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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM REGIME FOR
OLD MILL CROSSING TOWNHOMES**

A Residential Condominium Regime in Comal County, Texas

Effective Date of Amended and Restated Declaration of Condominium Regime:

April 18, 2017

Declarant: Woodland Hills Development, Inc., a Texas corporation
4411 South IH-35 #100
Georgetown, Texas 78626

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AMENDED AND RESTATED

**DECLARATION OF CONDOMINIUM REGIME FOR OLD MILL CROSSING
TOWNHOMES**

Reference is made herein to that certain Declaration of Condominium Regime for Old Mill Crossing Townhomes (as amended, the “**Declaration**”) executed by Woodland Hills Development, Inc., a Texas corporation (the “**Declarant**”), on September 1, 2016, and recorded as Document No. 201606034149 in the Official Public Records of Comal County, Texas.

The Declaration was amended by (i) that certain First Amendment to Declaration of Condominium Regime for Old Mill Crossing dated to be effective November 2, 2016, and recorded as Document No. 201606042219 in the Official Public Records of Comal County, Texas; and (ii) that certain Second Amendment to Declaration of Condominium Regime for Old Mill Crossing dated to be effective December 20, 2016, and recorded as Document No. 201606048608 in the Official Public Records of Comal County, Texas.

This Amended and Restated Declaration of Condominium Regime for Old Mill Crossing Townhomes is made and entered into to be effective as of the Effective Date shown on the cover sheet. This Amended and Restated Declaration of Condominium Regime for Old Mill Crossing Townhomes **SUPERSEDES AND REPLACES**, in its entirety, the Declaration of Condominium Regime for Old Mill Crossing recorded as Document No. 201606034149 in the Official Public Records of Comal County, Texas, including all amendments. This Amended and Restated Declaration of Condominium Regime for Old Mill Crossing Townhomes is the only declaration governing the Regime.

Woodland Hills Development, Inc., a Texas corporation (“**Declarant**”), is the owner of Lot 1, Block 1, Old Mill Crossing, a subdivision located in Comal County, Texas, according to the map or plat thereof recorded in Document No. 201606018979, Map and Plat Records of Comal County, Texas (the “**Property**”). The Property, together with all Improvements thereon and all easements, rights, and appurtenances thereto, is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code (the “**Act**”), for the purpose of creating Old Mill Crossing Townhomes, a residential condominium regime (the “**Regime**”).

THE REGIME MAY BE CONSTRUCTED IN PHASES, WITH EIGHT (8) UNITS BEING CREATED BY THIS DECLARATION ON THE EFFECTIVE DATE (THE “INITIAL NUMBER OF UNITS”) AND A MAXIMUM NUMBER OF FIFTY (50) UNITS (THE “MAXIMUM NUMBER OF UNITS”) BEING SUBJECT TO CREATION BY DECLARANT DURING THE DEVELOPMENT PERIOD. SEE SECTION 3.1 OF THIS DECLARATION.

RECITALS

WHEREAS, Declarant is the fee simple owner of the Property;

WHEREAS, Declarant desires to create a residential condominium regime on the Property pursuant to the Act;

WHEREAS, Declarant intends to establish a plan for the individual ownership of estates in real property consisting of the Units and the appurtenant undivided interests in the Common Elements, all pursuant to the Act;

NOW, THEREFORE, it is hereby declared that the Property will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, which will run with the Property, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1: DEFINITIONS

Unless otherwise defined in this Declaration, terms defined in Section 82.003 of the Act have the same meaning when used in this Declaration. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1 **“Act”** means Chapter 82 of the Texas Property Code, the Texas Uniform Condominium Act, as it may be amended from time to time.

1.2 **“Applicable Law”** means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are “Applicable Law” on the date of the Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3 **“Architectural Authority”** means Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Authority will automatically be transferred to the Board.

1.4 **“Assessment”** means any charge levied against a Unit or Owner by the Association pursuant to the Documents, the Act, or other Applicable Law, including but not limited to Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments as defined in this Declaration.

1.5 “**Association**” means Old Mill Crossing Condominium Association, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of Units within the Regime. The term “Association” shall have the same meaning as the term “property owners association” in Texas Property Code Section 202.001(2). The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and the Act.

1.6 “**Board**” means the Board of Directors of the Association.

1.7 “**Building**” means each detached, semi-attached, or attached residential dwelling structure constructed within the Regime, together with all appurtenant Improvements. Each Building in the Regime may contain one or more Units. Each Building and each Unit is described in this Declaration and described and depicted on Exhibit A attached hereto. Declarant has reserved the right to add additional Units and Buildings to the Regime as permitted in Annex “1”, attached hereto.

1.8 “**Bylaws**” mean the bylaws of the Association, as they may be amended from time to time.

1.9 “**Certificate**” means the Certificate of Formation of the Association filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

1.10 “**City**” means the City of New Braunfels, Texas, where the Property is located.

1.11 “**Common Elements**” means all portions of the Property save and except the Units. All Common Elements are “**General Common Elements**” unless such Common Elements have been designated as “**Limited Common Elements**” by this Declaration or the Act for the exclusive use of one or more but less than all of the Units.

1.12 “**Common Expenses**” shall mean those expenses related to the recurring, periodic, and anticipated responsibilities of the Association for which Owners are liable as provided in this Declaration.

1.13 “**Common Interest Percentage**” shall mean the percentage interest in the Common Elements allocated to each Unit, as set forth on Exhibit C attached hereto. The Common Interest Percentage is assigned in accordance with a ratio of 1 to the total number of Units. The same formula will be used in the event the Common Interest Percentage is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Percentage as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date set forth in such amendment.

1.14 “**County**” means Comal County, Texas, where the Property is located.

1.15 “**Declarant**” means Woodland Hills Development, Inc., a Texas corporation. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by recorded

written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under the Documents to any Person. Declarant may also, by recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under the Documents.

1.16 **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, in accordance with the terms of Annex "1" of this Declaration. The duration of Declarant Control Period is from the Effective Date for a maximum period not to exceed one hundred and twenty (120) days after title to seventy-five percent (75%) of the Maximum Number of Units that may be created hereunder have been conveyed to Owners other than Declarant.

1.17 **"Declaration"** means this Amended and Restated Declaration of Condominium Regime for Old Mill Crossing Townhomes, as it may be amended from time to time.

1.18 **"Development Period"** means the twenty (20) year period, beginning on the date this Declaration is recorded, during which Declarant has certain rights as more particularly described on Annex "1", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by recording a notice of termination.

1.19 **"Documents"** mean, singularly or collectively as the case may be, this Declaration, the Plat and Plans, attached hereto as Exhibit A, the Certificate, Bylaws, and the Rules of the Association, as each may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.20 **"Effective Date"** means the Effective Date shown on the cover page to this Declaration.

1.21 **"Encumbrances"** means the easements and restrictions contained in this Declaration and the all easements, licenses, leases, and encumbrances of record in the County affecting the Property. A list of recorded Encumbrances is included as Exhibit B to this Declaration.

1.22 **"General Common Elements"** mean Common Elements which are not Limited Common Elements. General Common Elements may be designated as "GCE" or "General Common Element" on the Plat and Plans attached as Exhibit A, but not all General Common Elements are so designated on the Plat and Plans. "General Common Elements" includes Common Elements identified in this Declaration as General Common Elements, even if such Common Elements are not designated as "GCE" or "General Common Element" on the Plat and Plans.

1.23 **"Improvement"** means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, Buildings,

outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.24 **“Landscape Services”** mean the following services to be provided to the Yard Areas in the Regime: (a) regular irrigation of all turf and landscaped areas in a reasonable manner, as determined by the Association, considering local rules, ordinances, and regulations and water conservation measures and restrictions in place and in force at any time; (b) regular mowing and edging all turf in Front Yard Areas on an as-needed basis as determined by the Association; (c) applying fertilizer to all turf in Front Yard Areas on an as-needed basis as determined by the Association; (d) manually and mechanically controlling weeds in as required to maintain a manicured appearance in Front Yard Areas. Notwithstanding the foregoing, the Board will have the right to modify the Landscape Services provided hereunder from time to time.

1.25 **“Limited Common Elements”** means those portions of the Property reserved for the exclusive use of one or more Units to the exclusion of other Owners. Limited Common Elements may be designated as “LCE” or “Limited Common Element” on the Plat and Plans attached as Exhibit A, but not all Limited Common Elements are so designated on the Plat and Plans. “Limited Common Elements” includes Common Elements identified in this Declaration as Limited Common Elements, even if such Common Elements are not designated as “LCE” or “Limited Common Element” on the Plat and Plans.

1.26 **“Majority”** means more than fifty percent (50%).

1.27 **“Member”** means a member of the Association, with each Member being an Owner of a Unit and having one (1) vote in the Association.

1.28 **“Mortgagee”** means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Unit.

1.29 **“Owner”** means a holder of recorded fee simple title to a Unit. Declarant is the initial Owner of all Units. Mortgagees who acquire fee simple title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Mortgagees and other lienholders or other holders of security interests are not Owners unless and until they acquire fee simple title to a Unit. Every Owner is a Member of the Association.

1.30 **“Person”** shall mean any individual or entity having the legal right to hold title to real property.

1.31 **“Plat and Plans”** means the plat and plans attached hereto as Exhibit A, as changed, modified, or amended in accordance with this Declaration.

1.32 **“Property”** means Lot 1, Block 1, Old Mill Crossing, a subdivision located in Comal County, Texas, according to the map or plat thereof recorded in Document No. 201606018979, Map and Plat Records of Comal County, Texas, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.33 **“Regime”** means the condominium regime created by this Declaration and known as Old Mill Crossing Townhomes; the Regime includes the Property, Units, General Common Elements, and Limited Common Elements as described in this Declaration.

1.34 **“Resident”** means an occupant or tenant of a Unit, regardless of whether the Person owns the Unit.

1.35 **“Rules”** means rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules may be adopted by Declarant for the benefit of the Association.

1.36 **“State”** means the State of Texas.

1.37 **“Unit”** means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans attached hereto as Exhibit A and are further described in Article 3 of this Declaration. The “Initial Number of Units” created by this Declaration is eight (8). Subject to Section 3.1, Declarant reserves the right to create up to fifty (50) Units (the “Maximum Number of Units”) during the Development Period.

1.38 **“Unit Boundary Wall”** means the wall within a Building that separates two Units. Each Unit Boundary Wall shall be a “double wall” consisting of two parallel single walls having air space and/or fire blocks in between them, but which, together with the Building exterior makes two (2) Units into one architecturally whole Building. PURSUANT TO SECTION 12.30 OF THIS DECLARATION, OWNERS MAY NOT PENETRATE THE UNIT BOUNDARY WALL FOR ANY PURPOSE EXCEPT FOR THE PURPOSE OF HANGING DECORATIVE ITEMS INSIDE THEIR UNITS.

1.39 **“Unit Exterior and LCE Maintenance”** means, as determined by the Board, all scheduled routine maintenance items that must be completed in order to maintain the Limited Common Elements designated for use by the Units and the exterior of the Units in accordance with the exterior usability and appearance standards acceptable to the Association. “Unit Exterior and LCE Maintenance” includes routine painting of the Units but does not include Unit Exterior and LCE Repairs.

1.40 **“Unit Exterior and LCE Repairs”** means any unscheduled repair work that must be completed on a Limited Common Element or a Unit in order to maintain the usability, structural integrity, and livability of the Limited Common Element or the Unit and to maintain the exterior of the Limited Common Elements or the Units in accordance with the usability

exterior appearance standards acceptable to the Association. Regular maintenance tasks shall not be considered Unit Exterior and LCE Repairs.

1.41 “Yard Area,” “Front Yard Area,” and “Backyard Area” have the meanings given such terms in this Section. “Yard Area” means any yard space area that is adjacent to the boundary of a Unit except for space that is designated by the Declarant as “Open Space” or “Non-Yard Area.” Any Property designated as “Open Space” or “Non-Yard Area” shall be a General Common Element. “Front Yard Area” means all Yard Area in the Regime that is not enclosed by a Unit’s fence (as such fence is required to be located by Declarant). Any ambiguities as to what portions of the Property constitute Front Yard Area and Open Space shall be resolved by the Association in its sole discretion. “Backyard Area” means all Yard Area that is enclosed in a Unit’s fence (as such fence is required to be located by Declarant). All Yard Area is a Limited Common Element as designated in Article 4 of this Declaration. Pursuant to Annex “1”, Declarant has reserved the right to convert General Common Elements to Yard Area and to convert Yard Area into a General Common Element during the Development Period. Declarant also reserves the right to add a landscape plan or fence plan to the Plat and Plans to designate the location of fences, open space (or Non-Yard Area), Front Yard Areas, and Backyard Areas. Portions of the Property that are enclosed by fences along with constructed General Common Elements such as detention or drainage improvements are not considered Yard Area under this Declaration; such fenced portions of the Property are considered part of the General Common Element appurtenant to them.

ARTICLE 2: PROPERTY SUBJECT TO DOCUMENTS

2.1 **Subject To Documents.** The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including all exhibits and Annex “1”, attached hereto, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2 **Terms of the Act.** The provisions of the Act shall apply to and govern the operation and governance of the Regime, except to the extent that contrary provisions not prohibited by the Act are contained in one or more of this Declaration, the Bylaws, or the Rules established hereunder.

2.3 **Additional Property.** Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of Owners representing at least two-thirds (2/3) of the ownership interests in the Property, or during the Development Period by Declarant as permitted in Annex “1”. Annexation of additional property is accomplished by the recording of an amendment or addendum to this Declaration, which will include a description of the additional real property, and if applicable, a description of any new Units added to the Regime.

2.4 **Withdrawal of Property.** During the Development Period, Declarant may withdraw from the Property and the Regime any portion of the real property marked on the Plat and Plans as “Development Rights Reserved” or “Subject to Development Rights.”

2.5 **Recorded Easements and Licenses.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and Encumbrances of record, including those described in the attached Exhibit B and any shown on a recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, and Encumbrances. Each Owner further agrees to maintain any easement that crossed his Unit and for which the Association does not have express responsibility.

ARTICLE 3: UNITS

3.1 **Development of Regime in Phases.** The Regime initially consists of eight (8) Units. During the Development Period, the Declarant has reserved the right to create a total of fifty (50) Units, as set out in Annex 1. To add Units to the Regime, Declarant shall, during the Development Period, file an amendment to this Declaration expressly for the purpose of creating additional Units. Such amendment shall: (1) assign a unit number to each of the new Units, (2) reallocate Common Interest Percentages among all of the Units in the Regime, (3) describe any Limited Common Elements created with the new Units, and (4) with respect to the new Units, include the information required by Section 82.055 and Section 82.059(b) of the Act.

3.2 **Separate Estates.** The Property is hereby divided into fee simple estates consisting of eight (8) separate condominium Units, and except as stated herein, together with the exclusive rights to use the Limited Common Elements, if any, appurtenant to each Unit, the non-exclusive right to use the General Common Elements, and the Common Interest Percentage in and to the Common Elements. The physical boundaries of the Units, as the same are set out on the Plat and Plans attached as Exhibit A or as otherwise changed by Declarant, shall be conclusively presumed to be the boundaries of such areas, notwithstanding any settling, rising, or other movement of the Buildings, Improvements, or the Property, and regardless of any variances actually existing on the date hereof with respect to such boundaries. Additionally, there is hereby granted a valid and existing easement for any encroachments arising out of any such variances, settling, rising, or other movement, and such easement shall exist so long as the Property exists as a condominium regime pursuant to the Act. The initial Units consist of duplexes such that each numbered Building shown on the Plat and Plans contains two separate Units (lettered “A” and “B”) divided by a Unit Boundary Wall.

