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TRAVIS COUNTY, TEXAS

DECLARATION OF CONDOMINIUM REGIME FOR EVOLV EAST

A RESIDENTIAL CONDOMINIUM PROJECT LOCATED AT
2108 TILLERY STREET, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS

AFTER RECORDING,

RETURN TO:

Elliott Stratmann, PLLC
Attn: Mary Stratmann
2705 Bee Cave Road, Suite 200
Austin, Texas 78746

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Exhibits, Attachments and Appendixes:

- Exhibit A - Legal Description of the Property

- Attachment 1 - Condominium Plats and Plans
- Attachment 2 - Encumbrances
- Attachment 3 - Schedule of Allocated Interests
- Attachment 4 - Maintenance Responsibility Chart
- Attachment 5 - Description of Landscape Services

- Appendix A - Declarant Reservations

**DECLARATION OF CONDOMINIUM REGIME FOR
EVOLV EAST**

A. Cantegra Tillery, LLC, a Texas limited liability company (“**Declarant**”), is the owner of that certain tract of land (together, the “**Land**”) consisting of 0.966 acres, more or less, located in Travis County, Texas, and being more particularly described on Exhibit A attached hereto and incorporated herein by reference.

B. The Land, together with all Improvements (defined herein) thereon, and all easements, rights, and appurtenances thereto, are hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating the Evolv East Condominiums.

NOW, THEREFORE, it is hereby declared that the Property (defined herein) will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the reservations of Declarant set forth on Appendix A attached hereto, which will run with the Property, 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. Other defined terms used herein, and which are not defined in this Article 1, have the meanings ascribed to them as set forth elsewhere in this Declaration.

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 Reviewer**” means Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer 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 Article 6 of this Declaration.

1.5. “**Association**” means Evolv East Homeowners 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 Section 202.001(2) of the Texas Property Code. 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, the Act and Applicable Law.

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

1.7. “**Building**” means each detached, semi-attached, or attached residential dwelling constructed within the Regime, together with all appurtenant Improvements.

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. “**Common Element**” means all portions of the Property save and except the Units. All Common Elements are “**General Common Elements**” except if such Common Elements have been allocated 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.

1.11. “**Community Manual**” means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion.

1.12. “**Declarant**” means Cantegra Tillery, LLC, a Texas limited liability company, its successors and, as contemplated pursuant to the next two sentences, assigns. 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.

1.13. “**Declarant Control Period**” means that period of time during which Declarant controls the operation and management of the Association pursuant to Appendix A of this Declaration. The duration of Declarant Control Period commences on the date this Declaration is Recorded and expires one hundred and twenty (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant.

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1.14. **“Declaration”** means this document, as it may be amended from time to time.

1.15. **“Design Guidelines”** means the standards for design, construction, landscaping, and exterior items placed on any Unit adopted pursuant to Section 10.6, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. Declarant may adopt the initial Design Guidelines applicable to the Regime.

1.16. **“Development Period”** means the seven (7) year period, beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix A, 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. **DURING THE DEVELOPMENT PERIOD, APPENDIX A HAS PRIORITY OVER THE OTHER TERMS AND PROVISIONS OF THIS DECLARATION.**

1.17. **“Documents”** mean, singly or collectively as the case may be, this Declaration, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.18. **“Front Yard Area”** means the enclosed front yard and patio area included within the boundaries of each of Units 12, 13, 14, 15 and 16 as reflected in the Plat and Plans attached hereto as Attachment 1.

1.19. **“General Common Elements”** mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as, or identified by the notation, “GCE”, “General Common Element”, “General Common Area”, “Common Area” or “Common Areas” on Attachment 1 attached hereto.

1.20. **“Improvement”** means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, within the Property, 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, including, without limitation, grinder pumps.

1.21. **“Landscape Services”** mean those services to be provided to the Maintained Area (as defined in Attachment 5 attached hereto) in accordance with the terms as provided for

in Section 9.2 of this Declaration and as set forth in Attachment 5 attached hereto and incorporated herein by reference.

1.22. “**Limited Common Elements**”, if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as “LCE”, “Limited Common Elements”, or “Limited Common Areas” on Attachment 1 attached hereto and/or as provided in Section 5.4 of this Declaration.

1.23. “**Majority**” means more than half.

1.24. “**Member**” means a member of the Association, each Member being an Owner of a Unit, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.25. “**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.

1.26. “**Occupant**” means any Person, including any Owner and any tenant of an Owner, having a right to occupy or use all or any portion of a Unit for any period of time.

1.27. “**Owner**” means a holder of Recorded fee simple title to a Unit. Declarant is the initial Owner of all Units. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

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

1.29. “**Plat and Plans**” means the plat and plans attached hereto as Attachment 1, as changed, modified, or amended in accordance with this Declaration.

1.30. “**Property**” means the Land, together with all Improvements thereon, and all easements, rights, and appurtenances thereto, and includes every Unit and Common Elements.

1.31. “**Rear Yard Area**” means the rear yard area included within the boundaries of each Units 1 through 11 as reflected in the Plat and Plans attached hereto as Attachment 1. The Rear Yard Area does not include any deck, porch or patio attached to any Building.

1.32. “**Record, Recordation, Recorded and Recording**” means filing the referenced instrument or document in the Official Public Records of Travis County, Texas.

1.33. “**Regime**” means the Property, Units, General Common Elements and Limited Common Elements that comprise the condominium regime established by this Declaration.

1.34. “**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 (as part of the Community Manual or otherwise) for the benefit of the Association.

1.35. “**Underwriting Lender**” means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), the Veteran’s Administration, or Government National Mortgage Association (Ginnie Mae), singularly or collectively. Use of the term “Underwriting Lender” in this Declaration, and the specific institutions listed in this definition, may not be construed as a limitation on an Owner’s financing options or as a representation that the Property is approved by any specific institution.

1.36. “**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 Attachment 1, as further described in Section 5.2 of this Declaration.

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 Declarant’s representations and reservations as set forth on Appendix A attached hereto, which run with the Property, bind all Persons 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. Adjacent Land Use. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

2.3. Additional Property. Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association with the approval of Owners holding at least sixty-seven percent (67%) of the total votes in the Association, or, during the Development Period, unilaterally by Declarant as permitted in Appendix A. Annexation of additional property is accomplished by the Recording of a declaration of annexation which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime. Upon the annexation of such real property into the Regime such land will be considered part of the Property for the purposes of this Declaration.

2.4. Recorded Easements and Encumbrances. 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 Attachment 2, and as 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, leases,

and encumbrances. Each Owner further agrees to maintain any easement that crosses the Owner's Unit and for which the Association does not have express responsibility.

2.5. Common Elements. The Common Elements of the Property consist of all of the Property, save and except the Units.

2.5.1. Ownership & Maintenance. The designation of Common Elements is determined by this Declaration. The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with the 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.

2.5.2. 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 its 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.

ARTICLE 3

PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. 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.

3.2. Owner's Easement of Enjoyment. Every Owner is granted a right and easement of enjoyment over the General Common Elements and use of Improvements therein, subject to other limitations, rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Occupants of the Owner's Unit and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit. The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Documents or nonpayment of Assessments.

3.3. 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, subject to the consent of the Board and the consent of the Owner of the adjoining Unit, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of or damage the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Board and

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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 8:00 a.m. until 6:00 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit must be approved in advance and in writing by the Board. The Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. The Board may also require that the Owner abide by additional reasonable rules with respect to use and protection of Units and the Common Elements during any such 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, Board or the Owner of the damaged Unit.

Prior to commencing any work upon a Unit which requires access to, over or through the Common Elements or other Units, the Person performing such work must deliver to the Board, 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.

3.4. 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 to and egress from the Owner's Unit or the Limited Common Elements, if any, assigned thereto.

3.5. Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by the Owner's 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. The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the Architectural Reviewer.

3.6. 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 the Owner's 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.

3.7. 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 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 following purposes:

- (i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.
- (ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.
- (iii) To enforce the Documents.
- (iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.
- (v) To respond to emergencies.
- (vi) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.8. Utility Easement. Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Elements and the Rear Yard Areas for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant, during the Development Period, and the Association thereafter, may grant

easements over and across the Units, including, without limitation, the Rear Yard Areas, 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 and shall not unreasonably interfere with the use of a Unit for residential purposes. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, internet, and security.

3.9. 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 Property. Each Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, members, managers, committees, contractors, representatives, agents, and employees are not providers, insurers, or guarantors of security within the Property. EACH OCCUPANT ACKNOWLEDGES AND ACCEPTS THAT IT IS THE SOLE RESPONSIBILITY OF THE OCCUPANT TO PROVIDE SECURITY FOR THEIR OWN PERSON AND PROPERTY, AND EACH OCCUPANT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OCCUPANT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, COMMITTEES, CONTRACTORS, REPRESENTATIVES, AGENTS, AND EMPLOYEES, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OCCUPANT RELIED ON ANY REPRESENTATION OR WARRANTY, STATUTORY, 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 OCCUPANT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, COMMITTEES, CONTRACTORS, REPRESENTATIVES, 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.

3.10. Injury to Person or Property. Neither Declarant nor the Association, or their respective directors, officers, committees, agents, and employees, have a duty or obligation to any Owner, Occupant or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any portion of the Property; or (c) to provide security or protection to any Owner, Occupant, 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 DEFEND,

INDEMNIFY AND HOLD HARMLESS DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, COMMITTEES, REPRESENTATIVES, CONTRACTORS, AGENTS, AND EMPLOYEES, FROM AND AGAINST 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 OR HIS OCCUPANT, GUESTS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, LICENSEES OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE PROCURED AND MAINTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

3.11. Parking. Declarant reserves the right to designate and assign portions of the General Common Elements as parking space(s) for the exclusive use of any Owner. The assignment of parking spaces within the General Common Elements not specifically designated by the Declarant for the exclusive use of an Owner will be under the exclusive control and administration of the Declarant until the expiration or termination of the Development Period. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board, but 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 the Association upon expiration or termination of the Development Period) which shall identify the parking space(s) and the Unit assigned thereto. Any designation and assignment of General Common Elements as parking 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 parking spaces so assigned, and may not be terminated or modified without the consent of the Declarant (or a Majority of the Board if the Development Period has expired or been terminated) and the Owner of the Unit to which the parking space was assigned.

Notwithstanding anything to the contrary stated herein, with respect to any handicap parking spaces, such handicap parking spaces shall be assigned subject to the rights of the Declarant, during the Development Period, or the Association thereafter, to require the Owner to whose Unit such handicap parking space has been assigned (hereinafter, the "**Original Assignee**") to grant a license to use such handicap parking space to another Owner (hereinafter, the "**Disabled Owner**"), provided that: (i) the Disabled Owner (or Occupant of such Disabled Owner's Unit) qualifies under Applicable Law to use a handicap parking space in public facilities; (ii) the Disabled Owner provided the Original Assignee with a license to use the Disabled Owner's parking space; and (iii) at such time as the Disabled Owner (or Occupant of such Disabled Owner's Unit) no longer qualifies as provided in subsection (i) hereof, the license shall automatically expire and the Original Assignee and the Disabled Owner shall each use their respective original, assigned parking spaces. Declarant and the Association hereby disclaim any representation or warranty regarding use of the handicap parking spaces in a manner that is contrary to, or in violation of, any Applicable Law.

ARTICLE 4

CERTAIN PROPERTY FEATURES

This Article discloses selective features of the Regime that may not be obvious to potential Owners and Occupants. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

4.1. Service Contracts. Declarant or the Association may have contracted, on behalf of the Owners, with vendors for the provision of services on a contract basis, such as cable television, internet and/or trash removal. 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, neither Declarant nor the Association is (nor are they to be considered) 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.

4.2. Fire Sprinklers. One or more Buildings within the Regime may be constructed with a fire sprinkler system. Damage to, or a malfunction of, a water line or sprinkler head may harm or destroy real and personal property. Notwithstanding any provision in this Declaration to the contrary, the fire sprinkler system, if any, will be maintained by the Association with the costs of maintenance, operation and repair levied through Regular Assessments. However, each Owner is solely responsible for: (i) preserving the integrity and functionality of the Building's fire sprinkler system located in the Owner's Unit; (ii) instructing the Occupants, invitees, and contractors and other Persons working in and on the Owner's Unit about the care and protection of the sprinkler system, including any applicable Rules; and (iii) any damage to the Owner's Unit, an adjoining Unit, a Common Element, or any personal property (such as furnishings and clothing) caused by the Owner, or the Owner's Occupants, invitees, and contractors and other Person's, abuse or negligent acts which cause a malfunction of any component of the sprinkler system. Additionally, each Owner is hereby advised that the local municipal or fire authorities may periodically access the Unit for the purpose of conducting inspections of the fire sprinkler system. Inspection may include drainage and recharge of the lines. Any such inspection will be coordinated through the Association, who will contact the Owners to ensure orderly access to the Units. Any expenses incurred in connection with the inspection will be a common expense of the Association.

4.3. Outside Conditions. It is acknowledged that there may be conditions outside of the Property that an Owner or Occupant may find objectionable, and it shall be the sole responsibility of an Owner or Occupant to become acquainted with neighborhood conditions that could affect the Property and Unit. Neither the Declarant nor the Association can control what occurs outside of the Property.

4.4. Street Names. Declarant may change, in its sole discretion, the Property name and the street names and addresses in or within the Property including the street address of the Unit before or after closing if required by any applicable regulatory agency.

4.5. Construction Activities. Portions of the Regime may be under construction, from

time to time, and such construction may produce certain conditions on the Regime, including, without limitation: (a) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (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 Occupants agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance.

4.6. Water Runoff. The Property may be subject to erosion and/or flooding during periods of rain, and water may pond on portions of the Property having impervious surfaces, such as the parking areas and driveways, as applicable.

4.7. Encroachments. Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by such any such encroachments.

4.8. Budgets. Any budgets prepared by or on behalf of the Association are based on estimated expenses only without consideration for the effects of inflation. The estimated expenses reflected on a budget may increase or decrease significantly when the actual expenses become known.

4.9. Schools. No representations are being made regarding which schools may now or in the future serve the Unit.

4.10. Sounds. No representations are made that the Unit is or will be soundproof or that sound and/or vibrations may not be transmitted from one Unit to another or from the Common Elements (including, but not limited to, any amenity areas) or any adjacent property to a Unit. Sound transmissions and/or vibrations between Units and Common Elements are inherent in condominium construction and attendant use and operation of the Improvements from time to time comprising the Regime, and are not design or construction defects.

