

AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
TERRACE GARDENS OFFICE PARK

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This Amended and Restated Declaration of Covenants and Restrictions for Terrace Gardens Office Park ("Declaration") is made this 24th day of September, 1989 by and between EL PASO SAVINGS ASSOCIATION, a Texas savings association ("EPSA") and TEXAS NATIONAL BANK, a national banking association ("TNB").

W I T N E S S E T H:

WHEREAS, EPSA, and TNB are the owners of all of the Units and all of the Percentage of Interest in and to the Common Elements described in the Declaration of Covenants and Restrictions for Terrace Gardens Office Park of record in Book 1947, Page 882, Condominium Records of EL Paso County, Texas;

WHEREAS, the parties desire to make certain changes, additions and deletions in and to the Declaration.

NOW THEREFORE, the parties hereto mutually agree that the Declaration is hereby amended and restated as follows:

DECLARATION

1.1. Declaration. EPSA and TNB declare that: (i) the Property is, and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges and liens described on Exhibit "E" attached hereto (ii) the Property shall be known as TERRACE GARDENS OFFICE PARK; and (iii) the Property shall hereafter be subject to the covenants, restrictions, easements, limitations, conditions and uses of this Declaration, which shall run with the land, shall be binding upon EPSA and TNB, their successors, assigns and lessees, and any person or entity acquiring any interest in the Property, their grantees, successors, heirs, executors, administrators, devisees or agents.

DEFINITIONS

2. Definitions. The following words, when used in this Declaration, and the Governing Documents, shall have the following meanings:

2.1. Building. "Building" and/or "Buildings" shall mean those portions of the Property, with improvements located thereon, identified in the plat attached hereto as Exhibit "A" as Buildings "A" through "F".

2.2. Common Assessment. "Common Assessment" shall mean a charge for (i) the cost to maintain, improve, and operate the Common Elements and improvements, including, without limitation, funding of appropriate reserves for future repair and replacement, and (ii) Common Expenses.

2.3. Common Elements. "Common Elements" or "General Common Elements" means that portion of the Property not included in the Buildings including (i) land on which a Building is erected, (ii) foundations, bearing walls and columns, roofs, halls, lobbies, stairways, and entrance, exit, and communication ways; (iii) roofs, yards, and gardens, (iv) compartments or installation of central services such as power, light, gas, water, refrigeration, central heat and air, reservoir, water tanks and pumps; and (v) garbage incinerators and all other devices and installations generally existing for common use.

2.4. Common Expense. "Common Expense" shall mean: (i) the expense of, and reasonable reserves for, the maintenance or replacement, management and operation of the Common Elements, and the cost of Common Utility Services, if any; (ii) the cost of capital improvements to the Common Elements which the Council of Owners may from time to time authorize; (iv) the expenses of management and administration of the Council of Owners, including without limitation, compensation paid or incurred by the Council of Owners to a manager, accountant, attorney or other employees or agents; and (v) any other item or items designated by or in accordance with other provisions of this Declaration or the Rules and Regulations adopted by the Council of Owners. By way of illustration, Common Expense shall include, but not be limited to, the cost of trash pickup from the exterior trash receptacles, electrical and plumbing maintenance, maintenance of landscaping, fountain maintenance, maintenance of Common Element security, insurance, as more specifically described below, pest control, legal, audit, Common Element real estate taxes, and reserves for Common Element maintenance.

2.5. Common Utility Services. "Common Utility Services" shall mean all existing and future utility services

installed, consumed or used by or for the benefit of all of the Owners.

2.6. Council of Owners. "Council of Owners" shall mean the TERRACE GARDENS OFFICE PARK COUNCIL OF OWNERS, an unincorporated association to which each Owner shall belong, as herein provided, its successors and assigns.

2.8. Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions and the covenants, restrictions, and conditions and all other provisions herein set forth, as the same may be from time to time amended or supplemented.

2.9. Governing Documents. "Governing Documents" shall mean and refer collectively and severally to this Declaration, the Council of Owners' Bylaws, its Rules and Regulations, its Book of Resolutions, and the Texas Condominium Act.

2.10. Landscaped Areas. "Landscaped Areas" shall mean all landscaping within the Property including that situated in the unenclosed covered areas around the perimeter of the Buildings and that located on the real property owned by the City of El Paso and contiguous to the western boundary of the real property described in Exhibit "B", the contiguous property being more particularly described in that certain Easement Agreement dated February 21, 1987 and of record in Book 1425, Page 1517, Film Records of El Paso County, Texas.

2.11. Limited Common Elements. "Limited Common Elements" shall mean those portions of the Common Elements which may be allocated by unanimous agreement of the Council of Owners for the use of one or more but less than all of the Units. The covered parking areas immediately adjacent to each Building indicated on Exhibit "A" are hereby designated Limited Common Elements and the use thereof is hereby reserved for the exclusive use of the Units to which they are adjacent, except for Building C which shall not have any exclusive covered parking area.

2.12. Member. "Member" shall mean: (i) members of the Council of Owners, which shall consist of all Owners, or (ii) the heirs, executor or authorized personal representative of any Member.

2.13. Mortgage. "Mortgage" or "Deed of Trust" shall mean the conveyance of an interest in a Unit, or other portion of the Property, to secure the performance of an obligation, which conveyance shall be released or reconveyed upon the due performance of said obligation.

2.14. Mortgagee and Mortgagor. "Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall include

the beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who conveys an interest in a Unit to another by a Mortgage or Deed of Trust.