3.3 **Unit Boundaries.** The boundaries and identifying number of each Unit are shown on the Plat and Plans attached as Exhibit A. Each Unit includes the roof, exterior walls, and the portion of the foundation (including the foundation beams) of the Building that underlies the Unit and all other Improvements which constitute the Unit. Where a Unit Boundary Wall serves as the boundary between two Units, each Unit shall include the full single wall that is appurtenant to the Unit, and the adjacent one-half of the air space and fire blocks between the

two single walls in the Unit Boundary Wall. In addition to the Building and the Improvements which constitute the Unit, to the extent not specifically identified in this Declaration as a Common Element, each Unit also includes Improvements, fixtures, and equipment serving the Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Building, including but not limited to any below-grade foundation, piers, retaining walls, or other structural supports; plumbing, sewer lines and improvements, and utility lines, pipes, drains, and conduits; landscape irrigation and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Unit exclusively. All landscape irrigation improvements (including subterranean irrigation lines and sprinkler heads) shall be General Common Elements.

3.4 **Unit Inclusions.** Each Unit includes the spaces and Improvements within the above-described boundaries, including without limitation, any windows, window screens and frames, exterior doors and door hardware, attic area, firebox and fireplace flue. Each Unit also includes Improvements, fixtures, and equipment serving the Unit exclusively, whether located inside or outside the Unit (or inside of an adjacent Unit), and whether or not attached to or contiguous with the Unit, including but not limited to, the following (if any): chimneys, water heaters, air conditioners, utility meters, fuse boxes, electrical switches, electrical and communications wiring and cabling, pipes, ducts, conduits, smoke detectors, security systems, television antennas, lighting fixtures, telephone and electrical receptacles, and skylights. In some circumstances, wiring, conduit, or cabling exclusively serving one Unit may cross through an adjacent Unit; in such circumstances, the wiring, conduit, or cabling exclusively serving a Unit is considered part of the Unit that it serves even though it is crossing through the boundary of the adjacent Unit. The easements granted by Owners in Article 5 govern the rights of Owners when wiring, conduit, or cabling exclusively serving a Unit crosses through an adjacent Unit.

- a. **Exclusions.** Except as specifically included above, each Unit excludes the spaces and Improvements lying outside of the boundaries of the Unit.
- b. **Inconsistency with Plans.** If the foregoing description of Unit boundaries is inconsistent with the Plats and Plans, then this Section will control.
- c. **Representations of Size.** The space contained within the Unit's boundaries is not related to the size of the Unit's living areas. Similarly, the Units may be marketed on the basis of a limited number of representational floorplans, each of which is marked with a rounded and estimated size of air-conditioned space taken from pre-construction architectural drawings. Those marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries and the actual area contained within the air conditioned space of the Unit.

3.5 **Description and Conveyance of Units.** No Unit shall be conveyed to any other party unless the conveyance also includes the Common Elements appurtenant thereto. Any attempted conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of all or any portion of a Common Element, which does not include the Unit appurtenant thereto, shall be void. The description of a Unit in any deed, lease, mortgage, deed of trust or other instrument

shall include, at a minimum: (i) the name of the condominium Regime; (ii) the recording information for this Declaration, including any amendments, plats, and plans; (iii) the name of the County; and (iv) the identifying number of the Unit.

3.6 **Subdivision and Rezoning of Units.** Neither the Units nor any structures now or hereafter existing within any Unit may be subdivided into separate ownership units. No Unit will be rezoned to any classification without the express consent of Declarant or the Association. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved subdivision or rezoning at the expense of the enjoined party.

3.7 **Encumbrances.** Each Unit, and ownership of each Unit, shall be subject to all Encumbrances.

3.8 **Reserved Rights and Easements.** Each Unit, and ownership of each Unit, shall be subject to all rights and easements otherwise described and/or retained in this Declaration.

3.9 **Separate Taxes.** Taxes, assessments, and other charges of the State, County, City, or any other political subdivision, or of any special improvement district or other taxing or assessing authority, shall be assessed by such authorities against and collected on each individual Unit, which shall include the Limited Common Elements designated for use by the Unit and the Unit's Common Interest Percentage of the Common Elements. Each Unit shall be carried in the appraisal district's tax records as a separate and distinct entity for the purpose of real property ad valorem taxation. Real property ad valorem taxes shall not be assessed on the Regime as a whole, all as more particularly provided for in the Act. Each Owner shall be individually responsible for payment of the separate taxes, assessments, and charges.

3.10 **Declarant's Building Rights.** Declarant has the right and option to build one or more of the Units at one or more times so long as Declarant is the Owner of such Unit. None of the Buildings, Units, or other Improvements are required to be built, whether or not designated as "Must Be Built" on the Plat.

3.11 **Street Addresses of Units.** Local governing authorities have assigned street addresses to the Units, and such street addresses are shown on the final page of the Plat and Plans attached as Exhibit A. Street addresses are subject to change by the local governing authorities. The assigned street addresses are not part of the legal description of the Units and have no effect other than for use by governing authorities; the Units are identified for legal purposes by the Unit number assigned in this Declaration. To be effective, a conveyance of a Unit must include the Unit number (as required in Section 3.4 of the Declaration). The conveyance of a Unit may, but is not required to, include the street address of a Unit.

ARTICLE 4: COMMON ELEMENTS

4.1 **Common Elements.** The Common Elements of the Regime consist of all of the Property save and except the Units. All Common Elements that are not specifically designated as Limited Common Elements shall be General Common Elements.

4.2 **Ownership and Maintenance.** The designation of Common Elements is determined by this Declaration as it may be amended from time-to-time. The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with its development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration elsewhere provides for a different allocation for a specific Common Element.

4.3 **Acceptance.** By accepting an interest in or title to a Unit, each Owner is deemed: (i) to accept the Common Elements of the Property and any Improvement thereon in their then-existing condition; (ii) to acknowledge the authority of the Association, acting through its Board, for all decisions pertaining to the Common Elements; (iii) to acknowledge that transfer of a Common Element's title (if any) to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (iv) to acknowledge the continuity of maintenance of the Common Elements, regardless of changes in the Association's Board or management.

4.4 **Common Expense Liabilities.** The percentage of liability for Common Expenses allocated to each Unit and levied pursuant to this Declaration is equivalent to the Common Interest Allocation assigned to the Unit.

4.5 **Initial Designations of Limited Common Elements.** The following portions of the Common Elements are Limited Common Elements assigned to one or more Units, whether or not designated as Limited Common Elements on the Plat and Plans:

- a. **Shown on Plats and Plans.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as Exhibit A, by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.
- b. **Appurtenant Areas.** Only to the extent they are not part of the Unit, any appurtenant improvement, such as a driveway, sidewalk, or fence that is obviously intended for the sole and exclusive use of the Unit to which the area is appurtenant is deemed a Limited Common Element, whether or not the area is so designated on Plats and Plans. For purposes of clarification, each driveway in the Regime is considered a Limited Common Element designated for the use of the Unit served by the driveway. For purposes of clarification, sidewalks running along roads are General Common Elements, but a sidewalk running from the road to the front door of a Unit is a Limited Common Element designated for use by that Unit. A sidewalks running from the road to multiple Units is a Limited Common Element designated for use by the Units being served.
- c. **Yard Areas.** All Yard Areas are Limited Common Elements designated as follows:

- i. Front Yard Areas are Limited Common Elements designated for the use of the Units that adjoin the Front Yard Area (i.e., the Front Yard Area located in between two Units is a Limited Common Element reserved to those two Units); and
 - ii. Backyard Areas are Limited Common Elements reserved for the exclusive use of the Unit adjoining the Backyard Area (i.e., the Backyard Area enclosed in a Unit's fence is a Limited Common Element reserved exclusive for the use of that Unit).
 - iii. Any Property designated as "Open Space" or "Non-Yard Area" is a General Common Element. Pursuant to Annex "1", Declarant has reserved the right to convert General Common Elements to Yard Area and to convert Yard Area into a General Common Element during the Development Period.
- d. Shared Fences. Any fence that serves more than one Unit is a Limited Common Element reserved to the Units that it serves.

4.6 **Landscape Irrigation Improvements**. All landscape irrigation improvements (including subterranean irrigation lines and sprinkler heads) shall be General Common Elements.

4.7 **Subsequent Allocation of Limited Common Elements**. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only pursuant to the provisions of this Declaration. Declarant reserves the right in Annex "1" of this Declaration to create and assign Limited Common Elements within the Property.

4.8 **Condemnation**. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Elements, the funds payable with respect thereto will be payable to the Association and will be used by the Association to purchase additional Common Elements to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event the Board determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Elements or for whatever reason, any remaining funds may be used by the Association for other purposes or distributed to the Owner based on Common Interest Percentages.

ARTICLE 5: PROPERTY EASEMENTS, RIGHTS, AND RESTRICTIONS

5.1 **General**. In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this Article.

5.2 **Owner's Easement of Enjoyment**. Every Owner is granted a right and easement of enjoyment over the General Common Elements and to use of Improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Unit

delegates this right of enjoyment to the Residents of his Unit and is not entitled to use the General Common Elements.

5.3 **Owner's Maintenance Easement.** Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain, or reconstruct such Owner's Unit (including wiring, conduit, or cabling exclusively serving such Owner's Unit that crosses through an adjacent Unit), provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 9 a.m. until 6 p.m., and then only in conjunction with actual repair, maintenance, or reconstruction activities. Access to the Common Elements for the purpose of repairing, maintaining, or reconstructing any Unit must be approved in advance and in writing by the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 9 a.m. until 6 p.m., and then only in conjunction with actual repair, maintenance, or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Elements and adjacent Units during any such repair, maintenance, or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Unit.

All work requiring access to the Common Elements may only be performed by a Person who shall deliver to the Board prior to commencement of such work, in form satisfactory to the Board: (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work; (ii) indemnities of the Board and the Association holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units; (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and (iv) all other information and assurances which the Board may reasonably require.

Notwithstanding anything to the contrary stated herein, the provisions of this Section shall not apply to any construction performed by or on behalf of Declarant.

5.4 **Owner's Ingress/Egress Easement.** Each Owner is hereby granted a perpetual easement over the General Common Elements, as may be reasonably required for vehicular and pedestrian ingress.

5.5 **Owner's Encroachment Easement.** Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction,

repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the improvement stands. Such easement includes the right for wiring, conduit, or cabling exclusively serving a Unit to cross through an adjacent Unit.

5.6 Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over each adjoining Unit and Common Element as needed for the common benefit of the Property, or for the benefit of Units in a Building, or Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner: (i) acknowledges the necessity for cooperation in a condominium; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Unit and Limited Common Elements when needed by the Association to fulfill its duties; and (iv) agrees to try refrain from actions that interfere with the Association's maintenance and operation of the Property.

5.7 Association's Access Easement. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association a blanket easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon, for the following purposes:

- a. To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law;
- b. To perform maintenance that is permitted or required of the Association by the Documents (such as Unit Exterior and LCE Maintenance) or by the Owner or Applicable Law, if the Owner fails or refuses to perform such maintenance;
- c. To enforce the Documents, including without limitation, the architectural standards and use restrictions;
- d. To exercise self-help remedies permitted by the Documents or by Applicable Law;
- e. To respond to emergencies;
- f. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Regime; and
- g. To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

Such easement includes the right to use portions of the Property as laydown areas, construction areas, or equipment parking, storage, or deployment areas as required for the Association to exercise any of its rights under the easement granted in this Section.

5.8 **Easement for Drainage.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association a blanket easement on, over, and under the ground within the Property to drain surface water and to maintain improvements for the purpose of stormwater drainage, runoff, and other drainage purposes. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Owner to correct or maintain any drainage facilities within the Project.

5.9 **Easement to Correct Drainage.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association a blanket easement on, over, and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety, and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Such easement includes the right to use portions of the Property as laydown areas, construction areas, or equipment parking, storage, or deployment areas as required for the Association to exercise any of its rights under the easement granted in this Section. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Owner to correct or maintain any drainage facilities within the Project.

5.10 **Utility Easement.** The Association and Declarant (during the Development Period) may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant (during the Development Period) and the Association may grant easements over and across the Units and Common Elements to the extent necessary or required to provide utilities to Units; provided, however, that such easements will not unreasonably interfere with the use of any Unit for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

5.11 **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Regime. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Regime. Each Owner and Resident acknowledges and accepts as his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security

measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.

5.12 **Injury to Person or Property.** Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Limited Common Element, General Common Element, or other Improvement; or (c) to provide security or protection to any Owner, Resident, or their guests employees, contractors, and invitees from harm or loss. By accepting title to a Unit, each Owner agrees that the limitations set forth in this section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents, from any claim of damages, to person or property arising out of an accident or injury in or about the Regime to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance obtained by the Association at the time of such accident or injury.

5.13 **Easement to Inspect and Right To Correct.** For a period of 10 years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the purposes contained in this Section.

5.14 **Parking.** Declarant reserves the right to designate and assign portions of the General Common Elements as parking for the exclusive use of any Owner of a Unit. Any parking spaces not specifically designated by the Declarant for the exclusive use of an Owner of a Unit will be under the exclusive control and administration of the Association until such time as the Declarant no longer owns any Unit within the Regime. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board subject to any assignment previously made by the Declarant. Any designation and assignment of General Common Elements as parking will be memorialized by a written "assignment of parking" executed by an authorized representative of the Declarant (or Association if Declarant no longer owns any Units within the Regime) which shall identify the parking space(s) and the Unit assigned thereto. The assignment shall be made a part of the corporate records of the Association, will be considered an agreement between the Association

and such Owner with regard to use of the General Common Element so assigned, and may not be terminated or modified without the consent of the Declarant (or a majority of the Board if Declarant no longer owns any Units within the Regime) and the Owner of the Unit to which such General Common Element parking was assigned. The assignment of a parking space to a Unit does not convert the parking space to a Limited Common Element; parking spaces shall remain General Common Elements at all times unless this Declaration is amended. The Declarant or the Board may be required periodically to re-allocate parking to comply with the site plan approved by the applicable regulatory authority and applicable to the Property.

ARTICLE 6: DISCLOSURES

6.1 **General.** This Article discloses certain aspects of the Regime that may not be obvious to potential Owners and Residents. Because the Regime may change over time, no disclosure in this Article should be relied upon without independent confirmation.

6.2 **Service Contracts.** Declarant may have contracted, on behalf of the Owner, for one or more services to be provided by vendors to the individual Owners on a contract basis, such as intrusion monitoring and cable television. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

6.3 **Adjacent Thoroughfares.** The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

6.4 **Concrete.** Minor cracks in poured concrete are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling.

6.5 **Construction Activities.** Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time to time, produce certain conditions on the Regime, including, without limitation: (a) noise or sound; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

6.6 **Water Runoff.** The Property may be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. Water may pond on various portions of the Property having impervious surfaces.

6.7 **Budgets.** Any budgets are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

6.8 **Light and Views.** The natural light available to and views from a Unit can change over time due to among other things, additional development and the removal or addition of landscaping. Natural light and views are not protected by this Declaration.

6.9 **Schools.** No representations are being made regarding which schools may now or in the future serve any Units.

6.10 **Location of Utilities.** Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants, or storm inlets or basins.

6.11 **Marketing.** Declarant's use of a sales center and/or model units or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the Units and Improvements available for purchase. The Units and Improvements may not conform, except as herein noted, to any model unit in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and scale models of the project. By acquiring title to a Unit, each Owner agrees that such items are conceptual, subject to change, for display purposes only, and may not be incorporated into the Regime or any Unit. Declarant retains the right to obtain and use photography of the Property (including the Units and all Improvements) for publication and advertising purposes.

6.12 **Streets Within the Property.** Streets adjacent to the Property are public streets and maintained by applicable governmental authorities. Streets within the Property are private and maintained by the Association. Any private streets located within the Property are General Common Elements and are maintained and administered by the Association. The Association, acting through the Board has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of private streets, including but not limited to: (i) identification of vehicles used by Owners and Residents and their guests; (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking; (iv) removal or prohibition of vehicles that violate applicable rules and regulations; and (v) fines for violations of applicable rules and regulations. Declarant may change, in its sole discretion, the names of private streets and addresses in or within the Property, including the street address of a Unit, before or after closing if required by any applicable regulatory agency.

6.13 **Public Streets.** Public streets are not Common Elements but may be maintained and/or regulated by the Association to the extent they are not maintained or regulated by the City or County. As to public streets, the Association, acting through the Board, is specifically authorized: (i) to accept from applicable governmental authorities any delegation of street-related

duties; and (ii) to act as attorney in fact for the Owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets serving and adjacent to the Property.

