

Regulating Condominium Projects

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Summary

Condominiums (or “condos” herein) are interesting land use vehicles that may be misunderstood by city planners, staff, and attorneys, leading to improper regulation. The purpose of this paper is to give government-side municipal attorneys, planners, and other city staff the background required to push back against arguments that condominiums, for some reason, deserve different regulatory treatment than other developments based simply on the fact that they are *condominiums*. Condominiums are a form of real property ownership that are not exempt by state law from municipal or county regulation. Additionally, the municipal and county subdivision requirements of the Texas Local Government Code can apply to a condominium development depending on its physical layout. This paper will detail what condominiums actually are and how a city can regulate them.

Pop Quiz: Is this a Condo??

Question 1: Is this a condo?



Answer: Maybe, but you cannot tell by looking at the building.

Question 2: Is this a condo?



Answer: Maybe, but you cannot tell by looking at the building.

Question 3: Is this a condo?



Answer: Maybe, but you cannot tell by looking at the building.

How did you do? The answer in all three cases above, was “yes.” Those are all condominiums. Each of those buildings is a fundamentally different type of construction: High-Rise Multi-Family construction vs. Single-Family Detached vs. Big-Box Retail. And each of the different structures can house different uses: commercial vs. residential vs. mixed-use. Yet all are “condominiums.” If it isn’t the structure or the land use that defines a condo, what is it?

A Condominium is a Form of Ownership

The Texas Uniform Condominium Act (“TUCA”) defines “condominium” as, “... a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by

the owners of those portions.”¹ “Condominium” only refers to ownership. “Condos” are not a type of building construction, nor are they a use of real property.

Large, vertical, apartment-like developments often take advantage of the condominium form of ownership, because it allows for collective ownership, control and maintenance of shared portions of the development (known as “common elements”), while allowing for individual ownership of “units” within the condo project. This joint ownership provides the legal structure that allows the individual owners to collectively maintain pools, tennis courts, parks, parking structures, community spaces or other shared amenities, while still having their individually-owned, private spaces.



Traditional High-Rise Condominium

While people may often picture a high-rise apartment building on a beach or in a city when they talk about condos, there is no requirement that condo developments be vertical construction of a single, shared building. The condominium form of ownership has been used for high-rise apartment buildings, industrial parks, retail commercial developments, several different types of residential developments including developments of detached, single-family homes (so-called “site condominiums”), and likely many other types of real estate uses. Again, the take-away here is that a “condo” is a form of collective property ownership and not a specific type of building or a use of real property.



Site Condominium Development

How is a Condominium Created?

Commonly, condominiums are created on a single legal lot of real estate. Whether it is a high-rise apartment development on a single urban block or a 150-acre single family detached residential neighborhood, condos often involve a single tract of land. The condominium is created by recording a document called a “condominium declaration” (“Condo Dec”) in the deed records of each county in which the condo is located.² The TUCA contains a list of items that must be in

¹ Tex. Prop. Code §82.003 (2017).

² Tex. Prop. Code §82.051 (2017).

a condominium declaration,³ but at its core, a Condo Dec describes the condo development's physical layout, the rules of joint ownership and creates the individual condo units. A copy of a recorded condominium declaration is attached to this paper as Appendix A for reference. Once a valid Condo Dec is recorded (and not terminated), the real property affected by the Condo Dec is a condominium.

The Intersection of TUCA and Municipal Regulation

The Texas Uniform Condominium Act makes clear that the creation of a condominium does not exempt the property or development from municipal regulation. The same section that details the creation of condominiums also states that, “this chapter *does not affect or diminish the rights of municipalities and counties* to approve plats of subdivisions and enforce building codes as may be authorized or required by law (emphasis added).”⁴ Additionally, the TUCA, “...does not invalidate or modify *any provision* of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation (emphasis added).”⁵ These provisions of the TUCA are important because they show that within the chapter of the Property Code that governs all new condominium developments, the plain text allows for full municipal regulation of condominiums.

Physically Identical Developments

While condo projects receive no exemption from municipal regulation, municipalities cannot “...*prohibit the condominium form of ownership* or impose any requirement on a condominium that it would not impose on a *physically identical development under a different form of ownership* (emphasis added).”⁶ This brings us back to the Pop Quiz at the start of this paper. To follow TUCA, municipal authorities should not look at a proposed development and ask themselves, “Is this a condo?” They should look at a proposed development, *regardless of ownership structure*, and follow the same regulations for all developments that look physically identical. If a development looks like a vertical, multi-family high-rise, all developments like that should be subject to the same municipal rules. Likewise, if the development looks like a single-

³ Tex. Prop. Code §82.055 (2017).

⁴ Tex. Prop. Code §82.051(e) (2017).

⁵ Tex. Prop. Code §82.006 (2017).

⁶ *Id.*

family residential development, they should be subject to the same rules regardless of the form of ownership. To do otherwise risks violating TUCA.

What About Subdivision Plats and Condominiums?

What the Condo Dec does not do is alter the size of the legal lot on which the condo regime is situated. Routinely, Condo Decs will contain a statement that ‘This Condominium IS NOT a Subdivision of Real Property.’⁷ The action of land “subdivision” is one of the triggers for municipal land use regulation in local codes and the trigger for state platting requirements in Chapters 212⁸ and 232⁹ of the Texas Local Government Code. And because the Condo Dec may not divide the legal lot into smaller legal lots on which the condo is situated, landowners argue that condominiums are not “subdivisions of land” and are, therefore, exempt from county and municipal subdivision and platting requirements. This view is incorrect. A condominium *might* be a subdivision of land triggering platting requirements.

Whether a condo is a subdivision of land depends on what the landowner is doing with the property. For property located inside the limits of a city a subdivision plat is required when:

[T]he owner of a tract of land ... divides the tract into *two or more parts* to lay out ... suburban, building, or other lots, or to lay out streets, alleys, squares, parks, *or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts* [the owner] must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, *or by using any other method* (Emphasis added).¹⁰

This platting requirement does not take ownership structure into account and only addresses the functional use of the property – Is a tract of land being divided into smaller *parts* for use by owners? If the answer is “yes,” this is a subdivision of land requiring platting. Not to put too fine a point

⁷ See Appendix A, Page 15.

⁸ Tex. Loc. Gov’t. Code §212.004 (2017).

⁹ Tex. Loc. Gov’t. Code §232.001 (2017).

¹⁰ Tex. Loc. Gov’t. Code §212.004 (2017).

on it, but Condo Decs “divide” “a tract of land” into “parts” to “lay out buildings” or “other parts” “intended” “for the use of purchasers or owners of lots” or “other parts.” The fact that a property is being owned as a condominium does not to exempt it from subdivision platting. Additionally, Chapter 232 of the Texas Local Government Code contains nearly identical requirements for platting a subdivision of property outside the limits of a municipality.¹¹

Ultimately, what matters is not the form of ownership of the property but what is physically being developed on the land. The Condo Dec should contain enough detail to inform city planners about what type of development is being contemplated – multifamily, single family detached, industrial park, etc. – and the City should then treat the condo development just like it would treat a physically identical development owned in a different manner. For example, a high-rise apartment development might not require a new subdivision plat, while a residential development of a single-family detached homes likely would.

While there is no caselaw in Texas that definitively applies Chapters 212 or 232 of the Texas Local Government Code to a condominium, there is an Attorney General opinion that supports the position that condominiums can be subdivisions of land.¹² A copy of the Opinion is attached hereto as Appendix B. In its opinion, the Attorney General addresses two questions from Hays County:

1. Whether a condominium development pursuant to Chapter 82, Texas Property Code, is subject to the regulatory control of the county under the subdivision statutes contained in Chapter 232 of the Local Government Code; and
2. Does Section 232.100, Texas Local Government, allow urban counties to require condominium or other multi-unit developments (a building, structure or combination of structures which have been designed to contain units in which more than two families may reside) to meet subdivision or infrastructure planning requirements?¹³

These questions were asked by a county official in reference to a condominium development comprised of 17 single-family structures and some common elements. The county took the

¹¹ Tex. Loc. Gov't. Code §232.001 (2017).

¹² Tex. Att'y Gen. Op. No. GA-0223 (2004.)

¹³ *Id.* at 3.

position that because the development appeared to be “similar to typical single family residence[s]” that the development should be subject to Chapter 232’s subdivision platting requirement.¹⁴ The landowner disagreed, arguing, among other things, that because unit owners owned an interest in all the common elements, the property, in fact, could not logically be being subdivided.¹⁵ Ultimately, the Attorney General reviewed a number of cases that discussed the idea of subdivision in different contexts (none in the context of a condominium) and decided that county officials could determine that a, “...condominium development constitutes a subdivision that must be platted.”¹⁶ The Attorney General also dismissed the landowner arguments that condominiums are exclusively regulated by the TUCA, stating that, “... [Texas Property Code] Section 82.006 precludes a county from discriminating against condominiums but expressly preserves a county’s authority to regulate them as subdivisions.”¹⁷ The second question the Attorney General Opinion applies only to counties, so it will not be addressed herein other than to say that the Attorney General found in favor of county regulation of condominiums.¹⁸ While this Attorney General Opinion is not binding precedent, it interprets the same laws discussed herein and comes to the same conclusion: That condominium developments are not exempt from county or municipal regulations.

Other States Caselaw

Below is a brief and incomplete survey of a few cases from other states that have also adopted the Uniform Condominium Act. In the absence of Texas cases on point, looking to caselaw from states can be instructive. This is an *extremely* brief look at just a few cases. The point here is to give the reader an idea that if a unique set of facts comes up and there is no caselaw on point in Texas, looking at cases from the 14 other states that have adopted the Uniform Condominium Act can be instructive.¹⁹

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 8-9.

¹⁹ Alabama, Arizona, Kentucky, Maine, Minnesota, Missouri, Nebraska, New Mexico, Pennsylvania, Rhode Island, Texas, Virginia, Washington and West Virginia all adopted the Uniform Condominium Act. Note that individual states may have amended the law over time, so the exact wording can vary state-to-state.

Alabama:

Dyess v. Bay John Developers II, L.L.C., 13 So.3d 390 (Ala. Ct. Civ. App. 2007)

This case involved the development of a condo project in a county in Alabama. The developer sued for a declaratory judgment asserting, in part, that condos are not subdivisions of land; and therefore, the county could not apply its subdivision regulations. The Court of Civil Appeals of Alabama disagreed, stating that, “subdivision regulations do not distinguish between various types of multifamily developments, such as apartments, duplexes, or condominiums.”²⁰ The Court was also interested in the official commentary to the Alabama Uniform Condominium Act which stated that, “[b]ecause it involves the division of land into two or more parcels, technically a condominium involves a subdivision of real estate.”²¹ Additionally, since the regulations sought to be imposed by the county on the development were being applied to all “physically identical development” making “...no distinction between condominiums and other multifamily developments, such as apartments, in their application” the regulations were valid and enforceable.²² This case is instructive because it not only holds that condominiums are not exempt from regulations simply because they are condominiums and but also holds that they can be subdivisions of land based on the physical characteristics of the development.

Pennsylvania

Frank N. Shaffer Family Limited Partnership v. Zoning Hearing Board of Chanceford Township. 964 A.2d 23, 28-29. (Commonwealth Ct. Penn. 2009).

This is another argument over whether a condominium constituted a subdivision of land, but in this case, the development in question was a “condominium conversion” of a planned community. In the condominium conversion, ownership interest was changed slightly among the three unit owners, and there was a change in lot lines and a conveyance of a unit to a different owner. This case is useful, because it shows that simply conversion to a planned community form of ownership does not trigger subdivision regulations if nothing material is changing in terms of lot or unit configuration or construction.²³ This reinforces the idea that the dispositive

²⁰ *Dyess v. Bay John Developers II, L.L.C.*, 13 So.3d 390, 397 (Ala. Ct. Civ. App. 2007).

²¹ *Id.*

²² *Id.* at 396.