4.11. Location of Utilities. Declarant makes no representation, warranty or other assurance as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

4.12. Sidewalks, Private Drives and Parking. The sidewalks and private drives located within the Property and designated as such are General Common Elements and are maintained and administered by the Association. By acquiring a Unit in the Regime, each Owner acknowledges and agrees that use of such sidewalk(s), if any, and private drive(s) will be subject to all applicable Rules. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules for use of sidewalks, if any, and private drives, including but not limited to: (i) identification of vehicles used by Owners and Occupants and their guests; (ii) designation of no-parking areas and loading/unloading zones; (iii) limitations or prohibitions on curbside and driveway parking; (iv) removal or prohibition of vehicles that violate applicable Rules; and (v) fines for violations of applicable Rules.

4.13. Unit Plans and Dimensions. Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed on any Unit or portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Room dimensions, Unit size and elevations may vary due to the nature of the construction process and site conditions. If an Owner is concerned about any representations regarding room dimensions, Unit size and elevations, the Owner should conduct its own investigation of such matters prior to contracting for the purchase of a Unit.

ARTICLE 5

UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. Number of Units. The Regime consists of sixteen (16) Units. If additional land is annexed into the Regime, then the declaration of annexation may also include a description of the Units added to the Regime if the Declarant elects to create Units upon Recordation of the declaration of annexation; or, Declarant may elect to create additional Units or Common Elements on the additional property subsequent to the recordation of the declaration of annexation. No assurance is given as to the dispersion of new Units, total number of new Units, or size or other characteristics of such Units.

5.2. Unit Boundaries. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached as Attachment 1. While the Plat and Plans attached hereto as Attachment 1 generally show the boundaries of the Units, the vertical and horizontal boundaries of the portions of the Units within the Buildings are as follows:

5.2.1. For portions of the Unit which adjoin an exterior wall of a Building, the vertical boundary of the Unit is defined by the inside-facing surfaces of each stud wall forming the exterior wall and by the outside-facing surfaces of the outermost component of doors, windows and garage doors.

5.2.2. For portions of the Unit which adjoin a wall separating the Unit from another Unit, the vertical boundary of the Unit is the centerline of such wall.

5.2.3. The upper horizontal boundary of each portion of a Unit within a Building is the inside-facing surface of the material which comprises the permanent ceiling in the Unit. The lower horizontal boundary of each portion of the Unit within a Building is the unfinished concrete on the ground floor of the Unit. The actual concrete slab foundation is a General Common Element. Anything on or affixed to the top of unfinished concrete is part of the Unit.

5.3 What the Unit Includes. Each Unit includes the spaces, yard areas (including, without limitation, Rear Yard Area and Front Yard Area, if any), deck, patio, courtyard and Improvements constructed within the Unit, including, without limitation, windows, window frames, doors, door frames, garage doors, all fixtures and equipment exclusively serving such

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Improvements and the Unit, whether located inside or outside the Unit, whether or not attached to or contiguous with the Unit, including but not limited to, the following (if any): water heaters, solar systems, air conditioners, utility meters, fuse boxes, electrical switches, wiring, pipes, ducts, conduits, smoke detectors, security systems, television antennas, lighting fixtures, telephone and electrical receptacles, and skylights. Except as specifically included above, each Unit excludes the spaces and improvements lying outside of the boundaries of the Unit. Each Unit also excludes any chute, pipe, flue, duct, wire, or conduit running through a Unit for the purpose of furnishing utility and similar services to other Units and/or Common Elements. **THE LEGAL BOUNDARIES OF EACH UNIT ARE ESTABLISHED BY THE DECLARATION AND THE PLAT AND PLANS. HOWEVER, EACH OWNER ACKNOWLEDGES THAT THE UNIT MAY BE MEASURED AND DEPICTED IN A MANNER WHICH DIFFERS FROM THE LEGAL BOUNDARIES OF A UNIT. FOR EXAMPLE, THE UNIT MAY BE MEASURED OR DEPICTED DIFFERENTLY FOR TAX PURPOSES, APPRAISAL PURPOSES AND SALES PURPOSES. NO SINGLE MEASUREMENT IS DEFINITIVE FOR ALL PURPOSES.**

5.3. Initial Designations of Limited Common Elements. Portions of the Common Elements may be allocated as Limited Common Elements on the Plat and Plans 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.

5.4. Subsequent Allocation of Limited Common Elements. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration. Declarant has reserved the right, as set forth in Appendix A of this Declaration, to create and assign Limited Common Elements within the Property.

5.5. Common Interest Allocation. The percentage of interest in the Common Elements (the “**Common Interest Allocation**”) allocated to each Unit, and the formula used for establishing the same, is set forth on Attachment 3. In the event an amendment or notice of annexation to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment or notice of annexation is Recorded.

5.6. Common Expense Liabilities. The percentage of liability for common expenses allocated to each Unit (the “**Common Expense Liability**”) and levied pursuant to Article 6 is equivalent to the Common Interest Allocation assigned to the Unit.

5.7. Votes. One (1) vote is allocated to each Unit. The one vote appurtenant to each Unit is weighted equally for all votes, regardless of the other allocations appurtenant to the Unit. In other words, the one vote appurtenant to each Unit is uniform and equal to the vote appurtenant to every other Unit.

ARTICLE 6

COVENANT FOR ASSESSMENTS

6.1. 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 Occupants, including but not limited to maintenance of the Regime, 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.

6.2. 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 the Documents pertain. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of his Unit. An Owner's obligation for Assessments is not subject to offset by the Owner, nor is it contingent on the Association's performance or lack thereof. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

6.3. Types of Assessments. There are five (5) types of Assessments: Regular, Special, Utility, Individual, and Deficiency Assessments.

6.4. Regular Assessments.

6.4.1. Purpose of Regular Assessments. Regular Assessments are used for common expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- (i) Maintenance, repair, and replacement, as necessary, of Common Elements and Improvements, equipment, signage and property owned by the Association.
- (ii) Provision of the Landscape Services to all Maintained Area, subject to Section 9.2 hereof.
- (iii) Maintenance examination and report, as required by Article 9.
- (iv) Utilities billed to the Association.
- (v) Pest control and other services obtained by the Association.
- (vi) Taxes on property owned by the Association and the Association's income 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.
- (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.

6.4.2. Annual Budget-Regular. 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 of the Association 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.

6.4.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Unit will be liable for the Unit's share of the annual budget based on the Common Expense Liability allocated to such Unit. 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 by the Board.

6.5. Supplemental Increases. If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated common expenses of the Association 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. Supplemental increases will be apportioned among the Units in the same manner as Regular Assessments.

6.6. Special 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 acquisition of real property must be approved by Owners representing at least a Majority of the votes in the Association. Special Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.7. Utility Assessments. This Section applies to utilities serving the Units and consumed by the Owner and/or Occupants that are billed to the Association by the utility
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provider, and which may or may not be sub-metered by or through the Association. The Board may levy a Utility Assessment against each Unit. The Board may allocate the Association's utility charges among the Units by any conventional and reasonable method. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub-metering services. The Board may, from time to time, change the method of utility allocation, provided the method of allocation is reasonable.

6.8. Individual 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: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and copies of the Documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, such Owner's Occupant, or their respective contractors, agents, employees, representatives, invitees, licensees, or guests; (viii) common expenses that benefit fewer than all of the Units, which may be assessed according to benefit received as reasonably determined by the Board; (ix) fees or charges levied against the Association on a per-Unit basis; and (x) "pass through" expenses for services to Units provided through the Association and to be paid by each Unit according to benefit received as reasonably determined by the Board.

6.9. Deficiency Assessments. The Board may levy a Deficiency Assessment against the Units for the purpose of defraying, in whole or in part, the cost of maintenance, repair, and replacement, as necessary, performed by the Association or its permittees if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.10. 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 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 of a Unit will not be subject to the reserve fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. 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.

6.11. Reserve Fund Contribution. Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Unit to a subsequent Owner of the Unit), a reserve fund contribution in an amount equal to one (1) month of Regular Assessments will be paid from the transferee of the Unit to the Association for the Association's replacement reserve funds. Each reserve fund contribution will be collected from the transferee of a Unit 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 of a Unit will not be subject to the reserve fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use the reserve fund contribution collected hereunder to pay the operational expenses of the Association until the Declarant Control Period terminates. The Declarant, during the Development Period, and thereafter the Board, will have the power to waive the payment of any reserve fund contribution attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.12. Due Date. Regular Assessments are due annually, with monthly installments of the total annual Regular Assessments to be paid on the first calendar day of each month or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received on or before such date. Utility, 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 Utility, Special, Individual, or Deficiency Assessment is given.

6.13. Reserve Funds. The Association may maintain reserves for operations 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. 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.

6.14. Declarant's Right to Inspect And Correct Accounts. For a period of ten (10) years after termination or expiration 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 established during 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 re-characterize 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.

6.15. Association's Right To Borrow Money. The Association is granted the right to borrow money, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist in 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.

6.16. Limitations of Interest. 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 charge, receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever charges, receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of applicable Assessments, or reimbursed to the Owner if those Assessments are paid in full.

ARTICLE 7 **ASSESSMENT LIEN**

7.1. 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 Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency 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 title to such Owner's Unit may be subject to the continuing lien for Assessments attributable to a period prior to the date the Owner purchased its Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments.

7.2. Superiority 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 the initial 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 the lien is Recorded or perfected. The Assessment lien is also superior to any Recorded assignment of the rights to insurance proceeds on the Unit unless the assignment is part of a superior deed of trust lien.

7.3. Effect of Mortgagee'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.

7.4. Notice and Release of Notice. The lien established hereby 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, in the exercise of its lien rights, the Association may, at its option, cause a notice of the lien to be Recorded. Each lien filed by the Association must be prepared and filed by an attorney licensed to practice law in the State of Texas. 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.

7.5. Power of Sale. By accepting an interest in title to a Unit, and except as prohibited under Applicable Law, each Owner grants to the Association a private power of non-judicial sale in connection with its 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 (as a trustee or in such other representative capacity as the Association may designate), including the power of sale. Any such appointment must be in writing and may be in the form of a resolution duly adopted by the Board.

7.6. Foreclosure of Lien. **IF YOU FAIL TO PAY ASSESSMENTS TO THE ASSOCIATION, YOU MAY LOSE TITLE TO YOUR UNIT IF THE ASSOCIATION FORECLOSES ITS ASSESSMENT LIEN.** The Assessment lien may be enforced by judicial or non-judicial foreclosure. 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 all costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at a foreclosure sale initiated by it and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 8

EFFECT OF NONPAYMENT OF ASSESSMENTS

8.1. Generally. 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 all delinquent Assessments. From time to time, the Association may delegate some or all of its collection procedures and remedies, as it in its sole discretion deems appropriate, to a manager, attorney or a debt collector. Neither the Association nor the Board, 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.

8.2. 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 ten percent (10%) per annum.

8.3. Late Fees. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board.

8.4. 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.

8.5. Suspension of Vote. Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend such Owner's right to vote. 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 twenty percent (20%) of the total Members (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.

8.6. 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 becomes 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 payment of 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.

8.7. 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.

8.8. 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.

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

8.10. 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 Owner attaches conditions or directions contrary to the Association's policy for applying payments. The policies of the Association may provide that endorsement and deposit of a payment does not constitute acceptance, and that acceptance occurs when payment is posted to the Owner's account.

8.11. Remedies Cumulative. The rights and remedies of the Association in respect of the collection of delinquent Assessments, both as expressed in this Declaration or as may otherwise be available to the Association at law or in equity, are cumulative, and not exclusive.

ARTICLE 9

MAINTENANCE AND REPAIR OBLIGATIONS

9.1. Association Maintains. Except as otherwise provided herein, the Association maintains the Common Elements, and the Owner maintains the Owner's Unit. If any Owner fails to maintain its Unit, the Association may perform the work at the Owner's expense. The respective maintenance obligations of the Association and each Owner are set forth in this Article 9 and are summarized on Attachment 4; however, to the extent of any conflict between the provisions of this Article 9 and the summary set forth on Attachment 4, the provisions of this Article 9 will control. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Units or Common Elements:

- (i) the General Common Elements and Limited Common Elements serving more than one Unit;
- (ii) any real and personal property owned by the Association but which is not a Common Element;
- (iii) any area, item, easement or service the maintenance of which is assigned to the Association by the Documents;
- (iv) all portions of the exterior walls of the Buildings, except for the inside-facing surfaces of each stud wall forming the exterior wall and the outside-facing surfaces of the outermost component of doors, windows and garage doors;
- (v) all portions of the roofs of the Buildings, except for the interior-facing

surface of the material which comprises the permanent ceiling in a Unit;

- (vi) all portions of the foundations, slabs and floors of the Buildings, except for the unfinished concrete on the ground floor of a Unit, anything affixed to the top of unfinished concrete and the second floor of a Unit; and
- (vii) Common water, wastewater, mechanical, electrical and plumbing lines and systems serving more than one Unit.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is assumed by an Owner and such assumption is approved by the Board; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with any such assumption as provided in (ii) or (iii), the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to any portion of the Property by an Owner or Occupant that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant and the Owner and Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. If the Association assigns any portion of its maintenance responsibilities to an Owner as permitted by the Documents, the Association will perform any such assigned obligations if not timely performed by the Owner.

NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE LIABLE FOR INJURY OR DAMAGE TO PERSON OR PROPERTY CAUSED BY THE ELEMENTS OR BY THE OWNER OR OCCUPANT OF ANY UNIT OR ANY OTHER PERSON OR RESULTING FROM ANY UTILITY, RAIN, SNOW OR ICE WHICH MAY LEAK OR FLOW FROM ANY PORTION OF THE COMMON ELEMENTS OR FROM ANY PIPE, DRAIN, CONDUIT, APPLIANCE OR EQUIPMENT WHICH THE ASSOCIATION IS RESPONSIBLE TO MAINTAIN HEREUNDER, EXCEPT FOR INJURIES OR DAMAGES ARISING AFTER THE OWNER OR OCCUPANT OF A UNIT HAS PUT THE ASSOCIATION ON WRITTEN NOTICE OF A SPECIFIC LEAK OR FLOW FROM ANY PORTION OF THE COMMON ELEMENTS AND THE ASSOCIATION HAS FAILED TO EXERCISE DUE CARE TO CORRECT THE LEAK OR FLOW WITHIN A REASONABLE TIME THEREAFTER. NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE LIABLE TO ANY OWNER OR OCCUPANT OF ANY UNIT FOR LOSS OR DAMAGE, BY THEFT OR OTHERWISE, OF ANY PROPERTY, WHICH MAY BE STORED IN OR UPON ANY OF THE COMMON ELEMENTS OR ANY UNIT. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE LIABLE TO ANY OWNER OR OCCUPANT FOR ANY DAMAGE OR INJURY CAUSED IN WHOLE OR IN PART BY THE ASSOCIATION'S FAILURE TO DISCHARGE ITS RESPONSIBILITIES UNDER THE DOCUMENTS WHERE SUCH DAMAGE OR INJURY IS NOT A FORESEEABLE, NATURAL RESULT OF THE

ASSOCIATION'S FAILURE TO DISCHARGE ITS RESPONSIBILITIES. NO DIMINUTION OR ABATEMENT OF ASSESSMENTS SHALL BE CLAIMED OR ALLOWED BY REASON OF ANY ALLEGED FAILURE OF THE ASSOCIATION TO TAKE SOME ACTION OR PERFORM SOME FUNCTION REQUIRED TO BE TAKEN OR PERFORMED BY THE ASSOCIATION UNDER THE DOCUMENTS OR FOR INCONVENIENCE OR DISCOMFORT ARISING FROM THE MAKING OF REPAIRS OR IMPROVEMENTS WHICH ARE THE RESPONSIBILITY OF THE ASSOCIATION OR FROM ANY ACTION TAKEN BY THE ASSOCIATION TO COMPLY WITH ANY APPLICABLE LAW.