6.14 **Adjacent Railroad Tracks.** The Regime is located adjacent to operating railroad tracks, and the Regime may be affected by traffic and noise along the railroad tracks from time to time. Railroad tracks pose unique dangers. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident, or their guests: (a) to supervise minor children or any other person in relation to the railroad tracks; (b) to fence or otherwise separate the Regime from the railroad tracks (except as required by Applicable Law); or (c) to provide security or protection to any Owner, Resident, or their guests employees, contractors, and invitees from harm or loss in relation to the railroad tracks. Declarant makes no representations concerning the manner of operation of the railroad tracks.

ARTICLE 7: COVENANT FOR ASSESSMENTS

7.1 **Purpose of Assessments.** The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

7.2 **Personal Obligation.** An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person regarding any matter to which this Declaration pertains. No Owner may exempt itself from its Assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of his Unit. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

7.3 **Types of Assessments.** There are five types of Assessments: Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments.

7.4 **Regular Assessments.**

- a. **Purpose of Regular Assessments.** Regular Assessments are used for the Common Expenses related to the recurring, periodic, and anticipated responsibilities of the Association. The Common Expenses include, but are not limited to, the following expenses:

- i. Maintenance, repair, and replacement, as necessary, of the Common Elements and Improvements, equipment, signage, and property owned by the Association.
 - ii. All Maintenance that is the responsibility of the Association under this Declaration, including Unit Exterior and LCE Maintenance and maintenance and repair of Limited Common Elements that is the express responsibility of the Association.
 - iii. Utilities billed to the Association.
 - iv. Pest control.
 - v. Services obtained by the Association and made available to the Units or the Regime.
 - vi. Taxes on property owned by the Association and the Association's income taxes, Texas franchise taxes, and other business taxes.
 - vii. Management, legal, accounting, auditing, and professional fees for services to the Association.
 - viii. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
 - ix. Insurance premiums and deductibles paid by the Association.
 - x. Contributions to the reserve funds.
 - xi. Any other expense which the Association is required by Applicable Law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.
- b. Annual Budget. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and Common Expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

- c. Basis of Regular Assessments. Regular Assessments will be assessed monthly based on the annual budget *minus* estimated income from sources other than Regular Assessments. Each Unit will be liable for its Common Interest Percentage of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.
- d. Supplemental Increases. If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

7.5 Special Assessments. In addition to Regular Assessments, the Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by at least a Majority of the votes in the Association: (i) acquisition of real property; and (ii) construction of additional Improvements within the Regime (excluding the repair or replacement of existing Improvements).

7.6 Utility Assessments. Utility Assessments relate to payment for utilities serving the individual Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to Regular Assessments, the Board may levy a Utility Assessment against each Unit. If the Units are submetered for consumption of a utility, the Utility Assessment will be based on the submeter reading. If the Units are not submetered, the Board may allocate the Association's utility charges among the Units by any conventional method for similar types of properties, including by Common Interest Percentages. The levy of a Utility Assessment may include administrative and processing fees, a share of the utilities for the Common Elements, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The Board may, from time to time, change the method allocation provided that the same type of method or combination of methods is used for all Units.

7.7 Individual Assessments. In addition to Regular, Utility, and Special Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: charges for completion of a Unit Exterior and LCE Repair; interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; fines for violations of the Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; submetered utilities serving the Unit; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Unit; Common Expenses that benefit fewer than all of the Units, which may be assessed according to

benefit received (including maintenance and repairs costs incurred by the Association for the benefit of certain Units or Limited Common Elements); fees or charges levied against the Association on a per-Unit basis; and “pass through” expenses for services to Units provided through the Association and which are equitably paid by each Unit according to benefit received.

7.8 **Deficiency Assessments.** The Board may levy a Deficiency Assessment against all Units for the purpose of defraying, in whole or in part, the cost of repair or restoration for General Common Elements if insurance proceeds or condemnation awards prove insufficient.

7.9 **Working Capital Fund.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid by the *transferee* of the Unit to the Association for the Association’s working capital fund. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Unit. Each working capital contribution will be collected from the *transferee* upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) the foreclosure of a deed of trust lien, tax lien, or the Association’s assessment lien; (ii) a transfer to, from, or by the Association; (iii) a voluntary transfer by an Owner to one or more co-owners (of which one is the transferring Owner), or to the Owner’s spouse, child, or parent; and (iv) a transfer from the initial Declarant to a successor Declarant. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay operational expenses of the Association until the Declarant Control Period terminates.

7.10 **Reserve Fund Contribution.** Upon the transfer of a Unit from one Owner to a subsequent Owner (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a fee equal to one (1) month of Regular Assessments will be paid by the *transferee* of the Unit to the Association for the Association’s replacement reserve funds. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any reserve fund assessment payable on the transfer of a Unit. Each reserve fund contribution will be collected upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the reserve fund contribution: (i) the foreclosure of a deed of trust lien, tax lien, or the Association’s assessment lien; (ii) a transfer to, from, or by the Association; (iii) a voluntary transfer by an Owner to one or more co-owners (of which one is the transferring Owner), or to the Owner’s spouse, child, or parent; and (iv) a transfer from the initial Declarant to a successor Declarant. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use reserve fund fees collected hereunder to pay operational expenses until the Declarant Control Period terminates.

7.11 **Due Date.** Regular Assessments and Utility Assessments are due on the first calendar day of each month or on such other date as the Board may designate in its sole and

absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, or Deficiency Assessment is given.

7.12 **Certificate of Assessment Status.** The Association will, upon written demand and for a reasonable charge, furnish a certificate signed by an officer or authorized representative of the Association setting forth whether or not all Assessments have been paid for the applicable assessment period for any Unit and providing such other information as is required by the Act.

7.13 **Reserve Funds.** The Association will establish, maintain, and accumulate reserves for working capital and for replacement and repair. The Association will budget for reserves and may fund reserves out of Regular Assessments.

- a. **Working Capital Reserves.** The Association may maintain working capital reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.
- b. **Replacement and Repair Reserves for General Common Elements.** The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements.

7.14 **Declarant's Right to Inspect and Correct Accounts.** For a period of ten (10) years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the formation of the Association until the termination of the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and Development Period.

7.15 **Association's Right To Borrow Money.** The Association is granted the right to borrow money, subject to the consent of Owners representing at least a Majority of the votes in the Association and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

7.16 **Usury.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those Assessments are paid in full.

7.17 **Audited Financial Statements.** The Association shall have an audited financial statement for the preceding full fiscal year of the Association prepared and made available in accordance with the requirements of the Act.

ARTICLE 8: ASSESSMENT LIEN

8.1 **Assessment Lien.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that its title may be subject to the continuing lien for Assessments attributable to a period prior to the date it purchased his Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments.

8.2 **Priority of Assessment Lien.** The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a recorded deed of trust lien securing a loan for construction of the original Unit; (iii) a deed of trust or vendor's lien recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to a lien for construction of Improvements to the Unit, regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

8.3 **Effect of Mortgage's Foreclosure.** Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a Common Expense.

8.4 **Notice and Release of Notice.** The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded. If the debt is cured after a notice has been

recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

8.5 **Power of Sale.** By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

8.6 **Foreclosure of Lien.** The Assessment lien may be enforced by judicial or non-judicial foreclosure as permitted by the Act and Applicable Law. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 9: EFFECT OF NONPAYMENT OF ASSESSMENTS

9.1 **Delinquency.** An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Documents or Applicable Law.

9.2 **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is twelve percent (12%) per annum.

9.3 **Late Fees.** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time. The initial late fee shall be \$100.00 per month

9.4 **Collection Expenses.** The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager. Such expenses may be assessed against the Unit as an Individual Assessment.

9.5 **Acceleration.** If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

9.6 **Suspension of Vote.** Subject to the below-described limitations, if an Owner's account has been delinquent for at least 30 days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds 20 percent of the total Members (with co-Owners of a Unit constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

9.7 **Assignment of Rents.** Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of Assessments to the Association. If a Unit's account become delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

9.8 **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

9.9 **Notice to Mortgagee.** The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in payment of Assessments.

9.10 **Application of Payments.** The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, and (lastly) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a

payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Unit Owner's account.

ARTICLE 10: MAINTENANCE AND REPAIR OBLIGATIONS

10.1 **Association's Obligations.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs and replaces, as a Common Expense, all General Common Elements. Subject to the provisions this Article below, the Association has the following obligations concerning the Units and the Limited Common Elements (all other obligations pertaining to the Units and the Limited Common Elements are the responsibility of the Owner):

- a. The Association shall maintain the Yard Areas by providing the Landscape Services as described in Section 10.2 below, but the Association shall not provide any other services to the Yard Areas. Note that some Landscape Services are provided only to Front Yard Areas.
- b. The Association shall repair and maintain, to the extent necessary, all exterior concrete included in the General Common Elements, including all roads and sidewalks.
- c. The Association shall complete all Unit Exterior and LCE Maintenance. The Board shall establish a Regime-wide schedule for the Unit Exterior and LCE Maintenance, and the Unit Exterior and LCE Maintenance shall be completed by the Association according to such schedule. The Association may alter the maintenance schedule from time to time in the sole discretion of the Board. The cost of all Unit Exterior and LCE Maintenance shall be a budgeted Common Expense paid for by the Association through the collection of the Regular Assessments; Individual Assessments shall not be levied against the Units for Unit Exterior and LCE Maintenance. All Unit Exterior and LCE Maintenance shall be completed by contractors or subcontractors selected by the Association in the Association's sole discretion.
- d. The Association shall complete all Unit Exterior and LCE Repairs. If a Unit Owner notifies the Association that a Unit Exterior and LCE Repair is required, the Association shall investigate the request for a repair and make a determination of whether or not the repair is required. The decision of the Association shall be final. If the Association determines that a Unit Exterior and LCE Repair is required (whether through an Association inspection, the report of the Unit Owner, or the report of an Owner of a different Unit), then the Association shall complete the Unit Exterior and LCE Repair in a timely manner. All Unit Exterior and LCE Repairs shall be completed by contractors or subcontractors selected by the Association in the Association's sole discretion. Regardless of the

cause of the need for the Unit Exterior and LCE Repair, the Association shall levy an Individual Assessment against the Owner and the Unit for the cost of the repair plus an administrative fee equal to 5% of the cost of the repair (the Association reserves the right to reduce or waive the administrative fee on a case-by-case basis in its sole discretion). A notice of the Individual Assessment shall be delivered to the Owner as required in Article VII of this Declaration, and the payment due date shall be the due date set forth for Individual Assessments in Article VII. The notice of Individual Assessment shall include a copy of the invoice showing the cost of the Unit Exterior and LCE Repair when available.

10.2 Landscape Services.

- a. Generally. The Association will cause the Landscape Services to be provided to each Unit, and accordingly, the Association is hereby granted an easement over and across each Unit and any Yard Area allocated thereto to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Landscape Services. If the Association damages any Improvements located within a Unit or Yard Area in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements. Except for irrigation, which is provided to all Yard Areas, the Landscape Services are provided only to the Front Yard Areas. Owners are solely responsible for maintenance and repair of the Backyard Areas.
- b. Dates. The Association or its designated landscape company may, from time to time, provide each Owner with a schedule of dates on which the Landscape Services will be performed.
- c. Irrigation. The Association shall provide irrigation services to all Yard Areas (Front Yard Areas and Backyard Areas) as described in the definition of Landscape Services. All landscape irrigation improvements are General Common Elements.
- d. Cost. The cost of all Landscape Services will be a Common Expense. Notwithstanding the foregoing, in the event for any reason the Association is unable to access Yard Area, the Association will be relieved of its obligation hereunder to provide Landscape Services to such Yard Area until such time that the Association is able to access such Yard Area.
- e. Water Conservation. Water conservation by Owners is encouraged. The Association may adopt Rules or modify the Landscape Services in order to

conserve water or to comply with local rules or Applicable Law concerning water conservation.

10.3 **Association's Inspection Obligations.**

- a. **Contract for Services.** In addition to the Association's maintenance obligations set forth in this Declaration, the Association may contract with or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Regime. The cost of inspection services will be a Common Expense.
- b. **Schedule of Inspections.** If retained, the inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the members of the Association at the next meeting of the members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.
- c. **Notice to Declarant.** During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.
- d. **Limitation.** The provisions of this Section shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

10.4 **Owner's Obligations.** Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

- a. To maintain, repair, and replace all aspects of its Unit, except for components expressly assigned to the Association by this Declaration.
- b. The routine cleaning of any Limited Common Element assigned to its Unit and any balcony, porch, or deck area of its Unit, keeping all such areas in a neat, clean, odorless, orderly, and attractive condition.

- c. To maintain, repair, and replace all portions of the Regime for which it is responsible under this Declaration or by agreement with the Association.
- d. To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Regime, reduce the value thereof, or impair any easement or real property right thereto.
- e. To be responsible for his own willful or negligent acts and those of its or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Regime for which the Association has maintenance or insurance responsibility.
- f. To maintain and repair Backyard Area, except that the Association will provide irrigation services to the Backyard Area.
- g. To maintain and repair Limited Common Elements reserved to the Owner's Unit (whether reserved solely to the Owner's Unit or jointly to the Owner's Unit and one or more other Units), except to the extent maintained or repaired by the Association pursuant to this Article.

Without limiting the generality of the foregoing, Owner shall specifically be responsible for the maintenance and repair of the following items in its Unit: all landscaping other than landscaping maintained by the Association as part of the Landscape Services; Backyard Areas; exterior lights; fireplaces; attics; insulation; Unit interiors; exterior doors and windows; interior and exterior water, wastewater, and electrical lines and systems serving the Unit; heating and cooling systems; water heaters; intrusion alarms; smoke, heat, and carbon monoxide detectors; and television and internet infrastructure and equipment.

10.5 **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board (or the Declarant during the Declarant Control Period), acting in its sole but reasonable discretion. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility, with all ambiguities resulting in the maintenance of a Unit being the responsibility of the Owner. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

10.6 **Sheetrock.** Notwithstanding anything to the contrary in the Documents, the Association is not responsible for the repair and replacement of sheetrock in any Unit, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability of insurance. If the Association receives insurance proceeds for sheetrock damage to a Unit and

chooses to not perform the repairs, the Owner of the damaged Unit is entitled to the proceeds in exchange for identification of the damage and a release from future claims for the same damage.

10.7 **Mold.** The Owner is responsible for taking prudent action to prevent and eliminate conditions that might result in the presence of mold in its Unit. The Association is not required to maintain insurance coverage applicable to mold damage with respect to any Unit. Accordingly, an Owner who wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowners insurance policy.

10.8 **Concrete.** Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways, and porches, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the Building. Such minor cracking in poured concrete may not warrant repair. The Association's duty to repair exterior concrete such as sidewalks and roads does not extend to minor or cosmetic cracking.

10.9 **Warranty Claims.** If the Owner is the beneficiary of a warranty against defects of the Common Elements, the Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements.

10.10 **Owner's Default In Maintenance.** If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which shall result in an Individual Assessment against the Owner and his Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

10.11 **Repairs Resulting from Owner Action.** If the Association determines that any repair that must be completed by the Association was necessitated by the direct action of one or more Owners (for example, an Owner damages the irrigation system serving its Unit, and the Association is required to repair the damage), the cost associated with repairing such damage may be assessed to the Owner as an Individual Assessment.

ARTICLE 11: ARCHITECTURAL CONTROL

11.1 **Declarant Control During the Development Period.** During the Development Period, the primary purpose of this Article is to reserve and preserve Declarant's right of architectural control, and the Declarant has the right to regulate every aspect of the exterior of the Property, including the exterior design, use, and appearance of Units and Common Elements

during the Development Period. After expiration or termination of the Development Period, or Declarant's delegation to the Association of all or a portion of its reserved rights as Architectural Authority in accordance with this Article below, the Association will have the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation.