²³ *Frank N. Shaffer Family Limited Partnership v. Zoning Hearing Board of Chanceford Township*. 964 A.2d 23, 28-29. (Commonwealth Ct. Penn. 2009).

characteristics for regulation of condominiums is not the fact that the property is a condominium, it is what the development physically looks like and is there a substantive change that would trigger regulation.

Rhode Island

McConnel v. Wilson, 1987 WL 882326 (R.I. Sup. Ct. 1987)

This case was a mandamus action that arose when a Town Clerk refused to record condominium declaration and condo plat before the developer had gone through local review.²⁴ The developer was converting the ownership structure of a retail store into a condominium without making any other significant changes.²⁵ The Clerk believed that the Plaintiff's condo conversion triggered subdivision regulations and refused to record the declaration.²⁶ The Rhode Island condominium act language is very similar to the TUCA language regarding equal treatment for physically identical developments:

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership, or otherwise regulate the creation, governance or existence of the condominium form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.²⁷

The court held that because no change was made to the development *other than the form of ownership*, that to make a condominium conversion go through zoning or subdivision processes, when a physically identical development owned in another way would not have to would violate the Rhode Island Condominium Act.²⁸ Additionally, this case is of interest, because the court

²⁴ *McConnel v. Wilson*, 1987 WL 882326, 1 (R.I. Sup. Ct. 1987)

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 2.

makes the point that a condominium is a form of ownership and not a use designation for property.²⁹

Michigan:

Stanley Building Co. v. City of St. Clair Shores, Not Reported in N.W.2d (2004)

Developer owned two single-family lakefront lots and recorded master deed to condo the lots and create seven single-family condo units and a private road. The City treated them like a residential subdivision and denied the permits. Developer sued citing a lack of city authority to regulate the project. The Michigan Condominium Act is like the Texas law in terms of non-discrimination based on ownership:

A condominium project shall comply with applicable local law, ordinances, and regulations. Except as provided in subsection (2), a proposed or existing condominium project shall not be prohibited nor treated differently by any law, regulation, or ordinance of any local unit of government, which would apply to that project or development under a different form of ownership.³⁰

Because the detached condominium units resemble homes (physically identical), the trial court concluded that the proposed development was not unlike a traditionally platted subdivision, and the appellate court affirmed.³¹

Solutions Available under Texas Law

Given the legal framework summarized above for condos in Texas, cities and counties must treat condos the same as physically identical projects and tackle the question of subdivision and equality of regulations. Chapter 212 provides two solutions discussed briefly below that may or may not be a solution for a city grappling with how to regulate condominium projects the same as physically identical projects.

²⁹ *Id.*

³⁰ *Stanley Building Co. v. City of St. Clair Shores*, 2004 WL 1676575, 2 (2004)

³¹ *Id.* at 1

Require Subdivision Plat

As previously discussed, the creation of certain condominium units can result in a subdivision of land subject to Subchapter A of Chapter 212 and local subdivision regulations.³² While this solution appears on its face to be the most straightforward approach to regulation of condominiums, it presents legal and practical problems.

First, as shown in Appendix A, many condominium declarations contain language proclaiming on its face that it is not a subdivision of land. Despite the law indicating that may not always be the case, every developer will contest a City or County's position that a condominium project is a subdivision of land and will most likely bring in their condominium expert attorneys to argue their case. While some cities or counties may have their own legal counsel to provide the legal argument as to why that particular condominium project is a subdivision of land, many smaller cities may not have that luxury.

Second, development whether condominium form of ownership or lot ownership typically begins with zoning and subdivision. Its only after a developer has approved zoning and an approved plat, if one is required at all, that a Condo Dec is drafted and filed. A city has no authority to regulate the Condo Dec or review the documents prior to filing. It is only after the declaration has been filed and the developer comes to the city for the next required approval that the city can require a replat to capture the subdivision of land created by the condominium units. This timing issue is solvable but may cause an additional level of confusion.

Adopt Development Plat

In addition to the automatic requirement for a subdivision plat in Chapter 212, a city may choose by ordinance to be covered by Subchapter B of Chapter 212 and require development plats.³³ In order to do so, a city must hold a public hearing and determine plans, rules or ordinances that will govern development plats inside its city limits and its extraterritorial jurisdiction.³⁴ Once adopted, Subchapter B applies to "any person who proposes the development of a tract of land."³⁵

³² See *supra*, pages 4-7

³³ Tex. Loc. Gov't. Code §214.041 (2017).

³⁴ *Id.* at §214.044.

³⁵ *Id.* at §214.045(a).

For purposes of Subchapter B, development means “the new construction of the enlargement of any exterior dimension of any building, structure, or improvement.”³⁶ A development plat must be prepared by a registered professional land surveyor and show (1) each existing or proposed building, structure or improvement or proposed change to the external configuration of an existing building; (2) easements and rights-of-way; and (3) the dimensions of each street, sidewalk, alley, square, park or other property intended for use by the public or for use by the owners of lots of fronting the street, alley, sidewalk, or right-of-way.³⁷ A development plat is processed in the same manner as a subdivision plat, and no building permit can be issued without approval of a development plat.³⁸

If adopted, the requirement for a development plat would potentially solve the regulatory challenge presented by condominium developments. Because “development” includes the construction of any building and is not dependent on the determination of whether a subdivision of land has occurred, almost all condominium regimes would be required to obtain a development plat.³⁹ One potential challenge is resistance to the adoption of Subchapter B. In cities where property owners and developers have become accustomed to the advantages of developing property exempt from subdivision requirement under Subchapter A, there may be strong resistance to development plats during the adoption process.

Conclusions

Hopefully you did not learn anything new from this paper. “Condominium” describes the ownership form of real estate – not a type of development, use or building type. The TUCA does not restrict municipal regulation, and there are other tools such as development plats which can also help ensure Texas cities and their residents are getting the quality developments they deserve.

³⁶ *Id.* at §214.043.

³⁷ *Id.* at §214.045(b).

³⁸ *Id.* at §214.044.

³⁹ One exception to this statement could be the conversion of existing property to condominium regime. If the conversion did not change the exterior dimensions of any building, it would not trigger a development plat requirement.

Appendix A



AFTER RECORDING RETURN TO:

KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

**DECLARATION OF CONDOMINIUM REGIME
FOR EDGEWATER CONDOMINIUMS
(A Residential Condominium in Williamson County, Texas)**

Declarant: THE BROHN GROUP, LLC, a Texas limited liability company

TABLE OF CONTENTS

| | |
|---|----|
| ARTICLE 1 DEFINITIONS | 1 |
| ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS | 5 |
| 2.1. Subject to Documents | 5 |
| 2.2. Additional Property | 5 |
| 2.3. Adjacent Land Use | 5 |
| 2.4. Recorded Easements and Licenses | 5 |
| 2.5. Common Elements | 5 |
| ARTICLE 3 PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS | 6 |
| 3.1. General | 6 |
| 3.2. Owner's Easement of Enjoyment | 6 |
| 3.3. Owner's Maintenance Easement | 6 |
| 3.4. Owner's Ingress/Egress Easement | 7 |
| 3.5. Easement of Cooperative Support | 7 |
| 3.6. Association's Access Easement | 7 |
| 3.7. Utility Easement | 8 |
| 3.8. Security | 8 |
| 3.9. Injury to Person or Property | 9 |
| 3.10. Easement to Inspect and Right to Correct | 9 |
| 3.11. Parking | 10 |
| ARTICLE 4 CERTAIN PROPERTY FEATURES | 10 |
| 4.1. General | 10 |
| 4.2. Reservoir Area | 10 |
| 4.3. Service Contracts | 10 |
| 4.4. Adjacent Thoroughfares | 11 |
| 4.5. Use of Adjacent Property | 11 |
| 4.6. Outside Conditions | 11 |
| 4.7. Street Names | 11 |
| 4.8. Concrete | 11 |
| 4.9. Construction Activities | 11 |
| 4.10. Moisture | 11 |
| 4.11. Water Runoff | 12 |
| 4.12. Encroachments | 12 |
| 4.13. Budgets | 12 |
| 4.14. Light and Views | 12 |
| 4.15. Schools | 12 |
| 4.16. Plans | 12 |
| 4.17. Upgrades | 12 |
| 4.18. Location of Utilities | 12 |
| 4.19. Chemicals | 12 |

| | | |
|---|---|----|
| 4.20. | Marketing | 12 |
| 4.21. | Streets Within the Property | 13 |
| ARTICLE 5 UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS..... | | 13 |
| 5.1. | Initial Submitted Units and Maximum Number of Units..... | 13 |
| 5.2. | Units..... | 14 |
| 5.3. | Designation of Limited Common Elements..... | 15 |
| 5.4. | Common Interest Allocation | 15 |
| 5.5. | Common Expense Liabilities; Liability for Expenses of Landscape Services..... | 15 |
| 5.6. | Votes..... | 16 |
| ARTICLE 6 COVENANT FOR ASSESSMENTS..... | | 16 |
| 6.1. | Purpose of Assessments..... | 16 |
| 6.2. | Personal Obligation | 16 |
| 6.3. | Types of Assessments..... | 16 |
| 6.4. | Regular Assessments..... | 16 |
| 6.5. | Landscape Assessments..... | 18 |
| 6.6. | Special Assessments..... | 18 |
| 6.7. | Utility Assessments..... | 18 |
| 6.8. | Individual Assessments | 18 |
| 6.9. | Deficiency Assessments | 19 |
| 6.10. | Working Capital Fund..... | 19 |
| 6.11. | Reserve Fund Contribution | 19 |
| 6.12. | Due Date..... | 20 |
| 6.13. | Reserve Funds..... | 20 |
| 6.14. | Declarant's Right to Inspect and Correct Accounts | 20 |
| 6.15. | Association's Right to Borrow Money | 20 |
| 6.16. | Limitations of Interest | 20 |
| 6.17. | Audited Financial Statements | 21 |
| ARTICLE 7 ASSESSMENT LIEN..... | | 21 |
| 7.1. | Assessment Lien..... | 21 |
| 7.2. | Superiority of Assessment Lien | 21 |
| 7.3. | Effect of Mortgagee's Foreclosure..... | 21 |
| 7.4. | Notice and Release of Notice..... | 21 |
| 7.5. | Power of Sale | 22 |
| 7.6. | Foreclosure of Lien..... | 22 |
| ARTICLE 8 EFFECT OF NONPAYMENT OF ASSESSMENTS | | 22 |
| 8.1. | Generally | 22 |
| 8.2. | Interest | 22 |
| 8.3. | Late Fees | 22 |
| 8.4. | Collection Expenses | 23 |
| 8.5. | Acceleration | 23 |
| 8.6. | Suspension of Vote..... | 23 |

| | | |
|--|--|----|
| 8.7. | Assignment of Rents | 23 |
| 8.8. | Money Judgment | 23 |
| 8.9. | Notice to Mortgagee | 23 |
| 8.10. | Application of Payments | 23 |
| ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS | | 24 |
| 9.1. | Association Maintains | 24 |
| 9.2. | Landscape Services | 24 |
| 9.3. | Owner's Obligations for Maintenance of Yard Area | 25 |
| 9.4. | Inspection Obligations | 25 |
| 9.5. | Owner Responsibility | 26 |
| 9.6. | Disputes | 27 |
| 9.7. | Warranty Claims | 27 |
| 9.8. | Owner's Default in Maintenance | 27 |
| ARTICLE 10 ARCHITECTURAL COVENANTS AND CONTROL | | 27 |
| 10.1. | Purpose | 27 |
| 10.2. | Architectural Reviewer | 27 |
| 10.3. | Architectural Control by Declarant | 28 |
| 10.4. | Architectural Control by Association | 28 |
| 10.5. | Limits on Liability | 29 |
| 10.6. | Prohibition of Construction, Alteration and Improvement | 29 |
| 10.7. | No Deemed or Verbal Approval | 29 |
| 10.8. | Application | 30 |
| 10.9. | Owner's Duties | 30 |
| ARTICLE 11 USE RESTRICTIONS | | 30 |
| 11.1. | Variance | 30 |
| 11.2. | Association's Right to Promulgate Rules and Amend Community Manual | 30 |
| 11.3. | Rules and Regulations | 31 |
| 11.4. | Animals | 31 |
| 11.5. | Annoyance | 31 |
| 11.6. | Appearance | 32 |
| 11.7. | Declarant Privileges | 32 |
| 11.8. | Drainage | 32 |
| 11.9. | Driveways | 32 |
| 11.10. | Garages | 32 |
| 11.11. | Landscaping | 32 |
| 11.12. | Noise And Odor | 32 |
| 11.13. | Occupancy | 32 |
| 11.14. | Residential Use | 33 |
| 11.15. | Signs | 33 |
| 11.16. | Antenna | 33 |
| 11.17. | Vehicles | 34 |
| 11.18. | Balconies and Patios | 35 |