9.2. Landscape Services.

9.2.1. Generally. The Association will cause the Landscape Services to be provided to the Maintained Area in accordance with the provisions attached hereto and incorporated herein by reference as Attachment 5. Accordingly, the Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Landscape Services. Each Occupant shall secure and restrain its pets such that the Association or its designated landscaping contractor can safely perform the Landscape Services. Notwithstanding anything to the contrary herein, however, in the event for any reason the Association or its designated landscaping contractor is unable to access any portion of the Maintained Area, or if the Board or its designated landscaping contractor determines, in its sole and absolute discretion, that the performance of the Landscape Services to the Maintained Area or the health and safety of its employees, agents and contractors is threatened or impaired by the presence of any pets or any other potentially hazardous conditions, the Association will be relieved of its obligation hereunder to provide Landscape Services until such time as the Association is able to access such portion of the Maintained Area and the Board or its designated landscaping contractor determines, in its sole and absolute discretion, that it can safely perform the Landscape Services notwithstanding the presence of any pet(s) or any other potentially hazardous conditions. **EACH OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, THE BOARD, ANY DESIGNATED LANDSCAPING CONTRACTOR, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, COMMITTEES, REPRESENTATIVES, CONTRACTORS, AGENTS, AND EMPLOYEES, AS APPLICABLE, FROM AND AGAINST ALL COSTS, EXPENSES, CLAIMS, SUITS, CAUSES OF ACTION, LIABILITIES, LOSSES, INJURIES AND DAMAGES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, ASSOCIATED LEGAL EXPENSES AND COSTS OF COURT) INCURRED IN CONNECTION WITH PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF SUCH OWNER'S OR ITS OCCUPANT'S FAILURE TO SECURE AND RESTRAIN ITS PET(S) OR CURE ANY OTHER POTENTIALLY HAZARDOUS CONDITION CREATED BY SUCH OWNER WHILE THE ASSOCIATION OR ITS DESIGNATED LANDSCAPING CONTRACTOR IS PERFORMING OR ATTEMPTING TO PERFORM THE LANDSCAPE SERVICES TO THE MAINTAINED AREA. IN NO EVENT SHALL THE ASSOCIATION, THE**

BOARD, ITS DESIGNATED LANDSCAPING CONTRACTOR NOR ANY OTHER RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, COMMITTEES, REPRESENTATIVES, CONTRACTORS, AGENTS OR EMPLOYEES BE LIABLE FOR TRESPASS WHEN ENTERING ANY UNIT FOR THE PURPOSES OF PROVIDING THE LANDSCAPE SERVICES.

9.2.2. 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.

9.2.3. Cost. The cost of all Landscape Services will be a Common Expense. Notwithstanding the forgoing, in the event that Landscape Services are due to negligence or willful misconduct of an Owner, an Occupant, or an Owner's pet, as determined by the Board in its sole discretion, the cost of such maintenance or repair may be levied as an Individual Assessment. Costs incurred from water loss as a result of a system malfunction, leak or delay in repairing an irrigation system within a Maintained Area due to negligence or misconduct of the Owner, an Occupant, or an Owner's pet, as determined by the Board in its sole discretion, may be levied as an Individual Assessment.

9.2.4. Alterations. Any alterations in the landscaping or irrigation of any portion of a Unit, including, without limitation, the Rear Yard Area, must be approved in writing by Declarant pursuant to the Declaration and/or the Architectural Reviewer prior to the alterations being made.

9.2.5. Owner or Occupant Repair. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed by an Owner or Occupant that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant, and the Owner and Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

9.2.6. Irrigation. The Association is responsible for irrigation and all costs associated therewith and shall properly irrigate all Maintained Areas within such Owner's Unit.

9.3. Fences. The Association will maintain and repair, as a Common Expense, all fences located within the Property, regardless of whether the same are located within a Unit or outside of a Unit. Accordingly, the Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association to inspect and discharge its obligations under this Section 9.3.

9.4. Inspection Obligations.

9.4.1. 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.

9.4.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices. 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.

9.4.3. Notice to Declarant. During the Development Period, the Association shall, if requested by Declarant, deliver to the 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.

9.4.4. Limitation. The provisions of this Section shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

9.5. Owner Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

- (i) To maintain, repair, and replace the Owner's Unit and the Limited Common Elements appurtenant thereto, except for portions thereof expressly assigned to the Association by this Declaration.
- (ii) The routine cleaning of any balcony, deck, porch and patio of the Owner's Unit, if any, keeping same in a neat, clean, odorless, orderly, and attractive condition.
- (iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.
- (iv) 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 Property, reduce the value thereof, or impair any easement or real property right thereto.
- (v) To be responsible for such Owner's own willful or negligent acts and those of the Owner or Occupant's invitees, licensees, guests, agents, employees, representatives, or contractors when those acts necessitate

maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

- (vi) To report to the Board his discovery of any leak, break, or malfunction in any portion of the Property which the Association has a duty to maintain. An Occupant who fails to promptly report a problem may be deemed negligent, in which case the Owner may be liable for any additional damage caused by the delay.
- (vii) To reduce the risks associated with concentrations of mold. In this regard, Owners should be proactive in preventing circumstances conducive to mold, identifying mold, and eliminating mold. Towards that end, each Owner is responsible for: (a) regularly inspecting its Unit for evidence of water leaks or penetrations or other conditions which may lead to mold growth; (b) repairing promptly any water leaks, breaks, or malfunctions of any kind in its Unit that may cause damage to other Improvements or to the another Unit or Common Elements; (c) regularly inspecting its Unit for visible surface mold and promptly removing same using appropriate procedures; and (d) reporting promptly to the Association any water leak, penetration, break, or malfunction in any portion of its Unit or any adjacent Common Elements for which the Association may have maintenance responsibility.

Many insurance policies do not cover damages related to mold. The Association is not required to maintain insurance coverage applicable to mold damage with respect to any Unit and will not obtain such coverage. Accordingly, an Owner who wants insurance coverage with respect to mold and mold-related damages is advised to separately purchase such insurance coverage.

9.6. Disputes. If a dispute arises regarding the allocation of maintenance responsibilities by the Documents, the dispute will be resolved by the Board. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. 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 unless otherwise approved by the Board.

9.7. 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 (an appointment coupled with an interest) to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements.

9.8. Owner's Default in Maintenance. If the Board determines that an Owner has failed to properly discharge such Owner's 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 the Owner's expense. The notice

must state, with reasonable particularity, the maintenance deemed necessary and afford the Owner 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 the Owner's expense, which will be considered an Individual Assessment against the Owner and the Owner's 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 such action being the Owner's expense.

ARTICLE 10

ARCHITECTURAL COVENANTS AND CONTROL

10.1. Purpose. 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 such time. 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 Reviewer in accordance with Section 10.3.3 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. Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property and all architectural modifications made thereto that are made by the Declarant or its designee shall not be subject to approval pursuant to this Article.

10.2. Architectural Reviewer. Until expiration or termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. After termination of the Development Period, or Declarant's delegation to the Association of all or a portion of its reserved rights as Architectural Reviewer in accordance with Section 10.3.3 below, the role of Architectural Reviewer will automatically be transferred to the Board or a committee appointed by the Board. **UNTIL THE TERMINATION OF THE DEVELOPMENT PERIOD, ONLY THE DECLARANT HAS THE AUTHORITY TO MAKE DECISIONS REGARDING ARCHITECTURAL CONTROL IN THE ASSOCIATION.**

10.3. Architectural Control by Declarant.

10.3.1 Declarant as Architectural Reviewer. During the Development Period, the Architectural Reviewer shall mean Declarant or its designee, and neither the Association, the Board nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the review and approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this Article.

10.3.2 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 Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole and absolute discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

10.3.3 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 rights as Architectural Reviewer to the Board or a committee appointed by the Board comprised of 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 right of Declarant (exercisable throughout the Development Period) 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.

10.4. Architectural Control by Association. Upon Declarant's delegation, in writing, of all or a portion of its reserved rights as Architectural Reviewer to the Board, or upon the expiration or termination of the Development Period, the Association will assume jurisdiction over architectural control. In such event, the Association, acting by and through the Board, or a committee appointed by the Board, will be the Architectural Reviewer hereunder and shall exercise all architectural control over the Property.

10.5. 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 Reviewer 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.

10.6. Design Guidelines. Declarant, as the initial Architectural Reviewer, will have the power to adopt the Design Guidelines. Thereafter, the Architectural Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the Architectural Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to

the terms of this Declaration. Such charges will be held by the Architectural Reviewer and used to defray the administrative expenses incurred by the Architectural Reviewer in performing its duties hereunder; provided, however, that any excess funds from such charges held by the Architectural Reviewer will be distributed to the Association at the end of each calendar year. The Architectural Reviewer will not be required to review any proposed plans, specifications or other documents until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the Architectural Reviewer. The Architectural Reviewer will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with Declaration, as it may deem necessary or appropriate in connection with the performance and administration of its duties hereunder.

10.7. Prohibition of Construction, Alteration and Improvement. Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property. **YOU CANNOT CHANGE THE EXTERIOR OF ANY IMPROVEMENTS WITHIN YOUR UNIT UNLESS YOU HAVE THE SIGNED CONSENT OF THE ARCHITECTURAL REVIEWER.**

10.8. No Deemed or Verbal Approval. Approval by the Architectural Reviewer 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 Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing - negatively, affirmatively, or requesting information - within sixty (60) days after the Architectural Reviewer's actual receipt of the Owner's application, the application is deemed denied. Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded, with the cost of Recordation borne by the Owner. Architectural Reviewer approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer's approval and thereafter diligently prosecuted to completion, or, if no commencement date is stated, within ninety (90) days after the date of Architectural Reviewer approval.

10.9. Application. To request Architectural Reviewer 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

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sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner, at its cost, must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer 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.

10.10. Owner's Duties. If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the Improvement, provided:

- (i) The Owner complies with Section 3.3;
- (ii) The Owner must adhere strictly to the plans and specifications which accompanied the application;
- (iii) The Owner must initiate, diligently prosecute, and complete the Improvement in a timely manner; and
- (iv) If the approved application is for work that requires a building permit from a municipality or other regulatory authority, the Owner, at its own cost, must obtain the appropriate permit.

The Architectural Reviewer's approval of plans and specifications does not mean that such plans and specifications comply with a municipality or other regulatory authority's requirements. Alternatively, approval by a municipality or other regulatory authority does not ensure Architectural Reviewer approval.

ARTICLE 11

USE RESTRICTIONS

11.1. Variance. The use of the Regime is subject to the restrictions contained in this Article and the Rules. Declarant, in its sole and absolute discretion, may grant a variance or waiver of a restriction or Rule during the Development Period. 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 the Declarant and/or a Majority of the Board, as applicable. The grant of a variance shall not constitute a waiver or estoppel of the right to deny a variance in other circumstances.

11.2. Declarant Privileges. In connection with the development and marketing of Units, Declarant has reserved a number of rights and privileges to use the Regime in ways that are not available to other Owners or Occupants. Declarant's exercise of a right that appears to

violate the Documents does not constitute waiver or abandonment of any applicable provision of the Documents.

11.3. Association's Right To Promulgate Rules and Amend Community Manual. 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. The Association, acting through the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion; provided, however, that, during the Development Period, any modification, amendment or repeal to the Community Manual or the Rules, and each new policy or Rule, must be approved in advance and in writing by the Declarant. **EVERY OCCUPANT IS EXPECTED TO COMPLY WITH RULES ADOPTED BY THE BOARD OF DIRECTORS.**

11.4. Rules and Regulations. In addition to the restrictions contained in this Article and elsewhere within this Declaration (which, for the avoidance of doubt, shall be deemed to be Rules), each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- (i) Use of Common Elements;
- (ii) Hazardous, illegal, or annoying materials or activities on the Property;
- (iii) The use of Property-wide services provided through the Association;
- (iv) The consumption of utilities billed to the Association;
- (v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units;
- (vi) The occupancy and leasing of Units;
- (vii) Animals;
- (viii) Vehicles;
- (ix) Disposition of trash and control of vermin, termites, and pests; and/or
- (x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

11.5. Animals-Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words, may be

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kept, maintained, boarded or cared for anywhere on the Property (as used in this paragraph, the term “domestic household pet” shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). 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 on the Property. If the Rules fail to establish animal occupancy quotas, an Owner or Occupant shall be allowed no more than two cats, or two dogs, or one cat and one dog. 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.

11.6. Annoyance. No Unit or Common Element may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) reduces the desirability of the Property as a residential community; (iii) may endanger the health or safety of Occupants; (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.

11.7. Appearance. Both the exterior and the interior of the Buildings must be maintained in a manner so as not to be unsightly when viewed from the street, Common Elements, or neighboring Units. The Board will be the arbitrator of acceptable appearance standards. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles, toys and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view. Service areas, storage areas and compost piles shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Regime except within enclosed structures or appropriately screened from view.

11.8. 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 Occupants as provided in Appendix A of this Declaration. Declarant’s exercise of a Development Period right that appears to violate a Rule or a provision of this Article does not constitute waiver or abandonment of the restriction by the Association.

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

11.10. Garages. All vehicles must be parked in the garage located within the Unit. Garages may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein. Trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles may not fit into the garages. Declarant makes no representations or warranties that any trucks, sports utility vehicles, vans, minivans, large sedans,

or any other vehicles other than compact passenger vehicles will actually fit into any garage parking spaces. Garage doors must be kept closed at all times except when a vehicle is entering or leaving.

11.11. 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.

11.12. Fire Safety. No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property, including the sprinkler heads and water lines in and above the ceilings of the Unit, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

11.13. Landscaping. No person may perform landscaping, planting, or gardening anywhere upon the Property, including, without limitation, within the Rear Yard Area, without the Board's prior written authorization. However, the foregoing shall not prohibit an Occupant's ability to place pots and plants on its porch or patio.

11.14. Noise And Odor. An Occupant 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 Occupants of neighboring Units. The Rules may limit, discourage, or prohibit noise-producing activities and items in the Units and on the Common Elements.