2.15. Occupant. "Occupant" shall mean and refer to the occupant of any Unit who shall be (i) the Unit Owner, or (ii) a lessee who holds a written lease of a Unit, or part thereof, in accordance with the provisions of this Declaration.

2.16. Owner. "Owner" shall mean the record Owner of a Unit. The term "Owner" shall not mean a mortgagee, or any one having an interest merely as security for the performance of an obligation.

2.17. Percentage of Interest. "Percentage of Interest" is defined in Section 4.1 below.

2.18. Property. The "Property" shall mean the real property described in Exhibit "A" appended hereto, together with the improvements now or hereafter located thereon.

2.19. Special Assessments. "Special Assessments" are defined in Section 5.8 and 5.8.1. below.

2.20. Unit. "Unit" shall mean a commercial or professional office space which is not owned in common with other Owners of the Property as shown on the maps attached hereto as Exhibit "C-1 through 6". The boundaries of a Unit are the interior surfaces of the Unit's perimeter walls, floors, and ceilings. The term "Unit" shall have the same meaning as the term "Apartment" as used in the Texas Condominium Act.

2.21. Zoning Ordinance. "Zoning Ordinance" shall mean the provisions of the City Code of the City of El Paso, as amended from time to time and as such shall be applicable to the Property.

ORGANIZATION OF THE COUNCIL OF OWNERS

3. Organization.

3.1. The Council of Owners. As set forth in Section 2.6 hereof, the Council of Owners shall be organized as an unincorporated association governed by the laws of the State of Texas, with the duties and vested with the powers prescribed by law, if any, and set forth in the Governing Documents, as such may be amended from time to time. The purpose of the Council of Owners shall be: (i) to provide for the management, maintenance and operation of the Common Elements and Common Utility Services, (ii) for the periodic collection of Common and Special Assessments, and (iii) the payment of Common Expense.

3.2. The Council of Owners Membership. Membership in the Council of Owners shall be appurtenant to each Unit, and shall not be assigned, transferred, pledged, hypothecated, divided, conveyed or alienated in any way, except as provided in this Declaration. Each Owner of a Unit, shall, upon and by virtue of owning such Unit, automatically become a Member of the Council of Owners and shall remain a Member thereof until his or its ownership ceases for any reason, at which time his or its membership in the Council of Owners shall automatically cease. Ownership of a Unit shall be the sole qualification for membership in the Council of Owners. Whenever the legal ownership of any Unit passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for the transfer of membership in the Council of Owners.

3.3. Member's Rights and Duties. Each Member shall have the rights, duties and obligations set forth in the Governing Documents.

3.4. Voting Rights. Each Member of the Council of Owners, shall be entitled to voting rights in accordance with such Owner's Percentage Interest as set forth in Section 4.1. below.

COMMON ELEMENTS

4. Common Elements.

4.1. Ownership. The Percentage of Interest appurtenant to each Unit is as set forth on Exhibit "D" attached hereto, said Percentage of Interest being computed by dividing the total number of square feet in a Unit by the total number of square feet contained within all Units. The Percentage of Interest shall determine the proportionate share of each Owner for the Common Assessments and Common Expenses and the vote such Owner shall have at meetings of the Council of Owners. Each Owner's respective Percentage of Interest in the Common Elements, as hereby established, shall be conveyed with the respective Unit and shall not be separated therefrom. Each undivided interest shall be deemed to be conveyed or encumbered with each respective Unit even though the description in the conveyance or mortgage may refer only to the title to the Unit.

4.2. Obligations of the Council of Owners. The Council of Owners, subject to the rights of the Members set forth in the Governing Documents, shall be responsible for the management, maintenance and control of the Common Elements.

4.2.1. Rules Governing Common Elements. Any rules or regulations adopted by the Council of Owners pertaining to the Common Elements shall apply equally to all Owners, and may provide that the Common Elements shall

be used only for such purposes and in such manner as established by the Council of Owners.

4.2.2. Fees. The Council of Owners may establish a reasonable fee other than a Common or Special Assessment, to be charged for the use of any portion of the Common Elements.

4.3. Members' Easements of Enjoyment and Access. Subject to the provisions of Subparagraph 4.4 hereof and the restrictions pertaining to the Limited Common Elements, every Member shall have a common right and non-exclusive easement of enjoyment in and to the unenclosed covered areas around the perimeter of the Buildings, the Common Elements and Common Utility Services, if any, and for ingress and egress across, over and through the such unenclosed covered areas and Common Elements, and such rights and easements shall be appurtenant to and shall pass with the title to each Unit.

4.4. Extent of Members' Easements. The rights and easements of enjoyment and access created hereby shall be subject to the following:

4.4.1. Suspension of Rights. The right of the Council of Owners in its discretion: (i) to suspend the voting rights of a Member, and/or his right to the use of Common Elements and/or Common Utility Services, during the period he is in default in excess of thirty (30) days in the payment of any assessment or charge against his Unit after notice; and/or (ii) to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published Rules and Regulations after notice. The aforesaid rights of the Council of Owners shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Council of Owners may have at law or in equity on account of any such default or infraction.

4.4.2. Rules. The right of the Council of Owners to create a fund and/or reserve for the payment of charges and fees for Common Utility Services, if any, Common Expenses, and for the maintenance, repair and upkeep of Common Elements, and to make, publish, and enforce reasonable Rules and Regulations governing the collection and payment of charges for Common Utility Services, Common Expenses, and the use and enjoyment of Common Elements for the benefit of all Members.