| | |
|--|----|
| 11.19. Wireless Internet Systems | 35 |
| ARTICLE 12 UNIT LEASING | 35 |
| 12.1. Lease Conditions | 35 |
| 12.2. Owner Occupancy | 36 |
| 12.3. Eviction of Tenants | 36 |
| 12.4. Exemption | 36 |
| ARTICLE 13 ASSOCIATION OPERATIONS | 36 |
| 13.1. Board | 36 |
| 13.2. The Association | 37 |
| 13.3. Name | 37 |
| 13.4. Duration | 37 |
| 13.5. Governance | 37 |
| 13.6. Merger | 37 |
| 13.7. Membership | 38 |
| 13.8. Manager | 38 |
| 13.9. Books and Records | 38 |
| 13.10. Indemnification | 38 |
| 13.11. Obligations of Owners | 38 |
| 13.12. Unit Resales | 39 |
| ARTICLE 14 ENFORCING THE DOCUMENTS | 40 |
| 14.1. Notice and Hearing | 40 |
| 14.2. Remedies | 40 |
| 14.3. Board Discretion | 41 |
| 14.4. No Waiver | 41 |
| 14.5. Recovery of Costs | 42 |
| ARTICLE 15 INSURANCE | 42 |
| 15.1. General Provisions | 42 |
| 15.2. Property Insurance | 43 |
| 15.3. Board to Make Policies Available | 44 |
| 15.4. Form of Policies; Review of Policies | 44 |
| 15.5. Liability Insurance | 44 |
| 15.6. Worker's Compensation | 44 |
| 15.7. Fidelity Coverage | 45 |
| 15.8. Directors and Officers Liability | 45 |
| 15.9. Mortgagee Required Policies | 45 |
| 15.10. Other Policies | 45 |
| ARTICLE 16 RECONSTRUCTION OR REPAIR AFTER LOSS | 45 |
| 16.1. Subject to Act | 45 |
| 16.2. Restoration Funds | 45 |
| 16.3. Costs and Plans | 46 |
| 16.4. Owner's Duty to Repair | 46 |

| | |
|--|----|
| 16.5. Owner's Liability for Insurance Deductible | 46 |
| ARTICLE 17 TERMINATION AND CONDEMNATION | 47 |
| 17.1. Association as Trustee | 47 |
| 17.2. Termination..... | 47 |
| 17.3. Condemnation | 47 |
| ARTICLE 18 MORTGAGEE PROTECTION | 47 |
| 18.1. Introduction | 47 |
| 18.2. Amendment | 48 |
| 18.3. Termination..... | 48 |
| 18.4. Implied Approval..... | 48 |
| 18.5. Other Mortgagee Rights..... | 48 |
| 18.6. Insurance Policies..... | 49 |
| 18.7. Notice of Actions..... | 49 |
| 18.8. Amendments of a Material Nature..... | 49 |
| ARTICLE 19 AMENDMENTS..... | 50 |
| 19.1. Consents Required | 50 |
| 19.2. Amendments Generally | 51 |
| 19.3. Effective | 51 |
| 19.4. Declarant Rights | 51 |
| ARTICLE 20 DISPUTE RESOLUTION | 51 |
| 20.1. Introduction and Definitions | 51 |
| 20.2. Mandatory Procedures..... | 52 |
| 20.3. Notice | 53 |
| 20.4. Negotiation | 53 |
| 20.5. Mediation | 53 |
| 20.6. Termination of Mediation..... | 53 |
| 20.7. Binding Arbitration-Claims..... | 54 |
| 20.8. Allocation of Costs | 56 |
| 20.9. General Provisions | 56 |
| 20.10. Period of Limitation..... | 56 |
| 20.11. Approval & Settlement..... | 57 |
| ARTICLE 21 GENERAL PROVISIONS..... | 58 |
| 21.1. Notices | 58 |
| 21.2. Compliance | 58 |
| 21.3. Higher Authority | 58 |
| 21.4. Interpretation..... | 58 |
| 21.5. Duration..... | 58 |
| 21.6. Captions..... | 58 |
| 21.7. Construction..... | 58 |
| 21.8. Declarant as Attorney in Fact and Proxy | 59 |
| 21.9. Exhibits/Attachments/Appendixes..... | 60 |

DECLARATION OF CONDOMINIUM REGIME FOR EDGEWATER CONDOMINIUMS

SPANISH CREEK DEVELOPMENT, INC., a Texas corporation ("**Property Owner**"), is the owner of the Property, as defined below. The Property Owner hereby appoints **THE BROHN GROUP, LLC**, a Texas limited liability company ("**Declarant**"), as Declarant. The Property is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Edgewater Condominiums through the recordation of this Declaration of Condominium Regime for Edgewater Condominiums (this "**Declaration**").

NOW, THEREFORE, it is hereby declared that the Property 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 Property, together with all improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

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

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

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

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

1.4 "**Assessment**" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or other Applicable Law, including but not limited to Regular Assessments, Landscape Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments as defined in *Article 6* of this Declaration.

1.5 "**Association**" means the EW Condominium Community, Inc., a Texas non-profit corporation, d/b/a Edgewater Condominium Community, 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, and the Act.

1.6 "Board" means the Board of Directors of the Association.

1.7 "Building" means each residential dwelling constructed within a Unit. Declarant has reserved the right to add additional Units and Buildings to the Regime as permitted in Appendix A, attached hereto.

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

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

1.10 "Common Elements" means all portions of the Property save and except the Units. All Common Elements are "General Common Elements" except if such Common Elements have been allocated as "Limited Common Elements" by this Declaration or the Act for the exclusive use of one or more but less than all of the Units.

1.11 "Community Manual" means the community manual 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. The Community Manual may be amended, from time to time, by 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.

1.12 "Declarant" means THE BROHN GROUP, LLC, a Texas limited liability company. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under the Documents to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under the Documents.

1.13 "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association, in accordance with the terms of Appendix A of this Declaration. The duration of the Declarant Control Period is 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.

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

1.15 "Development Period" means the seven (7) year period, beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix A, attached hereto, including rights related to development,

construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

1.16 **"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, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.17 **"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.

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

1.19 **"Landscape Services"** mean the following services to be provided to each Occupied Unit: (a) mowing and edging all turf areas at least once per week during the months of May through September of each year, and on an as-needed basis during the months of October through April; (b) applying fertilizer to the turf areas twice a year; (c) manually and mechanically controlling weeds in as required to maintain a manicured appearance; and (d) controlling fire ants in the turf areas with applications of "Logic" or approved equal in the spring and fall. Notwithstanding the foregoing, the Board will have the right to modify the Landscape Services provided hereunder from time to time.

1.20 **"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", and "Limited Common Areas" on Attachment 1, attached hereto and as provided in *Section 5.4* of this Declaration.

1.21 **"Majority"** means more than half.

1.22 **"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.

1.23 **"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.

1.24 **"Occupied Unit"** means a Unit in which a Building has been constructed and which has been conveyed to the initial non-homebuilder purchaser thereof.

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

1.25 **"Person"** shall mean any individual or entity having the legal right to hold title to real property.

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

1.27 **"Property"** means, collectively, that certain real property more particularly described on Exhibit A, attached hereto and incorporated herein by reference.

1.28 **"Recorded"** means recorded in the Official Public Records of Williamson County, Texas.

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

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

1.31 **"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 and included within the Community Manual.

1.32 **"Underwriting Lender"** means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or Government National Mortgage Association (Ginnie 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.

1.33 **"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.

1.34 **"Yard Area"** means all yard areas within a Unit, including any yard areas within a Unit which are enclosed by a fence. In the event of any dispute concerning what constitutes the Yard Area of a Unit, the Board's determination of such area will be final, binding and conclusive.

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 parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Additional Property.** Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of Owners representing at least two-thirds (2/3) of the ownership interests in the Property, or, during the Development Period, by Declarant as permitted in Appendix A. Such additional property may include, without limitation, all or any portion of that certain real property more particularly described on Exhibit B, attached hereto and incorporated herein by reference. Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime.

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 2, and any shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-Recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses such Owner's Unit and for which the Association does not have express responsibility.

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

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

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

ARTICLE 3

PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

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

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

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 an Improvement on 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 onto 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 Improvements on 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. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Elements and adjacent Units during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element or any Improvement located thereon in exercising the easement granted hereunder, the Owner will be required to restore the Unit, Common Element or Improvement to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period

of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Unit.

All work requiring access to the Common Elements may only be performed by a Person who shall deliver to the Board prior to commencement of such work, in form satisfactory to the Board:

- (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

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

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, if any, assigned thereto.

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

3.6. **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:

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- (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, including without limitation, the architectural standards and use restrictions.
- (iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.
- (v) To respond to emergencies.
- (vi) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

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

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.

3.8. **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 as his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.

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

3.10. **Easement to Inspect and Right to Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Buildings and 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 public codes and ordinances. This Section 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 an easement of access and entry over, across, under, and through the

Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the purposes contained in this Section.

3.11. **Parking.** Declarant reserves the right to designate and assign portions of the General Common Elements as parking for the exclusive use of any Owner of a Unit. Any parking spaces not specifically designated by the Declarant for the exclusive use of an Owner of a Unit will be under the exclusive control and administration of the Association until such time as the Declarant no longer owns any Unit within the Regime. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board subject to any assignment previously made by the Declarant. Any designation and assignment of General Common Elements as parking will be memorialized by a written "assignment of parking" executed by an authorized representative of the Declarant (or Association if Declarant no longer owns any Units within the Regime) which shall identify the parking space(s) and the Unit assigned thereto. The assignment shall be made a part of the corporate records of the Association, will be considered an agreement between the Association and such Owner with regard to use of the General Common Element so assigned, and may not be terminated or modified without the consent of the Declarant (or a majority of the Board if Declarant no longer owns any Units within the Regime) and the owner of the Unit to which such General Common Element parking was assigned. The Declarant or the Board may be required periodically to re-allocate parking to comply with the site plan approved by the applicable regulatory authority and applicable to the Property.

ARTICLE 4 CERTAIN PROPERTY FEATURES

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

4.2. **Reservoir Area.** Portions of the Common Elements are restricted for use as a reservoir and spillway by virtue of perpetual easements for such purposes granted to the Upper Brushy Creek Water Control and Improvement District (collectively, the "Reservoir Area"). The Reservoir Area of the Common Elements is specifically identified on the Plats and Plans. Notwithstanding any provision to the contrary in this Declaration, the following restrictions apply to all Units that abut the Reservoir Area: (a) no trees may be located within the portion of the Yard Area located between the Building on the Unit and the boundary of the Unit adjacent to the Reservoir Area; and (b) no gates may be installed on the portion of the fence along the boundary of the Unit adjacent to the Reservoir Area.

