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AMENDED AND RESTATED DECLARATION OF CONDOMINIUM REGIME FOR THE COVE AT WESTOVER HILLS CONDOMINIUMS

(A Residential Condominium in Bexar County, Texas)

Declarant: **KB HOME LONE STAR INC.**, a Texas corporation

THIS DOCUMENT AMENDS, RESTATES, AND REPLACES IN ITS ENTIRETY THAT CERTAIN AMENDED AND RESTATED DECLARATION OF CONDOMINIUM REGIME FOR THE COVE AT WESTOVER HILLS CONDOMINIUMS, RECORDED UNDER DOCUMENT NO. 20230049642 IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.

THE PROPERTY SUBJECT HERETO IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF (i) THAT CERTAIN DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS, RECORDED IN VOLUME 3517, PAGES 684-735, IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, AS MAY BE AMENDED FROM TIME TO TIME AND (ii) THAT CERTAIN DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS, RECORDED AS DOCUMENT NO. 20090126189, IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, AS MAY BE AMENDED FROM TIME TO TIME.

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DECLARATION OF CONDOMINIUM REGIME FOR THE COVE AT WESTOVER HILLS CONDOMINIUMS

This Amended and Restated Declaration of Condominium Regime for The Cove at Westover Hills Condominiums (the "**Declaration**") is made by **KB HOME LONE STAR INC.**, a Texas corporation (the "**Declarant**"), and is as follows:

R E C I T A L S:

A. **KB HOME LONE STAR INC.**, a Texas corporation (the "**Declarant**") previously executed and recorded that certain instrument entitled Amended and Restated Declaration of Condominium Regime for The Cove at Westover Hills Condominiums, recorded under Document No. 20230049642, Official Public Records of Bexar County, Texas (the "**Original Declaration**"), thereby submitting that certain tract of land in Bexar County, Texas, as more particularly described as Lot 3, Block 0, Subdivision Plat of The Cove at Westover Hills, a subdivision in Bexar County, Texas, according to the map or plat thereof recorded as Document No. 20220283655 [Vol. 20002, Pages 2548-2551] in the Official Public Records of Bexar County, Texas, together with all Improvements thereon and all easements, rights, and appurtenances thereto (the "**Land**"), to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating The Cove at Westover Hills Condominiums.

B. Declarant is the owner of all of the Units established by the Original Declaration and holds one-hundred percent (100%) of the votes in the Association (as defined in *Article 1* of the Original Declaration).

C. Declarant now desires to amend, restate and replace in its entirety the Original Declaration as forth herein below.

NOW, THEREFORE, it is hereby declared that: (i) the Original Declaration is hereby amended, restated and replaced in its entirety by this Declaration; (ii) the Land will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Land 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; and (iii) each contract or deed which may hereafter be executed with regard to the Land, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE 1
DEFINITIONS

Unless otherwise defined in this Declaration, terms defined in Section 82.003 of the Act have the same meaning when used in this Declaration. The following words and phrases,

whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1 "**Access Gate** means any subdivision entry facilities serving the Regime, whether one or more, including, but not limited to, gates, call boxes, controllers and all other facilities associated with operation of gates restricting access to the Private Street within the Property. The Access Gate is General Common Element and is administered and maintained by the Association.

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

1.3 "**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.

1.4 "**Architectural Reviewer**" means Declarant or its designee during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

1.5 "**Assessment**" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or 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.

1.6 "**Association**" means The Cove at Westover Hills Condominium Community, 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.

1.7 "**Board**" means the Board of Directors of the Association.

1.8 "**Building**" means a residential dwelling constructed within a Unit.

1.9 "**Bylaws**" mean the bylaws of the Association, as they may be amended from time to time.

1.10 "**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.

1.11 "**City**" means the City of San Antonio, Texas.

1.12 "**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 for the exclusive use of one or more but less than all of the Units.

1.13 "**Common Expenses**" means the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Regime, including but not limited to those expenses incurred for the maintenance, repair, replacement and operation of the Common Elements.

1.14 "**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. The Community Manual may be amended, from time to time, by the Declarant during the Development Period, or a Majority of the Board; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

1.15 "**Declarant**" means **KB HOME LONE STAR INC.**, a Texas corporation. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration 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 this Declaration.

1.16 "**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 is the earlier to occur of (i) from the date this Declaration is Recorded for a maximum period not to exceed 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; or (ii) five (5) year period beginning on the date this Declaration is Recorded.

1.17 "**Declaration**" means this document, as it may be amended from time to time.

1.18 "**Development Period**" means the five (5) 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 the Recording of a notice of termination.

During the Development Period, Appendix "A" has priority over the terms and provisions of this Declaration.

1.19 "**Documents**" mean, singly or collectively as the case may be, this Declaration, the Plat and Plans, attached hereto as Attachment 1, the Certificate, Bylaws, 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.

The Documents are subject to amendment or modification from time to time. By acquiring a Unit in The Cove at Westover Hills Condominiums, you agree to comply with the terms and provisions of the Documents, as amended or modified.

1.20 "**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 "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment 1, attached hereto.

1.21 "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, Buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, irrigation, sewer, gas, electric, telephone, regular or cable television, or other utilities.

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 as provided in *Section 5.3* and *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 "**Owner**" means a holder of 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 or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.27 "**Person**" means any individual or entity having the legal right to hold title to real property.

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

1.29 **Private Street** means the streets constructed or to be constructed within the variable width access easement shown on the Plat and Plans. The Private Street shall be used for vehicular and pedestrian ingress and egress to and from the Units. The Private Street is General Common Element and is administered and maintained by the Association.

1.30 "**Property**" Lot 3, Block 0, Subdivision Plat of The Cove at Westover Hills, a subdivision in Bexar County, Texas, according to the map or plat thereof recorded as Document No. 20220283655 [Vol. 20002, Pages 2548-2551] in the Official Public Records of Bexar County, Texas, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.31 "**Record, Recordation, Recorded, and Recording,**" means to record or recorded in the Official Public Records of Bexar County, Texas.

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

1.33 "**Resident**" means an occupant or tenant of a Unit, regardless of whether the Person owns the Unit.

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 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), the Veterans Administration, and the Federal National Mortgage Association (Fannie Mae), singularly or collectively. The use of this term and these institutions may not be construed as a limitation on

an Owner's financing options or as a representation that the Property is approved by any 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.

1.37 **"Westover Hills 1985 Covenant"** means that certain Declaration of Restrictions and Protective Covenants, recorded in Volume 3517, Pages 684-785, Official Public Records of Bexar County, Texas, as may be amended from time to time.

1.38 **"Westover Hills 2009 Covenant"** means that certain Declaration of Restrictions and Protective Covenants, recorded as Document No. 20090126189, Official Public Records of Bexar County, Texas, as may be amended from time to time.

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. 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 the 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.

2.3. Adjacent Land Use. Declarant makes no representations of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

2.4. Recorded Easements and Licenses. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of Record, including those described in the attached Attachment 3, and any shown on a Recorded plat, each of which is incorporated herein by reference. Without limitation on the foregoing, it is expressly acknowledged and agreed by each Owner that the Property is subject to the terms and provisions of the Westover Hills 1985 Covenant and the Westover Hills 2009 Covenant (collectively, the "**Westover Hills Covenants**"). 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, expressly including, without limitation, the Westover Hills Covenants. 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. 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.

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*.

3.2. Owner's Easement of Enjoyment. Every Owner is granted a right and easement of enjoyment over the General Common Elements and the 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 Residents 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 Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 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 consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common

Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. The Board may require that the Owner abide by reasonable rules with respect to use and protection of the Common Elements and adjacent Units 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 and/or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Unit, as applicable.