4.4.3. Access to Units. The Council of Owners' agents and employees shall have the right, after reasonable notice to the Owner, and at reasonable hours, to enter upon any portion of the Property, or into any

Unit for any purpose reasonably related to the performance by the Council of Owners of its rights and responsibilities, and to enter any Unit without notice at any time in the event of an emergency.

4.5. Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Elements and Common Utility Services to members of his family, his tenants, or guests, provided, however, that such Member shall at all times remain responsible for assessments and charges due hereunder and for compliance with Rules and Regulations of the Council of Owners governing the use and enjoyment of the Common Elements and Common Utility Services.

4.6. Waiver of Use. No Member may exempt himself from liability for assessments and charges duly levied by the Council of Owners, nor release his Unit from the liens and charges created hereunder, for any reason, including, without limitation, by waiver of the use and enjoyment of the Common Elements or by abandonment of a Unit or due to suspension of rights with regard to the Common Elements.

4.7. Additional Provisions Relating to Common Elements. All Owners covenant and agree that the Common Elements shall remain undivided; that no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property; that if any portion of the Common Elements encroaches upon any Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist.

4.8. Common Elements Maintenance. The Council of Owners shall maintain the Common Elements in a first-class condition, including but not limited to the parking area, exterior trash receptacle enclosures, roads, sidewalks, landscaping, fountains, drainage, public utilities and lighting facilities. All Common Elements improvements repaired or replaced by the Council of Owners shall be repaired or replaced with materials of quality at least equal to the quality of materials originally used, so as to maintain the architectural and aesthetic harmony and integration of the Property as a whole. All exterior lighting shall be charged as a Common Expense.

COVENANT FOR ASSESSMENTS AND CHARGES

5. Assessments and Charges.

5.1. Creation of Lien and Obligation for Assessments. EPSA and TNB hereby covenant for each Unit within the Property, and each Owner of a Unit, by his claim or assertion of Ownership or by accepting a deed to any such Unit, whether

or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and to agree to pay to the Council of Owners, its successors or assigns, each and all of the Common and Special Assessments as are established herein as the same shall become due and payable, without demand.

5.2. Covenants for Assessments and Charges. Common and Special Assessments, together with late charges, if any, interest, costs of collection, including, without limitation, court costs and attorney's fees, shall be and constitute a charge on the land and shall be secured by a separate, valid, subsisting and continuing lien, hereby created and fixed, which shall exist upon and against each Unit and all improvements comprising such Unit, for the benefit of the Council of Owners and all Members. Each assessment, together with late charges, interest and costs of collection, shall also be the personal obligation of the Owner of such Unit. The personal liability of an Owner for assessments and charges which became due prior to foreclosure shall not be extinguished by foreclosure in the event a deficiency still remains outstanding. Voluntary sale or transfer of any Unit shall not affect the assessment lien. In the case of a voluntary conveyance, the grantee of such Unit shall be jointly and severally liable with the grantor for any unpaid assessments and/or charges. No Member shall be exempt or excused from payment of any assessment or charge.

5.3. Subordination of the Lien to Mortgages. The lien for assessments provided for herein shall be subordinate to: (i) all liens for taxes or assessments levied by any governmental entity, and (ii) the lien of a valid Mortgage securing any part of the Project or any Unit, whether now in existence or hereafter incurred. The sale or transfer of any Unit in connection with a Mortgage pursuant to foreclosure under power of sale, a deed in lieu thereof, or through court proceedings in which the Council of Owners has been made a party, shall cut off and extinguish the lien securing assessments and charges which became due and payable prior to such foreclosure date or date of conveyance in lieu thereof but no such foreclosure or conveyance in lieu thereof shall relieve a Unit or Owner thereof from liability for any assessments thereafter becoming due or from the lien therefor.

5.4. Common Assessments: Purpose. All Common Assessments, and other charges collected by the Council of Owners, shall be held, used, and expended by the Council of Owners exclusively: (i) for the common benefit of all Members, and (ii) to improve, maintain, and operate the Common Elements and Common Utility Services, if any, including, without limitation, funding of appropriate reserves for future repair and replacement, and (iii) to pay Common Expense. The Council of Owners may, in its sole discretion, give one or more of the purposes set forth above preference over other purposes, and it

is agreed that all expenses incurred and expenditures and decisions made by the Council of Owners in good faith shall be binding and conclusive on all Members.

5.4.1. Levy of Assessments. The amount of Common Assessments for each calendar year shall be fixed and levied by the Council of Owners not less than thirty (30) days prior, nor more than thirty (30) days after, the beginning of each calendar year, and at such other and additional times as in the judgment of the Council of Owners additional Common Assessments are required. A budget shall be prepared by which the Common Assessments for the ensuing calendar year shall be determined. The Council of Owners may, however, increase the amount of assessments as deemed necessary and at any time during the calendar year.

5.4.2. Minimum. Unless otherwise changed by the Council of Owners, if the annual Common Assessment is not made as provided in Subparagraph 5.4.1., a payment in the amount required by the last prior annual Common Assessment shall be due upon each assessment payment date until changed by a new assessment.

5.4.3. Assessment Payment Date. The annual Common Assessments shall be payable in twelve (12) equal monthly installments, each installment being payable in advance on the first day of the month. The Council of Owners may revise the date or dates on which all Common and Special Assessments shall become due.