11.15. Occupancy. The Board may adopt Rules regarding the occupancy of Units. If the Rules fail to establish occupancy standards, no more than two (2) persons per bedroom may occupy a Unit, subject to the exception for familial status. The Association's occupancy standard for Occupants 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.

11.16. 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 an Occupant 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 residential dwelling; (ii) the uses conform to Applicable Law; (iii) there is no external evidence of the use; (iv) the use does not entail visits to the Unit by employees or the public; and (v) the uses do not interfere with the use and enjoyment of other 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.

11.17. Signs. 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 Property or to be visible from windows in the Units unless approved in advance by the Architectural Reviewer. 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 Architectural Reviewer may, but is not required to, authorize a sign, and such authorization may specify the

location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway which the Architectural Reviewer or Board deems to be unsightly or inappropriate. The Association may cause the immediate removal of any sign or object that violates this Section or which the Architectural Reviewer or Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal. As provided in Appendix A, Declarant has reserved the right to maintain signs and other items on the Property for the purpose of promoting, identifying and marketing the Property and off-site developments of Declarant or its assigns.

Notwithstanding the foregoing, a religious item on the entry door or door frame of a Unit (which may not extend beyond the outer edge of the door frame) is permitted, provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches.

11.18. Flag Display and Flagpole Installation. No flag or flagpole may be installed on any portion of the Common Elements without the advance written approval of the Architectural Reviewer.

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

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

11.21. Antenna. Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an “**Antenna/Dish**”), shall be erected, maintained, or placed on a Unit without the prior written approval of the Board.

11.22.1 Dishes Over One Meter Prohibited. Unless otherwise approved by the Board (which may include the Board’s directive as to positioning and placement), an Antenna/Dish which is over one (1) meter in diameter is prohibited within the Regime.

11.22.2 Notification. An Owner or Occupant who wishes to install an Antenna/Dish one (1) meter or less in diameter (a “**Permitted Antenna**”) must submit, at least ten (10) days prior to the date of installation, a written notice to the Board or its designee, which notice must include the Owner or Occupant’s installation plans for the satellite dish.

11.22.3 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 one satellite dish, 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.

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 Occupants 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, INDEMNIFY AND HOLD THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND MEMBERS, INDIVIDUALLY AND COLLECTIVELY, HARMLESS FROM AND AGAINST LOSSES DUE TO ANY AND ALL CLAIMS FOR DAMAGES OR LAWSUITS, BY ANYONE, ARISING FROM THE OWNER'S 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.**

11.22.4 Preferred Installation Locations. A Permitted Antenna may be installed in a location from which an acceptable quality signal can be obtained and where least visible from the street and the Regime. 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 Building, 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; then
- (ii) Attached to the side of the Building, 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.

11.22.5 Cable and Internet. The Property is designed with a conduit for use with cable television lines and/or internet fiber. Each Owner may use the conduit for its intended purpose and no other purpose. The draping of cable wires on the exteriors of Buildings or the installation of additional conduits are prohibited without the Board's prior written consent.

11.22.6 Prohibited Act. Any other installation pertaining to an Antenna/Dish is prohibited without the prior written consent of the Board.

11.22. Vehicles. All vehicles on the Property, whether owned or operated by the Owner, the Occupants, or their families and guests, are subject to the Documents, including, without limitation, this Section 11.22 and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle 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 Property. Vehicles that

transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. 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.

11.23. Window Treatments. The color and condition of all window panes, window screens, and window treatments must conform to the Building standard as established from time to time by the Board. All window treatments within the Unit that are visible from the street or another Unit must be maintained in good condition and must not detract from the appearance of the Property. The Board may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the Board determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The Board may prohibit the use of certain colors or materials for window treatments.

11.24. Door Locks. Owners must allow representatives of the Association and other emergency personnel access to their Units in case of emergencies. In the case of any emergency originating in, or threatening, any Unit, regardless of whether the Owner or any Occupant is present at the time of such emergency, the Board, the Association's managing agent or any other person authorized by the Board or the Association's managing agent shall have the right to enter into such Unit for the purpose of remedying or abating the cause of such emergency and such right of entry shall be immediate.

11.25. Balconies and Patios. An Occupant will maintain the porch, patio, courtyard, balcony, and deck portions of the Building located on his Unit in a clean manner. An Occupant will take care that the cleaning of his porch, patio, courtyard, balcony, and deck does not annoy or inconvenience other Occupants. A porch, balcony, patio, courtyard or deck may not be enclosed or used for storage purposes; provided, however, the Front Yard Area may be enclosed with a fence or wall not to exceed five feet (5') in height and the Rear Yard Area may be enclosed with a fence to the extent permitted in Section 11.29 below. No linens, cloths, clothing, towels, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, bicycles or other articles, shall be stored, shaken or hung from or on any of the windows, doors, terraces, decks, porches, courtyards, patios or balconies, or other portions of the Regime. Certain types of furniture, lamps, and container gardens are allowed on porches, patios, courtyards, balconies and decks if approved in advance by the Board, such approval to be made in the Board's sole and absolute discretion. If the Board determines that a porch, patio, courtyard, balcony or deck is unsightly, the Board may give the Owner notice of the problem and a reasonable time period in which to correct it, after which the Board may take corrective action at the Owner's expense.

11.26. Wireless Internet Systems. A wireless Internet communication network ("WiFi System") may be installed or otherwise used in a Unit provided precautions are taken to insure 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, managers, directors, officers agents, contractors, 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 the Association, Declarant, or their respective current and former partners, members, managers, directors, officers, agents, contractors, employees, affiliates or committee members, be held liable for any loss or damage relating to the use or operation of WiFi Systems within the Regime.**

11.27. Combustibles. An Occupant may not store or maintain, anywhere on the Property – including within a Unit – explosives or materials capable of spontaneous combustion.

11.28. No Piercing of Walls. In addition to and without limiting the provisions set forth in Article 10 of this Declaration, an Owner or other Person authorized by such Owner shall not pierce any of the Unit walls with any type of nail, screw, drill bit or other similar item in excess of ¾ inch in length without first obtaining the consent of the Architectural Reviewer as set forth in Article 10.

11.29. No Improvements Within Rear Yard Areas. Except for landscaping, irrigation, Improvements necessary to provide utility services to the Units and Common Elements and fences (to the extent permitted by this Section 11.29), no Improvements shall be constructed or installed within the Rear Yard Areas, including, without limitation, retaining walls, storage sheds or any other structure of any kind; provided, however, fences may be constructed to enclose the Rear Yard Areas so long as the same are permissible under applicable Laws and the Architectural Reviewer approves the same.

ARTICLE 12 **UNIT LEASING**

12.1. Lease Conditions. The leasing of Units is subject to the following conditions, which shall apply except to the extent otherwise approved in writing by the Board: (i) no Unit may be rented for transient or hotel purposes or for a period less than thirty (30) days; (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; (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law; and (vi) at the Association's request, an Owner must give the Board a copy of each lease and lease renewal. No Unit may be occupied by a person who constitutes a direct threat to the health or safety of other persons, or whose occupancy would result in substantial physical damage to the property of others.

12.2. Owner Occupancy. For purposes of this Article, a Unit is considered “Owner occupied” if at least one Occupant 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; provided, however, except that a Unit being offered for lease may not be considered "Owner occupied" even though the Unit is then-vacant or then-occupied by an Owner. In calculating occupancy, Units are counted uniformly regardless of size.

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

12.3.1. **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.

12.3.2. **Association as Attorney-in-Fact.** Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Documents by the Association, each Owner appoints the Association as his attorney-in-fact (an appointment coupled with an interest), with full authority to act in his place in all respects, solely for the purpose of enforcing the Documents against his tenants, including but not limited to the authority to institute forcible detainer proceedings against his tenant on his behalf, provided the Association gives the Owner at least ten (10) days' notice, by certified mail, of its intent to so enforce the Documents.

12.3.3. **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.

12.4. **Exemptions.** 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 13

ASSOCIATION OPERATIONS

13.1. **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 a Majority of its Board of Directors."

13.2. **The Association.** The duties and powers of the Association are those set forth in
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the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under Applicable Law, but expressly subject to any limitations on such powers set forth 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.

13.3. Name. A name is not the defining feature of the Association. The Association may operate under any name that is approved by the Board and: (i) filed with the Travis County Clerk as an assumed name; or (ii) 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, except no amendment shall be required in the event the corporate charter has been revoked and the name "Evolv East Homeowners Association" is no longer available. In such event, the Board will cause a notice to be Recorded stating the current name of the Association.

13.4. Governance. The Association will be governed by the Board elected by the Members. Unless the Bylaws or Certificate provide otherwise, and subject to the provisions in Appendix A, 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. 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 total votes in the Association, or at a meeting by Owners representing at least a Majority of the votes in the Association that are represented at the meeting.

13.5. Membership. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. 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.

13.6. 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.

13.7. Indemnification. The Association indemnifies every officer, director, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader 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 Leaders may be entitled. As a common expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation.

13.8. Obligations of Owners. Without limiting the obligations of Owners under the

Documents, each Owner has the following obligations:

13.8.1. 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, phone number, email address, and driver's license number, if any; (iii) any Mortgagee's name, address, and loan number; (iv) the name, phone number, and email address of any Occupant other than the Owner; and (v) the name, address, phone number, and email address of the Owner's managing agent, if any.

13.8.2. 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 without demand by the Association.

13.8.3. Compliance with Documents. Each Owner will comply with the Documents as amended from time to time.

13.8.4. Reimburse for Damages. Each Owner will pay for damage to the Property or the personal property of other Occupants caused by the negligence or willful misconduct of the Owner, an Occupant of the Owner's Unit, or the Owner's or Occupant's guests, licensees, employees, representatives, contractors, agents, or invitees.

13.8.5. Liability for Violations. Each Owner is liable to the Association for violations of the Documents by the Owner, an Occupant of the Owner's Unit, or the Owner's or Occupant's guests, licensees, employees, representatives, contractors, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorneys' fees whether or not suit is filed.

13.9. 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:

13.9.1. Resale Certificate. An Owner intending to sell his Unit will notify the Association and will request a condominium resale certificate from the Association.

13.9.2. 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.

13.9.3. 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, 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. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

13.9.4. 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, 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 a governmental agency. The requirements of this Section do not apply to the initial conveyance of a Unit from the Declarant to a third-party.

ARTICLE 14

ENFORCING THE DOCUMENTS

14.1. 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: (i) a description of the violation or property damage; (ii) the amount of the proposed fine or damage charge; (iii) 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 (iv) 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 twelve (12) months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise 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. The Owner may attend the hearing in person, or may be represented by another Person or by a written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with the requirements of Applicable Law.

14.2. 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 Applicable Law, the Association has the following rights to enforce the Documents:

14.2.1. 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.

14.2.2. Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Occupant, or the Owner's or Occupant's guests, employees, representatives, agents, contractors, or invitees violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and do not constitute a waiver or discharge of the Owner's obligations under the Documents.

14.2.3. Suspension. The Association may suspend the right of Owners and Occupants to use General Common Elements (provided that the rights of ingress and egress and utility services are not impaired) for any period during which the Owner or Occupant, or the Owner's or Occupant'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.

14.2.4. 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 Improvement, 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.

14.2.5. 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.

14.3. 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.

14.4. No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

14.5. Recovery of Costs. The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

14.6. Right of Action by Owners; Release. The Owners, acting collectively or individually, shall have the right to maintain actions against the Association for its willful failure to comply with the provisions of the Act, this Declaration or the Bylaws, or its willful failure to perform its duties and responsibilities hereunder; provided, however, except as otherwise provided by the Documents, no other action shall be brought against the Association or its affiliates, parents, Members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, or sureties, by the Owners. **SUBJECT TO THE ASSOCIATION'S OBLIGATIONS UNDER THIS DECLARATION, EXCEPT AS OTHERWISE PROVIDED BY THE DOCUMENTS, EACH OWNER HEREBY RELEASES, ACQUITS AND FOREVER DISCHARGES THE ASSOCIATION, AND ITS AFFILIATES, PARENTS, MEMBERS, SUBSIDIARIES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PREDECESSORS, SUCCESSORS, CONTRACTORS, CONSULTANTS, INSURERS, OR SURETIES, OR THEIR RESPECTIVE ASSIGNS, AND AGREES TO HOLD SUCH PERSONS HARMLESS OF AND FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, COSTS AND/OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) RELATING TO THE CONSTRUCTION OF, REPAIR OR RESTORATION OF, OR THE SALE TO THE OWNERS OF, THE UNITS, OR THE COMMON ELEMENTS. THIS RELEASE SHALL RELEASE AND FOREVER DISCHARGE THE ASSOCIATION AND ITS AFFILIATES, PARENTS, MEMBERS, SUBSIDIARIES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PREDECESSORS, SUCCESSORS, CONTRACTORS, CONSULTANTS, INSURERS, AND SURETIES, AND THEIR RESPECTIVE ASSIGNS, FROM ALL CLAIMS AND CAUSES OF ACTION, WHETHER STATUTORY OR UNDER THE COMMON LAW, KNOWN OR UNKNOWN, NOW ACCRUED, THAT AROSE IN THE PAST, OR THAT ARISE IN THE FUTURE.**

14.7. Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Unit Owner (whether one or more); or (ii) pertaining to a Claim, as defined in Section 20.1.1 below, relating to the design or construction of a Unit (whether one or more). The foregoing sentence is expressly intended to remove from the power of the Association the right, under Section 82.102 of the Act, to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on behalf of two (2) or more Unit Owners on matters affecting the Regime. This Section 14.7 may not be amended or modified without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

ARTICLE 15 **INSURANCE**

15.1. 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.

15.1.1. 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.

15.1.2. No Coverage. Even if the Association and the Owner have adequate amounts of recommended and required insurance coverage, the Property may experience a loss that is not covered by insurance. In such event, the Association is responsible for restoring the Common Elements as a common expense, and the Owner is responsible for restoring the Owner's Unit at such Owner's sole expense. This provision does not apply to the deductible portion of an insurance policy.

15.1.3. Requirements. The cost of insurance coverage 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 of Texas. 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 Occupant who is not under the Association's control.

15.1.4. Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as such Owner's trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

15.1.5. 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 at least ten (10) days' prior notice of

cancellation, termination, material modification, or expiration absent imminent renewal.

15.1.6. 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 or an Underwriting Lender. 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 Occupant or their invitee, then the Board may levy an Individual Assessment against the Owner and the Owner's 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 14.1 of this Declaration.

15.2. Property Insurance. The Association will obtain property insurance in accordance with Section 82.111(a) of the Act. The insurance must be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. All hazard and flood insurance policies which include any Units must also have the standard mortgagee clause.

15.2.1. Common Property Insured. If insurable, the Association will insure: (i) General Common Elements; (ii) Limited Common Elements assigned to more than one (1) Unit; and (iii) property owned by the Association, including, if any, records, furniture, fixtures, equipment, and supplies.