11.2 Architectural Control by Declarant.

- a. Declarant as Architectural Authority. During the Development Period, the Architectural Authority shall mean Declarant or its designee, and neither the Association nor the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the architectural approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Authority in reviewing and responding to applications pursuant to this Article.
- b. Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market Units in its Development or in Declarant's other developments. Accordingly, each Owner agrees that, during the Development Period, no Improvements will be started or progressed or modified without the prior written approval of the Architectural Authority, which approval may be granted or withheld at the Architectural Authority's sole discretion. In reviewing and acting on an application for approval, the Architectural Authority may act solely in its self-interest and owes no duty to any other Person or any organization.
- c. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights as Architectural Authority under this Article to an Architectural Control Committee appointed by the Board or a committee comprised of architects, engineers, or other Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

11.3 Architectural Control by Association. Upon Declarant's delegation, in writing, of all or a portion of its reserved rights as Architectural Authority to the Board, or upon the

termination of the Development Period, the Association will assume jurisdiction over architectural control and will have the powers of the Architectural Authority hereunder and the Board, or a committee appointed by the Board, is the Architectural Authority and shall exercise all architectural control over the Property.

11.4 **Limits on Liability.** Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents will have any liability for decisions made as Architectural Authority in good faith, and which are not arbitrary or capricious. Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to the Board; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and Applicable Law. Approval of a modification or Improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

11.5 **Prohibition of Construction, Alteration, and Improvement.** Without the Architectural Authority's prior written approval, a Person may not commence or continue any construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Regime, or do anything that affects the appearance, use, or structural integrity of the Regime, including an individual Unit.

11.6 **No Deemed or Verbal Approval.** Approval by the Architectural Authority may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by the Declarant, Declarant's representative or designee or the Association, an Association director or officer, a member or chair of the Declarant or Board-appointed architectural control committee, the Association's manager, or any other representative of the Association. To be valid, approval of the Architectural Authority must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Authority; (iii) signed and dated by a duly authorized representative of the Architectural Authority designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. **If the Architectural Authority fails to respond in writing — negatively, affirmatively, or requesting information — within sixty (60) days after the Architectural Authority's actual receipt of the Owner's application, the application is deemed denied. Under no circumstance may approval of the Architectural Authority be deemed, implied or presumed.** If the Architectural Authority approves a change, the Owner or the Architectural Authority may require that the architectural approval be recorded. Architectural Authority approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Authority's approval or, if no commencement date is stated, within ninety (90) days after the date of Architectural Authority approval.

11.7 **Application.** To request Architectural Authority approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is

sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Authority in conjunction with the application. The Architectural Authority may return one set of plans and specifications to the applicant marked with the Architectural Authority's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Authority will retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Authority has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

11.8 **Owner's Duties.** If the Architectural Authority approves an Owner's application, the Owner may proceed with the Improvement, provided: (i) the Owner complies with any obligation in Article 5 to obtain an easement over the Common Elements or another Unit; (ii) the Owner adheres strictly to the plans and specifications which accompanied his application; (iii) the Owner initiates and completes the Improvement in a timely manner; and (iv) if the approved application is for work that requires a building permit from the City or County, the Owner obtains the appropriate permit. The Architectural Authority's approval of plans and specifications does not mean that they comply with City or County requirements. Alternatively, approval by the City or County does not ensure Architectural Authority approval.

ARTICLE 12: USE RESTRICTIONS

12.1 **Variance.** The use of the Regime is subject to the restrictions contained in this Article and subject to Rules adopted pursuant to this Article. The Board, with the Declarant's written consent during the Development Period, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by a Majority of the Board. The grant of a variance shall not constitute a waiver or estoppel of the Association's right to deny a variance in other circumstances.

12.2 **Association's Right To Promulgate and Amend Rules.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules and penalties for infractions thereof regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property.

12.3 **Rules and Regulations.** In addition to the restrictions contained in this Article, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Elements.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.

- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.
- f. The occupancy and leasing of Units.
- g. Animals.
- h. Vehicles.
- i. Disposition of trash and control of vermin, termites, and pests.
- j. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

12.4 **Accessory Structures.** Accessory structures, such as gazebos, storage sheds, playhouses, and greenhouses, are permitted only if approved by the Architectural Authority. Accessory structures may not be located in Front Yards Areas or otherwise be visible from the street.

12.5 **Animals.** No animal, bird, fish, reptile, or insect of any kind, may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy quotas, no more than 2 dogs, or 2 cats, or one dog and one cat, may be maintained in each Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules.

12.6 **Annoyance.** No Unit or Limited Common Element may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Residents of other Units; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

12.7 **Appearance.** Both the exterior and the interior of the Units must be maintained in a manner so as not be unsightly when viewed from the street, Common Elements, or neighboring Units. The Association will be the arbiter of acceptable appearance standards.

12.8 **Composting Devices, Rain Barrels, and Rainwater Harvesting.** The design, placement, and materials of composting devices, rain barrels, and rainwater harvesting systems are subject to regulation by the Association to the extent such regulation is permitted under Section 202.007 of the Texas Property Code.

12.9 **Declarant Privileges.** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents and are set forth in Annex "1" of this Declaration. Declarant's exercise of a Development Period right that appears to violate a Rule or a restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

12.10 **Drainage.** No person may interfere with the established drainage pattern over any part of the Property or Regime unless an adequate alternative provision for proper drainage has been approved by the Board.

12.11 **Driveways.** Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

12.12 **Fences.** All aspects of fences, including height and material, must be approved by the Architectural Authority. Fences may not be constructed except for the purpose of enclosing Backyard Areas, which fences shall be constructed in the locations designated by Declarant or the Association.

12.13 **Fire Safety.** No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Regime or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

12.14 **Garages.** Garages may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein without the Board's written authorization. Any automatic garage door opener is to be maintained by the Owner. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

12.15 **Hunting and Fireworks.** Hunting (using firearms, bow, or any other weapon or device) and the discharge of fireworks are not permitted anywhere in the Regime. The Association is not required to enforce this provision by confronting an armed person.

12.16 **Landscaping.** No person may perform landscaping, planting, or gardening anywhere upon the Regime without the Board's prior written authorization.

12.17 **Noise and Odor.** A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Units. The Rules may limit, discourage, or prohibit noise-producing activities and items in the Units and on the Common Element.

12.18 **Lights.** Exterior lights on a Unit should be unobtrusive, shielded to prevent glare, directed away from neighboring Units and Yard Areas, and designed to cause little or no spillover onto a neighboring Unit. All visible exterior light fixtures should be consistent in style and finish with the architecture of the Unit.

12.19 **Occupancy.** The Board may adopt Rules regarding the occupancy of Units. If the Rules fail to establish occupancy standards, no more than 2 persons per bedroom may occupy a Unit, subject to the exception for familial status. The Association's occupancy standard for Residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Unit*) permitted by the U.S. Department of Housing and Urban Development. A person may not occupy a Unit if the person constitutes a direct threat to the health or safety of other persons, or if the person's occupancy would result in substantial physical damage to the property of others.

12.20 **Residential Use.** The use of a Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a dwelling; (ii) the uses conform to applicable governmental ordinances; (iii) there is no external evidence of the uses; (iv) the uses do not entail visits to the Unit by employees or the public; and (v) the uses do not interfere with Residents' use and enjoyment of neighboring Units. Other than the air conditioned part of a Unit, no thing or structure on the Property may be occupied as residence at any time by any person. This provision applies, without limitation, to the garage.

12.21 **Signs.** Unless prohibited by Applicable Law, no sign of any kind (including signs advertising Units for sale, for rent, or for lease) may be erected, placed, or permitted to remain on the Regime or unless written approval has been obtained in advance from the Board. The Board may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Unit. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Association may affect the immediate removal of any sign or object which has not been approved in advance by the Board or otherwise violates the Documents or any sign guidelines promulgated by the Board, or which the Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal. Notwithstanding anything to the contrary stated herein, during the Development Period, the Declarant, and not the Board, must approve all signs.

12.22 **Solar Energy Devices.** The design, placement, and materials of solar energy devices are subject to regulation by the Association to the extent such regulation is permitted under Section 202.010 of the Texas Property Code.

12.23 **Specific Uses.** Except for ingress and egress, the Front Yard Area, sidewalks, and driveways on the Property may not be used for any purpose that has not been authorized in writing by the Board.

12.24 **Structural Integrity.** No person may directly or indirectly impair the structural soundness or integrity of a Building, other Unit, or Unit Boundary Wall, nor do any work or modification that will impair an easement or real property right.

12.25 **Temporary Structures.** Except for approved “accessory structures” described in this Article, improvements or structures of a temporary nature, such as tents, portable sheds, and mobile homes (except in connection with approved construction activities), may not be placed in the Regime.

12.26 **Antenna.** Except as expressly provided below, no exterior radio, television, or communications antenna or aerial or satellite dish or disc (collectively, an “**Antenna/Dish**”), shall be erected, maintained, or placed on a Unit without the prior written approval of the Board.

- a. **Dishes Over One Meter Prohibited.** Unless otherwise approved by the Board, an Antenna/Dish which is over one meter in diameter is prohibited within the Regime.
- b. **Notification.** An Owner or Resident who wishes to install an Antenna/Dish one meter or less in diameter (a “**Permitted Antenna**”) must submit a written notice to the Board or its designee, which notice must include the Owner or Resident’s installation plans for the satellite dish.
- c. **One Dish Limitation.** Unless otherwise approved by the Board, only one Permitted Antenna per Unit is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from a single Permitted Antenna, the Owner must provide written notification to the Board or its designee. Upon notification, the Owner will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.
- d. **Permitted Installation Locations – Generally.** An Owner or Resident may erect a Permitted Antenna (after written notification has been provided to the Board or its designee) if the Owner or Resident has an exclusive use area in which to install the Permitted Antenna. An “exclusive use area” is an area in which only the Owner or Resident may enter and use to the exclusion of all other Owners and Residents. Unless otherwise approved by the Board or its designee, the Permitted Antenna must be entirely within the exclusive use area of the Owner’s Unit. A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Residents of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or occupant of the Unit. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or

lawsuits, by anyone, arising from his Permitted Antenna. The Board of Directors may determine what constitutes a nuisance to the Association. The Board may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

- e. **Preferred Installation Locations.** A Permitted Antenna may be installed in a location within the Unit from which an acceptable quality signal can be obtained and where least visible from the street and the Regime, other than the Unit. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Board are as follows:
 - i. Attached to the back of the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; or
 - ii. Attached to the side of the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened view of adjacent Units and the street.

12.27 **Vehicles.** All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Regime. The Board may prohibit any vehicle from which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or restorations of vehicles on the Regime. Vehicles that transport inflammatory or explosive cargo are prohibited from the Regime at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Regime. The Association may cause the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

12.28 **Balconies and Patios.** No articles other than Board-approved patio-type furniture and suitable plants shall be placed on any patios or outside balconies. No linens, cloths, clothing, towels, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, or other articles, shall be stored, shaken, or hung from or on any of the windows, doors, patios, balconies, or other portions of the Regime. The Board will have the authority to require an Owner or Resident to remove any article from a window, door, terrace, balcony, or deck, if in the sole and exclusive discretion of the Board, the article is unsightly, offensive, or constitutes an annoyance.

12.29 **Wireless Internet Systems.** A wireless Internet communication network (“WiFi System”) may be installed or otherwise used in a Unit provided precautions are taken to ensure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Regime. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that

any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems within the Regime. The Association may require that any WiFi System found to cause such problems be terminated. The Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi Systems in the Regime, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Regime.

12.30 **Unit Boundary Walls.** All penetrations of Unit Boundary Walls by Owners are strictly prohibited except for the purpose of hanging decorative items inside of Units.

ARTICLE 13: UNIT LEASING

13.1 **Lease Conditions.** The leasing of Units is subject to the following conditions: (i) no Unit may be rented for transient or hotel purposes or for a period less than six (6) months; (ii) no Unit may be subdivided for rent purposes, and not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Documents; (iv) an Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

13.2 **Owner Occupancy.** For purposes of this Article, a Unit is considered “Owner occupied” (and therefore not leased) if at least one Resident of an occupied Unit is an Owner of the Unit or is related by blood, marriage, or adoption to an Owner of the Unit, or if the Unit is vacant.

13.3 **Eviction Of Tenants.** Every lease agreement on a Unit, whether written or oral, express or implied, is subject to and is deemed to include the following provisions:

- a. **Violation Constitutes Default.** Failure by the tenant or his invitees to comply with the Documents or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of his tenant’s violation, the Owner will promptly obtain his tenant’s compliance or exercise his rights as a landlord for tenant’s breach of lease. If the tenant’s violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant’s compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant, subject to the terms of this Section.
- b. **Association Not Liable for Damages.** The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost

rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

13.4 **Exemption.** A Mortgagee that acquires title to the Unit by foreclosure of its deed of trust lien or by deed in lieu of foreclosure of its lien is exempt from the effect of this Article. During the Development Period, Declarant is exempt from the effect of this Article.

ARTICLE 14: ASSOCIATION OPERATIONS

14.1 **Board.** Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

14.2 **The Association.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under the laws of the State. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

14.3 **Name.** Although the initial name of the Association is Old Mill Crossing Condominium Association, Inc., the Association may, without the need to amend this Declaration, operate under any name that is approved by the Board and (1) filed with the County as an assumed name, or (2) filed with the Secretary of State of Texas as the name of the filing entity. The Association may also change its name by amending the Documents.

14.4 **Duration.** The Association comes into existence on the earlier to occur of the following two events: (1) the date on which the Certificate is filed with the Secretary of State of Texas, or (2) the date on which a Unit deed is recorded in the real property records of the County evidencing diversity of ownership in the Property (in other words, on the date that the Property is no longer owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

14.5 **Governance.** The Association will be governed by the Board elected by the Members. Unless the Bylaws or Certificate provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. In accordance with the Act, not later than the 120th day after conveyance of 50% of the Maximum Number of Units to Owners other than Declarant, not less than one-third of the members of the Board must be elected by Owners other than Declarant. The Association will be administered in accordance with the Bylaws. Unless the Documents provide otherwise,

any action requiring approval of the Members may be approved in writing by Owners representing at least a Majority of the votes, or at a meeting by Owner's representing at least a Majority of the votes that are represented at the meeting.

14.6 **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners of at least two-thirds (2/3) of the votes in the Association. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

14.7 **Membership.** Each Owner is a Member of the Association, with ownership of a Unit being the sole qualification for membership. Each Owner is entitled to one (1) vote in the Association. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Unit is owned by more than one person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit, but only one vote shall be cast with respect to each Unit.

14.8 **Manager.** The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

14.9 **Books and Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of the Act and the Texas Business Organizations Code.

14.10 **Indemnification.** The Association indemnifies every officer, director, and committee member (for purposes of this Section, "Association Officials") against expenses, including attorneys' fees, reasonably incurred by or imposed on the Association Official in connection with any threatened or pending action, suit, or proceeding to which the Association Official is a party or respondent by reason of being or having been an Association Official. An Association Official is not liable for a mistake of judgment. An Association Official is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Association Officials may be entitled. As a Common Expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation.

14.11 **Obligations of Owners.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

- a. Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address and phone number; (iii) any Mortgagee's name; (iv) the name and phone number of any Resident other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.
- b. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay Regular Assessments and Utility Assessments without demand by the Association.
- c. Compliance with Documents. Each Owner will comply with the Documents as amended from time to time.
- d. Reimburse for Damages. Each Owner will pay for damage to the Regime caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.
- e. Liability for Violations. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

14.12 Unit Resales. This Section applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than Declarant:

- a. Resale Certificate. An Owner intending to sell his Unit will notify the Association and will request a condominium resale certificate from the Association.
- b. No Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association.
- c. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, certificates of Assessment status, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace.

Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees.

- d. Exclusions. The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (iii) transfer to, from, or by the Association; (iv) voluntary transfer by an Owner to one or more co-Owners (one of which being the transferring Owner), or to the Owner's spouse, child, or parent; (v) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (vi) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (vii) a disposition by a government or governmental agency. Additionally, the requirements of this Section do not apply to the initial conveyance from Declarant.