Notwithstanding the foregoing, no Owner, other than the Declarant, shall perform any work to any portion of his Unit or the Common Elements unless such work is approved in advance and in writing by the Architectural Reviewer.

3.4. Owner's Ingress/Egress Easement. Each Owner is hereby granted a perpetual easement over the Property, as may be reasonably required, for vehicular and pedestrian ingress to and egress from his Unit or the Limited Common Elements assigned thereto. Such easement shall be subject, in any event, to any Rules governing or limiting each Owner's right of ingress and egress granted hereby.

3.5. Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands. For example, in the event a Unit's fence or HVAC Unit, as originally installed by Declarant, encroaches onto an adjacent Unit, the Unit Owner is granted an encroachment easement and Improvement may remain undisturbed as 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 adjoining Units and Common Elements as needed for the common benefit of the Property, or for the benefit of Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner: (i) acknowledges the necessity for cooperation in a condominium; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Unit and Limited Common Elements when needed by the Association to fulfill its duties; and (iv) agrees to 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 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**. The Declarant, until expiration or termination of the Development Period, and thereafter the Association, may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant, during the Development Period, and the Association thereafter, reserves the right to grant easements over and across the Units and Common Elements for utilities necessary or required, as determined by the Declarant and/or the Association, as applicable, to provide utilities to the Units or property otherwise owned by the Declarant. The easements granted hereunder by the Declarant or the Association, as applicable, 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. Utilities may include, but are not limited to, water, irrigation, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

NOTICE

PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED "SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

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 OWNER AND RESIDENT ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS GUESTS, THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND ACCEPTS HIS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR RESIDENT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

3.10. Injury to Person or Property. NEITHER THE DECLARANT, THE ASSOCIATION, NOR THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, RESIDENT OR THEIR GUESTS: (A) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (B) TO FENCE OR OTHERWISE ENCLOSE ANY LIMITED COMMON ELEMENT, GENERAL COMMON ELEMENT, OR OTHER IMPROVEMENT; OR (C) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, RESIDENT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS *SECTION 3.10* ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE ASSOCIATION AND DECLARANT. EACH

OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, RESIDENT OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

3.11. Easement to Inspect and Right To Correct. Until the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 3.11* may not be construed to create a duty for Declarant, the Association, any architect, engineer, other design professionals, builder or general contractor, 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, and the Declarant's architect, engineer, other design professionals, builder, and general contractor, an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Owner's Unit and all Improvements thereon for the purposes contained in this *Section 3.11*.

3.12. Private Street and Access Gates. The Private Street, Access Gate, and all other Improvements associated with the operation of the Access Gate located within the Property are General Common Elements and are administered and maintained by the Association. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules for use of the Private Street and Access Gate, including but not limited to: (i) identification of vehicles used by Owners, Residents and their guests; (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking; (iv) removal or prohibition of vehicles that violate applicable Rules; and (v) fines for violations of applicable Rules. Unless otherwise approved in advance and in writing by the Board, parking on or along the Private Street is prohibited. "Parked", as used herein, means a vehicle left unattended for more than thirty (30) consecutive minutes. This provision will not apply to Declarant or its designee during the Development Period. Notwithstanding the foregoing, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed to be parked temporarily on the Private Street during normal business hours for the purpose of serving any Unit or the Common Elements; provided, however, no such vehicle shall remain on the Private

Street overnight or for any purposes unless prior written consent of the Board is first obtained. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND ACCEPTS THAT IT IS THE SOLE RESPONSIBILITY OF THE OWNER OR RESIDENT TO PROVIDE SECURITY FOR THEIR OWN PERSON AND PROPERTY, AND EACH OWNER AND RESIDENT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR RESIDENT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE ACCESS GATES, ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF ANY FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF ANY ACCESS GATE OR OTHER SECURITY MEASURE.

ARTICLE 4
DISCLOSURES

4.1. Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Property may include one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property. The Association will be obligated to inspect, maintain and administer such water quality facilities, drainage facilities, and drainage ponds in good and functioning condition and repair. Each Owner is advised that the water quality facilities, sedimentation, drainage and detention facilities and ponds are an active utility feature integral to the proper operation of the Regime and may periodically hold standing water. Each Owner is advised that entry into the water quality facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Rules.

4.2. Adjacent Thoroughfares and Property. The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future. No representations are made regarding the current or future use or zoning (if applicable) of adjacent property.

4.3. **Outside Conditions**. In every neighborhood there are conditions that different people may find objectionable. Accordingly, it is acknowledged that there may be conditions outside of the Property that an Owner or Resident may find objectionable, and it shall be the sole responsibility of an Owner or Resident to become acquainted with neighborhood conditions that could affect 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 Applicable Law.

4.5. **Construction Activities**. Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time to time, produce certain conditions within the Regime, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration.

4.6. **Moisture**. Improvements may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Residents, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

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

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

4.9. **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.

4.10. Budgets. Budgets prepared in conjunction with the operation and administration of the Regime are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

4.11. Light and Views. The natural light available to and views from a Unit can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**

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

4.13. Suburban Environment. The Property is located in an suburban environment. Land adjacent or near the Property may currently contain, or may be developed to contain in the future, residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors and light (from signs, streetlights, other buildings, car headlights and other similar items) in suburban areas. The Units are not constructed to be soundproof or free from vibrations.

4.14. Plans. Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to an Owner which purport to depict the Improvements to be constructed within the Property are merely approximations and may not necessarily reflect the actual as-built conditions of the same.

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

ARTICLE 5
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. Initial Submitted Units and Maximum Number of Units. The Regime initially includes eighty (80) Units and the maximum number of Units that may be created pursuant to this Declaration is eighty (80).

5.2. Units.

5.2.1. Unit Boundaries. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached hereto as Attachment 1.

5.2.2. What a Unit Includes. Each Unit includes the spaces and Improvements within the lower, upper, and lateral boundaries defined in *Section 5.2.1.*

above, including without limitation the Building, the roof and foundation of the Building, landscaping, driveways, sidewalks, fences, yards, utility lines and meters and all other Improvements located within the Unit. In addition to the Building and the Improvements within the Unit, each Unit also includes Improvements, fixtures, and equipment serving the Building or Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Building, including but not limited to any below-grade foundation, piers, retaining walls, fence, or other structural supports; sewage injection pumps, sewage grinder pumps, plumbing, sewerages, and utility lines, pipes, drains, and conduits; landscape irrigation, drainage facilities and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Building or Unit exclusively.

5.2.3. Building Size. The space contained within the vertical and horizontal boundaries of the Unit is not related to the size of the Building. A Building may only occupy a portion of a Unit in a location approved in advance by the Architectural Reviewer.

5.3. Designation and Allocation of Limited Common Elements. Portions of the Common Elements may be allocated as Limited Common Elements on the Plat and Plans, attached hereto as Attachment 1, 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 or the Plat and Plans as a Limited Common Element may be so allocated only pursuant to the provisions of the Act and by the Declarant pursuant to Appendix "A" attached to this Declaration.

5.5. Common Interest Allocation. The percentage of interest in the Common Elements (the "**Common Interest Allocation**") allocated to each Unit is assigned in accordance with a ratio of one (1) to the total number of Units.

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

5.7. Association 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 Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the Association was formed. 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 this Declaration pertains. No Owner may be exempt from Assessment liability by such Owner's non-use of the Common Elements or abandonment of the Owner's Unit. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

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 the General Common Elements, and Improvements, equipment, signage, and property owned by the Association.