4.3. **Service Contracts.** Declarant may have contracted, on behalf of the Owner, for one or more services to be provided by vendors to the individual Owners on a contract basis, such as intrusion monitoring and cable television. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments,

which may be considered Regular Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

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

4.5. **Use of Adjacent Property Outside Conditions.** Since in every neighborhood there are conditions that different people may find objectionable, 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 Unit, including periodic entertainment, arts, sports, festivals and other events. **Street Names.** Declarant may change, in its sole discretion, the Property name and the street names and addresses in or within the Property including the street address of the Unit before or after closing if required by any applicable regulatory agency.

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

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

4.10. **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.

4.11. **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.

4.12. **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.

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

4.14. **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.**

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

4.16. **Plans.** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed on any Unit are merely approximations and do not necessarily reflect the actual as-built conditions of the same.

4.17. **Upgrades.** The cost of upgrades may not necessarily result in a commensurate increase in the value of the Unit and Improvements constructed thereon.

4.18. **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.

4.19. **Chemicals.** Each Building will contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a Person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner to keep the Building clean, dry, well ventilated and free of contamination.

4.20. **Marketing.** Declarant's use of a sales center and/or model Units or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the Units and Improvements available for purchase. The Units and Improvements may not conform, except as herein noted, to any model Unit in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and

scale models of the project (collectively "**Promotional Aids**"). By acquiring title to a Unit, each Owner agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Regime or any Unit. Declarant retains the right to obtain and use photography of the Property (including the Units and all Improvements) for publication and advertising purposes.

4.21. **Streets Within the Property.** Streets adjacent to the Property are public streets and maintained by applicable governmental authorities. Streets within the Property are private and maintained by the Association.

4.21.1. **Private Streets.** Any private streets located within the Property are General Common Elements and are maintained and administered by the Association. The Association, acting through the Board has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of private streets, including but not limited to:

- (i) Identification of vehicles used by Owners and Residents and their guests.
- (ii) Designation of parking or no-parking areas.
- (iii) Limitations or prohibitions on curbside parking.
- (iv) Removal or prohibition of vehicles that violate applicable rules and regulations.
- (v) Fines for violations of applicable rules and regulations.

4.21.2. **Public Streets.** Public streets are not Common Elements, but may be maintained and/or regulated by the Association to the extent they are not maintained or regulated by the City or county. As to public streets, the Association, acting through the Board, is specifically authorized: (i) to accept from applicable governmental authorities any delegation of street-related duties; and (ii) to act as attorney in fact for the Owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets serving and adjacent to the Property.

ARTICLE 5

UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. **Initial Submitted Units and Maximum Number of Units.** The Regime initially consists of one hundred three (103) Units. During the Development Period, Declarant, as permitted in Appendix A, has reserved the right to create a total of three hundred (300) Units on the Property and additional property added to the Regime. To add additional Units to the Regime established by the Declaration, Declarant shall prepare, execute, and record an amendment to this Declaration and the Plat and Plans which amendment will: (i) assign an

identifying number to each new Unit; (ii) reallocate the Common Interest Allocation (as defined below) among all Units then existing within the Regime; (iii) describe any Limited Common Elements; if any, created or designated to each new Unit; and (iv) with respect to new Units, include the information required by Section 82.055 and Section 82.059(b) of the Texas Uniform Condominium Act. To add additional property to the Regime, Declarant will execute and Record a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may also include a description of the Units added to the Regime if the Declarant elects to create Units upon Recordation of the declaration of annexation OR Declarant may elect to create additional Units or Common Elements on the additional property subsequent to the recordation of the declaration of annexation. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Units.

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 2. The boundaries of each Unit are further described as follows:

- (i) Lower Boundary of the Unit: The horizontal plane corresponding to the highest point of the finished grade of the land within the Unit as described and defined on Attachment 2.
- (ii) Upper Boundary of the Unit: The horizontal plane parallel to and fifty feet (50') above the lower boundary of the Unit.
- (iii) Lateral Boundaries of the Unit: A plane located on each side of a Unit perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit.

5.2.2. What Each 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; plumbing, septic, and utility lines, pipes, drains, and conduits; landscape irrigation and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Building or Unit exclusively.

Not a Typical Condominium Unit

Although a Unit resembles a platted lot: (i) a Unit does not include land; (ii) the conveyance of a Unit is not a metes and bounds conveyance of land; and (iii) the creation of a Unit does not constitute a subdivision of land. Instead, each Unit is the surface of a designated piece of land, and everything above the surface for 50 feet, and anything below the surface that serves or supports the above-surface Improvements.

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 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 2, 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. Only to the extent they are not part of the Unit, any front porch, sidewalk or fenced yard space that is obviously intended for the sole and exclusive use of the Unit to which the area is appurtenant is deemed a Limited Common Element, whether or not the area is so designated on Plat and Plans. If the boundaries of an appurtenant area change, with the Board's approval, the altered boundaries of the appurtenant area are the boundaries of the Limited Common Element. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only pursuant to the provisions of the Act; provided, however, that Declarant reserves the right in Appendix A of this Declaration, to create and assign Limited Common Elements within the Property.

5.4. **Common Interest Allocation.** The percentage of interest in the Common Elements (the "**Common Interest Allocation**") allocated to each Unit is set forth on Attachment 3 and is assigned in accordance with a ratio of one (1) to the total number of Units. The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units the reallocation will be effective on the date such amendment is Recorded.

5.5. **Common Expense Liabilities; Liability for Expenses of Landscape Services.** The percentage of liability for common expenses allocated to each Unit and levied pursuant to Article 6 is equivalent to the Common Interest Allocation assigned to the Unit. Each Occupied Unit shall be liable for an allocated share of the expenses associated with the Landscape Services in accordance with a ratio of one (1) to the total number of Occupied Units.

5.6. **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 Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

6.2. **Personal Obligation.** An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of his Unit. An Owner's obligation 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 six (6) types of Assessments: Regular, Landscape, 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 Common Elements, and Improvements, equipment, signage, and property owned by the Association.
- (ii) Maintenance examination and report, as required by *Article 9*.
- (iii) Utilities billed to the Association.
- (iv) Pest control.

- (v) Services obtained by the Association and available to all Units.
- (vi) Taxes on property owned by the Association and the Association's income taxes.
- (vii) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (viii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (ix) Insurance premiums and deductibles.
- (x) Contributions to the reserve funds.
- (xi) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

6.4.2. Annual Budget-Regular. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

6.4.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Unit will be liable for its allocated share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

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 are apportioned among the Units in the same manner as Regular Assessments.

6.5. **Landscape Assessments.** In addition to Regular Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments, the Board may levy one or more Landscape Assessments against the Owners of Occupied Units for the purpose of defraying, in whole or in part, expenses associated with performing the Landscape Services. The Landscape Assessments will be allocated uniformly against each Occupied Unit. Landscape Assessments do not require the approval of the Owners of Occupied Units. Each Occupied Unit will be liable for its allocated share of the expenses associated with the Landscape Services in accordance with the terms of *Section 5.5* above. If the Board fails to determine the amount of Landscape Assessments for any year, or delays in doing so, Owners will continue to pay the Landscape Assessment as last determined. If, during the course of a year, the Board determines that Landscape Assessments are insufficient to cover the estimated expenses associated with the Landscape Services for the remainder of the year, the Board may increase Landscape Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

6.6. **Special Assessments.** In addition to Regular Assessments, Landscape Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments, the Board may levy one (1) or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by at least a Majority of the votes in the Association. Special Assessments are apportioned among the Units in the same manner as Regular Assessments.

6.7. **Utility Assessments.** This *Section 6.7* 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 submetered by or through the Association. In addition to Regular Assessments, the Board may levy a Utility Assessment against each Unit. If the Units are submetered for consumption of a utility, the Utility Assessment will be based on the submeter reading. If the Units are not submetered, the Board may allocate the Association's utility charges among the Units by any conventional method for similar types of properties. 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 submetering 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.

6.8. **Individual Assessments.** In addition to Regular Assessments, Landscape Assessments, Utility Assessments, Special Assessments, and Deficiency 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: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; fines for violations of the Documents;

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transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Unit; common expenses that benefit fewer than all of the Units, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Unit basis; and "pass through" expenses for services to Units provided through the Association and which are equitably paid by each Unit according to benefit received.

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

6.10. **Working Capital Fund.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in the amount of Five Hundred and No/100 Dollars (\$500.00) will be paid by the transferee of the Unit to the Association for the Association's working capital fund. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Unit. Each working capital contribution will be collected upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital 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. Contributions to the fund are not advance payments of Regular Assessments or Landscape Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay operational expenses of the Association until the Declarant Control Period terminates.

6.11. **Reserve Fund Contribution.** Upon the transfer of a Unit from one Owner to a subsequent Owner (but excluding transfers from Declarant to the initial Owner), a fee in the amount of Five Hundred and No/100 Dollars (\$500.00) will be paid by the transferee of the Unit to the Association for the Association's replacement reserve funds. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any reserve fund assessment payable on the transfer of a Unit. Each reserve fund contribution will be collected upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the reserve fund contribution: (i) 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. Contributions to the fund are not advance payments of Assessments and are not refundable. Declarant may not use

reserve fund fees collected hereunder to pay operational expenses until the Declarant Control Period terminates.

6.12. **Due Date.** Regular Assessments, Landscape Assessments and Utility Assessments are due on the first calendar day of each month or on such other date as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, or Deficiency Assessment is given.

6.13. **Reserve Funds.** The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Elements.

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

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

6.16. **Limitations of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than

the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those Assessments are paid in full.

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

ARTICLE 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, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments.

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 or acquisition of the original Unit; (iii) a deed of trust or vendor's lien Recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to a lien for construction of Improvements to the Unit, regardless of when Recorded or perfected. It is also superior to any Recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

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, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

If you fail to pay Assessments to the Association, you may lose title to your Unit
if the Association forecloses its assessment lien.

7.4. **Notice and Release of Notice.** The Association's lien for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its

option, may cause a notice of the lien to be Recorded. If the debt is cured after a notice has been Recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

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

7.6. **Foreclosure of Lien.** The Assessment lien may be enforced by judicial or, to the fullest extent permitted under Applicable Law, 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 foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 8 EFFECT OF NONPAYMENT OF ASSESSMENTS

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

8.2. **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

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

8.4. **Collection Expenses.** The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

8.5. **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.

8.6. **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 twenty percent (20%) of the total Members (Co-Owners of a Unit constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

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

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

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

8.10. **Application of Payments.** The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a

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

ARTICLE 9

MAINTENANCE AND REPAIR OBLIGATIONS

9.1. **Association Maintains.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs and replaces, as a common expense, all General and Limited Common Elements, as well as any component of a Unit delegated to the Association by this Declaration (it being acknowledged that Landscape Services are not a common expense, and are instead defrayed through the levy of Landscape Assessments). A summary of the respective maintenance obligations of the Association and each Owner is attached hereto and incorporated herein by reference as Attachment 6 (the "**Maintenance Responsibility Chart**"). Although the Maintenance Responsibility Chart is attached to this Declaration as Attachment 6, it may be amended, restated, and published as a separate instrument. Any amended or restated Maintenance Responsibility Chart must be: (i) reflected in the Association's annual budget and reserve funds; and (ii) Recorded.

9.2. **Landscape Services.**

9.2.1. **Generally.** The Association will cause the Landscape Services to be provided to each Occupied Unit, accordingly, the Association is hereby granted an easement over and across each Occupied Unit and any Yard Area allocated thereto to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Landscape Services. Access hereunder to each Occupied Unit is limited to Monday through Saturday, from 7 a.m. until 6 p.m., and then only in conjunction with actual performance of Landscape Services. If the Association damages any Improvements located within an Occupied Unit or Yard Area in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

9.2.2. **Dates.** The Association or its designated landscape company may, from time to time, provide each Owner of an Occupied Unit with a schedule of dates on which the Landscape Services will be performed.