ARTICLE 15: ENFORCING THE DOCUMENTS

15.1 **Notice And Hearing.** Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine – unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication. No audio or video recording of the hearing may be made. The minutes of the hearing must contain a statement of the results of the hearing and the fine, if any, imposed. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the meeting, the notice requirements will be deemed satisfied. The Board may adopt additional or alternative procedures and requirements for notices and hearing provided they are consistent with the requirements of Applicable Law.

15.2 **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following rights to enforce the Documents:

- a. **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation.
- b. **Fine.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. All fines shall be assessed in accordance with the Fine Policy attached as Exhibit D. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.
- c. **Suspension.** The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.
- d. **Self-Help.** The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Unit without judicial proceedings.
- e. **Suit.** Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

15.3 **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the

particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

ARTICLE 16: INSURANCE

16.1 **General Provisions.** The broad purpose of this Article is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Units. Because the insurance requirements of mortgage underwriters are subject to change, as are State-promulgated insurance regulations and policies, this Article tries to balance the need for certain minimum insurance requirements with the desire to adapt to a periodically changing insurance environment. The Board will make every reasonable effort to comply with the requirements of this Article.

- a. **Unavailability.** The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.
- b. **No Coverage.** Even if the Association and the Owner have adequate amounts of recommended and required coverages, the Property may experience a loss that is not covered by insurance. In that event, the Association is responsible for restoring the Common Elements as a Common Expense, and the Owner is responsible for restoring its Unit at its sole expense. This provision does not apply to the deductible portion of a policy.
- c. **Requirements.** The cost of insurance coverages and bonds maintained by the Association is a Common Expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be

prejudiced by the act or omission of any Owner or Resident who is not under the Association's control.

- d. Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.
- e. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Mortgagees, and the insurer will give to Mortgagees, prior notices of cancellation, termination, expiration, or material modification.
- f. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration. In the event of an insured loss, the deductible is treated as a Common Expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Unit for the amount of the deductible that is attributable to the act or omission provided the Owner is given notice and an opportunity to be heard in accordance with Section 15.1 of this Declaration.

16.2 Property Insurance. The Association will obtain blanket all-risk insurance if reasonably available for all Common Elements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard.

- a. Property Insured. If insurable, the Association will insure: (i) General Common Elements, and (ii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.
- b. Units Insured by Association. The Association will maintain property insurance on the Units as originally constructed. The Association may insure betterments and improvements installed by Owners, but it will have no obligation to do so. The types of insurance maintained by the Association shall be determined by the Association in its sole discretion but shall be consistent with similar projects in the same general vicinity.

To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an underwriting lender, such as a special condominium endorsement.

- c. IN NO EVENT WILL THE ASSOCIATION MAINTAIN PROPERTY INSURANCE ON ANY UNIT CONTENTS. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON ITS PERSONAL BELONGINGS.

16.3 **Board to Make Policies Available.** The Board shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their individual insurance needs and each Owner shall have the right to obtain additional coverage at its own expense.

16.4 **Form of Policies; Review of Policies.** All policies of insurance shall be written with a company licensed to do business in the State. It shall be the duty of the Board at least once every year to conduct an insurance review to determine if the policy in force and purchased by the Association is adequate to meet the needs of the Association and to satisfy the requirements of Section 82.111 of the Act and this Declaration. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 82.111 of the Act and this Declaration.

16.5 **Liability Insurance.** The Association will maintain a commercial general liability insurance policy over the General Common Elements — expressly excluding the liability of each Owner and Resident within his Unit — for bodily injury and property damage resulting from the operation, maintenance, or use of the General Common Elements. The amount of coverage should shall be determined by the Association in its commercially reasonable discretion, but the amount shall be not less than \$1,000,000.00. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

16.6 **Worker's Compensation.** The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of Applicable Law or if the Board so chooses.

16.7 **Fidelity Coverage.** The Association shall be required to maintain blanket fidelity coverage for any Person who handles or is responsible for funds held or administered by the Association, whether or not the Person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

16.8 **Directors And Officers Liability.** The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

16.9 **Mortgagee Required Policies.** Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an underwriting lender for condominium developments if the underwriting lender is an Owner or a Mortgagee.

16.10 **Other Policies.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

16.11 **Owner's Responsibility For Insurance.**

- a. **Insurance by Owners.** The Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If requested, and Owner will provide evidence to the Association that it has obtained the insurance required by this Declaration. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.
- b. **Owners' Responsibilities.** Each Owner, at his expense, will maintain any insurance coverages required by the Association pursuant to this Article. Each Owner at his expense, may obtain additional insurance coverage of his real property, Improvements, and betterments thereto, or personal property. Each Owner will comply with reasonable requests by the Association for periodic inspection of its Unit for purposes of insurance appraisal.
- c. **Association Does Not Insure.** The Association does not insure an Owner's or Resident's personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Unit and within the Regime, including furnishings, vehicles, and stored items. **THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON ITS PERSONAL BELONGINGS.**

16.12 **Authority and Power of Attorney.** Exclusive authority to adjust losses under the insurance policies obtained by the Owners shall be vested in the Association, provided however no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Each Owner, by acceptance of a deed to Unit,

irrevocably appoints the Association or its designated representative, as attorney in fact for the purposes of collecting and disbursing the insurance proceeds on insurance policies obtained by the Owners, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all acts necessary to accomplish such purposes. This power is for the benefit of each and every Owner and their respective Mortgagees, and the Association, which runs with the land and is coupled with the interest.

ARTICLE 17: RECONSTRUCTION OR REPAIR AFTER LOSS

17.1 **Subject To Act.** The Association's response to damage or destruction of the Regime that is the responsibility of the Association will be governed by Section 82.111(i) of the Act. The following provisions apply to the extent the Act is silent.

17.2 **Restoration Funds.** For purposes of this Article, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the portions of the Regime insured by the Association (which does not include the Units – pursuant to Section 16.2 and 16.10, Owners are responsible for insuring their Units). All funds paid to the Association for purposes of repair or restoration of the portions of the Regime insured by the Association will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Association directors or that of an agent duly authorized by the Board.

- a. **Sufficient Proceeds.** If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed property insured by the Association, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.
- b. **Insufficient Proceeds.** If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference.
- c. **Surplus Funds.** If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them, provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

17.3 **Costs And Plans.**

- a. **Cost Estimates.** Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged property that is insured by the Association. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.
- b. **Plans and Specifications.** Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of Common Elements must be approved by Owners of at least two-thirds of the Units and by certain Mortgagees if so required by the Mortgagee Protection article of this Declaration.

17.4 **Owner's Duty to Repair.**

- a. **IN NO EVENT WILL THE ASSOCIATION MAINTAIN PROPERTY INSURANCE ON ANY UNITS.** Each Owner must repair and restore its Units substantially in accordance with original construction plans and specifications. Alternate plans and specifications for repair and restoration of Units must be approved by the Architectural Authority and by certain Mortgagees if so required by the Mortgagee Protection article of this Declaration. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Unit, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.
- b. If an Owner fails to repair or restore damage as required by this Section, the Association may affect the necessary repairs and levy an Individual Assessment against the Owner and Unit for the cost thereof, after giving an Owner of the Unit reasonable notice of the Association's intent to do so.

17.5 **Owner's Liability For Insurance Deductible.** If repair or restoration of Common Elements or Units is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 18: TERMINATION AND CONDEMNATION

18.1 **Association as Trustee.** Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Regime in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Regime. As trustee, the Association will have full and complete authority, right, and power to do all things

reasonable and necessary to effect the provisions of this Declaration and the including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Regime as permitted by this Declaration or by the Act; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

18.2 **Termination.** Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and Section 19.2 below.

18.3 **Condemnation.** The Association's response to condemnation of any part of the Regime will be governed by Section 82.007 of the Act. On behalf of Owners, but without their consent, the Board may execute an amendment of this Declaration to reallocate Common Interest Percentages following condemnation and to describe the altered parameters of the Regime. If the Association replaces or restores Common Elements taken by condemnation by obtaining other land or constructing additional Improvements, the Board may, to the extent permitted by law, execute an amendment without the prior consent of Owners to describe the altered parameters of the Property and any corresponding change of facilities or Improvements.

ARTICLE 19: MORTGAGEE PROTECTION

19.1 **Introduction.** This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. Some sections of this Article apply to "Mortgagees," as defined in Article 1. Other sections apply to "Eligible Mortgagees," as defined below.

- a. **Known Mortgagees.** An Owner who mortgages his Unit will notify the Association and provide the complete name and address of his Mortgagee and the loan number. The Association's obligations to Mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by Mortgagees will be conclusively satisfied by the Mortgagees known to the Association, without regard to other holders of mortgages on Units. The Association may rely on the information provided by Owners and Mortgagees.
- b. **Eligible Mortgagees.** "Eligible Mortgagee" means the holder, insurer, or guarantor of a first purchase money mortgage secured by a recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number

of Units subject to mortgages held by Eligible Mortgagees. For example, “51 percent of Eligible Mortgagees” means Eligible Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Eligible Mortgagees. All provisions of the Documents that require or obligate notice to Mortgagees shall be deemed to be referring to only Eligible Mortgagees.

19.2 **Amendment.** This Article establishes certain standards for the benefit of underwriting lenders and is written to comply with their requirements and guidelines in effect at the time of drafting. If an underwriting lender subsequently changes its requirements, the Board, without approval of the Owners or Mortgagees, may amend this Article and other provisions of the Documents as necessary to meet the requirements of the underwriting lender.

19.3 **Termination.** Termination of the terms of this Declaration and the condominium status of the Regime will be governed by this Declaration and Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Eligible Mortgagees. Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant during the Development Period; and (iii) fifty-one percent (51%) of Eligible Mortgagees.

19.4 **Implied Approval.** The approval of an Eligible Mortgagee for any purpose under the Documents is implied when the Eligible Mortgagee fails to respond within sixty (60) days after receiving the Association’s written request for approval of a proposed amendment, provided the Association’s request was delivered by certified or registered mail, return receipt requested.

19.5 **Other Mortgagee Rights.**

- a. **Inspection of Books.** The Association will maintain current copies of the Documents and the Association’s books, records, and financial statements. Mortgagees may inspect the Documents and records, by appointment, during normal business hours.
- b. **Financial Statements.** A Mortgagee may have an audited statement prepared at its own expense.
- c. **Attendance at Meetings.** A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.
- d. **Right of First Refusal.** The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner’s Unit to the Association. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease,

sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

- e. Management Contract. If professional management of the Association is required by this Article, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

19.6 Notice of Actions. The Association will use its best efforts to send timely written notice to Eligible Mortgagees of the following actions:

- a. Any condemnation or casualty loss that affects a material portion of the Regime or the mortgaged Unit.
- b. Any sixty (60) day delinquency in the payment of assessments or changes owed by the Owner of the mortgaged Unit.
- c. A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.
- e. Any proposed Document amendment of a material nature, as provided in this Article.
- f. Any proposed termination of the condominium status of the Regime.

19.7 Amendments of a Material Nature. A Document amendment of a material nature must be approved by Owners (as set forth in Section 20.1) and by at least fifty-one percent (51%) of Eligible Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT PROVIDED IN ANNEX "1" ATTACHED HERETO.** A Document amendment that is not of a material nature does not require the approval of the Eligible Mortgagees. A change to any of the provisions governing the following would be considered material:

- a. Voting rights.
- b. Assessment liens or the priority of assessment liens.
- c. Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- d. Responsibility for maintenance and repairs.
- e. Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited

Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Annex "1", or by agreement between Owners (only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action).

- f. Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action.
- g. Convertibility of Units into Common Elements or Common Elements into Units.
- h. Expansion or contraction of the Regime, or the addition, annexation, or withdrawal of Property to or from the Regime.
- i. Property or fidelity insurance requirements.
- j. Imposition of any restrictions on the leasing of Units.
- k. Imposition of any restrictions on Owners' right to sell or transfer their Units.
- l. Restoration or repair of the Property in a manner other than that specified in the Documents after hazard damage or partial condemnation.
- m. Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 20: AMENDMENTS

20.1 **Consents Required.** As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association.

20.2 **Amendments Generally.** For amendments requiring the consent of Eligible Mortgagees, the Association will send each Eligible Mortgagee a detailed description, if not the exact wording, of any proposed amendment. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge, or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and recorded with such amendment. In addition, no amendment to this Declaration shall modify, alter, abridge, or delete any: (i) permissible use of a Unit absent the consent of the Owner(s) of the Unit affected

by the change in permissible use; or (ii) any license, easement, or other contractual rights contained in this Declaration, including, without limitation, any easement, right and license benefiting or in favor of the Declarant.

20.3 **Effective.** To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the recording information of this Declaration and any amendments hereto; (ii) signed and acknowledged by an officer of the Association certifying the requisite approval of Owners and, if required, Eligible Mortgagees; provided, however, this subsection will not apply for amendments adopted by Declarant pursuant to any rights reserved by Declarant under this Declaration (including Annex “1”).

20.4 **Declarant Rights.** Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Annex “1”. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant’s rights under this Declaration or the Act without Declarant’s written and acknowledged consent, which must be part of the recorded amendment instrument. Because Annex “1” of this Declaration is destined to become obsolete at the end of the Development Period, the Board may restate, rerecord, or republish this Declaration without Annex “1” after such date. The automatic expiration and subsequent deletion of Annex “1” does not constitute an amendment of this Declaration. This Section may not be amended without Declarant’s written and acknowledged consent.

ARTICLE 21: DISPUTE RESOLUTION

21.1 **Introduction and Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the “**Parties**”) agree to encourage the amicable resolution of disputes involving the Property and the Regime and to avoid the financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

- a. **“Claim”** means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims as defined below, including without limitation:
 - i. Claims relating to the rights and/or duties of Declarant, or its permitted assigns, under the Documents.
 - ii. Claims relating to the design or construction of the Property or any Improvement by Declarant, its permitted assigns, its contractor or subcontractors, or its designee.
- b. **“Claimant”** means any Party having a Claim against any other Party.

- c. **“Exempt Claims”** means the following claims or actions, which are exempt from this Article:
- i. The Association’s claim for Assessments and any action by the Association to collect Assessments.
 - ii. Any action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party’s ability to enforce the provisions of this Declaration.
 - iii. Any enforcement by the Association or the Declarant of the easements, architectural control, maintenance, and use restrictions of this Declaration; provided, however, that any enforcement action brought by the Association against the Declarant, or vice versa, is not an Exempt Claim hereunder.
 - iv. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.
- d. **“Respondent”** means any Party against which a Claim has been asserted by a Claimant.

21.2 **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided below, a Claim will be resolved by binding arbitration.

21.3 **Notice.** Claimant must notify Respondent in writing of the Claim (the “Notice”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Article. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in Section 21.4 below is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with Section 21.4, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 21.4 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 21.5 below is intended to provide the

Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 21.5 is required without regard to the monetary amount of the Claim.

21.4 **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

21.5 **Mediation.** If the parties negotiate but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this Section 21.5.

21.6 **Termination of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

21.7 **Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings, bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 21.7. This section may not be amended without the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding at least seventy percent (67%) of the votes in the Association.

- a. **Governing Rules.** If a Claim has not been resolved after Mediation as required by Section 21.5, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 21.7 and the rules and procedures of the American Arbitration Association ("AAA") or if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in the County. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance

with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section 21.7, this Section 21.7 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows: (1) one arbitrator shall be selected by Respondent, in its sole and absolute discretion; (2) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and (3) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

- b. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 21.7 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes or realizing upon, reserving, or protecting upon any property, real or relating to (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.
- c. Statutes of Limitations. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this Section 21.7.
- d. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this Section 21.7; provided, however,

that for a Claim or any portion of a Claim governed by Chapter 27 of the Texas Property Code or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Claim within fifteen (15) days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by Applicable Law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

- e. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in the County. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure, and Applicable Law. The arbitrator shall have the power to award recovery of all costs and fees (including attorneys' fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

21.8 **Allocation of Costs.** Except as otherwise provided in this Article (or as awarded by the arbitrator) each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

21.9 **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. The Respondent and Claimant to any Exempt Claim may mutually agree to submit such Exempt Claim to the negotiation, mediation, and/or arbitration sections above.