(ii) Maintenance examination and report, as required by *Section 9.3*.

(iii) Utilities billed to the Association.

(iv) Services obtained by the Association and available to all Units.

(v) Taxes on property owned by the Association and the Association's income taxes.

(vi) Management, legal, accounting, auditing, and professional fees for services to the Association.

(vii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.

(viii) Insurance premiums and deductibles.

(ix) Contributions to reserves.

(x) 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 for the year, contributions to reserves, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to the Owner of each Unit, 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. Each Unit will be liable for its allocated share of the annual budget equal to the Common Expense Liability assigned to the Owner's 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.

6.4.4. Supplemental Increases. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Units in the same manner as Regular Assessments.

6.5. 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 reserves. 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 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.

6.6. Utility Assessments. This *Section 6.6* applies to utilities serving the individual Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be sub-metered by or through the Association. In addition to Regular and Special Assessments, the Board may levy a Utility Assessment against each Unit. The Board may allocate the Association's utility charges among the Units receiving the utilities by any conventional method for similar types of properties. For example, if the Units are sub-metered for consumption of a utility, the Utility Assessment may be based on the sub-meter reading. 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 allocation, provided the same type of method or combination of methods is used for all Units.

6.7. Individual Assessments. In addition to Regular, Special and Utility 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, the Owner's guests, invitees or Residents of the Owner's Unit; and (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.

6.8. 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 repair or restoration for the Common Elements if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.9. Working Capital Assessment. Each Owner (other than Declarant) will pay a one-time working capital assessment to the Association in such amount, if any, as may be determined by the Declarant, until expiration or termination of the Development Period, and the Board thereafter. The working capital assessment hereunder will be due and payable to the Association by the transferee immediately upon each transfer of title to the Unit, including upon transfer of title from one Owner of such Unit to any subsequent purchaser or transferee thereof. Such working capital assessment need not be uniform among all Units, and the Declarant or the Board, as applicable, is expressly authorized to establish working capital assessments of varying amounts depending on the size, use and general character of the Units.

The working capital assessment may be used to discharge operating expenses or capital expenses, as determined from time to time by the Board. The levy of any working capital assessment will be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the working capital assessment and the Units to which it applies. Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (b) transfer to, from, or by the Association; (c) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. In the event of any dispute regarding the application of the working capital assessment to a particular Owner, Declarant, until expiration or termination of the Development Period, will determine application of an exemption in its sole and absolute discretion. The working capital assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such Assessments. Declarant may not use working capital fees 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 working capital assessment attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.10. 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 by the Association 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.

6.11. 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 two (2) months 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. Declarant's Right to Inspect and Correct Accounts. Until the termination or expiration of the Development Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the formation of the Association until the termination of the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This *Section 6.12* 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.

6.13. Association's Right to Borrow Money. The Board is granted the right to borrow money on behalf of the Association, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Board has 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 by the Association.

6.14. Limitation 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 receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of unpaid Assessments to which such excess interest was applied, or reimbursed to the Owner if those Assessments are paid in full.

6.15. Audited Financial Statements. The Association shall have an audited financial statement for the preceding full fiscal year of the Association.

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 Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each 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 the Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of 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 construction of Improvements upon the Unit or acquisition of the 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 also superior to any Recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

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. The Association's lien for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, the Board, at its option, may 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 or title to a Unit, each Owner grants to the Association a private power of sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution duly adopted by the Board.

7.6. Foreclosure of 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 the Association's 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

An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other Person for the Board or the Association's 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.

8.1. 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 Applicable Law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

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

8.3. 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.

8.4. 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.

8.5. 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 the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless

participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds thirty percent (30%) 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 become delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

8.7. 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.

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

8.9. 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: (i) Individual Assessments, (ii) Deficiency Assessments, (iii) Special Assessments, (iv) Utility Assessments and (v) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Unit Owner's account.

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

9.1. Overview. Generally, 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 and are summarized on Attachment 4; however, to the extent of any conflict between the provisions of this Article and the summary set forth on Attachment 4, the provisions of this Article will control.

9.2. Association Maintains. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a Common Expense, all General Common Elements, any Limited Common Elements assigned to more than one (1) Unit. The Association also maintains any component of a Unit delegated to the Association by this Declaration.

9.3. Inspection Obligations.

9.3.1. Contract for Services. In addition to the Association's maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with or otherwise retain the services of independent, qualified, individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the General Common Elements.

9.3.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements is attached to this Declaration as Attachment 4. 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 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.

9.3.3. Notice to Declarant. During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

9.3.4. Limitation. The provisions of this *Section 9.3* shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

9.4. 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 such Owner's Unit and all Improvements constructed therein or thereon, and any Limited Common Elements assigned exclusively to such Owner's Unit.

(ii) To maintain the yard space within an Owner's Unit, keeping the 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 the Owner's willful or negligent acts and those of the Owner or Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.5. 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 9* that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

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

9.7. 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 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 is an Individual Assessment against the Owner and such Owner's Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice is waived, and the Board may take any action it deems necessary to protect persons or property, the cost of such action being at the Owner's expense and being levied as an Individual Assessment.

ARTICLE 10
ARCHITECTURAL COVENANTS AND CONTROL

PURSUANT TO THE WESTOVER HILLS 1985 COVENANT AND THE WESTOVER HILLS 2009 COVENANT, EACH OWNER IS OR MAY BE REQUIRED TO OBTAIN THE APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE (AS DEFINED IN EACH OF THE WESTOVER HILLS COVENANTS) ESTABLISHED BY EACH OF THE WESTOVER HILLS COVENANTS PRIOR TO CONSTRUCTING IMPROVEMENTS AND/OR MAKING MODIFICATIONS TO EXISTING IMPROVEMENTS. APPROVAL OF THE ARCHITECTURAL REVIEWER PURSUANT TO THIS DECLARATION DOES NOT CONSTITUTE APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE ESTABLISHED UNDER EITHER WESTOVER HILLS COVENANT.

10.1. Purpose. Because the Units are part of a single, unified community, the Architectural Reviewer has the right to regulate the appearance of all Improvements in order to preserve and enhance the Property's value and architectural harmony. The Architectural Reviewer has the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation. During the Development Period, the primary purpose of this Article is to reserve and preserve Declarant's right of architectural control. 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 permittees 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. Upon expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

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 or 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*.

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 during the Development Period, no Improvements will be started or progressed without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole

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 to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) 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 and will have the powers of the Architectural Reviewer hereunder and the Board, or a committee appointed by the Board, is the Architectural Reviewer and shall exercise all architectural control over the Property.

10.5. Limits on Liability. Neither the Declarant, the Board, nor their directors, officers, committee members, employees or agents will have any liability for decisions made as the Architectural Reviewer in good faith. Neither the Declarant, the Board, nor their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer; (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 ordinances, state and federal laws. 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. Prohibition of Construction, Alteration and Improvement. Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Property.

YOU CANNOT CHANGE THE EXTERIOR OF ANY IMPROVEMENTS WITHIN YOUR UNIT UNLESS YOU HAVE THE SIGNED CONSENT OF THE ARCHITECTURAL REVIEWER.

10.7. 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 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.

10.8. 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 sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural 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 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.

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

(i) The Owner must adhere strictly to the plans and specifications which accompanied the application.

(ii) The Owner must initiate, diligently prosecute, and complete the Improvement in a timely manner.