9.2.3. Irrigation. Each Owner of an Occupied Unit will be required to water turf thoroughly after the application of fertilizer. Each Owner of an Occupied Unit is also responsible for irrigation and all costs associated therewith, including construction and maintenance of any and all irrigation facilities within the Owner's Occupied Unit (unless otherwise discharged by the Association), and must properly irrigate all Yard Area within such Owner's Occupied Unit. Unless otherwise expressly approved by the Board, the Landscape Services will not include irrigation or the repair and maintenance of irrigation facilities. Each Owner of an Occupied Unit will refrain from irrigating the Yard Area of his Occupied Unit during the performance of Landscape Services.

9.2.4. Access. Notwithstanding the foregoing, in the event for any reason the Association is unable to access an Occupied Unit's Yard Area, the Association will be relieved of its obligation hereunder to provide Landscape Services to such Occupied Unit's Yard Area until such time that the Association is able to access such Occupied Unit's Yard Area.

9.2.5. Modifications to Scope. Notwithstanding any provision herein to the contrary, the Board shall have the right, in its sole and absolute discretion, at any time and from time to time, to expand, contract or otherwise modify the scope and character of Landscape Services to be provided by the Association.

9.2.6. Additional Landscape Services. The Association shall be permitted, but not obligated, upon an Owner's request, to provide landscape-related services to the Owner's Yard Area in addition to those services provided as part of the Landscape Services. The expenses associated with such additional landscape-related services shall be charged to the Owner to whom the services are provided as an Individual Assessment.

9.3. Owner's Obligations for Maintenance of Yard Area. Each Owner shall be obligated to perform any and all landscape maintenance and services within the Owner's Yard Area to the extent not provided by the Association as part of the Landscape Services. Each Owner must also maintain any portions of the Yard Area not maintained by the Association as part of the Landscape Services, at the Owner's expense, at a level, to a standard, and with an appearance that is commensurate with the neighborhood, as determined by the Architectural Reviewer in its sole and absolute discretion.

9.4. Inspection Obligations.

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

9.4.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices. 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 report the contents of such written reports to the members of the Association at the next meeting of the members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

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

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

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

9.5.1. To maintain, repair, and replace the Owner's Unit and all Improvements constructed therein or thereon, and any Limited Common Elements assigned exclusively to the Owner's Unit.

9.5.2. Except as otherwise provided herein, the maintenance of all landscaping located within the Owner's Unit or located within that portion of the General Common Elements which is parallel to the street facing any side of such Owner's Unit and between such Owner's Unit and a sidewalk, keeping same in a neat, clean, odorless, orderly, and attractive condition.

9.5.3. 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.

9.5.4. 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.

9.5.5. To be responsible for the Owner's willful or negligent acts and those of the Owner or Resident's family, guests, tenants, 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.

9.6. **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board, who shall delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Board in its sole and absolute discretion.

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

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

ARTICLE 10

ARCHITECTURAL COVENANTS AND CONTROL

10.1. **Purpose.** During the Development Period, the primary purpose of this Article is to reserve and preserve Declarant's right of architectural control. During the Development Period, the Declarant has the right to regulate every aspect of the exterior of the Property, including the exterior design, use and appearance of Units and Common Elements. After expiration or termination of the Development Period, or Declarant's delegation to the Association of all or a portion of its reserved rights as Architectural Reviewer in accordance with *Section 10.3.3* below, the Association will have the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation.

10.2. **Architectural Reviewer.** The purposes of this Article shall be undertaken by the Architectural Reviewer. Until termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. After termination of the Development Period, or Declarant's delegation to the Association of all or a portion of its reserved rights as

Architectural Reviewer in accordance with *Section 10.3.3* below, the rights of the Architectural Reviewer, as applicable in the case of a partial delegation in accordance with *Section 10.3.3* below, will automatically be transferred to the Board or a committee appointed by 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 nor the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this Article.

10.3.2. **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market Units in its Development or in Declarant's other developments. Accordingly, each Owner agrees that, during the Development Period, no Improvements will be started or progressed or modified without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole 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 reserved rights as Architectural Reviewer under this Article to an Architectural Control Committee appointed by the Board or a committee comprised of architects, engineers, or other Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (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.

UNTIL THE EXPIRATION OR TERMINATION OF THE DEVELOPMENT PERIOD, ONLY THE DECLARANT HAS THE AUTHORITY TO MAKE DECISIONS REGARDING ARCHITECTURAL CONTROL IN THE ASSOCIATION - INCLUDING ALL TASTE, DESIGN AND STANDARDS!

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

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

10.6. **Prohibition of Construction, Alteration and Improvement.** Without the Architectural Reviewer's prior written approval, a Person may not commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property.

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

10.7. **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 architectural control committee, the Association's manager, or any other representative of the Association. To be valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Architectural Reviewer's actual receipt of the Owner's application, **the application is deemed denied. Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed.** If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded. 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 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 will retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

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

10.9.1. The Owner complies with *Section 3.3*.

10.9.2. The Owner must adhere strictly to the plans and specifications approved by the Architectural Reviewer.

10.9.3. The Owner must initiate and complete the Improvement in a timely manner.

10.9.4. If the approved application is for work that requires a building permit from a governmental authority, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with Applicable Law. In addition, approval of plans and specifications by a governmental authority does not ensure Architectural Reviewer approval.

ARTICLE 11

USE RESTRICTIONS

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

11.2. **Association's Right to Promulgate Rules and Amend Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce

reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

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

11.3.1. Use of Common Elements.

11.3.2. Hazardous, illegal, or annoying materials or activities on the Property.

11.3.3. The use of Property-wide services provided through the Association.

11.3.4. The consumption of utilities billed to the Association.

11.3.5. The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.

11.3.6. The occupancy and leasing of Units.

11.3.7. Animals.

11.3.8. Vehicles.

11.3.9. Disposition of trash and control of vermin, termites, and pests.

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

11.4. **Animals.** No animal, bird, fish, reptile, or insect of any kind, may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy quotas, no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, may be maintained in each Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules.

11.5. **Annoyance.** No Unit or Limited Common Element may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the

desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Residents of other Units; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

11.6. **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 neighboring Units. The Board will be the arbitrator of acceptable appearance standards.

11.7. **Declarant Privileges.** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents, as provided in Appendix A of this Declaration. Declarant's exercise of a Development Period right that appears to violate a Rule or a Use Restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

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

11.9. **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.

11.10. **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, without the Board's written authorization.

11.11. **Landscaping.** No person may perform landscaping, planting, or gardening anywhere within the Common Elements without the Board's prior written authorization.

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

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

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

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

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

11.16.1. **Dishes Over One Meter Prohibited.** Unless otherwise approved by the Board, an Antenna/Dish which is over one (1) meter in diameter is prohibited within the Regime.

11.16.2. **Notification.** An Owner or Resident who wishes to install an Antenna/Dish one (1) meter or less in diameter (a "Permitted Antenna") must submit a written notice to the Board or its designee, which notice must include the Owner or Resident's installation plans for the satellite dish.

11.16.3. **One Dish Limitation.** Unless otherwise approved by the Board, only one (1) Permitted Antenna per Unit is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the Board or its designee. Upon notification, the Owner will be permitted to install an additional Permitted

Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.

11.16.4. Permitted Installation Locations – Generally. An Owner or Resident may erect a Permitted Antenna (after written notification has been provided to the Board or its designee) if the Owner or Resident has an exclusive use area in which to install the antenna. An “exclusive use area” is an area in which only the Owner or Resident may enter and use to the exclusion of all other Owners and Residents. Unless otherwise approved by the Board or its designee, the Permitted Antenna must be entirely within the exclusive use area of the Owner’s Unit.

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

11.16.5. 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 Board 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.

11.17. Vehicles. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the 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, 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 effect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

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

11.19. **Wireless Internet Systems.** A wireless Internet communication network (“WiFi System”) may be installed or otherwise used in a Unit provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Regime. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems within the Regime. The Association may require that any WiFi System found to cause such problems be terminated. The Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi Systems in the Regime, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Regime.

ARTICLE 12 UNIT LEASING

12.1. **Lease Conditions.** The leasing of Units is subject to the following conditions, which shall apply except to the extent otherwise approved in writing by the Board: (i) no Unit may be rented for transient or hotel purposes or for a period less than twelve (12) months; (ii) no Unit may be subdivided for rent purposes, and not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Documents; (iv) an Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

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

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

12.3.1. **Violation Constitutes Default.** Failure by the tenant or his invitees to comply with the Documents or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant, subject to the terms of this Section.

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

12.3.3. **Association Not Liable for Damages.** The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

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

ARTICLE 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 its Board of Directors."

13.2. **The Association.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under the laws of the State 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, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

13.3. **Name.** A name is not the defining feature of the Association. Although the initial name of the Association is the Edgewater Condominium Community, Inc., the Association may operate under any name that is approved by the Board and (i) filed with the Williamson 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. 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 in the Real Property Records of Williamson County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

13.5. **Governance.** Except during the Declarant Control Period, the Association will be governed by the Board elected by the Members. Unless the Bylaws or Certificate provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners representing at least a Majority of the votes in the Association, or at a meeting by Owners holding at least a Majority of the votes in the Association that are represented at the meeting.

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 votes in the Association. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and

obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

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 meetings of the Association. If a Unit is owned by more than one (1) person or entity, 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 (1) 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, the Board, or the Association's Members, employees, and agents. 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 the Texas Business Organizations Code.

13.10. **Indemnification.** The Association indemnifies every officer, director, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association may maintain general liability and director's 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 and Utility 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 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 charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

13.12.4. Exclusions. The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; 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 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), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine -- unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. 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 hearing, provided they are consistent with the requirements of Applicable Law.

14.2. Remedies. The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by 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 erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Unit without judicial proceedings.

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.

ARTICLE 15

INSURANCE

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

15.1.1. **Unavailability.** The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

15.1.2. **No Coverage.** Even if the Association and the Owner have adequate amounts of recommended and required 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 the Owner's Unit at such Owner's sole expense.

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 such Owner's trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

15.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Eligible Mortgagees, and the insurer will give go 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 his Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with the Notice and hearing Section 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 event of damage or destruction from any insured hazard. The Federal National Mortgage Association recommends use of a guaranteed replacement cost endorsement, or a replacement cost endorsement, together with an agreed amount endorsement in case of coinsurance.

15.2.1. Common Property Insured. If insurable, the Association will insure: (i) General Common Elements; (ii) Limited Common Elements serving more than one (1) Unit, if any; 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 any Units. Accordingly, each Owner of a Unit will be obligated to maintain property insurance on such Owner's Unit and Limited Common Element assigned exclusively to the Owner's Unit, including any betterments and Improvements installed within 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 HIS 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.

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

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

15.5. 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 his Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. The amount of coverage should be at least that required by an Underwriting Lender, to the extent reasonably available. The purpose of this requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

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

15.7. **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.

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

15.9. **Mortgagee Required Policies.** Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an Underwriting Lender for condominium developments as long as an Underwriting Lender is a Mortgagee or an Owner.

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

ARTICLE 16

RECONSTRUCTION OR REPAIR AFTER LOSS

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

16.2. **Restoration Funds.** For purposes of this Article, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Property. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Association directors or that of an agent duly authorized by the Board.

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

16.2.2. Insufficient Proceeds. If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference.

16.2.3. Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by such Owner, 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 sentence 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 Property. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

16.3.2. Plans and Specifications. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Units will be repaired and restored substantially in accordance with original construction plans and specifications. Alternate plans and specifications for repair and restoration of Common Elements must be approved by Owners holding at least two-thirds of the votes in the Association and by certain Mortgagees if so required by Article 18 of this Declaration.

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 Building and other Improvements constructed within 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 Building and other Improvements 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 18.3* below.

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

ARTICLE 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. Some sections of this Article apply to Mortgagees, as defined in *Article 1*. Other sections apply to Eligible Mortgagees, as defined below.