15.2.2. Units Insured by Association. In addition to insuring the Common Elements against casualty loss, the Association will maintain property insurance on the Units as originally constructed. The Association may insure betterments and Improvements installed by current or previous Owners, but will have no obligation to insure such items. In insuring Units, the Association may be guided by types of policies customarily available for similar types of properties.

15.2.3. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender.

15.3. 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 Occupant within the Owner's Unit - for bodily injury and property damage resulting from the operation, maintenance, or use of the General Common Elements. The amount of coverage should be at least that required by an Underwriting Lender, to the extent reasonably available. The purpose of this requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. 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.

15.4. 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.

15.5. Fidelity Coverage. The Association may 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, in the Association's custody while 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 by a separate fidelity insurance policy with the same coverages.

15.6. 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.

15.7. 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 as long as an Underwriting Lender is a Mortgagee or an Owner.

15.8. 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.

15.9. Owner's Responsibility For Insurance.

15.9.1. 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 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. Notwithstanding any provision in this Declaration to the contrary, if required by any Underwriting Lender, each Owner of a Unit will be required to procure insurance covering the interior of the Unit, including replacement of interior improvements and betterment coverage to improvements the Owner may make to the Unit, commonly referred to as HO-6 insurance

15.9.2. Owners' Responsibilities. The Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to the Owner's Unit, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Unit for purposes of insurance appraisal. Each Owner, at such Owner's expense, will maintain any insurance coverages required by the

Association pursuant to this Article.

15.9.3. Association Does Not Insure. The Association does not insure an Owner or Occupant's personal property. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND OCCUPANT PURCHASE AND MAINTAIN INSURANCE ON PERSONAL BELONGINGS.

ARTICLE 16

RECONSTRUCTION OR REPAIR AFTER LOSS

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

16.2. 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 Property. All funds paid to the Association for purposes of repair or restoration 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.

16.2.1. Sufficient Proceeds. If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Property, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

16.2.2. 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.

16.2.3. 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 provisions of this Section will be common funds of the Association to be used as directed by the Board in the Board's sole and absolute discretion.

16.3. Costs And Plans.

16.3.1. Cost Estimates. Promptly after the loss, the Board will obtain estimates

of the cost of restoring the damaged Property. 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.

16.3.2. Plans and Specifications. Unless otherwise approved by the Board, Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Unless otherwise approved by the Board, Units will be repaired and restored substantially in accordance with original construction plans and specifications, unless the Association insures betterments and Improvements made by Owners, in which case the Units 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 either Common Elements or Units must be approved by the Board and by certain Mortgagees if so required by the Mortgagee Protection article of this Declaration.

16.4. Owner's Duty to Repair.

16.4.1. Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Unit not covered by the Association's blanket insurance policy, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.

16.4.2. Insured Loss. If the loss to a Unit is covered by the Association's insurance policy, the Owner will begin repair or restoration of damage on receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve, or disapprove the repair or restoration during the course thereof.

16.4.3. Failure to Repair. If an Owner fails to repair or restore damage as required by this Section, the Association may effect 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.

16.5. 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 17
TERMINATION AND CONDEMNATION

17.1. Association As Trustee. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. 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 Act, including, without

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limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property 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.

17.2. Termination. Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and Section 18.4 below.

17.3. Condemnation. The Association's response to condemnation of any part of the Property will be governed by Section 82.007 of the Act. On behalf of Owners, but without their consent, the Board may execute and Record an amendment of this Declaration to reallocate allocated interests following condemnation and to describe the altered parameters of the Property. 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 Applicable Law, execute and Record 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 18

MORTGAGEE PROTECTION

18.1. Introduction. This Article is supplemental to, and not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. A provision of the Documents requiring the approval of a specified percentage of Mortgagees will be based on the number of Units subject to mortgages held by Mortgagees. For example, "51 percent of Mortgagees" means Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Mortgagees.

18.2. Notice of Mortgage. As provided in this Article 18, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in Section 18.8, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in Section 18.9 or the termination of this Declaration as described in Section 18.4. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this Section 18.2 after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

18.3. 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 Owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

18.4. Termination. Termination of the terms of this Declaration and the condominium status of the Regime will be governed by 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 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) sixty-seven percent (67%) of Mortgagees.

18.5. Implied Approval. The approval of a Mortgagee is implied when the 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.

18.6. Other Mortgagee Rights.

18.6.1. 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 such books, records, and financial statements, by appointment, during normal business hours.

18.6.2. Financial Statements. A Mortgagee may have an audited statement prepared at its own expense.

18.6.3. Attendance at Meetings. A representative of a Mortgagee may attend and address any meeting which an Owner may attend.

18.6.4. 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.

18.6.5. 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.

18.7. Insurance Policies. If an Underwriting Lender that holds a mortgage on a Unit or desires to finance a Unit has requirements for insurance of condominiums, the Association must try to obtain and maintain the required coverage, to the extent reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender. Because underwriting requirements are subject to change, they are not recited here.

18.8. Notice of Actions. The Association will use its best efforts to send timely written

notice to Mortgagees of any of the following actions, provided the Association has been provided with the information for such Mortgagee pursuant to Section 18.2 above:

- (i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit and any eminent domain proceeding affecting the General Common Elements which would result in a loss of more than ten percent (10%) of the estimated operational and reserve expenses as reflected on the then-current annual budget of the Association;
- (ii) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit;
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association;
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees;
- (v) Any proposed amendment of a material nature, as provided in this Article; and
- (vi) Any proposed termination of the condominium status of the property or dissolution of the Association at least thirty (30) days prior to the proposed termination or dissolution, as applicable.

18.9. Amendments of a Material Nature. A Document amendment of a material nature must be approved by owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS FILED BY THE DECLARANT AS PERMITTED IN APPENDIX A ATTACHED HERETO.** A change to any of the provisions governing the following would be considered material:

- (i) Voting rights;
- (ii) Assessment liens or the priority of Assessment liens;
- (iii) Reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use, except when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix A or by agreement between or among Owners (in which instance only those Owners and only the Mortgagees

- holding mortgages against those Units need approve the action);
- (vi) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Mortgagees holding mortgages against the Unit or Units need approve the action;
 - (vii) Convertibility of Units into Common Elements or Common Elements into Units;
 - (viii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property;
 - (ix) Property or fidelity insurance requirements;
 - (x) Imposition of any restrictions on the leasing of Units;
 - (xi) Imposition of any restrictions on Owners' right to sell or transfer their Units;
 - (xii) Restoration or repair of the Regime, in a manner other than that specified in the Documents, after hazard damage or partial condemnation; or
 - (xiii) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 19 **AMENDMENTS**

19.1. Consents Required. As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Except as otherwise provided in the Declaration, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association. Notice of any amendment to the Declaration which must be approved by Owners, including but not limited to the amendment requirement attributable to Article 20 as set forth in Section 20.1, shall be delivered to each Member in accordance with the Bylaws. All amendments made to the Declaration, Bylaws or Certificate during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to recording such document in the Official Public Records of Travis County, Texas, if Veterans Affairs has guaranteed any loans secured by Units in the Regime, except for amendments adding additional Units to the Regime pursuant to Section 5.1 of this Declaration.

19.2. Amendments Generally. For amendments requiring the consent of Mortgagees, the Association will send each 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 the Declarant, the Architectural Reviewer or the Association; (ii) rights, privileges, easements, protections, or defenses of the Declarant, the Architectural Reviewer or the Association; or (iii) rights of the Owners or the Association in relationship to the Declarant, the Architectural Reviewer or the Association without the written consent of the Declarant, the Architectural Reviewer or the Association, as applicable, attached to and Recorded with such amendment.

19.3. 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 data of this Declaration and any amendments theretofore made hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if and to the extent required, Mortgagees; provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration; and (iii) Recorded.

19.4. Declarant Provisions. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes and in any of the instances stated in Appendix A. 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 Appendix A of this Declaration is destined to become obsolete, beginning ten (10) years after the date this Declaration is first Recorded, the Board may restate, rerecord, or publish this Declaration without Appendix A. The automatic expiration and subsequent deletion of Appendix A does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

ARTICLE 20

DISPUTE RESOLUTION

20.1. 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 to avoid the emotional and 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. This Article 20 may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

20.1.1. "**Claim**" means:

- (i) Claims relating to the rights and/or duties of Declarant, the Association, or an Owner, under the Documents or the Act;

(ii) Claims relating to the acts or omissions of the Declarant or the Association during control and administration of the Association, any claim asserted against the Architectural Reviewer, and any claims asserted against the Board or a Person serving as a Board member or officer of the Association, or the Architectural Reviewer; and

(iii) Claims relating to the design or construction of any Improvement located within the Regime.

20.1.2. “**Claimant**” means any Party having a Claim against any other Party.

20.1.3. “**Respondent**” means any Party against which a Claim has been asserted by a Claimant.

20.2. 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 in Section 20.8 below, a Claim will be resolved by binding arbitration.

20.3. Claim Affecting Common Elements. In accordance with Section 14.7 of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Unit Owner (whether one or more); or (ii) pertaining to a Claim, as defined in Section 20.1.1 above, relating to the design or construction of a Unit (whether one or more). In the event the Association or a Unit Owner asserts a Claim related only to the Common Elements, as a precondition to providing the Notice defined in Section 20.4, initiating the mandatory dispute resolution procedures set forth in this Article 20, or taking any other action to prosecute a Claim related to the Common Elements, the Association or a Unit Owner, as applicable, must:

20.3.1 Independent Report on the Condition of the Common Elements. Obtain an independent third-party report (the “**Common Area Report**”) from a licensed professional engineer which: (i) identifies the Common Elements subject to the Claim including the present physical condition of the applicable Common Elements; (ii) describes any modification, maintenance, or repairs to the Common Elements performed by the Unit Owner(s) and/or the Association; (iii) provides specific and detailed recommendations regarding remediation and/or repair of the Common Elements subject to the Claim. For the purposes of this section, an independent third-party report is a report obtained directly by the Association or a Unit Owner and paid for by the Association or a Unit Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or a Unit Owner in the Claim. As a precondition to providing the Notice described in Section 20.4, the Association or Unit Owner must provide at least ten (10) days’ prior written notice of the date on which the inspection will occur to each party subject to a Claim, which notice shall identify the independent third-party engaged to prepare the

Common Area Report, the specific Common Elements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Common Area Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 20.4, the Association or the Unit Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Common Area Report.

20.3.2 Claim by the Association - Owner Meeting and Approval. If the Claim is prosecuted by the Association, obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in Section 20.4, initiate the mandatory dispute resolution procedures set forth in this Article 20, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws, but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any proposed engagement letter, with the terms of such engagement, between the Association and an attorney to be engaged by the Association to assert or provide assistance with the Claim (the “**Engagement Letter**”); (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not proceed with the Claim; (v) a summary of the steps previously taken, and proposed to be taken, by the Board to resolve the Claim; (vi) an estimate of the impact on the value of each Unit if the Claim is prosecuted and an estimate of the impact on the value of each Unit after resolution of the Claim; (vii) an estimate of the impact on the marketability of each Unit if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Unit during and after resolution of the Claim; (viii) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (ix) the projected impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in Section 20.4, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

20.4. 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 Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for

negotiation in Section 20.5 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 20.5 hereof, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 20.5 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 20.6 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 20.6 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association or the Claim pertains to the Common Elements, the Notice will also include: (i) a true and correct copy of the Common Area Report; (ii) a copy of the Engagement Letter; (iii) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Common Elements which forms the basis of the Claim; (iv) a true and correct copy of the special meeting notice provided to Members in accordance with Section 20.3.2 above; and (v) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice.

20.5. Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (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 or portion thereof that is subject to the Claim for the purposes of inspecting the same. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property or applicable portion thereof to take and complete corrective action.

20.6. 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 20.6.

20.7. 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.

20.8. Binding Arbitration-Claims. All Claims not settled as a result of negotiation or through mediation must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 20.8.

20.8.1. Governing Rules. If a Claim has not been resolved after mediation as required by Section 20.6, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 20.8 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 Travis County, Texas. 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 20.8, this Section 20.8 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:

- (i) one (1) arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) one (1) arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
- (iii) one (1) arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

20.8.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 20.8 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 of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies 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 the 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.

20.8.3. Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 20.8.

20.8.4. 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 deems just and equitable and within the scope of this Section 20.8 and subject to Section 20.9 (attorneys' fees and costs may not be awarded by the arbitrator); 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 Claimant would be entitled to under Chapter 27 of the Texas Property Code. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings, the parties shall have the right to seek vacation or modification of any award that is based, in whole or in part, on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

20.8.5. 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 Travis County, Texas. 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. 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 any 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.

20.9. Allocation Of Costs. Notwithstanding any provision in this Declaration to the contrary, 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, as applicable.

20.10. 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.

20.11. Period of Limitation.

20.11.1. For Actions by an Owner or Occupant of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of a Unit, 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 Occupant discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim.

20.11.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, 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; or (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, four (4) years and one (1) day from the date that the Association discovered or reasonably should have discovered evidence of the Claim.

20.12. Funding Arbitration and Litigation. The Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this Article 20 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.

ARTICLE 21
GENERAL PROVISIONS

21.1. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be either hand-delivered personally or sent by mail. Such notice shall be deemed delivered at the time if personally hand-delivered or 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, 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.

21.2. 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.

21.3. 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.

21.4. 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, governed and enforced under the laws of the State of Texas.

21.5. 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.

21.6. 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.

21.7. 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.

21.8. Declarant as Attorney-in-Fact and Proxy. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Appendix A 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 Appendix A 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 Appendix A 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 Appendix A or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed 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 Owners proxy as permitted by the Texas Business Organizations Code 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 Appendix A 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 nonrevocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

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

Exhibit A	Legal Description of the Land
Attachment 1	Condominium Plat and Plans
Attachment 2	Encumbrances
Attachment 3	Schedule of Allocated Interests
Attachment 4	Maintenance Responsibility Chart
Attachment 5	Description of Landscape Services
Appendix A	Declarant Reservations

[SIGNATURE PAGE FOLLOWS]

EXECUTED on this 22 day of June, 2020.

DECLARANT:

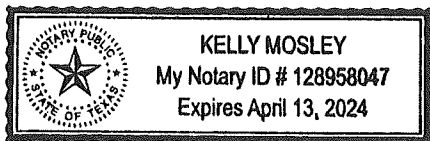
CANTEGRA TILLERY, LLC,
a Texas limited liability company

By: Shaun Ryan
Shaun Ryan, Manager

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 22 day of June, 2020 by Shaun Ryan, Manager of Cantegra Tillery, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)



Kelly Mosley
Notary Public, State of Texas

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by that certain Deed of Trust (with Security Agreement, Assignment of Rents and Leases and Financing Statement) dated as of February 21, 2020, recorded as Document No. 2020028664, in the Official Public Records of Travis County, Texas (the "**Lien**"), securing a note of even date therewith, executes this Declaration solely for the purpose of evidencing the consent required pursuant to Section 82.051(b) of the Texas Property Code. This Consent shall not be construed or operate as any release of lien or security interest owned and held by undersigned or any part thereof.