(iii) If the approved application is for work that requires a building permit from a municipality of other regulatory authority, the Owner 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 requirements. Alternatively, approval by a municipality or other regulatory authority does not ensure Architectural Reviewer approval.

ARTICLE 11
CONSTRUCTION & USE RESTRICTIONS

11.1. Variance. The Property is subject to the restrictions contained in this Article, and subject to the Rules. The Declarant 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 that are not available to other Owners or Residents. Declarant's exercise of a right or privilege that appears to violate the Documents does not constitute waiver or abandonment of 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 a Majority of 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. During the Development Period, the Declarant must approve any modification, amendment, or repeal to the Community Manual or the Rules, and each new policy or Rule, in advance and in writing.

11.4. Rules and Regulations. In addition to the restrictions contained in this *Article 11*, 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.

(x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

During the Development Period, all Rules must be must be approved in advance and in writing by the Declarant.

11.5. **Use of Common Elements**. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of Declarant (during the Development Period) and the Board thereafter, except as specifically provided herein.

11.6. **Abandoned Personal Property**. Personal property shall not be kept, or allowed to remain for more than twelve (12) hours upon any portion of the Common Elements, without the prior written consent of the Board. If the Board determines that a violation exists, then, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the disposition of the property within twenty-four (24) hours after the property is removed. Neither the Association nor any board member, officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

11.7. **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 kept, maintained, 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 pot-bellied pigs, miniature horses, 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 Resident shall be allowed no more than three (3) household pets plus no more than two (2) birds in any Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules.

11.8. Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, and shall also include, without limitation, sling shots, archery, and other projectile emitting devices.

11.9. Annoyance. No Unit may be used in any way that: (i) may reasonably be considered annoying to Residents; (ii) may be calculated to reduce the desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Residents; (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.

11.10. Appearance. Both the exterior and the interior of the Improvements constructed within a Unit must be maintained in a manner so as not be unsightly when viewed from the street, Common Elements, or Units. The Board will be the arbitrator of acceptable appearance standards.

11.11. Declarant Privileges. In connection with the development and marketing of the Property, as provided in this Declaration and Appendix "A" attached hereto, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents. Declarant's exercise of a right that appears to violate a Rule or a provision of this Declaration does not constitute waiver or abandonment of the Rule or provision of the Declaration.

11.12. 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.

11.13. Garages. The original garage area of any Building or Improvement constructed within a Unit may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein.

11.14. Landscaping. No Person may perform landscaping, planting, or gardening anywhere within the General Common Elements without the prior written authorization of the Board and the Architectural Reviewer.

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

11.16. Residential Use. The use of a Unit is limited exclusively to single-family residential purposes and only one single-family residence may be constructed within each Unit. This residential restriction does not, however, prohibit a Resident from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a residential dwelling; (ii) the uses conform to Applicable Law; (iii) there is no external evidence of the business or professional use; (iv) the business or professional use does not entail visits to the Unit by employees of the business or profession or the general public; and (v) the business or professional use does not interfere with Residents' use and enjoyment of their Units.

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 unless written approval has been obtained in advance from the Architectural Reviewer. The Architectural Reviewer may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Unit. As used in this *Section 11.17*, "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 cause the immediate removal of any sign or object which has not been approved in advance by the Architectural Reviewer.

11.18. Solar Energy Device and Energy Efficiency Roofing. A "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. "Energy Efficiency Roofing" means shingles that are designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities.

Approval by the Architectural Reviewer pursuant to *Article 10* is required prior to installing a Solar Energy Device or Energy Efficient Roofing. The Architectural Reviewer is not responsible for: (a) errors in or omissions in the application submitted to the Architectural Reviewer for approval; (b) supervising the installation or construction to confirm compliance with an approved application; or (c) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

During the Development Period, the Architectural Reviewer need not adhere to the terms and provisions of this *Section 11.18* and may approve, deny, or further restrict the installation of any Solar Energy Device.

11.18.1. Approval Application. To obtain Architectural Reviewer approval of a Solar Energy Device, an Owner shall provide a request to the Architectural Reviewer in accordance with *Article 10*, including the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application.

11.18.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10*. The Architectural Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 11.18.3* below **UNLESS** the Architectural Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 11.18.3*, will create a condition that substantially interferes with the use and enjoyment of the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Architectural Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Units immediately adjacent to the Owner/applicant's Unit provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this Section when considering any such request.

Each Owner is advised that if the Solar Application is approved by the Architectural Reviewer, installation of the Solar Energy Device must: (i) strictly comply with the Solar Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Solar Energy Device to be installed in accordance with the approved Solar Application, the Architectural Reviewer may require the Owner to: (i) modify the Solar Application to accurately reflect the Solar Energy Device installed on the Unit; or (ii) remove the Solar Energy Device and reinstall the device in accordance with the approved Solar Application. Failure to install

a Solar Energy Device in accordance with the approved Solar Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Section and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Solar Application or remove and relocate a Solar Energy Device in accordance with the approved Solar Application shall be at the Owner's sole cost and expense.

11.18.3. Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located within the Owner's Unit, entirely within a fenced area of the Owner's Unit, or entirely within a fenced patio located within the Owner's Unit. If the Solar Energy Device will be located on the roof of the residence, the Architectural Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the Architectural Reviewer. If the Owner desires to contest the alternate location proposed by the Architectural Reviewer, the Owner should submit information to the Architectural Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Unit or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located within the Owner's Unit, then: (a) the Solar Energy Device may not extend higher than or beyond the roofline; (b) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (c) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

11.18.4. Energy Efficient Roofing. The Architectural Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient

Roofing will be required to comply with the architectural review and approval procedures set forth in *Article 10*.

11.19. Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "**Rainwater Harvesting System**") may be installed with the advance written approval of the Architectural Reviewer.

11.19.1. Application. To obtain Architectural Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

11.19.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10* of the Declaration. Any proposal to install a Rainwater Harvesting System on Common Elements must be approved in advance and in writing by the Architectural Reviewer, and the Architectural Reviewer need not adhere to this *Section 11.19* when considering any such request.

11.19.3. Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed within the Owner's Unit, as reasonably determined by the Architectural Reviewer.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed within the Owner's Unit and any adjoining or adjacent street.

(iv) There is sufficient area within the Owner's Unit to install the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

(v) If the Rainwater Harvesting System will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common

Element, or another Owner's Unit, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 11.19.4* for additional guidance.

11.19.4. Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common Element, or another Owner's Unit, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Element, or another Owner's Unit. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common Element, or another Owner's Unit, any additional regulations imposed by the Architectural Reviewer to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

11.20. Flags. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States Military (**"Permitted Flag"**) and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence (**"Permitted Flagpole"**) within a Unit. Only two (2) Permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural Reviewer.

Approval by the Architectural Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Unit (**"Freestanding Flagpole"**). The Architectural Reviewer is not responsible for: (i) errors in or omissions in the application submitted to the Architectural Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

11.20.1. Approval Application. To obtain Architectural Reviewer approval of any Freestanding Flagpole, the Owner shall provide a request to the Architectural Reviewer in accordance with *Article 10*, including the following information: (a) the location of the flagpole to be installed on the Unit; (b) the type of flagpole to be installed; (c) the dimensions of the flagpole; and (d) the proposed materials of the flagpole (the **"Flagpole Application"**). A Flagpole Application may only be submitted by an Owner UNLESS the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Flagpole Application.

11.20.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10*. Any proposal to install a Freestanding Flagpole on property owned or maintained by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 11.20* when considering any such request.