21.10 **Period of Limitation.** Except as set forth in this Section, statutes of limitations under Applicable Law shall apply to all Claims.

- a. **For Actions by an Owner or Resident of a Unit Against Declarant or Declarant's Contractors.** The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of a Unit (to the extent that the Declarant or its contractors constructed any Units), shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years and one (1) day from the date Declarant conveyed the Unit to the original Owner unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Unit to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Unit, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the Applicable Law governing the limitation period and period of repose shall apply to the Claim.
- b. **For Actions by the Association Against Declarant or Declarant's Contractors.** The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years from the date Declarant substantially completed the Common Elements unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or

defective design of the Common Elements, two (2) years and one (1) day after the Declarant Control Period, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the Applicable Law governing the limitation period and period of repose shall apply to the Claim.

21.11 **Approval & Settlement.** Notwithstanding any provision in this Article to the contrary, the initiation of binding arbitration as required by this Article is subject to the following conditions:

- a. **Owner Acceptance.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Article 21.
- b. **Owner Approval.** The Association may not initiate binding arbitration or any judicial proceeding without the prior approval of Owners holding at least a Majority of the votes in the Association, except that no such approval is required for the initiation of arbitration or litigation to resolve any Exempt Claim.
- c. **Funding Arbitration and Litigation.** Except for Exempt Claims, the Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this Article 21 or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.
- d. **Settlement.** The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate the settlement of arbitration and litigation, and may execute any document related thereto, such as settlement agreement and waiver or release of claims.
- e. **Amendment.** This Section 21.11 may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding seventy percent (67%) of the votes in the Association.

ARTICLE 22: GENERAL PROVISIONS

22.1 **Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by certified mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid,

as a certified mail item, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association of created.

22.2 **Compliance.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and Applicable Laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property. When this Declaration reserves the right to make a decision to the Association or the Declarant, such party shall be deemed to have the right to much such decision in its sole discretion.

22.3 **Higher Authority.** The documents are subordinate to federal and State law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law.

22.4 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State.

22.5 **Duration.** Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by Applicable Law.

22.6 **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

22.7 **Construction.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof.

22.8 **Declarant as Attorney in Fact and Proxy.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Annex "1" and elsewhere in this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit within the Regime, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit in the Regime, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to Annex "1" or elsewhere in this Declaration.

The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage against a Unit in the Regime, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit in the Regime, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to Annex "1" or elsewhere in this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to Annex "1" or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby vested in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Non-profit Corporation Act the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant pursuant to Annex "1" or elsewhere in this Declaration on the date Declarant no longer has the right to exercise such rights. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non- revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

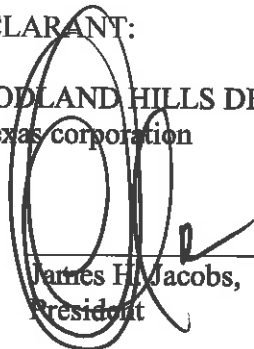
22.9 **Attachment/Appendix/Exhibits.** The following appendixes and exhibits are attached to this Declaration and are incorporated herein by reference:

| | |
|-----------|---|
| Annex "1" | Declarant Rights |
| Exhibit A | Plats and Plans |
| Exhibit B | Encumbrances |
| Exhibit C | Schedule of Common Interest Percentages |
| Exhibit D | Fine Policy |

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf as of the Effective Date.

DECLARANT:

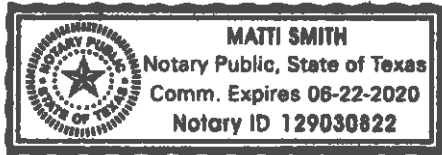
WOODLAND HILLS DEVELOPMENT, INC.
A Texas corporation

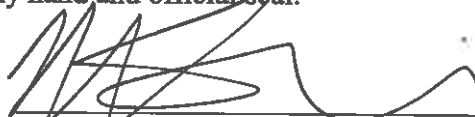
By: 
James H. Jacobs,
President

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

On this 20 day of April, 2017, before me, a Notary Public, the undersigned officer, personally appeared James H. Jacobs, President of Woodland Hills Development, Inc., a Texas corporation, executed the foregoing instrument for the purposes therein contained on behalf of such entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.





Notary Public, State of Texas

My commission expires: 6/22/20

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by a Deed of Trust (the "Lien") recorded as Document No. 201606038739 in the Official Public Records of Comal County, Texas, securing a note of even date therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Lien to this Declaration, both on the condition that the lien shall remain superior to the Assessment lien described in Section 8.1 in all events and circumstances. The undersigned further consents and subordinates the Lien to any subsequent amendments to this Declaration executed by Declarant for the sole purpose of adding Units and reallocating General Common Elements, Limited Common Elements, and Common Interest Percentages associated with the addition of Units and revising the Plat and Plans required to add such Units, all in accordance with the Declaration. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

Notwithstanding the foregoing, this consent and subordination (i) shall not be construed or operate as a release of the Lien, but shall instead confirm that the Lien shall hereafter be upon and against each and all of the Units, and all appurtenances thereto, and all of the undivided shares and interests in the Common Elements of the Regime established by the Declaration; (ii) shall not release, subordinate, impair, or otherwise affect any and all rights the lender has under the Deed of Trust to succeed to the rights, powers, and authority of Declarant under the Declaration in the event of a foreclosure of the Lien; and (iii) shall not modify or amend the terms and provisions of the Deed of Trust.

PROSPERITY BANK

By: Barry N Williams

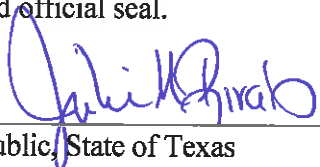
Print Name: Barry N Williams

Print Title: Regional President

STATE OF TEXAS §
COUNTY OF Comal §
§

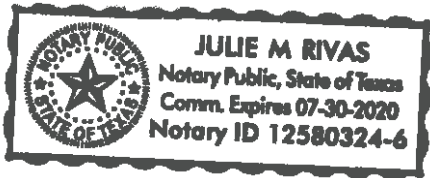
On this 18 day of April, 2017, before me, a Notary Public, the undersigned officer, personally appeared Barry N. Williams, Regional President of PROSPERITY BANK, executed the foregoing instrument for the purposes therein contained on behalf of such bank.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public, State of Texas

My commission expires: _____



ANNEX "1"

DECLARANT RIGHTS

1-1 General Provisions.

- A. General Reservation and Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Annex which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this Annex "1" and any other Document, this Annex "1" controls. This Annex may not be amended without the prior written consent of Declarant. The terms and provisions of this Annex "1" must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.
- B. Purpose of Development and Declarant Control Periods. This Annex gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly build-out and sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. The "**Development Period**", as specifically defined in Article 1 of the Declaration, means the twenty (20) year period beginning on the Effective Date unless such period is earlier terminated by Declarant's recordation of a notice of termination. Declarant Control Period is also defined in Article 1 the Declaration. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association that may not terminate without cause with ninety (90) days' written notice.

1-2 Declarant Control Period Reservations. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly build-out and sellout of the Property, Declarant will retain control of the Association, subject to the following:

- A. Association Budget. During the Declarant Control Period, the Declarant-appointed Board will establish a projected budget for the Regime as a fully developed, fully constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Regime, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new Units in the Regime.
- B. Officers and Directors. During Declarant Control Period, the Board may consist of three (3) persons. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each

of whom is indemnified by the Association as an "Association Official," subject to the following limitation: within one hundred and twenty (120) days after fifty percent (50%) of the Maximum Number of Units has been conveyed to Owners other than Declarant, at least one-third of the Board must be elected by Owners other than Declarant.

- C. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments, during the Declarant Control Period only, Declarant at Declarant's option may support the Association's budget by either of the following methods: (i) Declarant will pay Regular Assessments on each Declarant-owned Unit in the same manner as any Owner; or (ii) Declarant will assume responsibility for the difference between the Association's actual Common Expenses as they are paid and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or the termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant-owned Unit according to the Unit's allocated Common Interest Percentage.
- D. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association working capital or reserve funds to pay operational expenses of the Association.
- E. Enhancements. During the Declarant Control and Development Periods, Declarant – solely at Declarant's discretion – may voluntarily provide enhancements for the Regime, such as higher levels of maintenance, management, insurance, and seasonal color in landscaping.
- F. Expenses of Declarant. Expenses related to the marketing of the Regime will be paid by Declarant and are not expenses of the Association.
- G. Management Contract. If Declarant enters into a professional management contract on behalf of the Association during Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at least 30 days written notice to the manager, at any time after a Board elected by the Owners other than Declarant takes office.

1-3 Development Period Rights. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

- A. Annexation. The Property is subject to expansion by phasing for up to twenty (20) years from the Effective Date. During the Development Period, Declarant may annex additional property into the Regime and subject such property to this Declaration and the jurisdiction of the Association by recording an amendment or

supplement of this Declaration executed by Declarant in the Official Public Records of the County.

- B. Withdrawal of Property. During the Development Period, Declarant may withdraw from the Property and the Regime any portion of the real property marked on the Plat and Plans as “Development Rights Reserved” or “Subject to Development Rights.”
- C. Creation of Units. As of the Effective Date, the Regime contains eight (8) Units; however, Declarant reserves the right to create a maximum of fifty (50) Units upon full build-out of all phases of the Project which may include land added by the Declarant. Declarant’s right to create Units is for a term of years (i.e., for the entire Development Period) and does not require that Declarant own a Unit in the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated Common Interest Percentages.
- D. Changes in Development Plan. During the Development Period, Declarant may modify the Plat and Plans to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, uses, configurations, materials, and appearances of Units and Common Elements.
- E. Architectural Control. During the Development Period, Declarant shall be the Architectural Authority and have the absolute right of architectural control.
- F. Transfer Fees. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.
- G. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Regime or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.
- H. Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.
- I. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Regime; (ii) to create Units, General Common Elements, and Limited Common Elements within the Regime; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Regime any portion of the real property marked on the Plat and Plans as “Development Rights Reserved” or “Subject to Development Rights,” provided

that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

- J. Development Rights Reserved. Regarding portions of the real property shown on the Plat and Plans as “Development Rights Reserved” or “Subject to Development Rights,” if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.
- K. Amendment. During the Development Period, Declarant may amend the Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:
- (i) To meet the requirements, standards, or recommended guidelines of a lender or to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
 - (ii) To correct any defects in the execution of this Declaration or the other Documents.
 - (iii) To add real property to the Property and the Regime in the exercise of statutory Development Rights.
 - (iv) To create Units, General Common Elements, and Limited Common Elements within the Regime, in the exercise of statutory Development Rights.
 - (v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.
 - (vi) To convert General Common Elements to Yard Area and to convert Yard Area into a General Common Element.
 - (vii) To withdraw from the Regime any portion of the real property marked on the Plat and Plans as “Development Rights Reserved” or “Subject to Development Rights” in the exercise of statutory Development Rights.
 - (viii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
 - (ix) To change the name or entity of Declarant.
 - (x) For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

1-4 **Special Declarant Rights.** As permitted by the Act, Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Regime during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds the right to create additional Units or Common Elements or Declarant owns a Unit, whichever ceases last. Earlier termination of certain rights may occur by statute.

- (i) The right to complete or make Improvements indicated on the Plat and Plans.
- (ii) The right to exercise any Development Right permitted by the Act and this Declaration.
- (iii) The right to make the Regime part of a larger condominium or planned community.
- (iv) The right to use Units owned or leased by Declarant or Common Elements as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Regime.
- (v) For purposes of promoting, identifying, and marketing the Regime, an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Regime, including items and locations that are prohibited to other Owners and Residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Regime. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and brokers parties – at the Regime to promote the sale of Units.
- (vi) An easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant’s obligations under the Act.
- (vii) The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

1-5 **Additional Easements and Rights.** Declarant reserves the following easements and rights, exercisable at Declarant’s sole discretion, for the duration of the Development Period:

- (i) An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines

to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Regime.

- (ii) The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.
- (iii) The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.
- (iv) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done no later than one hundred and twenty (120) days after termination of the Development Period.
- (v) An easement over the entire Regime, including the Units, to inspect the Common Elements and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element Improvements.
- (vi) The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with the active marketing of Units by Declarant.

1-6 **Marketing Other Locations.** This Declaration grants to Declarant a number of significant rights to market the Regime. Declarant hereby reserves for itself and its affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing off-site developments of Declarant or its affiliates for the duration of the Development Period, even though Declarant may have completed the marketing of Units in the Property. Additionally, Declarant – at Declarant's sole option and discretion – may extend the effect of this Section for up to twelve (12) months after the end of the Development Period by paying the Association \$1,000.

1-7 **Common Elements.** Because the Common Elements are owned by the Owners, collectively and in undivided interest, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements.

1-8 **Successor Declarant.** Declarant may designate one or more successor Declarants for specified designated purposes and/or for specified portions of the Regime, or for all purposes and all of the Regime. To be effective, the designation must be in writing, signed and acknowledged by Declarant and successor Declarant, and recorded in the Official Public Records of the County. Declarant (or the successor Declarant) may

subject the designation of "Successor Declarant" to limitations and reservations. Unless the designation of "Successor Declarant" provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

EXHIBIT A

PLAT AND PLANS

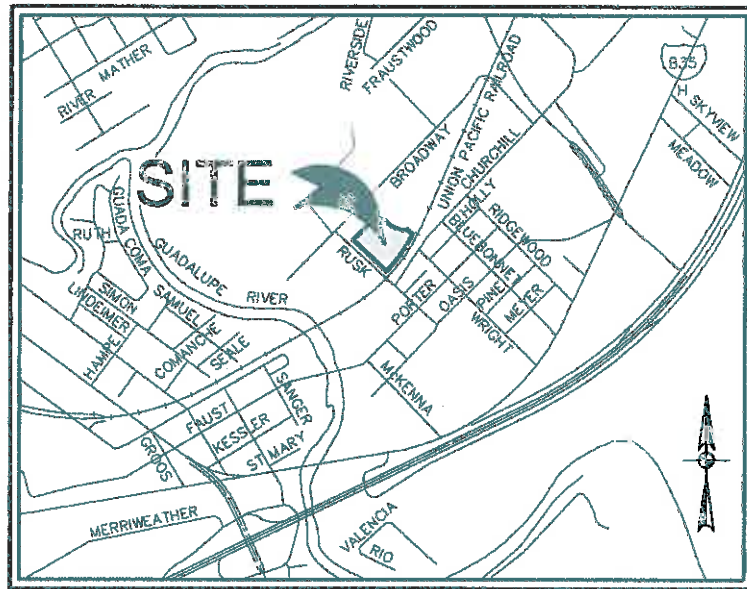
The attached Plat and Plans include seven (7) sheets and the Unit Address Chart.

[see attached]

CONDOMINIUM PLAT ESTABLISHING OLD MILL CROSSING TOWNHOMES

A CONDOMINIUM REGIME IN COMAL COUNTY, TEXAS, ESTABLISHED UPON LOT 1, BLOCK 1, OLD MILL CROSSING, A SUBDIVISION OF RECORD ACCORDING TO THE MAP OR PLAT THEREOF RECORDED AS DOCUMENT NO. 201606018979, MAP AND PLAT RECORDS, COMAL COUNTY, TEXAS.