MORTGAGEE:

INDEPENDENT BANK,
a Texas state bank

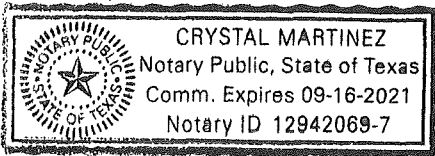
By: *Mark E. Lehnick*
Name: Mark E. Lehnick
Title: SVP - President - Georgetown

STATE OF TEXAS §
 §
COUNTY OF Williamson §

This instrument was acknowledged before me this 18 day of June, 2020, by Mark E. Lehnick, President of Independent Bank, a Texas state bank, on behalf of said state bank.

(SEAL)

Crystal Martinez
Notary Public, State of Texas



CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by that certain Deed of Trust (With Security Agreement, Financing Statement and Assignment of Rents as Leases) dated as of October 23, 2019, recorded as Document No. 2019166226, in the Official Public Records of Travis County, Texas, as affected by that certain Subordination Agreement dated February 20, 2020, recorded as Document No. 2020028665, in the Official Public Records of Travis County, Texas (the "Lien"), securing a note dated as of October 23, 2019, as more particularly described therein, executes this Declaration solely for the purpose of evidencing the consent required pursuant to Section 82.051(b) of the Texas Property Code. This Consent shall not be construed or operate as any release of lien or security interest owned and held by undersigned or any part thereof.

MORTGAGEE:

TIMMERMANN COMMERCIAL INVESTMENTS, LP,
a Texas limited partnership

By: Timmermann GP, LLC,
a Texas limited liability company,
its General Partner

By: Geraldine Timmermann
Name: Geraldine Timmermann
Title: Director

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 18th day of June, 2020, by Geraldine Timmermann, Director of Timmermann GP, LLC, a Texas limited liability company, the General Partner of Timmermann Commercial Investments, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(SEAL)

Christina Garcia
Notary Public, State of Texas

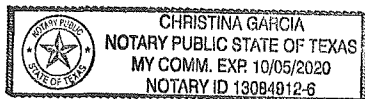


EXHIBIT A
DESCRIPTION OF LAND

[See Attached]



Eagle Eye Construction Layout
1807 S. US Highway 183
Leander, Texas 78641
(512) 528-5308
TBPLS FIRM # 10194139

**0.966 ACRES, (± 42,093 Sq. Ft.)
CITY OF AUSTIN, TRAVIS COUNTY, TEXAS.
METES AND BOUNDS DESCRIPTION**

A DESCRIPTION TO ACCOMPANY A CONDOMINIUM REGIME OF A 0.966 ACRE (APPROX. 42,093 Sq. Ft.) TRACT OF LAND, SITUATED IN THE LOGAN VANDEVER SURVEY No. 2, ABSTRACT No. 784, LOCATED IN TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS A CALLED 0.966 ACRE TRACT OF BEING LAND OUT OF AND A PORTION OF OUTLOT 50, DIVIDING B, IN THE CITY OF AUSTIN, IN THAT CERTAIN SPECIAL WARRANTY DEED, CONVEYED TO CANTEGRA TILLERY, LLC., DATED OCTOBER 23, 2019 AND APPEARING OF RECORD UNDER DOCUMENT No. 2019166225 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0.966 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING METES AND BOUNDS DESCRIPTION:

BEGINNING at a set ½-inch iron rod with plastic cap, stamped "4863" for the northeasterly corner of the hereon, described 0.966 Acre tract of land, same being the northeasterly corner of the aforementioned 0.966 Acre tract of land, same being the southeasterly corner of a called 1.217 Acre tract of land in that certain Special Warranty Deed, conveyed to 2200 Ventures SC, LLC., dated December 18, 2018 and appearing of record under Document No. 2018195518 of the Official Public Records of Travis County, Texas, same being a point along the southwesterly right-of-way line of Tillery Street, having a variable right-of-way width, and from which a found ½-inch iron rod bears North 11° 38' 45" West, a distance of 180.79 feet for the northeasterly corner of said 1.217 Acre tract of land;

THENCE South 11° 45' 56" East, along the common dividing line of the aforementioned 0.966 Acre tract of land and the southwesterly right-of-way line of the aforesaid Tillery Street, a distance of **121.12 feet** to a calculated point for the southeasterly corner of the hereon, described 0.966 Acre tract of land;

THENCE continuing along the common dividing line of the aforementioned 0.966 Acre tract of land and the common northerly lot line of Lot(s) 20, 19, 18, 17 and 16, of Encino Terrace, a subdivision appearing of record in Volume 30, Page 22 of the Plat Records of Travis County, Texas, and Lot(s) 15A and 14A, of the Resubdivision of Lot(s) 14 and 15, Encino Terrace, a subdivision appearing of record in Volume 38, Page 40 of the Plat Records of Travis County, Texas,

traversing along the south and southwesterly boundary line of the hereon, described 0.966 Acre tract of land with the following Two (2) courses and distances:

1). **South 80° 07' 04" West**, a distance of **363.73 feet** to a set ½-inch iron rod with plastic cap, stamped "4863" for the southwesterly corner of the hereon, described 0.966 Acre tract of land, same being the northwesterly lot corner of said Lot 15A and a point of angle along the easterly lot line of said Lot 14A;

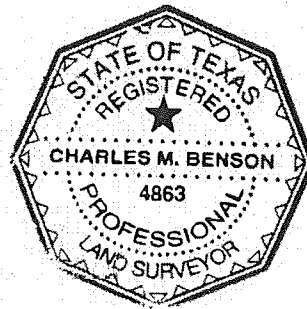
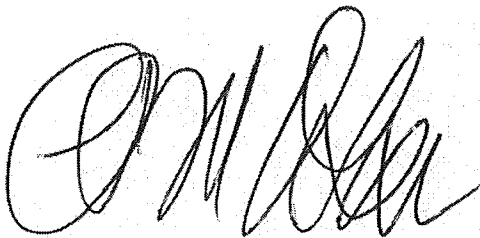
2). **North 12° 22' 28" West**, a distance of **110.21 feet** to a found ½-inch iron rod for the northwesterly corner of the hereon, described 0.966 acre tract of land, same being the northerly most common dividing corner of said 0.966 Acre tract of land and the said Lot 14A, same being a point along the southerly lot line of Lot 1, The Bartlett-Hudnall Addition, a subdivision appearing of record in Volume 77, Page 313 of the Plat Records of Travis County, Texas;

THENCE North 78° 28' 34" East, along the common dividing line of the aforementioned 0.966 Acre tract of land and the aforesaid Lot 1, a distance of **72.53 feet** to a found ½-inch iron rod for a point of angle along the northerly boundary line of the hereon, described 0.966 Acre tract of land, same being the common southerly dividing corner of said Lot 1 and the aforesaid 1.217 Acre tract of land;

THENCE North 78° 22' 43" East, along the common dividing line of the aforementioned 0.966 Acre tract of land and the aforesaid 1.217 Acre tract of land, a distance of **292.18 feet** to the **POINT OF BEGINNING**, containing the hereon, described 0.966 Acre (Approx. 42,093 Sq. Ft.) tract of land, more or less.

Survey on the ground June 4, 2020.

Bearings are based on the Texas Coordinate System, North American Datum of 1983, Central Zone (FIPS 4203).



Charles M. Benson
Registered Professional Land Surveyor
State of Texas No. 4863

June 5, 2020

ATTACHMENT 1
CONDOMINIUM PLAT AND PLANS

The plat and plans attached hereto as Attachment 1 contain the information required by the Texas Uniform Condominium Act.

[See Attached]

TILLERY RESIDENTIAL CONDOMINIUM (CONDOMINIUM PLAT)

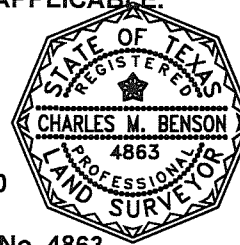
A CONDOMINIUM REGIME LOCATED ON A 0.966 ACRE (APPROX. 42,093 Sq. Ft.) TRACT OF LAND SITUATED IN THE LOGAN VANDEVER SURVEY No. 2, ABSTRACT No. 784, LOCATED IN TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED, CONVEYED TO CANTEGRA TILLERY, LLC., DATED OCTOBER 23, 2019 AND APPEARING OF RECORD UNDER DOCUMENT No. 2019166225 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

THE PLAT AND PLANS ATTACHED HERETO CONTAIN THE INFORMATION REQUIRED BY SECTIONS 82.052 AND 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT, AS APPLICABLE.



06/16/2020

CHARLES M. BENSON
REGISTERED PROFESSIONAL LAND SURVEYOR No. 4863

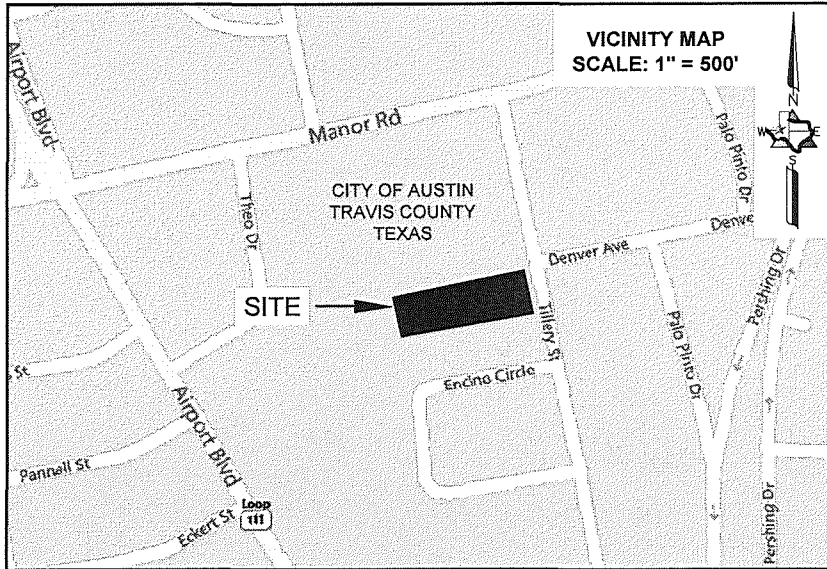


 EAGLE EYE CONSTRUCTION LAYOUT	PROJECT: TILLERY CONDO
	CLIENT: CANTEGRA DEVELOPMENT
1807 S. US HIGHWAY 183 LEANDER, TEXAS 78641 (512) 528-5308	DATE: 06/16/2020
WEB: eed.us EMAIL: eagle@eed.us	SCALE: N/A
T.B.P.L.S. FIRM #10194139	BY: rc/omb
	SHEET 01 of 06

TILLERY RESIDENTIAL CONDOMINIUM

(CONDOMINIUM PLAT)

A CONDOMINIUM REGIME LOCATED ON A 0.966 ACRE (APPROX. 42,093 Sq. Ft.) TRACT OF LAND SITUATED IN THE LOGAN VANDEVER SURVEY No. 2, ABSTRACT No. 784, LOCATED IN TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED, CONVEYED TO CANTEGRA TILLERY, LLC., DATED OCTOBER 23, 2019 AND APPEARING OF RECORD UNDER DOCUMENT No. 2019166225 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.



LEGEND


- BOUNDARY FOUND/SET (NOTED)
- CALCULATED POINT
- (G.C.E.) GENERAL COMMON ELEMENT
- (L.C.E.) LIMITED COMMON ELEMENT
- () RECORD CALL
- R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- P.R.T.C.T. PLAT RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS

GENERAL NOTES:

- 1). POINTS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE (FIPS 4203).
- 2). GRID DISTANCES SHOWN ARE IN U.S. SURVEY FEET.
- 3). THE SUBJECT TRACT SHOWN HEREON LIES WITHIN FLOOD ZONE "X" (UNSHADED) ACCORDING TO THE NATIONAL FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP FOR THE CITY OF AUSTIN, DEVELOPED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), DATED JANUARY 22, 2020 UNDER MAP No. 48453C0465K.
 - ZONE "X" UNSHADED : (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. AREA OF MINIMAL FLOOD HAZARD, USUALLY DEPICTED ON FIRMS AS ABOVE THE 500-YEAR FLOOD LEVELS).

THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES HEREON, WILL BE FREE FROM FLOODING OR FLOOD DAMAGE AND SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

- 4). THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A TITLE COMMITMENT OR ABSTRACT OF TITLE, THERE MAY BE EASEMENTS, OR OTHER MATTERS AFFECTING THE SUBJECT TRACT THAT ARE NOT SHOWN HEREON.
- 5). THIS DOCUMENT IS ACCOMPANIED BY A SEPARATE METES AND BOUNDS DESCRIPTION.