18.1.1. **Known Mortgagees.** An Owner who mortgages his Unit will notify the Association, giving the complete name and address of his mortgagee and the loan number. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of mortgages on Units. The Association may rely on the information provided by Owners and mortgagees.

18.1.2. **Eligible Mortgagees.** "**Eligible Mortgagee**" means the holder, insurer, or guarantor of a first purchase money mortgage secured by a Recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name

and address, the loan number, and the identifying number and street address of the mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Units subject to mortgages held by Eligible Mortgagees. For example, "51 percent of Eligible Mortgagees" means Eligible Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Eligible Mortgagees.

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

18.3. **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 Eligible Mortgagees.

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

18.5. **Other Mortgagee Rights.**

18.5.1. **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.

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

18.5.3. **Attendance at Meetings.** A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

18.5.4. 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.

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

18.6. 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 coverages, to the extent they are 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.

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

18.7.1. Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit.

18.7.2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the mortgaged Unit.

18.7.3. A lapse, cancellation, or material modification of any insurance policy maintained by the Association.

18.7.4. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

18.7.5. Any proposed amendment of a material nature, as provided in this Article.

18.7.6. Any proposed termination of the condominium status of the Property.

18.8. Amendments of a Material Nature. A Document amendment of a material nature must be approved by owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Eligible Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT PROVIDED IN APPENDIX A ATTACHED**

HERETO. A change to any of the provisions governing the following would be considered material:

18.8.1. Voting rights.

18.8.2. Assessment liens or the priority of assessment liens.

18.8.3. Reductions in reserves for maintenance, repair, and replacement of Common Elements.

18.8.4. Responsibility for maintenance and repairs.

18.8.5. 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, by agreement between Owners (only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action).

18.8.6. Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action.

18.8.7. Convertibility of Units into Common Elements or Common Elements into Units.

18.8.8. Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.

18.8.9. Property or fidelity insurance requirements.

18.8.10. Imposition of any restrictions on the leasing of Units.

18.8.11. Imposition of any restrictions on Owners' right to sell or transfer their Units.

18.8.12. Restoration or repair of the Property, in a manner other than that specified in the Documents, after hazard damage or partial condemnation.

18.8.13. Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 19 AMENDMENTS

19.1. **Consents Required.** As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant acting alone, or by certain

Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association.

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

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, Eligible 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 or the Act without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because Appendix A of this Declaration is destined to become obsolete, beginning seven (7) years after the date this Declaration is first recorded, the Board may restate, rerecord, or publish this Declaration without Appendix A. The automatic expiration and subsequent deletion of Appendix A does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

ARTICLE 20 DISPUTE RESOLUTION

20.1. **Introduction and Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of

litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

20.1.1. **"Claim"** means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims as defined below, and including without limitation:

- (i) Claims relating to the rights and/or duties of Declarant, or its permitted assigns, under the Documents.
- (ii) Claims relating to the design or construction of the Property or any Improvement by Declarant, its permitted assigns, its contractor or subcontractors, or its designee.

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

20.1.3. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article:

- (i) The Association's claim for Assessments and any action by the Association to collect Assessments.
- (ii) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- (iii) Any enforcement by the Association or the Declarant of the easements, architectural control, maintenance, and use restrictions of this Declaration; provided, however, that any enforcement action brought by the Association against the Declarant, or vice versa, is not an Exempt Claim hereunder.
- (iv) A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

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

20.2. **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied

with the procedures of this Article. As provided in *Section 20.7* below, a Claim will be resolved by binding arbitration.

20.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 20.4* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 20.4*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 20.4* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 20.5* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 20.5* is required without regard to the monetary amount of the Claim.

20.4. **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. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

20.5. **Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 20.5*.

20.6. **Termination of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator,

the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

20.7. **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 20.7*. This section may not be amended without the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding at least seventy percent (70%) of the votes in the Association.

20.7.1. **Governing Rules.** If a Claim has not been resolved after Mediation as required by *Section 20.5*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 20.7* and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Williamson County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 20.7*, this *Section 20.7* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) one (1) arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one (1) arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

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

20.7.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 20.7* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes 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.

20.7.3. Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 20.7*.

20.7.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *Section 20.7*; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Claim within fifteen (15) days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by Applicable Law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

20.7.5. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Williamson County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal

Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant 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.

20.8. **Allocation of Costs.** Except as otherwise provided in this Article, 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.

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

20.10. **Period of Limitation.**

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

20.10.2. **For Actions by the Association.** The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors,

including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years from the date Declarant substantially completed the Common Elements unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, two (2) years and one (1) day after the Declarant Control Period, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the Applicable Law governing the limitation period and period of repose shall apply to the Claim.

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

20.11.1. **Owner Acceptance.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this *Section 20.11* and *Article 20*.

20.11.2. **Owner Approval.** The Association may not initiate binding arbitration or any judicial proceeding without the prior approval of Owners holding at least a Majority of the votes in the Association, except that no such approval is required for the initiation of arbitration or litigation to resolve any Exempt Claim.

20.11.3. **Funding Arbitration and Litigation.** Except for Exempt Claims, the Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this *Article 20* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

20.11.4. **Settlement.** The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate the settlement of arbitration and litigation, and may execute any document related thereto, such as settlement agreement and waiver or release of claims.

This *Section 20.11* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding seventy percent (70%) of the votes in the Association.

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 personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, 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 federal and State law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law.

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

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

21.6. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. 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. **Declarant as Attorney in Fact and Proxy.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Appendix A and elsewhere in this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit within the Regime, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit in the Regime, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to Appendix A or elsewhere in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage against a Unit in the Regime, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit in the Regime, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to Appendix A or elsewhere in this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to Appendix A or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Business Organizations Code the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant pursuant to Appendix A or elsewhere in this Declaration on the date Declarant no longer has the right to exercise such rights. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-

revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

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

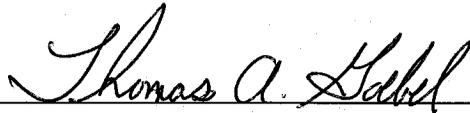
| | |
|--------------|--|
| Exhibit A | Property |
| Exhibit B | Additional Property |
| Attachment 1 | Plat and Plans |
| Attachment 2 | Encumbrances |
| Attachment 3 | Common Interest Allocation |
| Attachment 4 | Guide to Association's Examination of Common Elements |
| Attachment 5 | Guide to Association's Major Management and Governance Functions |
| Attachment 6 | Maintenance Responsibility Chart |
| Attachment 7 | Tax Certificate |
| Appendix A | Declarant Reservations and Representations |

[SIGNATURE PAGE FOLLOWS]

EXECUTED on this 30TH day of December, 2015.

PROPERTY OWNER:

SPANISH CREEK DEVELOPMENT, INC.,
a Texas corporation

By: 
Thomas A. Goebel, President

DECLARANT:

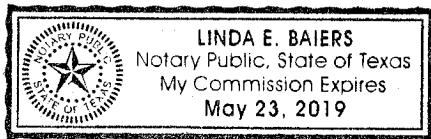
THE BROHNGROUP, LLC,
a Texas limited liability company

By: 
Adam B. Boenig, Managing Member

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 30th day of December, 2015, by Thomas A. Goebel, President of Spanish Creek Development, Inc., a Texas corporation, on behalf of said corporation.

(seal)



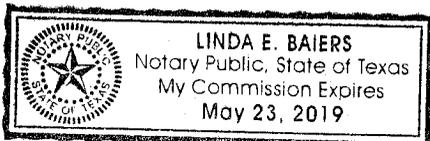
A handwritten signature in cursive script, appearing to read "L. Baiers", written over a horizontal line.

Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 30th day of December, 2015, by Adam B. Boenig, Managing Member of The Brohn Group, LLC, a Texas limited liability company, on behalf of said limited liability company.

(seal)



A handwritten signature in cursive script, appearing to read "L. Baiers", written over a horizontal line.

Notary Public Signature

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the liens created by the Warranty Deed with Vendor's Lien dated June 28, 2013, recorded under Document No. 2013061033, Official Public Records of Williamson County, Texas; the Deed of Trust (Security Agreement, Assignment of Leases, Assignment of Rents, and Financing Statement) dated June 28, 2013, recorded under Document No. 2013061034, Official Public Records of Williamson County, Texas; the Financing Statement dated June 28, 2013, recorded under Document No. 2013061035, Official Public Records of Williamson County, Texas; the Special Warranty Deed dated July 29, 2015, recorded under Document No. 2015067856, Official Public Records of Williamson County, Texas; and the Deed of Trust (Security Agreement, Assignment of Leases, Assignment of Rents, and Financing Statement) dated July 29, 2015, recorded under Document No. 2015067857, Official Public Records of Williamson County, Texas (collectively, the "Liens"); securing notes of even dates therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Liens to this Declaration, both on the condition that the Liens shall remain superior to the Assessment Lien in all events. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

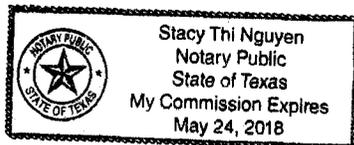
COMMERCE NATIONAL BANK,
a branch of Lubbock National Bank,
a Texas financial institution

By: *Mark E. Kalish, Sr.*
Mark E. Kalish, Senior Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 25 day of January, 2016 by Mark E. Kalish, Senior Vice President of Commerce National Bank, a branch of Lubbock National Bank, a Texas financial institution, on behalf of said financial institution.

(seal)



Stacy Thi Nguyen
Notary Public, State of Texas

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by the Second Lien Deed of Trust dated July 29, 2015, recorded under Document No. 2015067860, Official Public Records of Williamson County, Texas (the "Lien"), securing a note of even date therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

SPANISH CREEK INVESTMENTS, LP,
a Texas limited liability company

By: Goebel Management, LLC,
a Texas limited liability company,
its General Partner

By: Thomas A. Goebel
Thomas A. Goebel, Manager

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 30th day of December, 2015 by Thomas A. Goebel, Manager of Goebel Management, LLC, a Texas limited liability company, General Partner of Spanish Creek Investments, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

[Signature]

Notary Public, State of Texas

(seal)

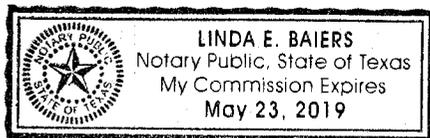


EXHIBIT A

PROPERTY

20.74 acres out of Lot 1, Block A, FINAL PLAT OF EDGEWATER, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded under Document No. 2015016045, Official Public Records of Williamson County, Texas.

EXHIBIT B

ADDITIONAL PROPERTY

The remainder of Lot 1, Block A, FINAL PLAT OF EDGEWATER, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded under Document No. 2015016045, Official Public Records of Williamson County, Texas.

ATTACHMENT 1

PLAT AND PLANS

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

Printed Name: Valerie Zurcher RPLS
RPLS or License No.: 6222

BOUNDARIES OF UNIT

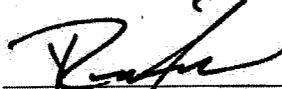
The legal boundaries of each Unit are established by the Declarant and the plat and plans attached hereto. However, each Owner acknowledges that the Unit may be measured and depicted in a manner which differs from the legal boundaries of a Unit. For example, the Unit may be measured or depicted differently for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes.

SEE NEXT PAGE FOR ORIGINAL CERTIFICATION

"ATTACHMENT-1"
EDGEWATER CONDOMINIUMS
PLATS AND PLANS
CERTIFICATION OF SURVEYOR

THE ATTACHED PLAT AND PLANS, ATTACHED HERETO AS
"ATTACHMENT-1" CONTAIN THE INFORMATION REQUIRED BY SECTION
82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT, AS APPLICABLE.

This 11th day of DECEMBER 2015 A.D.