5.4.4. Interest on Past Due Assessments. Common and Special Assessments (or installments of assessments) more than thirty (30) days past due shall bear interest at the rate of fifteen percent (15%) per annum, or the highest rate permitted by law, whichever is less.

5.4.5. Late Charges. In the event any assessment is not paid within ten (10) days of its due date, the Owner shall also be required to pay a \$25.00 late charge. The Council of Owners shall also be entitled to revise the late charge to such amounts and upon such conditions as the Council of Owners may from time to time determine.

5.5. Owner's Date for Commencement of Assessments. Each Owner shall be responsible for Common Assessment charges immediately upon taking legal title to its Unit.

5.6. Real Estate Taxes. Each unit owner shall be exclusively responsible for the payment of all taxes and assessments of any kind whatsoever levied or assessed against

any Unit and its Percentage of Interest of ownership in the Common Elements by any governmental entity or taxing authority. To the extent taxes assessed against the Common Elements are apportioned and billed to the Unit Owners, that amount as determined by the Council of Owners shall be included as an item of Common Expense. The Council of Owners may, to the extent taxes are not collected by the holders of any mortgage on a Unit, provide for the payment monthly, with the assessments as herein provided, the estimated amount of taxes due and owing on any Unit and its Percentage of Interest in the Common Elements.

5.7. Special Assessments. The Council of Owners may levy in any year Special Assessments for the purpose of defraying, in whole or in part, the cost of any: (i) construction, reconstruction, repair or replacement of an improvement, (ii) restoration of any part of the Property, (iii) landscaping of the Common Elements, including, fixtures and personal property related thereto, (iv) excessive use of Common Utility Services, or (v) any other purpose approved by the Council of Owners.

5.7.1. Special Assessments Applicable to an Owner. Special Assessments against a particular Owner and his respective Unit may be made by the Council of Owners for the separately allocated insurance premiums described in Section 6.1.1. below and for repair or restoration of the Common Elements caused by the negligence or neglect of an Owner which the Council of Owners deems to impair the value of the Property, the Common Elements or the property of other Owners. The amount of such Special Assessment shall be due and payable by said Owner to the Council of Owners on or before the tenth (10th) day following the date of invoice.

5.8. Commingling of Assessments. All sums collected by the Council of Owners from assessments may be commingled in a single fund, and without the necessity of a specific accounting for each element for which assessments have been made.

5.9. Effect of Nonpayment of Assessments: Remedies of the Council of Owners. Any assessment or installment thereof not paid within the time fixed by the Council of Owners for payment therefor, shall be delinquent. Thereupon, the Council of Owners may take any or all of the following actions: (i) declare the entire annual balance of such Common or Special Assessment due and payable in full; (ii) charge interest and late charges from the due date as herein provided; (iii) give written notice to the Owner and his Mortgagee, if any, mailed to their last known address, that in the event payment of such assessment, together with accrued interest, is not paid in full within thirty (30) days from the date of such notice, then the

express contractual assessment lien herein created shall be filed and at the option of the Council of Owners foreclosed. Notice of Sale in the event of foreclosure shall be in accordance with Section 51.002 of the Texas Property Code, as amended, and the President, Secretary, or any other officer of the Council of Owners, or one of them, are hereby appointed Trustee for the sale under the terms hereof. The Owner's Unit shall be sold by the Trustee to the highest bidder for cash at the door of the Courthouse in El Paso County, Texas; (iv) upon written notice, suspend the right of any such Owner to vote and use the Common Elements; or (v) employ any other remedies available at law or equity. Any sale pursuant to the power hereinabove granted or pursuant to court order shall be subject to the rights of any Mortgagee holding a Mortgage or security interest on the Unit to be sold and the sale shall not affect or impair the priority, status or validity of the Mortgage. The Council of Owners shall have power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. If a delinquent assessment is placed in the hands of an attorney for collection, or if suit is brought thereon, or if collected through probate or other judicial proceedings, there shall be paid to the Council of Owners an additional reasonable amount, but not less than fifteen percent (15%) of the amount owing as attorney's fees. Suit to recover a money judgment for delinquent assessments shall be maintainable without foreclosing or waiving the lien securing the same. All such actions may be instituted and brought in the name of the Council of Owners and may be maintained and prosecuted by the Council of Owners in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

5.10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; and (ii) all Common Elements.

5.11. Notice to Mortgage Holders. The holder, insurer or guarantor of the Mortgage on any Unit is entitled to timely written notice of: (i) any condemnation or casualty loss that affects either a material portion of the Property or the property securing the Mortgage; (ii) any 60-day delinquency in the payment of assessments or charge owed by the Owner of any Unit on which it holds the Mortgage; (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council of Owners; and (iv) any proposed amendments of material nature as specified below. The term "material" shall include, but shall not be limited to, a change to any of the following: voting rights; assessments, assessment liens, or subordination of assessment liens;

reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repair; reallocation of interests in the Common Elements, or right to their use; boundaries of any Building; convertibility of Units into Common Elements or vice-versa; expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property; insurance or fidelity bonds; imposition of any restriction on the Unit's Owner's right to sell or transfer his or her Unit; restoration or repair of the Property (after hazard damage or partial condemnation) in a manner other than as specified in the documents; any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or any provisions that expressly benefit Mortgage holders, insurers, or guarantors. Notwithstanding the foregoing, no material change to the Declaration or the By-Laws of the Council of Owners shall be effective until approval in writing by all affected Mortgagees.