 <p>EAGLE EYE CONSTRUCTION LAYOUT</p>	PROJECT: TILLERY CONDO
	CLIENT: CANTEGRA DEVELOPMENT
1807 S. US HIGHWAY 183 LEANDER, TEXAS 78641 (512) 528-5308	DATE: 06/16/2020 SCALE: N/A BY: rcl/emb
WEB: eecl.us EMAIL: eagle@eecl.us	T.B.P.L.S. FIRM #10194139 SHEET 02 of 06

TILLERY RESIDENTIAL CONDOMINIUM
(A RESIDENTIAL CONDOMINIUM PLAT)

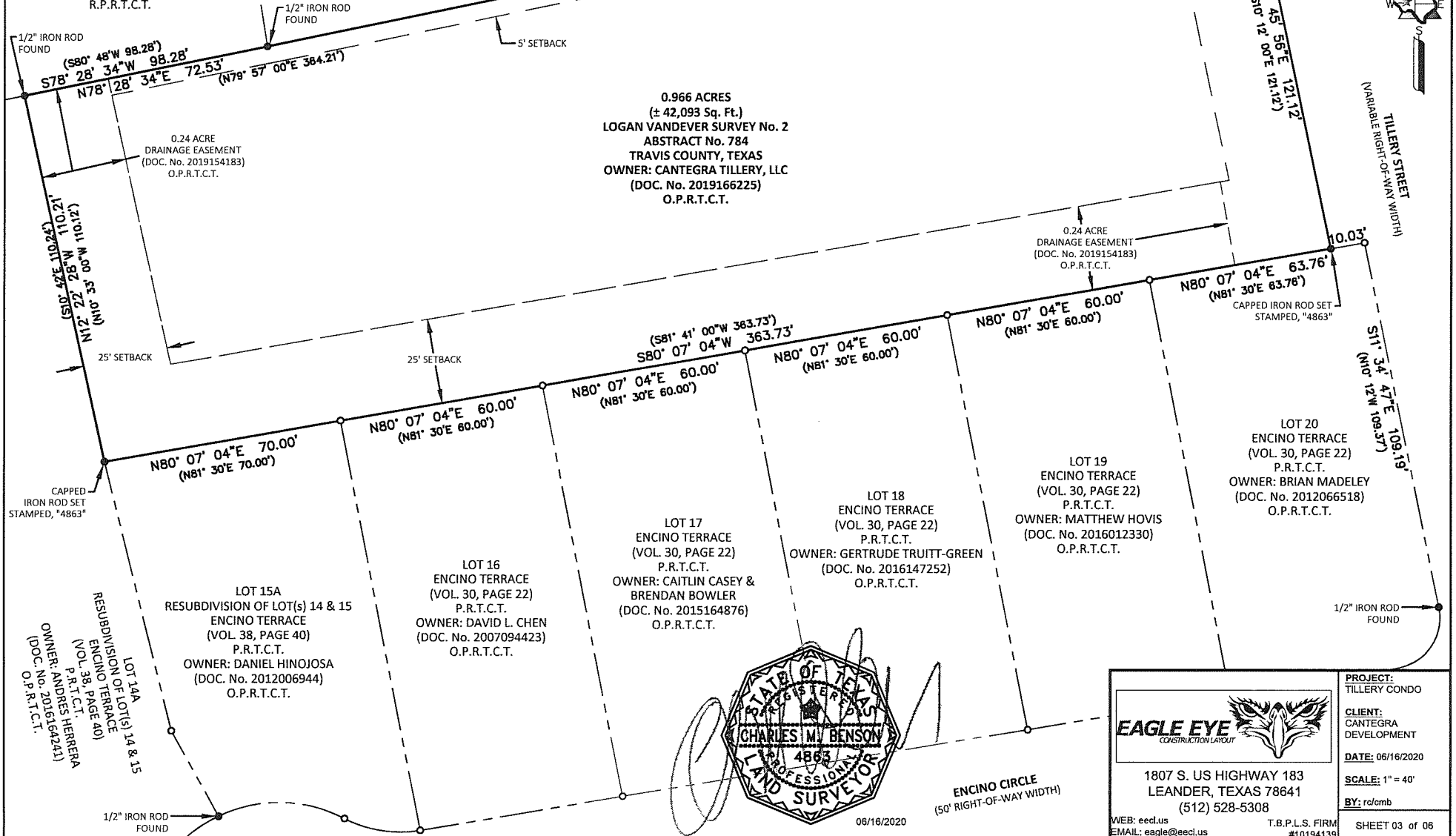
CALLED 1.217 ACRES
OWNER: 2200 VENTURES SC, LLC
(DOC. No. 2018195518)
O.P.R.T.C.T.

LOT 1
THE BARTLETT-HUDNALL ADDITION
(VOL. 77, PAGE 313)
P.R.T.C.T.
OWNER: THE WAAGNER
MANAGEMENT TRUST
(VOL. 13076, PAGE 40)
R.P.R.T.C.T.

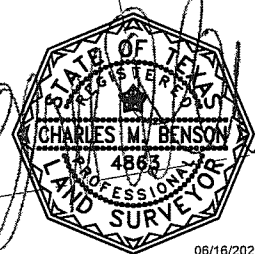
0.966 ACRES
(± 42,093 Sq. Ft.)
LOGAN VANDEVER SURVEY No. 2
ABSTRACT No. 784
TRAVIS COUNTY, TEXAS
OWNER: CANTEGRA TILLERY, LLC
(DOC. No. 2019166225)
O.P.R.T.C.T.

"REFERENCE POINT"
1/2" IRON ROD
FOUND
N11° 38' 45"W 180.79'
(S10° 00' 00"E 180.80')
"POINT OF BEGINNING"
CAPPED IRON ROD SET
STAMPED, "4863"

SCALE: 1" = 40'



 EAGLE EYE CONSTRUCTION LAYOUT	PROJECT: TILLERY CONDO
	CLIENT: CANTEGRA DEVELOPMENT
	DATE: 06/16/2020
	SCALE: 1" = 40'
1807 S. US HIGHWAY 183 LEANDER, TEXAS 78641 (512) 528-5308	BY: rcl/omb SHEET 03 of 06
WEB: eed.us EMAIL: eagle@eed.us	T.B.P.L.S. FIRM #10194139



06/16/2020

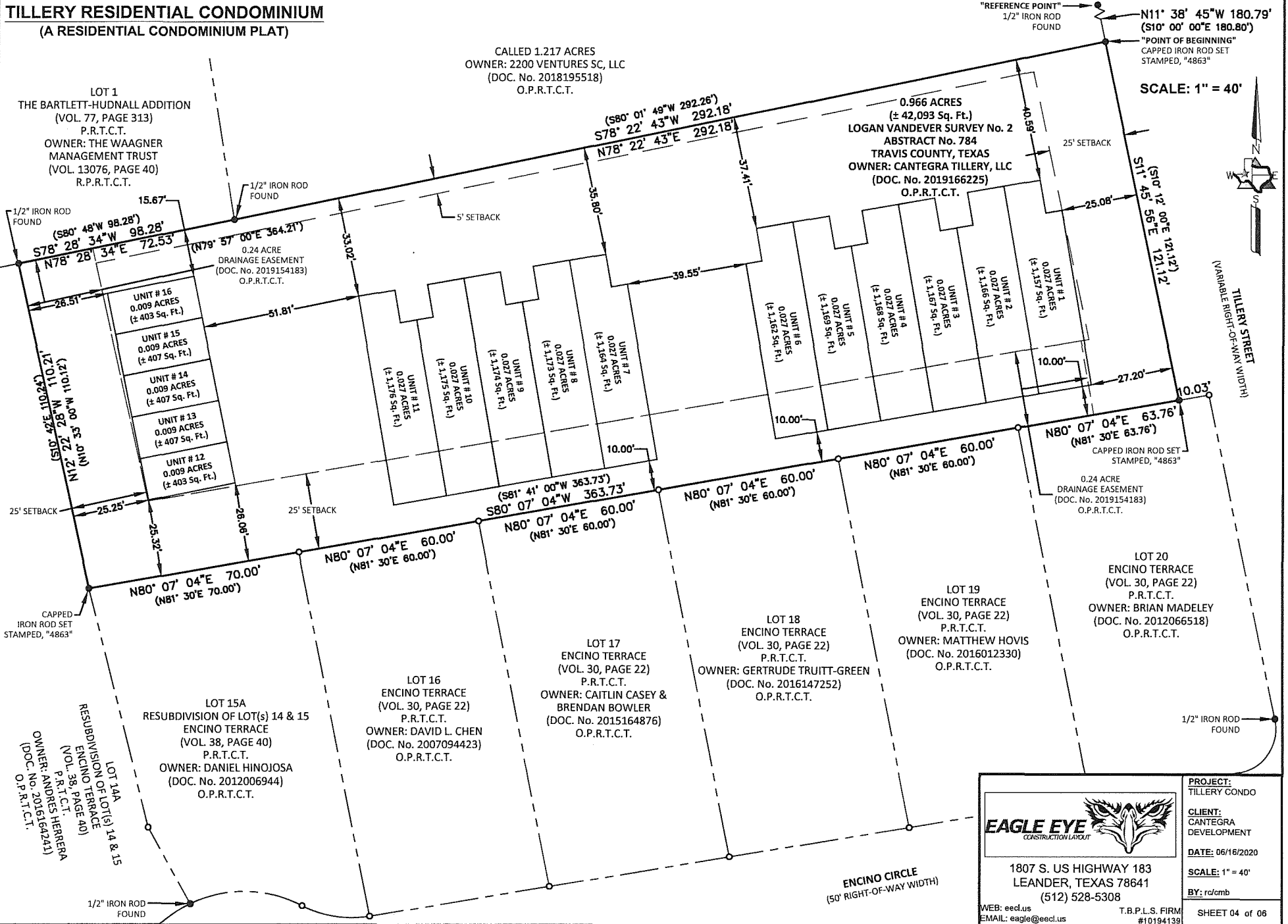
TILLERY RESIDENTIAL CONDOMINIUM
(A RESIDENTIAL CONDOMINIUM PLAT)

CALLED 1.217 ACRES
OWNER: 2200 VENTURES SC, LLC
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0.966 ACRES
(± 42,093 Sq. Ft.)
LOGAN VANDEVER SURVEY No. 2
ABSTRACT No. 784
TRAVIS COUNTY, TEXAS
OWNER: CANTEGRA TILLERY, LLC
(DOC. No. 2019166225)
O.P.R.T.C.T.

SCALE: 1" = 40'



<p>EAGLE EYE CONSTRUCTION LAYOUT</p>	PROJECT: TILLERY CONDO
	CLIENT: CANTEGRA DEVELOPMENT
	DATE: 06/16/2020
	SCALE: 1" = 40'
<p>1807 S. US HIGHWAY 183 LEANDER, TEXAS 78641 (512) 528-5308</p>	<p>BY: r/cmb</p>
<p>WEB: eed.us EMAIL: eagle@eed.us</p>	<p>T.B.P.L.S. FIRM #10194139</p>
SHEET 04 of 06	

TILLERY RESIDENTIAL CONDOMINIUM
(A RESIDENTIAL CONDOMINIUM PLAT)

CALLED 1.217 ACRES
OWNER: 2200 VENTURES SC, LLC
(DOC. No. 2018195518)
O.P.R.T.C.T.

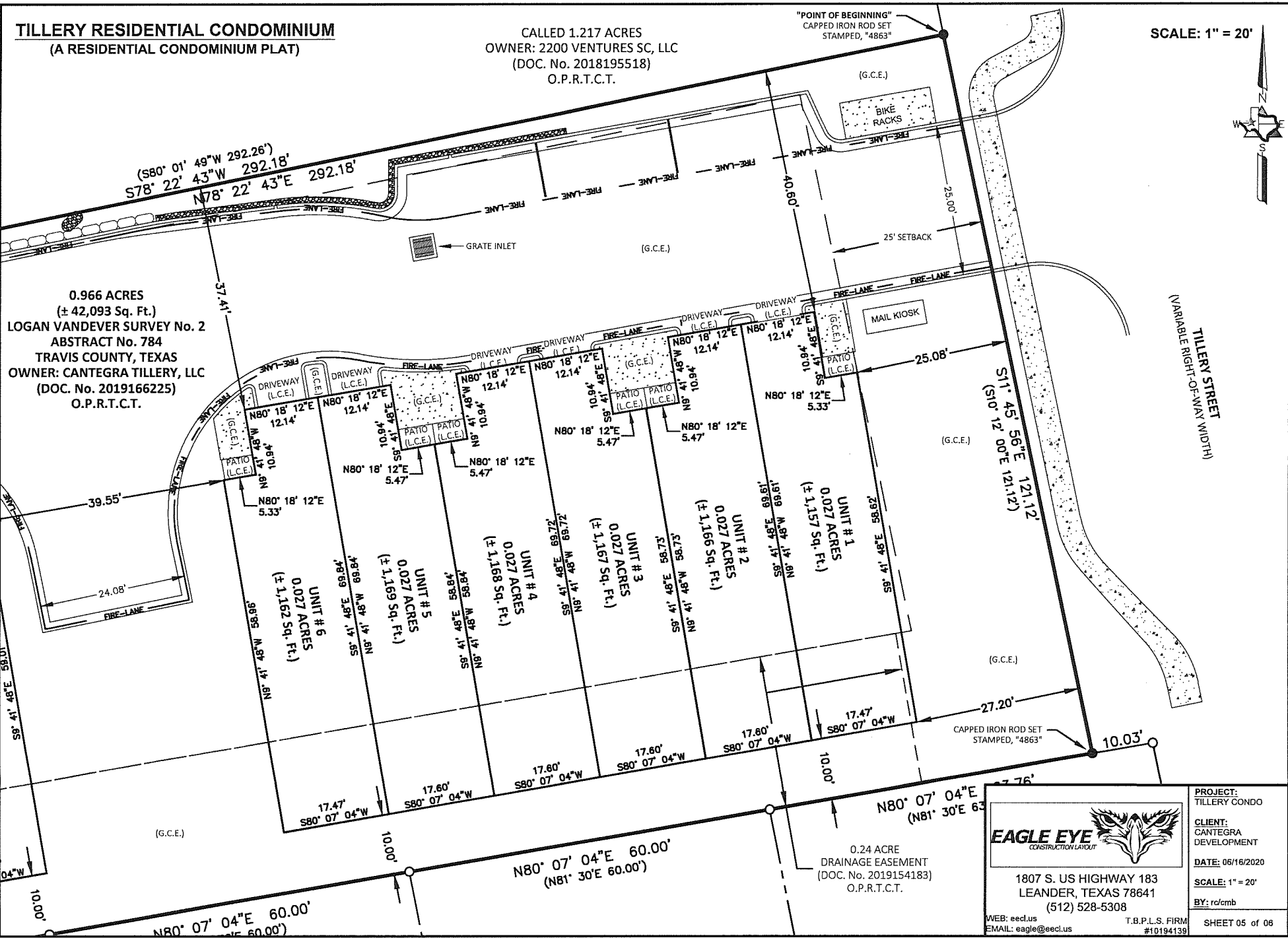
"POINT OF BEGINNING"
CAPPED IRON ROD SET
STAMPED, "4863"

SCALE: 1" = 20'



(S80° 01' 49"W 292.26')
(S78° 22' 43"W 292.18')
(N78° 22' 43"E 292.18')

0.966 ACRES
(± 42,093 Sq. Ft.)
LOGAN VANDEVER SURVEY No. 2
ABSTRACT No. 784
TRAVIS COUNTY, TEXAS
OWNER: CANTEGRA TILLERY, LLC
(DOC. No. 2019166225)
O.P.R.T.C.T.