Valerie Zurcher R.P.L.S.
Registered Professional Land Surveyor No. 6222
7800 Shoal Creek Blvd., Suite 200 West
Austin, Texas 78757
(512) 454-8711



7800 SHOAL CREEK BLVD | AUSTIN TEXAS 78757 | PHONE: 512.454.8711
SUITE 200 WEST | FAX: 512.454.8807

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FROM REGISTRATION # 019
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FROM REGISTRATION # 10000-00

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DECEMBER 2015

SHEET 1 OF 13

50863-00

DESCRIPTION OF CONDOMINIUM PROPERTY:

20.74 ACRES BEING OUT OF LOT 1, BLOCK A, FINAL PLAT OF EDGEWATER, A CALLED 52.178 ACRE TRACT RECORDED IN DOC. NO. 2015016045 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SITUATED IN THE WILLIAM S. PARKER SURVEY, ABSTRACT No. 9 AND THE WASHINGTON ANDERSON SURVEY, ABSTRACT No. 15, IN THE CITY OF CEDAR PARK, WILLIAMSON COUNTY, TEXAS.

GENERAL NOTES:

- 1.) ALL IMPROVEMENTS AND LAND REFLECTED ON THE PLAT ARE DESIGNATED AS GENERAL COMMON ELEMENTS, SAVE AND EXCEPT PORTIONS OF THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS OR "L.C.E." OR UNITS: (i) IN THE DECLARATION OF CONDOMINIUM REGIME FOR EDGEWATER CONDOMINIUMS, (THE "DECLARATION") OR (ii) ON THE PLATS AND PLANS OF THE REGIME.
- 2.) OWNERSHIP AND USE OF CONDOMINIUM UNITS IS SUBJECT TO THE RIGHTS AND RESTRICTIONS CONTAINED IN THE DECLARATION.
- 3.) EACH UNIT, BUILDING, LIMITED COMMON ELEMENT AND GENERAL COMMON ELEMENT IS SUBJECT TO SPECIAL RIGHTS RESERVED BY THE DECLARANT AS PROVIDED IN APPENDIX A" OF THE DECLARATION OF CONDOMINIUM REGIME FOR THE EDGEWATER CONDOMINIUMS. PURSUANT TO SUCH PROVISIONS, AMONG OTHER THINGS, DECLARANT HAS RESERVED THE RIGHT TO: (i) COMPLETE OR MAKE IMPROVEMENTS INDICATED ON THE PLAT AND PLANS; (ii) EXERCISE ANY DEVELOPMENT RIGHT PERMITTED BY THE TEXAS UNIFORM CONDOMINIUM ACT AND THE DECLARATION INCLUDING THE ADDITION OF REAL PROPERTY TO THE REGIME, WHICH PROPERTY MAY BE ADDED AS UNITS, GENERAL COMMON ELEMENTS AND/OR LIMITED COMMON ELEMENTS; (iii) MAKE THE PROPERTY PART OF A LARGER CONDOMINIUM OR PLANNED COMMUNITY; (iv) USE UNITS OWNED OR LEASED BY DECLARANT AS MODELS, STORAGE AREAS, AND OFFICES FOR THE MARKETING, MANAGEMENT, MAINTENANCE, CUSTOMER SERVICE, CONSTRUCTION, AND LEASING OF THE PROPERTY; AND (v) APPOINT OR REMOVE ANY DECLARANT-APPOINTED OFFICER OR DIRECTOR OF THE ASSOCIATION DURING THE DECLARANT CONTROL PERIOD (AS DESCRIBED IN THE DECLARATION) CONSISTENT WITH THE TEXAS UNIFORM CONDOMINIUM ACT. AS PROVIDED IN APPENDIX "A" OF THE DECLARATION, FOR PURPOSES OF PROMOTING IDENTIFYING, AND MARKETING THE PROPERTY, DECLARANT RESERVES AN EASEMENT AND RIGHT TO PLACE OR INSTALL SIGNS, BANNERS, FLAGS, DISPLAY LIGHTING, POTTED PLANTS, EXTERIOR DECORATIVE ITEMS, SEASONAL DECORATIONS, TEMPORARY WINDOW TREATMENTS, AND SEASONAL LANDSCAPING ON THE PROPERTY, INCLUDING ITEMS AND LOCATIONS THAT ARE PROHIBITED TO OTHER OWNERS AND RESIDENTS. DECLARANT RESERVES AN EASEMENT AND RIGHT TO MAINTAIN, RELOCATE, REPLACE, OR REMOVE THE SAME FROM TIME TO TIME WITHIN THE PROPERTY. AS PROVIDED IN APPENDIX "A" OF THE DECLARATION, DECLARANT HAS AN EASEMENT AND RIGHT OF INGRESS AND EGRESS IN AND THROUGH THE COMMON ELEMENTS (AS DEFINED IN THE DECLARATION) AND UNITS OWNED OR LEASED BY DECLARANT FOR PURPOSES OF CONSTRUCTING, MAINTAINING, MANAGING, AND MARKETING THE PROPERTY, AND FOR DISCHARGING DECLARANT'S OBLIGATIONS UNDER THE TEXAS UNIFORM CONDOMINIUM ACT AND THE DECLARATION.
- 4.) GCE SUBJECT TO DEVELOPMENT RIGHTS.



7300 DRYCAL CREEK BLVD | AUSTIN TEXAS 78717 | PHONE: 812-484-0711
SUITE 220 WEST | FAX: 812-484-0807

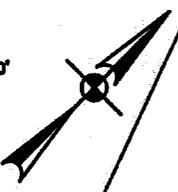
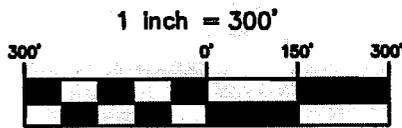
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 474
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 10200-08

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SHEET 2 OF 13

DECEMBER 2015

50863-00



DOUGLAS R. HOLMANS
AND WIFE, MAXINE
HOLMANS
A CALLED 40.23
ACRE TRACT
DOC. NO. 9526013
(O.R.)

LIMITS OF
CONDOMINIUM
REGIME

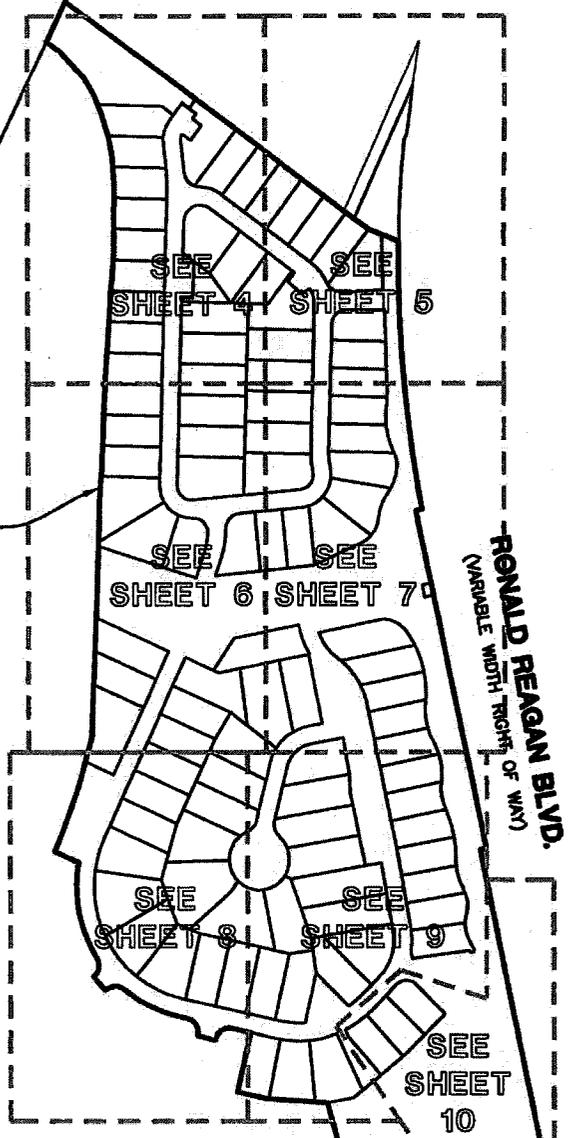
LOT 1, BLOCK A
FINAL PLAT OF
EDGEWATER
A CALLED 52.178
ACRE TRACT
DOC. NO.
2015016045 (O.P.R.)

WILLIAM WILSON
A CALLED 14.51
ACRE TRACT
VOL. 1792, PGS.
394-398 (O.R.)

LOT 1, BLOCK A
FINAL PLAT OF
EDGEWATER
A CALLED 52.178
ACRE TRACT
DOC. NO.
2015016045 (O.P.R.)

BULA LEWIS FARMS
THE REMAINING
PORTION OF A
CALLED A 57.67
ACRE TRACT
DOC. NO.
2012033218 (O.R.)

1431 INVESTORS, LTD.
A CALLED 29.68
ACRE TRACT
DOC. NO.
2004057866 (O.R.)



LEGEND:

- O.P.R. OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS
- O.R. OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS
- P.U.E. PUBLIC UTILITY EASEMENT
- G.C.E. GENERAL COMMON ELEMENT
- CALCULATED POINT

PAPE-DAWSON ENGINEERS

7800 BIRCHAL CREEK BLVD SUITE 200 WEST AUSTIN TEXAS 78717 PHONE: 817.454.8711 FAX: 817.450.8887

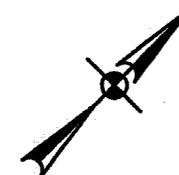
TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 476 TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 160288-00

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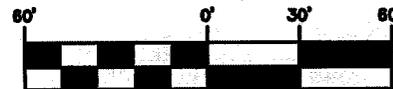
DECEMBER 2015

SHEET 3 OF 13

50863-00



1 inch = 60'

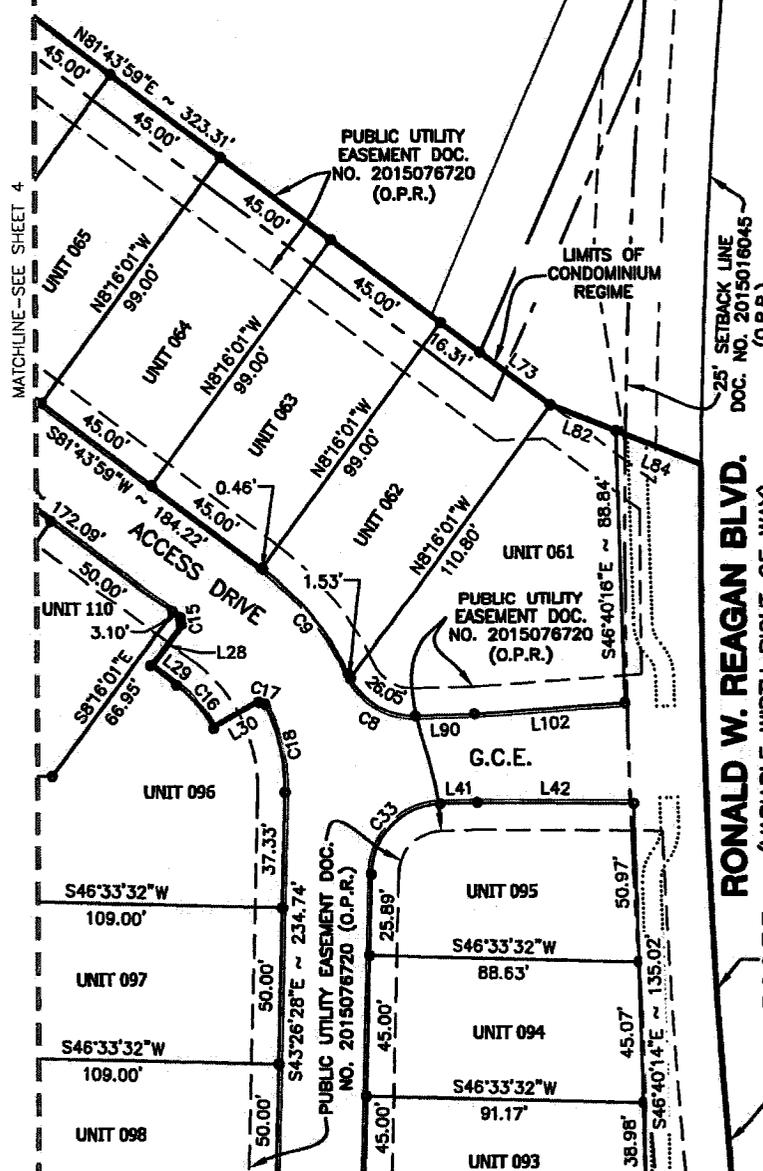


LANSFORD FAMILY LIMITED PARTNERSHIP
A CALLED 0.121 OF AN ACRE TRACT
DOC. NO. 2003013995 (O.R.)