INSURANCE

6. Insurance.

6.1. Insurance. All improvements located on the Property shall be insured. Insurance shall be carried upon the Property in accordance with the following provisions.

6.1.1. Authority to Purchase. All insurance provided for in this Paragraph, unless the Council of Owners specifically provides otherwise, shall be purchased by the Council of Owners. All premiums for insurance provided by the Council of Owners shall be a Common Expense to be paid by Common Assessments. To assist in the purchase and administration of such policies of insurance, the Council of Owners may employ the services of an independent insurance analyst, consultant, or broker, the expense of which shall be a Common Expense.

6.2. Fire and Extended Coverage Insurance. The Common Elements, all improvements thereon, and the structural shell of each Building, including exterior walls, roof framing, exterior finishes, lights, windows and doors, roofing, mechanical equipment and ducts, shall be insured by the Council of Owners so as to provide for and assure full replacement thereof in the event of damage or destruction from the perils specified below. All such policies shall be issued in the name of the Council of Owners and shall contain a loss payable endorsement in favor of the Council of Owners.

The Council of Owners shall obtain insurance affording protection against at least: (i) loss or damage to the Common Elements, improvements thereon or the structural shell of the Unit caused by fire and other hazards covered by

the standard extended coverage, and vandalism and malicious mischief endorsements; (ii) such other additional coverages as the Council of Owners shall deem necessary or advisable.

The Council of Owners shall furnish evidence of insurance to the holders of all Mortgages on the Units and shall furnish evidence of the renewals of the same at least thirty (30) days prior to the expiration date of the policy of insurance. In addition, a copy of the original policy and any renewal policy shall be furnished to each Mortgage holder when requested.

6.3. Public Liability Insurance. The Council of Owners shall purchase comprehensive liability coverage in an amount not less than One Million (\$1,000,000.00) Dollars per occurrence, issued in the name of the Council of Owners affording protection against at least: (i) bodily and personal injury, including death; (ii) property damage; (iii) operations of automobiles on behalf of the Council of Owners, and (iv) operations of the Council of Owners in connection with the operation, maintenance or use of the Property.

6.4. Other Insurance. The Council of Owners may purchase such other forms and coverages of insurance as may benefit the Owners or the Property, in such amounts as the Council of Owners may deem proper.

6.5. Owner and Occupant Insurance. Each Owner and Occupant shall be exclusively responsible for obtaining and keeping in full force and effect, at his sole expense, comprehensive liability coverage for operations of their respective business and fire and extended coverage insurance on all of the Unit as described in Subparagraph 7.3 below, any personal property contained in his Unit or occupied lease space or located on the Common Elements, and on any improvements and betterments added to his Unit or occupied lease space by such Owner or Occupant. However, in no event shall the insurance coverage purchased by the Council of Owners be brought into contribution with insurance purchased by any Owner. Each Owner or Occupant shall hold the Council of Owners harmless from and against any liability due to the use of the Unit, including liability for bodily injury and property damage. Certificates of Insurance showing full compliance with all requirements of this paragraph shall be submitted to the Council of Owners by each Owner and Occupant within thirty (30) days of purchase of a Unit or occupancy of leased space.

6.6. Waiver of Subrogation. To the extent possible, the Council of Owners and each Owner shall obtain insurance coverage which provides that their respective insurance companies shall have no right of subrogation against, as the case may be, the Council of Owners and/or the Owner. Accordingly, to the extent the respective parties shall

actually collect such insurance, carriers shall have no right of subrogation against such parties.

RECONSTRUCTION OR REPAIR OF IMPROVEMENTS

7. Reconstruction/Repair of Improvements.

7.1. When Reconstruction Required. If any Building shall be damaged or destroyed by fire or other casualty, then, subject to the provisions of Subparagraph 7.3, the Building shall be repaired or reconstructed under the supervision of the Council of Owners. Each Owner does hereby irrevocably name, constitute and appoint the Council of Owners as his true and lawful attorney-in-fact for the purpose of accomplishing such reconstruction or repair hereby granting to the Council of Owners complete authorization, right and power to make, execute and deliver, in his name, place and stead, any contract and any other instrument with respect to the interest of such Owner which is necessary and appropriate to accomplish the powers herein granted. Any shortfall of insurance proceeds shall be the responsibility of the Owners directly affected by the damage. All additional reconstruction shall be the responsibility of the Owner as provided in Subparagraph 7.3 below. Such reconstruction or repair shall be in accordance with the original plans and specifications of the Building unless the Council of Owners with the consent of the affected Mortgagees, shall decide otherwise.

7.2. Restoration of Common Elements. If reconstruction of the Common Elements is to be required, the same shall be accomplished by the Council of Owners, and each Owner does hereby irrevocably name, constitute and appoint the Council of Owners as his true and lawful attorney-in-fact for the purpose of accomplishing such reconstruction or repair hereby granting to the Council of Owners complete authorization, right and power to make, execute and deliver, in his name, place and stead, any contract and any other instrument with respect to the interest of such Owner which is necessary and appropriate to accomplish the powers herein granted. Such reconstruction or repair shall be substantially in accordance with the original plans and specifications of the Property unless the Council of Owners shall decide otherwise.