TILLERY STREET
(VARIABLE RIGHT-OF-WAY WIDTH)



1807 S. US HIGHWAY 183
LEANDER, TEXAS 78641
(512) 528-5308

WEB: eecl.us
EMAIL: eagle@eecl.us

PROJECT:
TILLERY CONDO
CLIENT:
CANTEGRA
DEVELOPMENT
DATE: 06/16/2020
SCALE: 1" = 20'
BY: rc/cmb

T.B.P.L.S. FIRM
#10194139

SHEET 05 of 08

0.24 ACRE
DRAINAGE EASEMENT
(DOC. No. 2019154183)
O.P.R.T.C.T.

N80° 07' 04"E 60.00'
(N81° 30'E 60.00')

N80° 07' 04"E 60.00'
(N81° 30'E 60.00')



Eagle Eye Construction Layout
1807 S. US Highway 183
Leander, Texas 78641
(512) 528-5308
TBPLS FIRM # 10194139

**0.966 ACRES, (± 42,093 Sq. Ft.)
CITY OF AUSTIN, TRAVIS COUNTY, TEXAS.
METES AND BOUNDS DESCRIPTION**

A DESCRIPTION TO ACCOMPANY A CONDOMINIUM REGIME OF A 0.966 ACRE (APPROX. 42,093 Sq. Ft.) TRACT OF LAND, SITUATED IN THE LOGAN VANDEVER SURVEY No. 2, ABSTRACT No. 784, LOCATED IN TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS A CALLED 0.966 ACRE TRACT OF BEING LAND OUT OF AND A PORTION OF OUTLOT 50, DIVIDING B, IN THE CITY OF AUSTIN, IN THAT CERTAIN SPECIAL WARRANTY DEED, CONVEYED TO CANTEGRA TILLERY, LLC., DATED OCTOBER 23, 2019 AND APPEARING OF RECORD UNDER DOCUMENT No. 2019166225 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0.966 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING METES AND BOUNDS DESCRIPTION:

BEGINNING at a set ½-inch iron rod with plastic cap, stamped "4863" for the northeasterly corner of the hereon, described 0.966 Acre tract of land, same being the northeasterly corner of the aforementioned 0.966 Acre tract of land, same being the southeasterly corner of a called 1.217 Acre tract of land in that certain Special Warranty Deed, conveyed to 2200 Ventures SC, LLC., dated December 18, 2018 and appearing of record under Document No. 2018195518 of the Official Public Records of Travis County, Texas, same being a point along the southwesterly right-of-way line of Tillery Street, having a variable right-of-way width, and from which a found ½-inch iron rod bears North 11° 38' 45" West, a distance of 180.79 feet for the northeasterly corner of said 1.217 Acre tract of land;

THENCE South 11° 45' 56" East, along the common dividing line of the aforementioned 0.966 Acre tract of land and the southwesterly right-of-way line of the aforesaid Tillery Street, a distance of **121.12 feet** to a calculated point for the southeasterly corner of the hereon, described 0.966 Acre tract of land;

THENCE continuing along the common dividing line of the aforementioned 0.966 Acre tract of land and the common northerly lot line of Lot(s) 20, 19, 18, 17 and 16, of Encino Terrace, a subdivision appearing of record in Volume 30, Page 22 of the Plat Records of Travis County, Texas, and Lot(s) 15A and 14A, of the Resubdivision of Lot(s) 14 and 15, Encino Terrace, a subdivision appearing of record in Volume 38, Page 40 of the Plat Records of Travis County, Texas,

traversing along the south and southwesterly boundary line of the hereon, described 0.966 Acre tract of land with the following Two (2) courses and distances:

1). **South 80° 07' 04" West**, a distance of **363.73 feet** to a set ½-inch iron rod with plastic cap, stamped "4863" for the southwesterly corner of the hereon, described 0.966 Acre tract of land, same being the northwesterly lot corner of said Lot 15A and a point of angle along the easterly lot line of said Lot 14A;

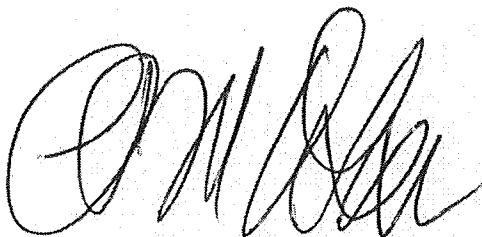
2). **North 12° 22' 28" West**, a distance of **110.21 feet** to a found ½-inch iron rod for the northwesterly corner of the hereon, described 0.966 acre tract of land, same being the northerly most common dividing corner of said 0.966 Acre tract of land and the said Lot 14A, same being a point along the southerly lot line of Lot 1, The Bartlett-Hudnall Addition, a subdivision appearing of record in Volume 77, Page 313 of the Plat Records of Travis County, Texas;

THENCE North 78° 28' 34" East, along the common dividing line of the aforementioned 0.966 Acre tract of land and the aforesaid Lot 1, a distance of **72.53 feet** to a found ½-inch iron rod for a point of angle along the northerly boundary line of the hereon, described 0.966 Acre tract of land, same being the common southerly dividing corner of said Lot 1 and the aforesaid 1.217 Acre tract of land;

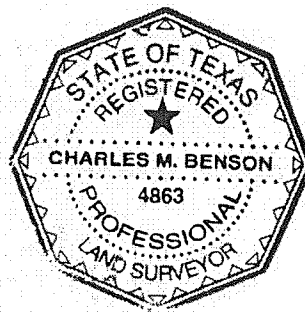
THENCE North 78° 22' 43" East, along the common dividing line of the aforementioned 0.966 Acre tract of land and the aforesaid 1.217 Acre tract of land, a distance of **292.18 feet** to the **POINT OF BEGINNING**, containing the hereon, described 0.966 Acre (Approx. 42,093 Sq. Ft.) tract of land, more or less.

Survey on the ground June 4, 2020.

Bearings are based on the Texas Coordinate System, North American Datum of 1983, Central Zone (FIPS 4203).



Charles M. Benson
Registered Professional Land Surveyor
State of Texas No. 4863



June 5, 2020

ATTACHMENT 2
ENCUMBRANCES

1. The following restrictive covenants of record: Volume 4588, Page 1504, Deed Records of Travis County, Texas.
2. 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.
3. Any encroachment, encumbrance, violation, variance or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Property.
4. Easement granted to Texas Power and Light Company for electric transmission and/or distribution line easement, recorded in Volume 445, Page 185, Deed Records of Travis County, Texas.
5. Building setback line(s) set forth in the restrictions recorded in Volume 4588, Page 1504, Deed Records of Travis County, Texas.
6. Rights of tenants in possession, as tenants only, under unrecorded lease agreements.

ATTACHMENT 3
SCHEDULE OF ALLOCATED INTERESTS

The Common Interest Allocation and Common Expense Liability for each Unit is as follows:

Unit 1	-	6.65%
Unit 2	-	6.65%
Unit 3	-	6.65%
Unit 4	-	6.65%
Unit 5	-	6.65%
Unit 6	-	6.65%
Unit 7	-	6.65%
Unit 8	-	6.65%
Unit 9	-	6.65%
Unit 10	-	6.65%
Unit 11	-	6.65%
Unit 12	-	5.37%
Unit 13	-	5.37%
Unit 14	-	5.37%
Unit 15	-	5.37%
Unit 16	-	5.37%

The foregoing Common Interest Allocation and Common Expense Liability was calculated on the basis that Units in the Regime shall be responsible for a portion of the common expenses for the Association based on an apportionment methodology such that the assignment of Common Interest Allocation and corresponding Common Expense Liability, as between the one-bedroom Units and the two-bedroom Units, will be according to the following ratio:

$$1BR:2BR = 45:55$$

This same apportionment methodology, consistent with the aforementioned ratio, will be used in the event the Common Interest Allocation and/or Common Expense Liability is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration.

THE COMMON INTEREST ALLOCATION ASSIGNED TO A PARTICULAR UNIT WILL DECREASE IF ADDITIONAL UNITS ARE CREATED AND ADDED TO THE REGIME BY THE DECLARANT.

ATTACHMENT 4
MAINTENANCE RESPONSIBILITY CHART

- “All aspects” includes maintenance, repair, and replacement, as needed.
- The components listed in the first column are applicable only if they exist and shall not be construed to create a requirement to have such a component.
- If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Control access gate at street entrance, if any.	All aspects.	None.
Water detention pond, if any.	All aspects.	None.
Fences	All aspects.	None
Screening walls and retaining walls	All aspects.	None
Interior asphalt streets.	All aspects.	None.
Street lights.	All aspects.	None.
Sidewalks.	All aspects if located outside of Unit.	All aspects if located within Unit.
Mailboxes & exterior street addresses or Unit numbers.	All aspects if located outside of Unit.	All aspects if located within Unit.
Trash receptacles.	All aspects with respect to those serving the community as a whole.	Bags or individual wheeled cans, if used.

Landscaped areas.	“Landscape Services” to be provided as set forth in Article 9 of the Declaration and on <u>Attachment 5</u> .	All aspects other than “Landscape Services” to be provided by the Association as set forth in Article 9 of the Declaration and on <u>Attachment 5</u> .
Roofs.	All aspects.	None.
Gutters and downspouts.	All aspects.	None.
Roof-mounted attachments.	All aspects.	None.
Building exteriors.	All aspects.	None.
Building foundations, patio slabs and A/C slabs.	All aspects.	None.
Driveways serving individual Units.	All aspects if located outside of Unit and designated as General Common Elements or Limited Common Elements if serving more than one Unit.	All aspects if located within Unit or designated as a Limited Common Element appurtenant to the Owner’s Unit.
Exterior light fixtures on Buildings.	All aspects.	None.
Garages.	None.	All aspects.
Fireplaces & chimneys.	All aspects if located outside of Unit.	All aspects if located within Unit.
Attics.	None.	All aspects.
Insulation & weather stripping.	All aspects.	None.
Building interior, including Improvements, fixtures, partition walls and floors within Unit.	None.	All aspects.
Sheetrock within Unit & treatment on walls	None.	All aspects.

Exterior doors of Units.	None.	All aspects.
Windows of Units.	None.	All aspects.
Water, wastewater, electrical lines & systems	All aspects of common lines & systems serving more than one Unit, and all lines and systems located in the Rear Yard Area.	All aspects of lines, pipes, fixtures, and appliances serving only that Owner's Unit.
Heating and cooling systems & water heaters.	All aspects if serving more than one Unit, otherwise none.	All aspects if serving the Owner's Unit exclusively, otherwise none.
Intrusion alarms smoke/heat detectors, monitoring equipment.	All aspects if serving more than one Unit, otherwise none.	All aspects if serving the Owner's Unit exclusively, otherwise none.
Cable for television or internet.	None	All aspects.
Television antennas & satellite dishes.	None	All aspects.

ATTACHMENT 5
DESCRIPTION OF LANDSCAPE SERVICES

The following services will be provided to the Units within the Property and will commence as to a particular Unit on the date a residence has been constructed and is being occupied for single-family residential purposes.

1. The following services will be provided to the landscaped portions of the Common Elements, all Rear Yard Areas and all Front Yard Areas (collectively, the “**Maintained Area**”). The Maintained Area does not include any balcony, patio, porch or terrace within a Unit. In the event of any disagreement of what constitutes the Maintained Area, the determination of the Board or its designee will be final. Maintenance will include:

- a. Mow and edge all turf areas within the Maintained Area.
- b. Manually and mechanically control weeds within the Maintained Area as required to maintain a manicured appearance. In cases of extraordinary weed problems, spot treat weeds with appropriate herbicide.
- c. Treat fire ants in the turf areas within the Maintained Area.
- d. Water, maintain, mow, replace and prune the landscaping, including trees, within the Maintained Area in good order and repair and in a safe, clean and attractive condition. Maintenance will include, without limitation, ensuring that the landscaping, including trees, does not cause visual or physical obstructions of adjacent streets or sidewalks. The Association or its designated landscape company, from time to time, will provide each Owner with a schedule of dates on which landscaping maintenance within the Maintained Area will be performed. No landscaping, including trees, or any portion of the irrigation system may be removed from or installed within the Maintained Area without the advance written consent of the Architectural Reviewer.
- e. Maintain, repair and replace all irrigation lines, controllers and associated facilities within the Maintained Area, in good order and repair and in a safe, clean and attractive condition. Maintenance of the irrigation system will include, without limitation, ensuring that the irrigation system does not leak or cause excessive run-off onto adjacent streets or sidewalks. Each Owner acknowledges and agrees that Units on the same block may be served by a single irrigation system. The Association shall have exclusive access to the control system of the irrigation system, and no Owner may interfere with the operation of the irrigation system without the advance consent of the Association.

2. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the determination of the Board will be final. Improvement maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this provision that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

APPENDIX A
DECLARANT RESERVATIONS

A.1. General Provisions.

A.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling certain Declarant-related provisions in this Appendix.

A.1.2. 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 Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this Appendix A and any other Document, this Appendix A controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "**Development Period**", as specifically defined in the Section 1.16 of the Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination. Declarant Control Period is defined in Section 1.13 of the Declaration.

A.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.2.1. Association Budget. During the Declarant Control Period, the Declarant-appointed Board will establish a projected budget for the Property 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 Property, 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 homes in the Property.

A.2.2. Appointment of Board and Officers and Directors. During Declarant Control Period, 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 a "Leader," subject to the following limitation: within one hundred and twenty (120) days after fifty percent (50%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third of the Board must be elected by the Owners other

than Declarant.

A.2.3. 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, 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 operational expenses as they are paid and the Regular Assessments received from Owners other than Declarant. On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant owned Unit according to the Unit's allocated Interest for Assessments.

A.2.4. 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.

A.2.5. Enhancements. During the Declarant Control and Development Periods, Declarant – solely at Declarant's discretion – may voluntarily provide enhancements for the Property, such as higher levels of maintenance, management, insurance, and seasonal color in landscaping.

A.2.6. Common Elements. At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, any such transferred Common Elements will be free of encumbrances except for the property taxes, if any, accruing for the year of conveyance. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

A.3. Development Period Rights. Declarant reserves the following rights during the Development Period:

A.3.1. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan 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, configurations, materials, and appearances of Units, and Common Elements.

A.3.2. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control.

A.3.3. Transfer Fees' Fines and Penalties. During the Development Period, Declarant will not pay transfer-related and resale certificate fees. Declarant will not pay to the Association any late fees, fines, administrative charges, or any other charge that may be considered a penalty.

A.3.4. Website & Property Name. Declarant has the unilateral right to approve or

disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.

A.3.5. 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 Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property 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. 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.

A.3.6. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following purposes:

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender 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, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, and Limited Common Elements within the Property, 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 withdraw from the Property 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.
- (vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (viii) To change the name or entity of Declarant.

(ix) For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

A.4. Special Declarant Rights. As permitted by the Act, Declarant reserves the following described Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Property during the Development Period:

A.4.1. The right to complete or make Improvements indicated on the Plat and Plans.

A.4.2. The right to exercise any Development Right permitted by the Act and this Declaration.

A.4.3. The right to make the Property part of a larger condominium or planned community.

A.4.4. 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 Property.

A.4.5. For purposes of promoting, identifying, and marketing the Property, Declarant reserves 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 Property, including items and locations that are prohibited to other Owners and Occupants. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and broker parties - at the Property to promote the sale of Units.

A.4.6. Declarant has 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 and this Declaration.

A.4.7. The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

A.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:

A.5.1. 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 Property.

A.5.2. 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 in the Documents.

A.5.4. 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.

A.5.5. An easement over the entire Property, including the Units, to inspect the Common Elements and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Elements.

A.5.6. 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.

A.6. Marketing Other Locations. This Declaration grants to Declarant a number of significant rights to market the Property. 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.

A.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. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

A.8. Successor Declarant. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. 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 Travis County, Texas. Declarant (or 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.

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