Each Owner is advised that if the Flagpole Application is approved by the Architectural Reviewer, installation of the Freestanding Flagpole must: (i) strictly comply with the Flagpole Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Freestanding Flagpole to be installed in accordance with the approved Flagpole Application, the Architectural Reviewer may require the Owner to: (i) modify the Flagpole Application to accurately reflect the Freestanding Flagpole installed on the Unit; or (ii) remove the Freestanding Flagpole and reinstall the flagpole in accordance with the approved Flagpole Application. Failure to install a Freestanding Flagpole in accordance with the approved Flagpole Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Section and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Flagpole Application or remove and relocate a Freestanding Flagpole in accordance with the approved Flagpole Application shall be at the Owner's sole cost and expense.

11.20.3. Installation, Display and Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per residential Unit, on which only Permitted Flags may be displayed;

(ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');

(iv) With the exception of flags displayed on common area owned and/or maintained by the Association and any Unit which is being used for marketing purposes by a builder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) The display of a flag, or the location and construction of the flagpole must comply with all applicable zoning ordinances, easements and setbacks of record;

(vi) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(vii) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;

(viii) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

(ix) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

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 Architectural Reviewer.

11.21.1. Dishes Over One Meter Prohibited. Unless otherwise approved by the Architectural Reviewer, an Antenna/Dish which is over one meter in diameter is prohibited within the Regime.

11.21.2. Notification. An Owner or Resident who wishes to install an Antenna/Dish one meter or less in diameter (a "**Permitted Antenna**") must submit a written notice to the Architectural Reviewer, which notice must include the Owner or Resident's installation plans for the satellite dish.

11.21.3. One Dish Limitation. Unless otherwise approved by the Architectural Reviewer, 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 Architectural Reviewer. 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.

11.21.4. Permitted Installation Locations – Generally. An Owner or Resident may erect a Permitted Antenna (after written notification has been provided to the

Architectural Reviewer) **if** the Owner or Resident has an exclusive use area in which to install the antenna. An "exclusive use area" is an area in which only the Owner or Resident may enter and use to the exclusion of all other Owners and Residents. Unless otherwise approved by the Architectural Reviewer, the Permitted Antenna must be entirely within the exclusive use area of the Owner's Unit.

A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Residents of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or Resident of the Unit. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Architectural Reviewer and the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Architectural Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

11.21.5. Preferred Installation Locations. A Permitted Antenna may be installed in a location within the Unit from which an acceptable quality signal can be obtained and where least visible from the street and the Regime, other than the Unit. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Architectural Reviewer are as follows:

(i) Attached to the back of the residence constructed within the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; then

(ii) Attached to the side of the residence constructed within the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street.

11.22. Xeriscaping. An Owner may submit plans for and install drought tolerant landscaping ("**Xeriscaping**") upon written approval by the Architectural Reviewer. All Owners implementing Xeriscaping shall comply with the following:

11.22.1. Application. Approval by the Architectural Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Architectural Reviewer for Xeriscaping, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Unit; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides

written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Architectural Reviewer is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the Architectural Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

11.22.2. Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Architectural Reviewer. For purposes of this Section, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's plan may be denied if the Architectural Reviewer determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Unit.

(ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over twenty percent (20%) of such Owner's front yard or twenty percent (20%) of such Owner's back yard.

(iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Units, as reasonably determined by the Architectural Reviewer.

11.22.3. Process. The decision of the Architectural Reviewer will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this Section when considering any such request.

11.22.4. Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Architectural Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30)

days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Architectural Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

11.23. Vehicles; Guest Parking. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this *Section 11.23* and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle from which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or restorations of vehicles on the 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 affect the removal of any vehicle in violation of this *Section 11.23* or the Rules without liability to the owner or operator of the vehicle.

ARTICLE 12
UNIT LEASING

12.1. Lease Conditions. The leasing of Units is subject to the following conditions: (i) no Unit may be rented for transient or hotel purposes or for a period less than six (6) months; (ii) 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 the Owner's tenant with copies of the Documents and notifying the tenant of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

12.2. Provisions Incorporated By Reference Into Lease. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the tenant, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

12.2.1. Compliance with Documents. The tenant shall comply with all provisions of the Documents and shall control the conduct of all other Residents and guests of the leased Unit, as applicable, in order to ensure such compliance. The Owner

shall cause all Residents of the Owner's Unit to comply with the Documents and shall be responsible for all violations by such Residents, notwithstanding the fact that such Residents of the Unit are fully liable and may be sanctioned for any such violation. If the tenant or Resident violates the Documents or a Rule for which a fine is imposed, notice of the violation shall be given to the Owner and the Resident, and such fine may be assessed against the Owner or the Resident. Unpaid fines shall constitute a lien against the Unit.

12.2.2. Assignment of Rents. If the Owner fails to pay any Assessment or any other charge against the Unit for a period of more than thirty (30) days after it is due and payable, then the Owner hereby consents to the assignment of any rent received from the tenant during the period of delinquency, and, upon request by the Board, the tenant shall pay directly to the Association all unpaid Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by tenant. The tenant need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by tenant shall reduce, by the same amount, tenant's obligation to make monthly rental payments to the Owner.

12.2.3. Violation Constitutes Default. Failure by the tenant or the tenant's guests to comply with the Documents or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of such violation, the Owner will promptly obtain 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 Applicable Law for the default, including eviction of the tenant.

12.2.4. 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 the Owner's attorney-in-fact, with full authority to act in the Owner's place in all respects, for the purpose of enforcing the Documents against the Owner's tenants, including but not limited to the authority to institute forcible detainer proceedings, provided the Association gives the Owner at least 10 days' notice, by certified mail, of its intent to so enforce the Documents.

12.2.5. 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 the Owner's 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.

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 the Board."

13.2. **Association**. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members and the Regime, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist 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. Although the initial name of the Association is The Cove at Westover Hills Condominium Community, Inc., the Association may operate under any name that is approved by the Board and: (i) filed with the Bexar 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 in the event the corporate charter has been revoked and the name, "The Cove at Westover Hills Condominium Community, Inc." is no longer available. In such event, the Board will cause a notice to be Recorded stating the current name of the Association. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration.

13.4. **Duration**. The Association comes into existence on the earlier to occur of the following two events: (i) the date on which the Certificate is filed with the Secretary of State of Texas, or (ii) the date on which a Unit deed is Recorded, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates).

13.5. **Governance**. The Association will be governed by a Board elected by the Members. Unless the Bylaws or Certificate provide otherwise, the Board will consist of at least three (3) Persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. The Association will be administered in accordance with the Documents and Applicable Law. 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 number of votes in the Association, or at a meeting by Owners' representing at least a Majority of the total number of votes in the Association.

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

13.7. **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 a meeting of the Association. If a Unit is owned by more than one Person, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit.

13.8. **Manager**. The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Attachment 5. The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its board members, officers, employees, and agents. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

13.9. **Books and Records**. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of Applicable Law.

13.10. **Indemnification**. The Association indemnifies every officer, director, and committee member (for purposes of this *Section 13.10*, "**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.

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

13.11.1. 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 and phone number; (iii) any Mortgagee's name; (iv) the name and phone number of any Resident other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

13.11.2. 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.

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

13.11.4. Reimburse for Damages. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

13.11.5. Liability for Violations. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

13.12. Unit Resales. This *Section 13.12* applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than Declarant:

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

13.12.2. 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.

13.12.3. 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 are not subject to the Association's assessment lien, and are not payable by the Association. This *Section 13.12.3* does not obligate the Board to levy transfer-related fees.