7.3. Owner's Repair. Each Owner shall be responsible for the reconstruction, repair or replacement of all improvements and betterments pertaining to his Unit, including, but not limited to, wall and roof insulation, all sheetrock or other hard wall surfaces, the floor coverings, wall coverings, window shades, draperies, interior walls, furniture, furnishings, standard or decorative light fixtures, all appliances, electrical and other special wirings, and computer equipment and wirings provided therefor. Each Owner shall also

be responsible for the costs not otherwise covered by insurance carried by the Council of Owners, of any reconstruction, repair or replacement of any portion of his Unit. Owner shall begin reconstruction, repair or replacement of his Unit within thirty (30) days after settlement of the insurance claim, but no later than sixty (60) days after the date of such damage. Plans and specifications with regard to all reconstruction, repair or replacement of the interior of a Unit shall be subject to the approval of the Council of Owners so as to insure continuity with existing interior finishes. All work in connection therewith shall be completed in a timely manner in accordance with the schedule submitted to and approved by the Council of Owners and shall be in accordance with the approved plans and specifications.

7.4. Application of Insurance Proceeds. In the event of a claim or loss to the Common Elements for which there are no or insufficient insurance proceeds available, then a Special Assessment shall be made against the Owners.

7.5. Condemnation. In the event of a taking by eminent domain of part or all of the Common Elements the award for such taking shall, subject to the right of affected Mortgagees, be payable to the Council of Owners, which shall represent the Owners named in the condemnation proceedings. Said award shall be utilized to the extent possible for the restoration, replacement and/or improvement of the remaining Common Elements. Any funds not so utilized shall be applied in payment of Common Expense. In the event of a taking by eminent domain of all or a part of a Building, the award made for such taking shall be payable to the Owners of Units affected thereby, their Mortgagees, and the Council of Owners, as their interests may appear.

USE AND RESTRICTIVE COVENANTS

8. Use and Restrictive Covenants.

8.1. Protective Covenants. Each Owner of a Unit by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to the following protective covenants with respect to the use of the Property and each Unit:

8.1.1. Nuisances. No nuisance shall be permitted to exist or operate upon any Unit or the Common Elements so as to jeopardize property values or be detrimental to the well-being of Members.

8.1.2. Leasing. Each lease pertaining to a Unit shall contain the following provision:

"The leased property, the Lessor, Lessee and their guests, are subject to any existing rules and regulations of the TERRACE GARDEN OFFICE PARK COUNCIL OF OWNERS ASSOCIATION (the "Association"). Lessee acknowledges receipt of the Governing Documents of the Council of Owners, and all pertinent rules and regulations of the Council of Owners. Lessor shall promptly notify Lessee of any changes or additions to the Governing Documents. Lessor shall pay all lienable dues and fees to the Council of Owners. Lessee agrees to abide by all of the provisions of the Governing Documents, including, without limitation, rules and regulations regarding pets, parking, noise, use of Common Elements, and maintenance of the Property, and the breach thereof shall be deemed to be a breach of this Lease, entitling Lessor to terminate this Lease. The Council of Owners also has the power under the Governing Documents to take action against Lessee to ensure compliance with the Governing Documents. Lessor hereby appoints and constitutes the President of the Council of Owners as his true and lawful attorney-in-fact for him, in his name, place and stead, to do and perform every act and thing necessary or requested to secure compliance with the Governing Documents and all pertinent rules and regulations of the Council of Owners."

Any lease shall be subject in all respects to the provisions of the Governing Documents, and any such lease shall provide that the failure by the Lessee to comply with the terms of the Governing Documents shall be a default under the terms of such lease. All leases shall be in writing, and a copy thereof shall be filed with the Council of Owners.

8.1.3. Commercial Purposes. Units shall be used as office space for commercial and professional facilities only.

8.1.4. Rules. From time to time the Council of Owners shall adopt and promulgate general rules, including but not limited to, rules to regulate potential problems relating to the use of the Property and the well being of the Members, such as the installation of signs, trash and trash containers, parking and use of vehicles on the Property, extermination of pests and standards for consumption with respect to Common Utility Services. All such general rules and any subsequent amendments thereto shall be placed in the records of the Council of Owners and shall be binding upon all Members, except where expressly provided otherwise in such rules.

8.1.5. Second Stories. No second stories shall be constructed on any improvement located on the Property.

8.1.6. Land Use Restrictions. No Unit or leased space therein within the Property shall be used for: (i) any child care facility, including, without limitation, nurseries, day care centers and kindergartens; (ii) theatres, gamerooms or arcades, including, without limitation, pinball machines, video games, pool tables, movie arcades and other commercial amusement facilities; (iii) adult bookstore, adult motion picture theatre or movie arcade, nude live entertainment club, dance hall or any other facility for the sale or distribution of pornographic materials; (iv) a bar, private club or other facilities requiring a license for the sale of alcoholic beverages or similar facility for the commercial sale of beer, wine or other alcoholic beverages; (v) automobile service station, automobile repair garage or any other facility for the sale of automobile repair or maintenance services or automotive fuel; (vi) any illegal or, in the opinion of the Council of Owners, offensive purposes; (vii) mass market phone solicitation operations; or (viii) health spas, exercise activities, dance studios or gymnasiums.

8.1.7. Signs. All signs to be installed on the Property shall be approved, designed and installed by the Council of Owners and at the expense of the particular Owner or lessee of occupied space.

8.1.8. Landscaping. The Common Elements shall be landscaped and maintained in accordance with the Rules and Regulations established by the Council of Owners.