DECLARANT: WOOLAND HILLS DEVELOPMENT, INC., A TEXAS CORPORATION



LOCATION MAP
NOT TO SCALE

SHEET INDEX:

1. COVER SHEET
2. CONDO LAYOUT
3. GENERAL NOTES
4. CONDO DETAIL "1"
5. CONDO DETAIL "2"
6. UNIT DETAILS
7. CURVE & LINE TABLES



410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNS.COM
PH: (830)625-8555
TBPLS FIRM 10153600

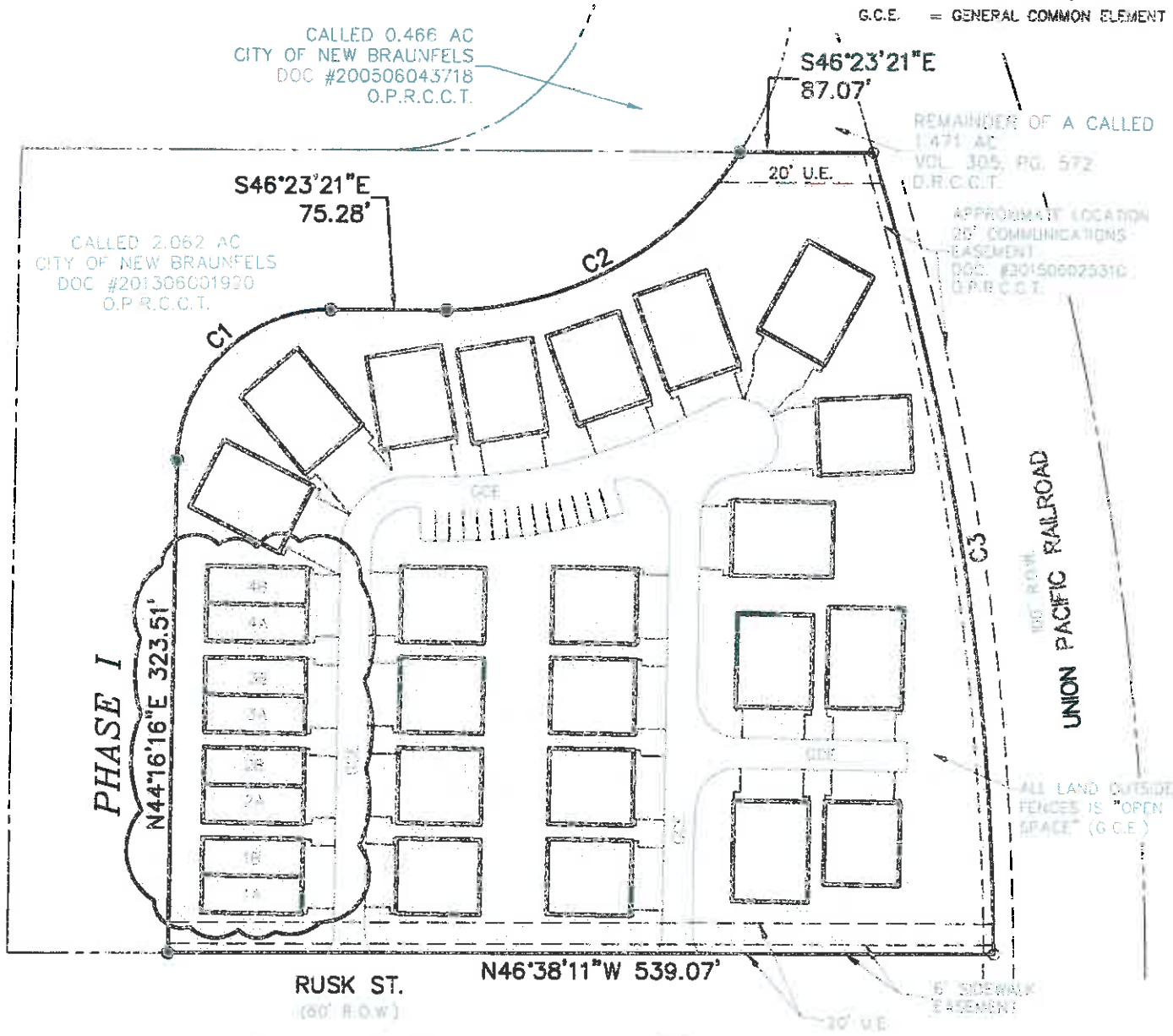
DATED THIS 4TH DAY OF APRIL, 2017
REVISED THIS 17TH DAY OF APRIL, 2017

OLD MILL CROSSING
TOWNHOMES

A CONDOMINIUM REGIME IN COMAL COUNTY, TEXAS, ESTABLISHED UPON LOT 1,
BLOCK 1, OLD MILL CROSSING, A SUBDIVISION OF RECORD ACCORDING TO THE
MAP OR PLAT THEREOF RECORDED AS DOCUMENT NO. 201606018979,
MAP AND PLAT RECORDS, COMAL COUNTY, TEXAS.

LEGEND:

- = FND 1/2" IRON PIN
- = SET 1/2" IRON PIN W/
PLASTIC CAP STAMPED "HMT"
- U.E. = UTILITY EASEMENT
- R.O.W. = RIGHT-OF-WAY
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS
OF COMAL COUNTY, TEXAS
- D.R.C.C.T. = DEED RECORDS OF
COMAL COUNTY, TEXAS
- G.C.E. = GENERAL COMMON ELEMENT



DEVELOPMENT NOTES:

1. ALL UNITS INCLUDED IN PHASE I ABOVE ARE CLASSIFIED AS UNITS THAT MUST BE BUILT.



410 N. SEQUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
PH: (830)625-8555
TBPLS FIRM 10153600

SCALE: 1"=100'

SHEET 2 OF 7

HMT Engineering & Surveying, Inc. 410 N. Sequin Ave., New Braunfels, Texas 78130. Phone: (830) 625-8555. Fax: (830) 625-8556. Website: www.hmtnb.com. License No. 10153600.

GENERAL NOTES
OLD MILL CROSSING
TOWNHOMES

GENERAL NOTES:

1. THIS CONDOMINIUM PLAT WAS PREPARED BY MARK F. CONLAN, RPLS NO. 6342, OF HMT ENGINEERING & SURVEYING. BY EXECUTING THIS CONDOMINIUM PLAT BELOW, THE SURVEYOR CERTIFIES THAT THIS CONDOMINIUM PLAT CONTAINS ALL OF THE INFORMATION REQUIRED BY SECTIONS 82.052 AND 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT, TEXAS PROPERTY CODE, CH. 82 (THE "ACT"), AS APPLICABLE.
2. CAPITALIZED TERMS USED IN THESE GENERAL NOTES HAVE THE SAME MEANINGS ASSIGNED TO THEM IN THE DECLARATION OF CONDOMINIUM REGIME FOR OLD MILL CROSSING TO WHICH THIS CONDOMINIUM PLAT IS ATTACHED.
3. ALL IMPROVEMENTS AND LAND REFLECTED ON THE CONDOMINIUM PLAT ARE DESIGNATED AS GENERAL COMMON ELEMENTS (OR "GCE"), SAVE AND EXCEPT THE UNITS AND THE PORTIONS OF THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS (OR "LCE") EITHER IN THE DECLARATION OR ON THE CONDOMINIUM PLAT, OR BOTH.
4. OWNERSHIP AND USE OF THE UNITS IS SUBJECT TO THE DECLARATION AND ALL OF THE RIGHTS AND RESTRICTIONS CONTAINED THEREIN.
5. CERTAIN EASEMENTS OVER THE REGIME, INCLUDING EASEMENTS OVER THE UNITS, GENERAL COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS, ARE RESERVED IN THE DECLARATION FOR THE BENEFIT OF THE OWNERS, THE ASSOCIATION, AND DECLARANT.
6. THE UNITS ARE SUBJECT TO ASSESSMENTS AS SET FORTH IN THE DECLARATION, AND THE ASSESSMENTS ARE SECURED BY A LIEN ON EACH OWNER'S UNIT.
7. EACH OWNER HAS CERTAIN MAINTENANCE AND REPAIR OBLIGATIONS WITH RESPECT TO HIS, HER, OR ITS UNIT AS SET FORTH IN THE DECLARATION.
8. EACH UNIT AND EVERY OTHER ASPECT OF THE REGIME (INCLUDING GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS) ARE SUBJECT TO CERTAIN DEVELOPMENT RIGHTS AND THE DEFINED SPECIAL DECLARANT RIGHTS RESERVED TO DECLARANT, ALL OF WHICH ARE DESCRIBED IN ANNEX A TO THE DECLARATION. THE RESERVED RIGHTS INCLUDE (BUT ARE NOT LIMITED TO) THE FOLLOWING:
 - a. THE RIGHT TO CONSTRUCT ALL OF THE IMPROVEMENTS IN THE REGIME.
 - b. THE RIGHT TO CREATE ADDITIONAL UNITS IN THE REGIME.
 - c. THE RIGHT TO EXERCISE THE DEVELOPMENT RIGHTS DESCRIBED IN THE ACT, INCLUDING ADDING ADDITIONAL REAL PROPERTY TO THE REGIME AND WITHDRAWING REAL PROPERTY FROM THE REGIME.
 - d. THE RIGHT TO MAKE THE REGIME PART OF A LARGER CONDOMINIUM REGIME.
 - e. THE RIGHT TO USE UNITS OWNED BY THE DECLARANT AS MODELS, STORAGE AREAS, AND OFFICES FOR THE MARKETING, MANAGEMENT, MAINTENANCE, CUSTOMER SERVICE, CONSTRUCTION, AND LEASING OF THE REGIME.
 - f. THE RIGHT TO APPOINT AND REMOVE CERTAIN OFFICERS OF THE ASSOCIATION AND CERTAIN MEMBERS OF THE ASSOCIATION'S BOARD IN THE MANNER AND FOR THE PERIODS PERMITTED BY THE ACT AND THE DECLARATION.
 - g. AN EASEMENT AND RIGHT TO PLACE OR INSTALL SIGNS, BANNERS, FLAGS, DISPLAY LIGHTING, POTTED PLANTS, EXTERIOR DECORATIVE ITEMS, SEASONAL DECORATIONS, TEMPORARY WINDOW TREATMENTS, AND SEASONAL LANDSCAPING ON THE REGIME, INCLUDING ITEMS AND LOCATIONS THAT ARE PROHIBITED TO OTHER OWNERS, AND A RIGHT TO HOST AND SPONSOR MARKETING EVENTS TO PROMOTE THE SALE OF UNITS.
 - h. AN EASEMENT AND RIGHT OF INGRESS AND EGRESS IN AND THROUGH THE COMMON ELEMENTS AND UNITS OWNED OR LEASED BY DECLARANT FOR PURPOSES OF CONSTRUCTING, MAINTAINING, MANAGING, AND MARKETING THE PROPERTY, AND FOR DISCHARGING DECLARANT'S OBLIGATIONS UNDER THE ACT.
9. THE REGIME MAY BE CONSTRUCTED IN PHASES IN ACCORDANCE WITH SECTION 3.1 OF THE DECLARATION. THE DECLARANT MAY ADD UNITS TO THE REGIME DURING THE DEVELOPMENT PERIOD BY FILING AN AMENDMENT TO THE DECLARATION EXPRESSLY FOR THE PURPOSE OF CREATING ADDITIONAL UNITS. EACH SUCH AMENDMENT WILL INCLUDE AN AMENDED CONDOMINIUM PLAT.

STATE OF TEXAS
COUNTY OF COMAL

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THIS SURVEY IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION

THIS 4TH DAY OF APRIL 2017
REVISED THIS 17TH DAY OF APRIL 2017 (ADDRESSED COMMENTS)


MARK F. CONLAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6342



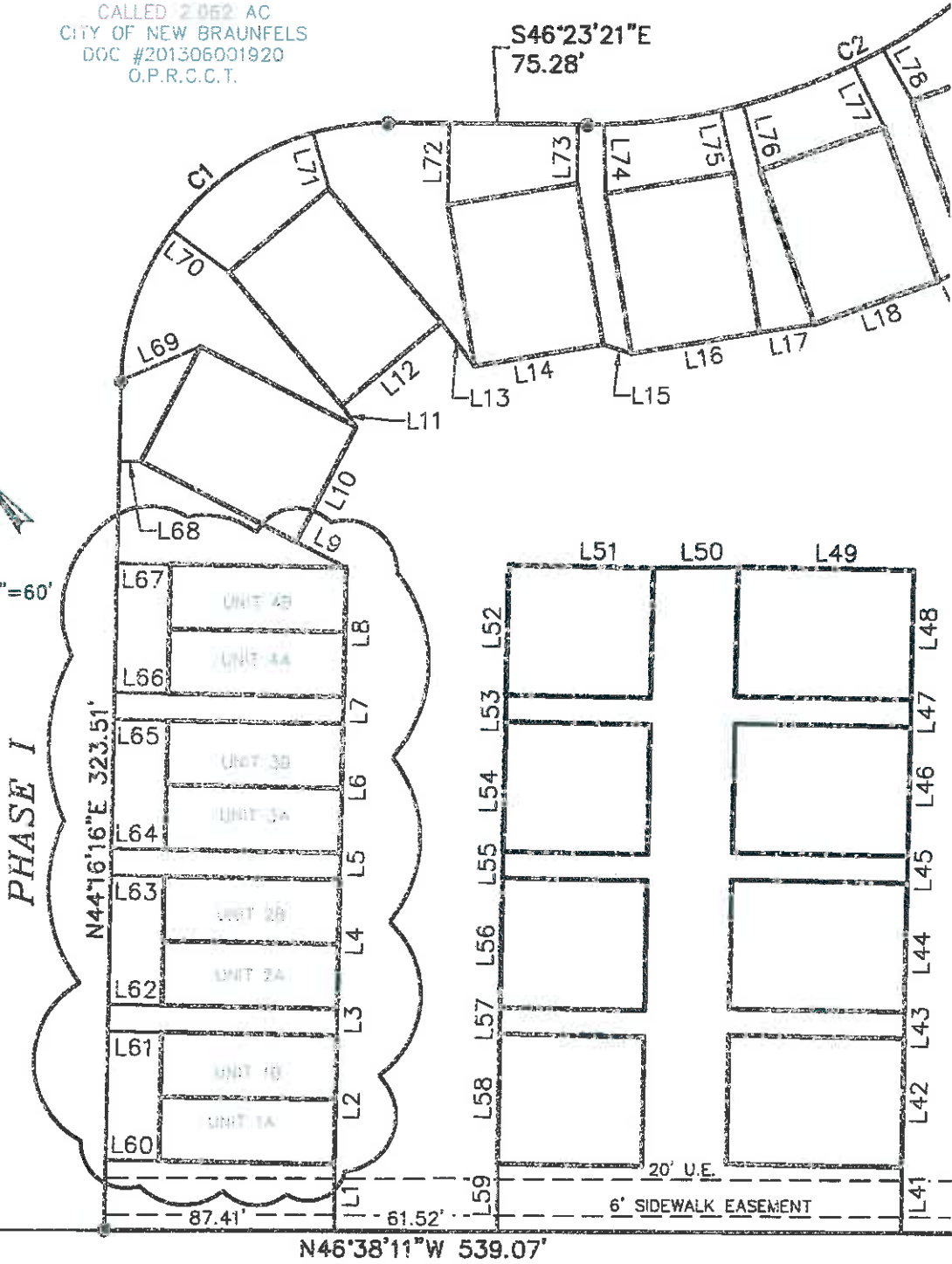
410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
PH: (830)625-8555
TBPLS FIRM 10153600

CONDO DETAIL "1"
OLD MILL CROSSING
TOWNHOMES

CALLED 2.062 AC
CITY OF NEW BRAUNFELS
DOC #201306001920
O.P.R.C.C.T.