13.12.4. Exclusions. The requirements of *Section 13.12* 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; 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; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (iv) a disposition by a government or governmental agency. Additionally, the requirements of this *Section 13.12* do not apply to the initial conveyance from Declarant.

ARTICLE 14
ENFORCING THE DOCUMENTS

14.1. Notice And Hearing. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Resident of the Unit. Pending the hearing, the Association may continue to exercise all 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 written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with Applicable Law.

14.2. Remedies. The remedies provided in this *Article 14* 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 Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

14.2.3. Suspension. The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

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 Association 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 any Improvement within 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. Release. 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, sureties and 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, sureties and assigns, from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, 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, arbitration or other proceedings for: (i) a Construction Claim, as defined in *Section 20.1.4* below, in the name of or on behalf of any Unit Owner (whether one or more); or (ii) a Unit Construction Claim, as defined in *Section 20.1.6* below. 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 15* 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. The Board will make every reasonable effort to comply with the requirements of this *Article 15*.

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 15* 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 coverages, the Property may experience a loss that is not covered by insurance. In that event, the Association is responsible for restoring the Common Elements as a Common Expense, and the Owner is responsible for restoring such Owner's Unit at Owner's sole expense. This provision does not apply to the deductible portion of a policy.

15.1.3. Requirements. The cost of insurance coverages and bonds maintained by the Association is a Common Expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State 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 Resident 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 the 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, and the insurer will give Mortgagees, prior notices of cancellation, termination, expiration, or material modification.

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

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 Not Insured by Association. In no event will the Association maintain property insurance on the Units. Accordingly, each Owner of a Unit will be obligated to maintain property insurance on such Owner's Unit and any Limited Common Elements assigned exclusively to such Owner's Unit, including any betterments and Improvements constructed within or exclusively serving such Unit, 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. In addition, the Association does not insure an Owner or Resident's personal property. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON SUCH OWNER'S OR RESIDENT'S PERSONAL BELONGINGS.

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, such as Inflation Guard Endorsement, Building Ordinance or Law Endorsement, and a Special Condominium Endorsement.

15.3. Liability Insurance. The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Resident within their Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. 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, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

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. 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.

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 16*, "**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 Common Elements. 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) Board members.

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 Common Elements, 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 paragraph will be common funds of the Association to be used as directed by the Board.

16.3. Costs and Plans.

16.3.1. Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Common Elements. 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. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction.

16.4. Owner's Duty to Repair. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of the Owner's Unit, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof. Unless otherwise approved by the Architectural Reviewer, the residence must be repaired and restored substantially in accordance with original construction plans and specifications.

16.5. Owner's Liability For Insurance Deductible. If repair or restoration of Common Elements 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 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 Regime will be governed by Section 82.007 of the Act. On behalf of Owners, but without their consent, the Board may execute an amendment of this Declaration to reallocate the Common Interest Allocation following condemnation and to describe the altered parameters of the Regime. If the Association replaces or restores Common Elements taken by condemnation by obtaining other land or constructing additional Improvements, the Board may, to the extent permitted by Applicable Law, execute an amendment without the prior consent of Owners to describe the altered parameters of the Regime and any corresponding change of facilities or Improvements.

ARTICLE 18
MORTGAGEE PROTECTION

18.1. Introduction. This Article is supplemental to, 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.

18.2. Notice to Mortgagee. 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 18* 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 18* 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 records, 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 18*, 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 send timely written notice to Mortgagees of the following actions:

(i) Any condemnation or casualty loss that affects a material portion of the Regime or the mortgaged Unit.

(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 18*.

(vi) Any proposed termination of the condominium status of the Regime.

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 total votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT AS PROVIDED IN APPENDIX "A" ATTACHED HERETO.** A change to any of the provisions governing the following would be considered material (hereafter a "**Material Amendment**"):

(i) Voting rights.

(ii) Any method of imposing or determining any charges to be levied against individual unit owners.

(iii) Assessment liens or the priority of assessment liens.

(iv) Reductions in reserves for maintenance, repair, and replacement of Common Elements.

(v) Responsibility for maintenance and repairs.

(vi) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A" or by agreement between

Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).

(vii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.

(viii) Reduction of insurance requirements.

(ix) Imposition of any restrictions on the leasing of Units.

(x) Imposition of any restrictions on Owners' right to sell or transfer their Units.

(xi) Restoration or repair of the Property, in a manner other than that specified in the Declaration, after any damage or partial condemnation.

(xii) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(xiii) Imposition of a new scheme of regulation or enforcement of exterior maintenance standards, architectural design or exterior appearance of Units other than those specified in the Declaration.

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. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the total votes in the Association. Notice of any amendment to the Declaration which must be approved by Owners, including but not limited to any amendment pursuant to *Section 20.1*, shall be delivered to each Member in accordance with the Bylaws. In the event the Regime is submitted and approved by the Secretary of Veterans Affairs and the Veteran Affairs has guaranteed any loans secured by Units in the Regime, all amendments, including any Material Amendment and any Extraordinary Action (as defined below) 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.

In addition, a change to any provision in the Declaration governing the following items (each an "**Extraordinary Action**") must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association:

(i) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association.

(ii) Determining not to require professional management if that management is required by the Declaration or the Association.

(iii) The addition of land to the Declaration if the addition would increase the overall land area then subject to the Declaration by more than ten percent (10%).

(iv) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements with the exception of: (i) granting easements over and across the Common Elements otherwise permitted by this Declaration or the Act; (ii) dedicating all or any portion of a Common Element to the extent required by any governing authority or regulatory authority; (iii) adjustments to the boundary line of Common Elements if made in accordance with the provisions of this Declaration; or (iv) transferring Common Elements pursuant to a merger or consolidation with another entity.

(v) Using insurance proceeds for purposes other than construction or repair of the insured improvements.

(vi) Any capital expenditure, other than for the maintenance, operation, repair or replacement of any existing Improvement, if the capital expenditure exceeds more than twenty percent (20%) of the annual operating budget during any period of twelve (12) consecutive months.

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. In addition, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) permissible use of a Unit absent the consent of the Owner(s) of the Unit affected by the change in permissible use; or (ii) any license, easement or other contractual rights contained in this Declaration, including, without limitation, any easement, right and license benefiting or in favor of the Declarant, the Architectural Reviewer or the Association.

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 hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if 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 Rights. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes 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 without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. This *Section 19.4* may not be amended without Declarant's written and acknowledged consent.

ARTICLE 20
DISPUTE RESOLUTION

This Article 20 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Units, Common Elements, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Units, prevent or jeopardize approval of the Units by Underwriting Lenders, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Unit and the Common Elements, this Article 20 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, the proposed arrangement between the Association and any inspection company who will prepare the Common Element Report (as defined below) or perform any other investigation or inspection of the Common Elements and/or Improvements related to the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

For the avoidance of doubt, nothing in this Article 20 is intended to limit the Association's right or obligation to obtain inspection services related to the maintenance, repair and physical condition of the Regime pursuant to Section 9.3 of this Declaration provided that such inspection services are not commissioned by the Association in conjunction with a Unit Construction Claim or a Common Element Construction Claim.