8.1.9. Partition/Subdivision. No Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property.

8.1.10. Animals. No animals of any kind shall be raised, bred or kept in any Unit of the Property.

8.1.11. Zoning Ordinance and Restrictions. The Property is zoned Office Park (O-P) and shall at all times be subject to the Zoning Ordinance and any prior restrictions, conditions and reservations created by contract, of record and applicable to the Property.

8.1.12. Resale of Units. The deed or instrument of conveyance transferring title to any Unit shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration. An Owner of a Unit shall, not less than fifteen (15) days prior to the closing date of the disposition, notify the Council of

Owners as to his intent to sell the Unit and provide the Council of Owners with copies of any contractual document related thereto.

8.1.13. Estoppel Certificate. Within ten (10) days of the receipt of the notice required by the Subparagraph 8.1.12. accompanied by a written request, the Council of Owners shall prepare an Estoppel Certificate which shall set forth any assessments and charges due upon such Unit at the time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Unit as of the date of the preparation of the Certificate. This Certificate shall be delivered to the place designated by the Owner, or to such place as the Council of Owners shall deem appropriate. Outstanding assessments, if any, and a reasonable charge to cover the cost of providing such Certificate shall be transmitted directly to the Council of Owners by the closing agent.

8.1.15. Roof Mounted Air-Conditioning Units/Antennas. Other than air-conditioning units mounted in the original construction or repairs or replacements thereof, no roof mounted equipment, including evaporative coolers, refrigeration units, solar units, antennas, or otherwise, shall be permitted on any Building without the prior written approval of the Council of Owners. No satellite dish or antenna shall be permitted on the Buildings or in the Common Elements except as approved by the Council of Owners.

8.1.17. Vegetation. No live trees, bushes, cactus, desert plants or other live vegetation, except for those plants commonly known as weeds, may be cut or removed without the prior approval of the Council of Owners.

8.1.18. Construction by Owner. An Owner may perform any construction required for tenant improvements as required in connection with the lease of Owner's Unit, provided, however, that the Owner shall keep at all times an orderly, clean appearance around the Unit and shall remove all debris daily. Unless the prior written consent of the Council of Owners is obtained which consent shall not be unreasonably withheld, no storage trailers, other construction related equipment or trash receptacles shall be permitted on the site overnight which interfere with the general access to and from the Units and parking areas on the Property. The Council of Owners shall be entitled to enforce these provisions with regard to all third party contractors, sub-contractors and suppliers. Plans and specifications with regard to all tenant improvement work

shall be subject to the approval of the Council of Owners. All work in connection therewith shall be completed in a timely manner in accordance with the schedule submitted to and approved by the Council of Owners, and shall be in accordance with the approved plans and specifications.

GENERAL PROVISIONS

9. Miscellaneous.

9.1. Covenants: Duration. EPSA and TNB hereby covenant for the Property and for each Unit within the Property, and each Owner of a Unit by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree, that the terms, conditions and restrictions contained in this Declaration, shall run with and bind the land constituting the Property, and shall inure to the benefit of and be enforceable by the Council of Owners or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending thirty (30) years thereafter. Upon the expiration of the initial term, this Declaration shall be automatically extended for successive periods of ten (10) years.

9.2. Amendment/Termination. Except as provided in paragraph 5.11 hereof, the covenants and restrictions of this Declaration shall not be amended except by Members having a vote of not less than sixty-seven percent (67%) of the Percentage of Interest; provided, however, that an amendment may not alter or destroy a Unit or Limited Common Elements without the consent of the Owners affected and the Owner's first lien Mortgagees.

The covenants and restrictions of this Declaration may be terminated only by an instrument signed by all of the then Owners and properly recorded in the Official Records of El Paso County, Texas.

9.3. Interpretation. If this Declaration or any word, clause, sentence, paragraph or any part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. Paragraph titles used in this Declaration are for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.

9.4. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision

appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

9.5. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, certified mail, to the last known address of the person or entity who appears as Member or Owner on the records of the Council of Owners at the time of such mailing, or to the municipal address assigned to the Unit owned by such Member or Owner.

9.6. Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical change required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

9.7. Severability. Invalidation of any one or more of the covenants, restrictions, conditions or provisions contained in this Declaration, or any part thereof, shall in no manner affect the validity or enforceability of any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

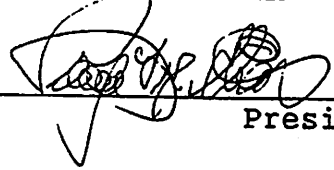
9.8. Enforcement. The Council of Owners, any Owner, Occupant or first Mortgagee, as their respective interests may appear, shall have the right to enforce, by any proceeding in law or in equity, all the restrictions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any enforcement proceedings shall be entitled to recover reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, the undersigned, have executed this Declaration to be effective, as of the day and year first above written.

EL PASO SAVINGS ASSOCIATION

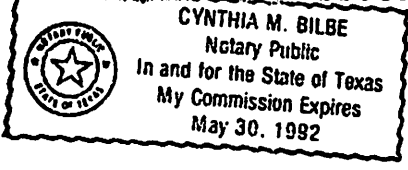
By:  President

TEXAS NATIONAL BANK

By:  President

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 5th day of October, 1989, by George D. May, Asst. Vice President, of EL PASO SAVINGS ASSOCIATION, a Texas savings association, on behalf of said association.



Cynthia M. Bilbe
Notary Public
My Commission Expires: _____

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 14th day of October, 1989, by George M. Elias, _____ President of TEXAS NATIONAL BANK, a national banking association, on behalf of said association.