S46°23'21"E
75.28'

SCALE: 1"=60'



PHASE I

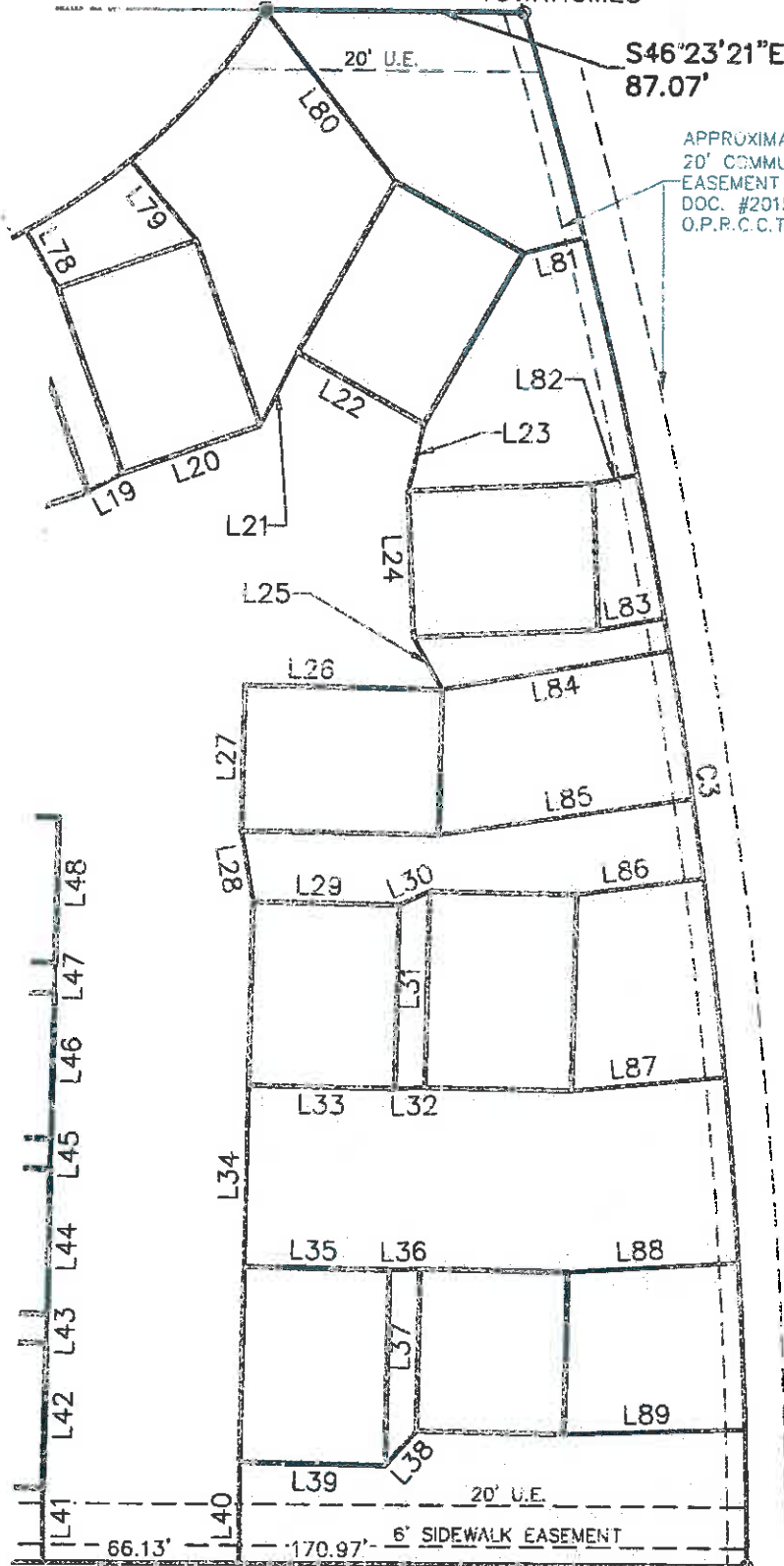
RUSK ST.
(60' R.O.W.)



410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
PH: (830)625-8555
TBPLS FIRM 10153600

Graphic Name (\\hmt\project\2017 - Survey - Draft - Dallas - Names\031_203 - Draft - Draft - Streets, and - Plans\031_001_001 - Condo - Subdivided - Plat.Dwg) - Date: 11/16/17 - 11/16/17 - 9:25am

CONDO DETAIL "2"
 OLD MILL CROSSING
 TOWNHOMES



APPROXIMATE LOCATION
 20' COMMUNICATIONS
 EASEMENT
 DOC. #201506025310
 O.P.R.C.C.T.



SCALE: 1"=60'

UNION PACIFIC RAILROAD
 100' R.O.W.



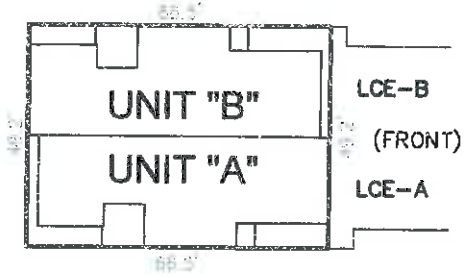
410 N. SEGUIN AVE.
 NEW BRAUNFELS,
 TEXAS, 78130
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 PH: (830)625-8555
 TBPLS FIRM 10153600

N46°38'11"W 539.07'

RUSK ST.
 (60' R.O.W.)

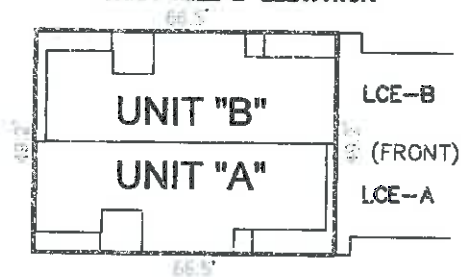
UNIT DETAILS
OLD MILL CROSSING
TOWNHOMES
SCALE: 1"=40'

GRIST MILL A ELEVATION



BUILDINGS 2 & 4

GRIST MILL B ELEVATION



BUILDING 1 & 3

Project Name: NLA_Proposal021 - 2016-2017 - 0120m
Drawing Title: Grist Mill A & B Elevation
Drawing Date: Apr 28, 2017 - 0120m



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**CURVE & LINE TABLES
OLD MILL CROSSING
TOWNHOMES**

| CURVE TABLE | | | | | | |
|-------------|---------|----------|------------|---------|--------------|---------------|
| CURVE | LENGTH | RADIUS | DELTA | TANGENT | CHORD LENGTH | CHORD BEARING |
| C1 | 155.93' | 100.00' | 089°20'23" | 98.85' | 140.60' | N88°56'28"E |
| C2 | 226.86' | 225.00' | 057°46'10" | 124.13' | 217.37' | S75°16'26"E |
| C3 | 533.35' | 1834.97' | 016°39'13" | 268.57' | 531.47' | S34°39'44"W |

| LINE TABLE | | |
|------------|-------------|--------|
| LINE # | DIRECTION | LENGTH |
| L1 | N43°21'49"E | 25.39' |
| L2 | N44°16'16"E | 49.17' |
| L3 | N44°16'16"E | 10.21' |
| L4 | N44°16'16"E | 49.17' |
| L5 | N44°16'16"E | 10.21' |
| L6 | N44°16'16"E | 49.17' |
| L7 | N44°16'16"E | 10.21' |
| L8 | N44°16'16"E | 49.17' |
| L9 | N19°42'01"W | 21.28' |
| L10 | N70°32'50"E | 49.17' |
| L11 | N09°04'54"E | 9.83' |
| L12 | S86°55'36"E | 49.17' |
| L13 | S06°19'24"W | 20.67' |
| L14 | S56°18'32"E | 49.45' |
| L15 | S29°21'22"E | 11.23' |
| L16 | S56°18'32"E | 49.32' |
| L17 | S55°27'47"E | 20.76' |
| L18 | S66°16'31"E | 49.44' |
| L19 | S74°15'07"E | 13.07' |
| L20 | S66°16'31"E | 49.17' |
| L21 | N69°34'14"E | 27.57' |
| L22 | S17°32'19"E | 49.17' |
| L23 | S55°54'01"W | 23.05' |
| L24 | S40°47'20"W | 49.44' |
| L25 | S14°08'14"W | 20.28' |
| L26 | N45°43'44"W | 66.46' |
| L27 | S44°16'16"W | 49.17' |
| L28 | S33°37'43"W | 24.37' |
| L29 | S45°43'37"E | 49.44' |
| L30 | S71°16'44"E | 11.22' |

| LINE TABLE | | |
|------------|-------------|--------|
| LINE # | DIRECTION | LENGTH |
| L31 | S44°16'16"W | 66.46' |
| L32 | N48°33'34"W | 10.14' |
| L33 | N45°43'37"W | 49.44' |
| L34 | S44°18'14"W | 61.50' |
| L35 | S45°43'44"E | 49.17' |
| L36 | S48°30'33"E | 10.31' |
| L37 | S44°16'16"W | 54.96' |
| L38 | S84°53'46"W | 15.81' |
| L39 | N45°43'44"W | 49.17' |
| L40 | S43°21'49"W | 34.16' |
| L41 | S43°22'24"W | 25.03' |
| L42 | N44°16'16"E | 49.17' |
| L43 | N44°16'16"E | 10.05' |
| L44 | N44°16'16"E | 49.17' |
| L45 | N44°16'16"E | 10.32' |
| L46 | N44°16'16"E | 49.17' |
| L47 | N44°16'16"E | 10.32' |
| L48 | N44°16'16"E | 49.17' |
| L49 | N45°43'44"W | 65.89' |
| L50 | N47°30'57"W | 32.11' |
| L51 | N45°43'44"W | 54.96' |
| L52 | S44°16'16"W | 49.44' |
| L53 | S44°16'16"W | 10.05' |
| L54 | S44°16'16"W | 49.44' |
| L55 | S44°16'16"W | 10.05' |
| L56 | S44°16'16"W | 49.44' |
| L57 | S44°16'16"W | 10.05' |
| L58 | S44°16'16"W | 49.44' |
| L59 | S43°21'49"W | 25.92' |
| L60 | N45°43'44"W | 20.54' |

| LINE TABLE | | |
|------------|-------------|--------|
| LINE # | DIRECTION | LENGTH |
| L61 | N45°43'44"W | 20.54' |
| L62 | N45°43'44"W | 20.54' |
| L63 | N45°43'44"W | 20.54' |
| L64 | N45°43'44"W | 20.54' |
| L65 | N45°43'44"W | 20.54' |
| L66 | N45°43'44"W | 20.54' |
| L67 | N45°43'44"W | 20.54' |
| L68 | N45°43'44"W | 8.29' |
| L69 | N69°47'05"W | 32.91' |
| L70 | N10°37'11"W | 26.91' |
| L71 | N27°14'28"E | 22.16' |
| L72 | N43°36'39"E | 31.08' |
| L73 | N43°36'39"E | 22.56' |
| L74 | N41°56'24"E | 26.41' |
| L75 | N30°36'43"E | 24.16' |
| L76 | N28°22'01"E | 25.68' |
| L77 | N17°04'11"E | 26.55' |
| L78 | N13°55'27"E | 22.31' |
| L79 | N03°11'37"E | 35.23' |
| L80 | N05°30'17"E | 73.19' |
| L81 | S61°11'57"E | 21.39' |
| L82 | S58°37'56"E | 15.18' |
| L83 | S57°05'25"E | 22.62' |
| L84 | S56°44'31"E | 77.60' |
| L85 | S55°09'37"E | 86.32' |
| L86 | S54°18'44"E | 43.11' |
| L87 | S52°12'01"E | 51.82' |
| L88 | S50°13'46"E | 57.57' |
| L89 | S48°27'35"E | 61.04' |

Planning Survey, P.L., Project 5122 - Survey, Access, Utilities, and Easements (02/03/01) - County: Tarrant, State: TX, Date: 08/11/01, Page: 13



ENGINEERING & SURVEYING

410 N. SEGUIN AVE.
 NEW BRAUNFELS,
 TEXAS, 78130
 WWW.HMTNB.COM
 PH: (830)625-8555
 TBPLS FIRM 10153600

OLD MILL CROSSING TOWNHOMES UNIT ADDRESS CHART

| UNIT # | STREET ADDRESS | | | |
|---------|-------------------|--|--|--|
| Unit 1A | 711 Gristmill Dr. | | | |
| Unit 1B | 715 Gristmill Dr. | | | |
| Unit 2A | 719 Gristmill Dr. | | | |
| Unit 2B | 723 Gristmill Dr. | | | |
| Unit 3A | 727 Gristmill Dr. | | | |
| Unit 3B | 731 Gristmill Dr. | | | |
| Unit 4A | 735 Gristmill Dr. | | | |
| Unit 4B | 739 Gristmill Dr. | | | |
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EXHIBIT B

ENCUMBRANCES

1. Easements recorded in Volume 130, Page 628, Deed Records of Comal County, Texas.
2. Easement Deed by Court Order in Settlement of Landowner Action, granting communication cable system easements, recorded in Document No. 201506025310.
3. All leases, grants, exceptions, or reservations of coal, lignite, oil, gas, and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records.
4. All easements and restrictions shown on the plat of the Property recorded in Document No. 201606018979, Map and Plat Records of Comal County, Texas.

EXHIBIT C

SCHEDULE OF COMMON INTEREST PERCENTAGES

| UNIT # | PERCENTAGE | | | |
|---------------|-------------------|--|--|--|
| Unit 1A | 12.5% | | | |
| Unit 1B | 12.5% | | | |
| Unit 2A | 12.5% | | | |
| Unit 2B | 12.5% | | | |
| Unit 3A | 12.5% | | | |
| Unit 3B | 12.5% | | | |
| Unit 4A | 12.5% | | | |
| Unit 4B | 12.5% | | | |
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TOTAL: 100.0%

EXHIBIT D

FINE POLICY

- D-1 Background. This fine policy is based on the requirements of Sec. 82.102(d) and (e) of the Act. To establish policies and procedures for fining under the Act, Declarant adopts this policy for the benefit of the Association.
- D-2 Policy. The Association uses fines to discourage violations of the Documents, and to encourage compliance when a violation occurs – not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Documents. The Association’s use of fines does not interfere with its exercise of other rights and remedies for the same violation. Nor may the Association use fines to the exclusion of other remedies.
- D-3 Owner’s Liability. An Owner is liable for fines levied by the Association for violations of the Documents by the Owner, Residents of the Unit, and the relatives, guests, employees, and agents of the Owner and Residents. Regardless of who performs the violation, the Association will direct its communications to the Owner, although the Association may send copies of its notices to the Resident.
- D-4 Violation Notice. Before levying a fine, the Association will give the Owner a written violation notice and an opportunity to be heard. This requirement may not be waived. The Association’s written violation notice will contain the following items: (1) the date the violation notice is prepared or mailed; (2) a description of the violation; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation; (5) the amount of the fine; (6) a statement that not later than the 30th day after the date of the violation notice, the Owner may request a hearing before the Board to contest the fine in accordance with Section 15.1 of the Declaration; and (7) the date the fine attaches or begins accruing (the “**Start Date**”), subject to the following:
- a. New Violation. If the Owner was not given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months, the notice will state a specific date by which the violation must be cured to avoid the fine, if the violation is ongoing or continuous. If the violation is not ongoing but is instead sporadic or periodic, the notice must state that any future violation of the same rule may result in the levy of a fine.
 - b. Repeat Violation. In the case of a repeat violation, the notice will state that, because the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months, the fine attaches from the date of the violation notice.

- D-5 Violation Hearing. An Owner may request in writing a hearing by the Board to contest the fine. To request a hearing before the Board, an Owner must submit a written request in accordance with Section 15.1 of the Declaration. All hearings will be conducted as set forth in Article 15 of the Declaration. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine.
- D-6 Levy of Fine. Within thirty (30) days after levying the fine, the Board must give the Owner notice of the levied fine. If the fine is levied at the hearing at which the Owner is actually present, the notice requirement will be satisfied if the Board announces its decision to the Owner at the hearing. Otherwise, the notice must be in writing. In addition to the initial levy notice, the Association will give the owner periodic written notices of an accruing fine or the application of an Owner's payments to reduce the fine. The periodic notices may be in the form of monthly statements or delinquency notices.
- D-7 Amount. The Association may set fine amounts on a case by case basis provided the fine amount is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. If circumstances warrant a variance from the schedule, the Board will document the reasons for the variance in the minutes of its meeting. The amount and cumulative total of a fine must be reasonable in comparison to the violation and should be uniform for similar violations of the same provision of the Documents. If the Association allows fines to accumulate, it will establish a maximum amount for a particular fine, at which point the total fine will be capped.
- D-8 Type of Levy. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, monthly, or quarterly), beginning on the Start Date. If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.
- D-9 Collection of Fines. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Association may not charge interest or late fees for unpaid fines.
- D-10 Amendment of Policy. This policy may be revoked or amended from time to time by the Board (or the Declarant during the Declarant Control Period). This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other communitywide publication.

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Filed and Recorded
Official Public Records
Bobbie Koepp, County Clerk
Comal County, Texas
04/21/2017 12:41:05 PM
CHRISTY 90 Pages(s)
201706021420

Exhibit D



Bobbie Koepp