20.1. Introduction and Definitions. The Association, the Owners, Declarant, all Persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 20* by written instrument delivered to the Claimant, which

may include, but is not limited to, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Units, Common Elements or any Improvement within, serving, or forming a part of the Regime (individually a "**Party**" and 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 20* 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 one-hundred percent (100%) of the votes in the Association. As used in this *Article 20* 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 or the Association under the Documents or the Act;

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

(iii) Claims relating to the design or construction of the Units, Common Elements or any Improvement located within, serving, or forming a part of the Regime; and

(iv) Claims relating to any repair or alteration of the Units, Common Elements, or any Improvement located within, serving, or forming a part of the Regime, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

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

20.1.3. "**Common Element Construction Claim**" means a Claim relating to: (i) the design or construction of the Common Elements or any Improvement located thereon; or (ii) any repair or alteration of the Common Elements, or any Improvement located thereon, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

20.1.4. "**Construction Claim**" means a Claim defined in *Section 20.1.1(iii)* or *Section 20.1.1(iv)*.

20.1.5. "**Respondent**" means any Party against which a Claim has been asserted by a Claimant.

20.1.6. "**Unit Construction Claim**" means a Claim relating to: (i) the design or construction of a Unit (whether one or more) or any Improvement located thereon; or (ii) any repair or alteration of a Unit (whether one or more), or any Improvement located thereon, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

20.2. **Mandatory Procedures: All Claims**. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any other judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the mandatory procedures of this *Article 20*. As provided in *Section 20.9* below, a Claim must be resolved by binding arbitration.

20.3. **Mandatory Procedures: Construction Claims**. Failure of a Claimant to comply with the procedures of this *Article 20* for a Construction Claim may result in significant expenses incurred by the Respondent to respond to a Construction Claim that would not have been otherwise incurred had the Claimant followed the procedures and dispute resolution process set forth herein, including attorney fees, court costs and other administrative expenses (the "**Response Costs**"). Notwithstanding any provision contained herein to the contrary, failure by a Claimant to comply with any of the procedural or dispute resolution requirements for a Construction Claim set forth in this *Article 20* shall constitute a material breach of this Declaration and any warranty agreement, entitling the Respondent to recover, from the Claimant, all actual and reasonable Response Costs incurred by Respondent. Moreover, strict compliance with the procedural and dispute resolution requirements of this *Article 20* shall be a condition precedent to any recovery for a Construction Claim.

20.4. **Common Element Construction Claim by the Association**. 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, arbitration or other proceedings for: (i) a Construction Claim in the name of or on behalf of any Unit Owner (whether one or more); or (ii) a Unit Construction Claim. Additionally, no Unit Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. Each Unit Owner, by accepting an interest in or title to a Unit, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. In the event the Association asserts a Common Element Construction Claim, as a precondition to providing the Notice defined in *Section 20.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 20*, or taking any other action to prosecute a Common Element Construction Claim, the Association must:

20.4.1. Obtain Owner Approval of Law Firm, Attorney and Inspection Company.

The requirements related to Owner approval set forth in this Section 20.4.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm and/or attorney engaged by the Association to prosecute a Common Element Construction Claim, and any financial arrangements between the Association and the Inspection Company (defined below) or a law firm and/or attorney and the Inspection Company. The agreement between the Association, the law firm or attorney, and/or the Inspection Company may include requirements that the Association pay costs, fees, and expenses to the law firm, attorney, or the Inspection Company which will be paid through Assessments levied against Owners. The financial agreement between the Association, the law firm or attorney, and/or the Inspection Company may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association, the law firm or attorney, and/or the Inspection Company is terminated, the Association elects not to engage the law firm or attorney or Inspection Company to prosecute or assist with the Common Element Construction Claim, or if the Association agrees to settle the Common Element Construction Claim. In addition, the financial arrangement between the Association, the law firm or attorney, and/or the Inspection Company may include additional costs, expenses, and interest charges. These financial obligations can be significant. The Board may not engage or execute an agreement with a law firm or attorney to investigate or prosecute a Common Element Construction Claim, or engage or execute an agreement between the Association and a law firm or attorney, for the purpose of preparing a Common Element Report or performing any other investigation or inspection of the Common Elements related to a Common Element Construction Claim unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 20.4.1. In addition, the Board may not execute an agreement with an Inspection Company to prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, unless the Inspection Company and the financial arrangements between the Association and the Inspection Company are approved by the Owners in accordance with this Section 20.4.1. For the purpose of the Owner approval required by this Section 20.4.1, an engagement, agreement or arrangement between a law firm or attorney and an Inspection Company, if such engagement, agreement or arrangement could result in any financial obligations to the Association, irrespective of whether the Association and law firm or attorney have entered into an engagement or other agreement to prosecute a Common Element Construction Claim, must also be approved by the Owners in accordance with this Section 20.4.1. An engagement or agreement described in this paragraph is referred to herein as a "Claim Agreement".

Unless otherwise approved by Members holding sixty-seven percent (67%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to enter into a Claim Agreement if the Claim Agreement includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney and/or the Inspection Company, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the Claim Agreement or engages another firm or third-party to assist with the Common Element Construction Claim; (ii) if the Association elects not to enter into a Claim Agreement; (iii) if the Association agrees to settle the Common Element Construction Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iv) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney or the Inspection Company; and/or (v) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney or the Inspection Company. For avoidance of doubt, it is intended that Members holding sixty-seven percent (67%) of the votes in the Association must approve the law firm and attorney who will prosecute a Common Element Construction Claim and the Inspection Company who will prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, and each Claim Agreement. All Claim Agreements must be in writing. The Board shall not have the authority to pay any costs, expenses, fees, or other charges to a law firm, attorney or the Inspection Company unless the Claim Agreement is in writing and approved by the Owners in accordance with this *Section 20.4.1*.

The approval of the Members required under this *Section 20.4.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney and/or the Inspection Company; (b) a copy of each Claim Agreement; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association under any Claim Agreement; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association under any Claim Agreement; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment under the Claim Agreement occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm, attorney and/or the Inspection Company will use to evaluate the Common Element Construction Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Building, Systems, Common Elements, Units, or Improvements). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Units or the Common Elements will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Building, Systems, Common Elements, Units, or Improvements affected by such testing, the

estimated costs thereof, and an estimate of Assessments that may be levied against the Owners for such repairs. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed Claim Agreement being approved by the Members. In the event Members holding sixty-seven percent (67%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Common Element Construction Claim, and the Inspection Company who will prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, and the Claim Agreement(s), the Board shall have the authority to engage the law firm and/or attorney, and the Inspection Company, and enter into the Claim Agreement approved by the Members.

20.4.2. Provide Notice of the Investigation or Inspection.

As provided in *Section 20.4.3* below, a Common Element Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Common Element Report, the Association must have provided at least ten (10) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Element Report, the specific Common Elements to be investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

20.4.3. Obtain a Common Element Report.

The requirements related to the Common Element Report set forth in this Section 20.4.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Element Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Common Element Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Element Report is compromised.

Obtain a written independent third-party report for the Common Elements (the "**Common Element Report**") from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Bexar County, Texas (the "**Inspection Company**"). The Common Element Report must include: (i) a description with photographs of the Common Elements subject to the Common Element Construction Claim; (ii) a description of the present physical condition of the Common Elements subject to the Common Element Construction Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Elements performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed

recommendations regarding remediation and/or repair of the Common Elements subject to the Common Element Construction Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Element Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Bexar County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Element Report must be obtained by the Association. The Common Element Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Element Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Element Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Element Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Element Report is finalized and delivered to the Association.

20.4.4. Provide a Copy of Common Element Report to all Respondents and Owners. Upon completion of the Common Element Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Element Report, the Association will provide a full and complete copy of the Common Element Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Element Report which will include the date the report was provided. The Common Element Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

20.4.5. Provide a Right to Cure Defects and/or Deficiencies Noted on Common Element Report. Commencing on the date the Common Element Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent

shall have the right to: (i) inspect any condition identified in the Common Element Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Element Report; and (iii) correct any condition identified in the Common Element Report. As provided in *Section 3.11* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Element Report.