Stephanie S. Spiring
Notary Public
My Commission Expires: _____

4439J

STEPHANIE S. SPIRING
NOTARY PUBLIC FOR THE STATE OF TEXAS
MY COMMISSION EXPIRES JULY 25, 1992.

EXHIBIT "D"

PERCENTAGES OF INTEREST OF OWNERS

<u>Building</u>	<u>Square Footage</u>	<u>Percentage of Interest</u>
A 1	5,498 (Interior) <u>-0-</u> (Storage) 5,498 (Total)	18.749
B 2	4,200 (Interior) <u>77</u> (Storage) 4,277 (Total)	14.585
C 3	4,200 (Interior) <u>77</u> (Storage) 4,277 (Total)	14.585
D 4	4,200 (Interior) <u>77</u> (Storage) 4,277 (Total)	14.585
E 5	5,412 (Interior) <u>77</u> (Storage) 5,489 (Total)	18.748
F 6	5,412 (Interior) <u>77</u> (Storage) 5,489 (Total)	18.748
	29,307	100 %

EXHIBIT "E"

1. Easement to EL PASO ELECTRIC COMPANY in Book 112, Page 646; Book 1686, Page 106; Book 184, Page 917; Book 998, Page 852, County Clerk's Records, El Paso County, Texas.
2. Rezoning contract and restrictions between ARNOLD B. PEINADO, JR., ET AL. and THE CITY OF EL PASO, in Book 987, Page 1 and in Book 1114, Page 927 amended in Book 1425, Page 1521, County Clerk's Records, El Paso County, Texas.
3. All rights of the CITY OF EL PASO to drainage easements, concrete lined drainage channels and right of ways for city streets as shown in Special Warranty Deed in Book 1234, Page 1652, County Clerk's Records, El Paso County, Texas.
4. Easement and Right-of-Way from CITY OF EL PASO to TERRACE GARDENS OFFICE PARK PARTNERSHIP, in Book 1425, Page 1517 (northerly line Tract 34F), County Clerk's Records, El Paso County, Texas.
5. Easement to EL PASO ELECTRIC COMPANY and MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY in Book 1451, Page 367 (Tract 34F), County Clerk's Records, El Paso County, Texas.
6. Easement to CITY OF EL PASO - PUBLIC SERVICE BOARD covering a portion of Tract 34F, in Book 1470, Page 947, County Clerk's Records, El Paso County, Texas.
7. Title to CITY OF EL PASO, of all oil, gas and minerals of every kind and character in, on and under the insured premises, together with all rights, privileges and immunities relating thereto, heretofore reserved or conveyed by predecessors in title, in Book 1279, Page 1083, County Clerk's Records, El Paso County, Texas.
8. Easement to EL PASO ELECTRIC COMPANY, in Book 1631, Page 47, County Clerk's Records, El Paso County, Texas.
9. All underground water rights reserved to THE CITY OF EL PASO for the benefit of its PUBLIC SERVICE BOARD in Book 1279, Page 1083, County Clerk's Records, El Paso County, Texas.
10. Easement to construct and maintain sewer lines granted to THE CITY OF EL PASO, in Book 1279, Page 1083, County Clerk's Records, El Paso County, Texas.
11. Rezoning contract and restrictions between PUNTO ALEGRE JOINT VENTURE and THE CITY OF EL PASO, in Book 1388, Page 762, County Clerk's Records, El Paso County, Texas.

EXHIBIT "E", PAGE 2

12. Easement from the CITY OF EL PASO to PUBLIC, in Book 1478, Page 1334, County Clerk's Records, El Paso County, Texas.
13. Title to PUBLIC FREE SCHOOL FUND OF TEXAS of all oil, gas and minerals of every kind and character in, on and under the insured premises, together with all rights, privileges and immunities relating thereto, heretofore reserved or conveyed by predecessors in title, in Book 25, Page 564, County Clerk's Records, El Paso County, Texas.
14. Easement to EL PASO ELECTRIC COMPANY in Book 1478, Page 1331 amended in Book 1492, Page 398, County Clerk's Records, El Paso County, Texas.

4439J



Office of the Secretary of State
Packing Slip

May 22, 2003

Page 1 of 2

Attn: John S. Birkelbach

Mounce Green Mvers Safi & Galatzan
PO Box 1977
El Paso, TX 79950- 1977

Batch Number: 3433779

Batch Date: 05-22-2003

Client ID: 10331755

Return Method: Fax and Mail

915-541-1597

Phone No: 915-541-1510 -

Document Number	Document Detail	Filing Number / Name	Page Count	Fee
34337790002	Articles of Incorporation	TERRACE GARDENS OFFICE PARK OWNERS ASSOCIATION, IN	0	\$25.00
34337790002	Expedited	TERRACE GARDENS OFFICE PARK OWNERS ASSOCIATION, IN	0	\$25.00
Total Document Fees				\$50.00

Payment Type	Payment Status	Payment Reference	Amount
Check	Received	21877	\$50.00
Total Payments Received			\$50.00
Total Amount Charged to Client Account			\$0.00
Total Amount Credited to Client Account			\$0.00

Note: This is not a bill. Please do not send any payments until the monthly statement is received.
Any amount credited to Client Account may be refunded upon request.
Refunds (if applicable) will be processed within 10 business days.
Acknowledgement of Filing Document(s) (if present) is attached.

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