20.4.6. Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of any Claim Agreement, the Association must obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 20.6*, initiate the mandatory dispute resolution procedures set forth in this *Article 20*, or take any other action to prosecute a Common Element Construction 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 Common Element Construction Claim, the relief sought, the anticipated duration of prosecuting the Common Element Construction Claim, and the likelihood of success; (ii) a copy of the Common Element Report; (iii) a copy of any Claim Agreement between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Common Element Construction Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Common Element Construction Claim; (v) a summary of the steps previously taken by the Association to resolve the Common Element Construction Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Common Element Construction Claim may affect the market value, marketability, or refinancing of a Unit while the Common Element Construction Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Common Element Construction Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Common Element Construction Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Common Element Construction Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Common Element Construction Claim. In the event Members approve providing the Notice described in *Section 20.6*, or taking any other action to prosecute a Common Element Construction 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 Common Element Construction Claim.

20.5. **Unit Construction Claim by Owners**. Class action proceedings are prohibited, and no Unit Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration. In the event an Owner asserts a Unit Construction Claim, as a precondition to providing the Notice defined in *Section 20.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 20*, or taking any other action to prosecute a Unit Construction Claim, the Owner must:

20.5.1. Provide Notice of the Investigation or Inspection.

As provided in *Section 20.5.2* below, a Unit Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Unit Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Unit Report, the Unit and areas of the Unit to be investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

20.5.2. Obtain a Unit Report.

The requirements related to the Unit Report set forth in this Section 20.5.2 are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Unit Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Unit Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Unit Report is compromised.

Obtain a written independent third-party report for the Unit (the "**Unit Report**") from an Inspection Company. The Unit Report must include: (i) a description with photographs of the Unit and portions of the Unit subject to the Unit Construction Claim; (ii) a description of the present physical condition of the Unit; (iii) a detailed description of any modifications, maintenance, or repairs to the Unit performed by the Owner or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Unit. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Unit Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Bexar County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of

Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Unit Report must be obtained by the Owner. The Unit Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (b) the costs and expenses for preparation of the Unit Report are not directly paid by the Owner to the Inspection Company no later than the date the Unit Report is finalized and delivered to the Owner; or (c) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner's agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Unit Report. For avoidance of doubt, an "independent" report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Unit Report is finalized and delivered to the Owner.

20.5.3. Provide a Copy of Unit Report to all Respondents. Upon completion of the Unit Report, and in any event no later than three (3) days after the Owner has been provided a copy of the Unit Report, the Owner will provide a full and complete copy of the Unit Report to each Respondent. The Owner shall maintain a written record of each Respondent who was provided a copy of the Unit Report which will include the date the report was provided. The Unit Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

20.5.4. Right to Cure Defects and/or Deficiencies Noted on Unit Report. Commencing on the date the Unit Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Unit Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Unit Report; and (iii) correct any condition identified in the Unit Report. As provided in *Section 3.11* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Unit Report.

20.5.5. Common Element Construction Claim. Pursuant to *Section 20.4* above, a Unit Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. In the event that a court of competent jurisdiction or arbitrator determines that a Unit Owner does have the power or right to institute, defend, intervene

in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim, such Unit Owner shall be required, since a Common Element Construction Claim could affect all Owners, as a precondition to providing the Notice defined in *Section 20.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 20*, or taking any other action to prosecute a Common Element Construction Claim, to comply with the requirements imposed by the Association in accordance with *Section 20.4.2* (Provide Notice of Inspection), *Section 20.4.3* (Obtain a Common Element Report), *Section 20.4.4* (Provide a Copy of Common Element Report to all Respondents and Owners), *Section 20.4.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Element Report), *Section 20.4.6* (Owner Meeting and Approval), and *Section 20.6* (Notice).

20.6. **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 20.6*. For Construction Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 20.7* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Construction Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 20.7*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 20.7* 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 Construction Claim. The one hundred and twenty (120) day period for mediation set forth in *Section 20.8* 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 20.8* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association and for a Common Element Construction Claim, the Notice will also include: (a) a true and correct copy of the Common Element Report, and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Elements; (b) a copy of any Claim Agreement; (c) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 20.4.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 20.4.6* above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and the Claim is a Unit Construction Claim, the Notice will also include a true and correct copy of the Unit Report.

20.7. **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 that is subject to the Claim for the purposes of inspecting the Property.

20.8. **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 thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this *Section 20.8*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 20.9*.

20.9. **Binding Arbitration - Claims**. All Claims 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 20.9*.

20.9.1. Governing Rules. If a Claim has not been resolved by mediation in accordance with *Section 20.8*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 20.9* and the American Arbitration Association (the "**AAA**") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 20.9*, this *Section 20.9* 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 the 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.

20.9.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 20.9* will limit the right of Claimant or Respondent, and Claimant and 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 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.

20.9.3. Statute of Limitations. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 20.9*.

20.9.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 20.9* and subject to *Section 20.10;* **provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent**. In addition, for a Construction Claim, or any portion of a Construction Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, **except that the arbitrator may not award attorney's fees and/or costs to either Claimant or Respondent**. 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 Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. **In no event may an arbitrator award speculative, special, exemplary, treble or punitive damages for any Claim.**

20.9.5. 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. Arbitration proceedings hereunder shall be conducted in Bexar County, Texas. Unless otherwise provided by this *Section 20.9*, 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. Claimant and Respondent agree 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. In no event shall Claimant or Respondent 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.

20.10. 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 attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

20.11. 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.

20.12. Period of Limitation.

20.12.1. For Actions by an Owner or Resident of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim shall be the earliest of: (i) for a Construction Claim, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Construction Claim; (ii) for Claims other than Construction Claims, four (4) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim, the exclusive period of limitation for such Common Element Construction Claim, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Common Element Construction Claim; or (b) the applicable statute of limitations for the Common Element Construction Claim. In no event shall this *Section 20.12.1* be interpreted to extend any period of limitations.

20.12.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim shall be the earliest of: (i) for a Common Element Construction Claim, two (2) years and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Common Element Construction Claim; (ii) for Claims other than a Common Element Construction Claim, four (4) years and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of

limitations for such Claim. In no event shall this *Section 20.12.2* be interpreted to extend any period of limitations.

20.13. Funding the Resolution of Claims. The Association must levy a Special Assessment to fund estimated costs to resolve a Construction Claim pursuant to this *Article 20*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Construction Claim unless the Association has previously established and funded a dispute resolution 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 delivered either by **electronic mail**, personally or by mail. Such notice shall be deemed delivered at the time of personal or **electronic delivery**, and 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 of created.

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 Law.

21.3. Higher Authority. The Documents are subordinate to Applicable Law. 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 and governed under the laws of the State of Texas.

21.5. Duration. Unless terminated or amended by Owners or the Declarant as permitted herein, the provisions of this Declaration run with and bind the Regime, 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. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

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. Throughout this Declaration there appears text enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions of this Declaration. In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of the Declaration will control.

21.8. **Appendix/ Attachments**. The following appendixes and exhibits are attached to this Declaration and are incorporated herein by reference:

Attachment 1	Plat and Plans
Attachment 2	Maintenance Responsibility Chart
Attachment 3	Encumbrances
Attachment 4	Guide to Association's Examination of Common Elements
Attachment 5	Guide to Association's Major Management and Governance Functions
Appendix "A"	Declarant Reservations

[*SIGNATURE PAGE FOLLOWS*]