DOUGLAS R. HOLMANS AND WIFE, MAXINE HOLMANS
A CALLED 40.23 ACRE TRACT
DOC. NO. 9526013 (O.R.)

R=2,183.00'
Delta=1°58'19"
CB=S38°37'31"E
CD=75.12'
L=75.13'

S20°15'40"E
11.78'



25' SETBACK LINE
DOC. NO. 2015018045 (O.P.R.)

RONALD W. REAGAN BLVD.
(VARIABLE WIDTH RIGHT OF WAY)

R=2,187.00'
Delta=15°42'44"
CB=S47°48'27"E
CD=597.87'
L=599.75'

PAPE-DAWSON ENGINEERS

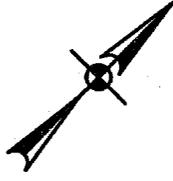
7800 BRADAL CREEK BLVD. SUITE 220 WEST AUSTIN TEXAS 78757 PHONE: 817.451.1711 FAX: 817.451.1717
REAL BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 008-02
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LIMITS OF CONDOMINIUM REGIME

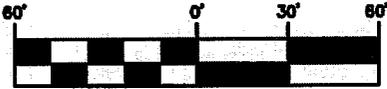
MATCHLINE--SEE SHEET 7

MATCHLINE--SEE SHEET 4

MATCHLINE-SEE SHEET 4



1 inch = 60'



LIMITS OF CONDOMINIUM REGIME

LOT 1, BLOCK A
FINAL PLAT OF
EDGEWATER
A CALLED 52.178
ACRE TRACT
DOC. NO.
2015016045 (O.P.R.)

"RESERVOIR AREA"
UPPER BRUSHY CREEK WCID FLOOD
CONTROL STRUCTURE #4 EASEMENT
DOC. NO. 2015009699 (O.P.R.)

DRAINAGE EASEMENT
DOC. NO.
2015016045 (O.P.R.)

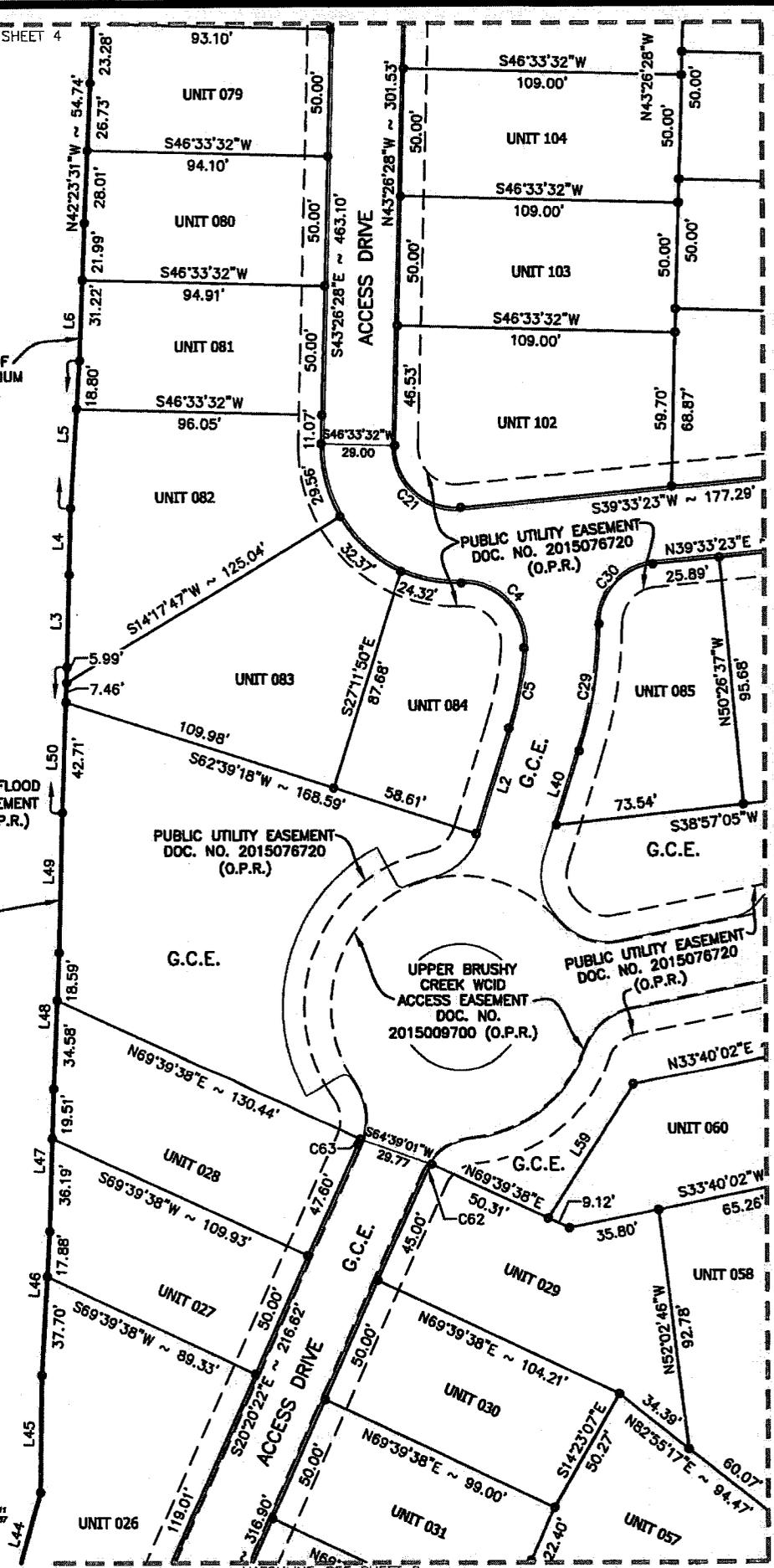
SHEET 6 OF 13
50863-00
DECEMBER 2015

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SUITE 220 WEST | FAX: 817.484.8857

STATE BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 102394-00

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MATCHLINE-SEE SHEET 8

MATCHLINE-SEE SHEET 7

MATCHLINE-SEE SHEET 6

"RESERVOIR AREA"
UPPER BRUSHY CREEK WCID
FLOOD CONTROL STRUCTURE #4
EASEMENT
DOC. NO. 2015008699

DRAINAGE EASEMENT
DOC. NO.
2015016045 (O.P.R.)

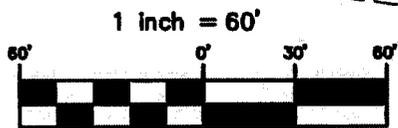
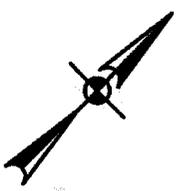
LOT 1, BLOCK A
FINAL PLAT OF
EDGEWATER
A CALLED TRACT
ACRE TRACT
DOC. NO.
2015016045 (O.P.R.)

LIMITS OF
CONDOMINIUM
REGIME

UPPER BRUSHY
CREEK WCID ACCESS
EASEMENT
DOC. NO.
2015009700 (O.P.R.)

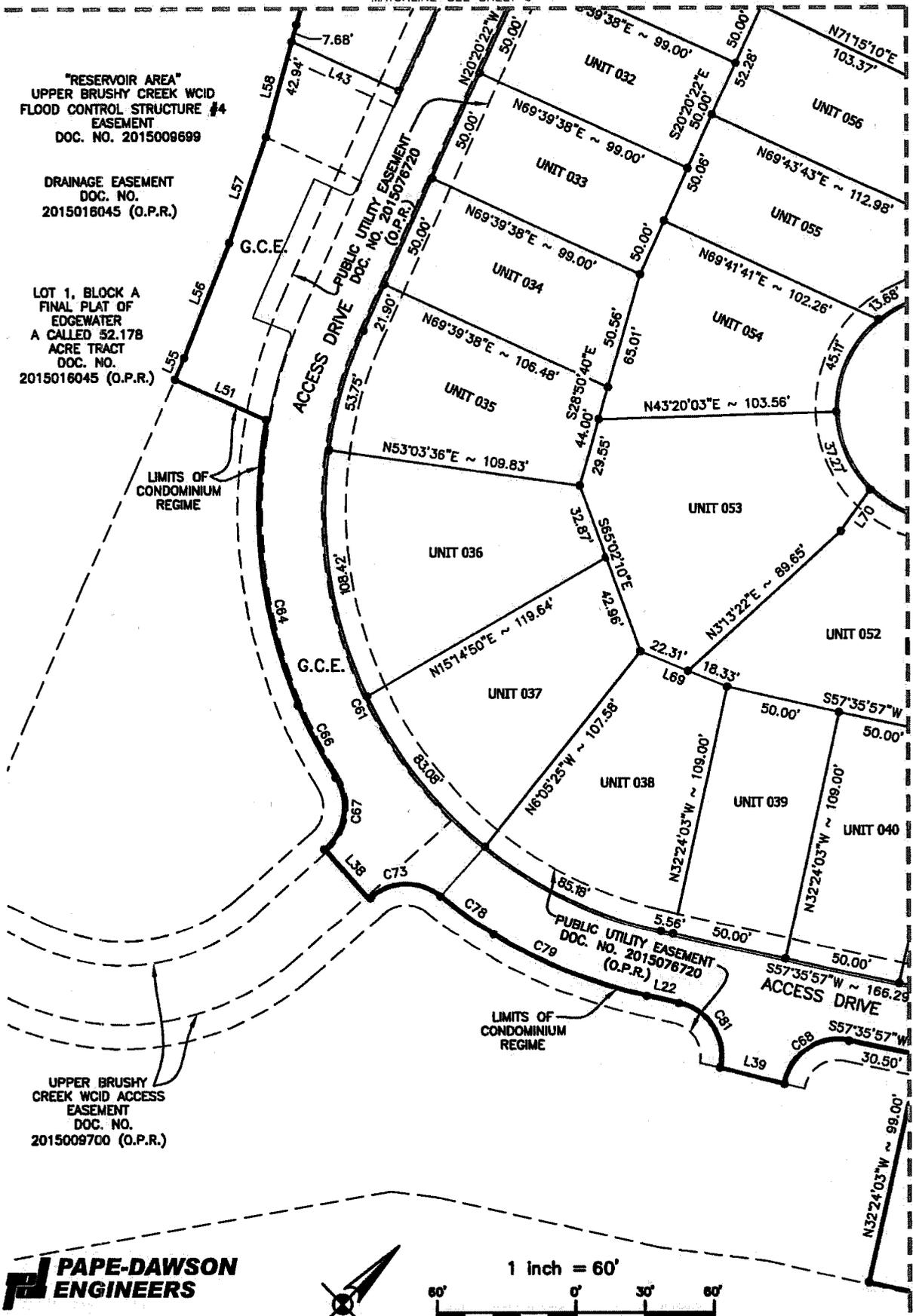
**Pape-Dawson
ENGINEERS**

7800 SIGNAL CREEK BLVD | SUITE 220 WEST | AUSTIN TEXAS 78717 | PHONE: 817.484.8711 FAX: 817.484.8887
Texas Board of Professional Engineers, Public Registration # 479
Texas Board of Professional Land Surveyors, Public Registration # 18888-02
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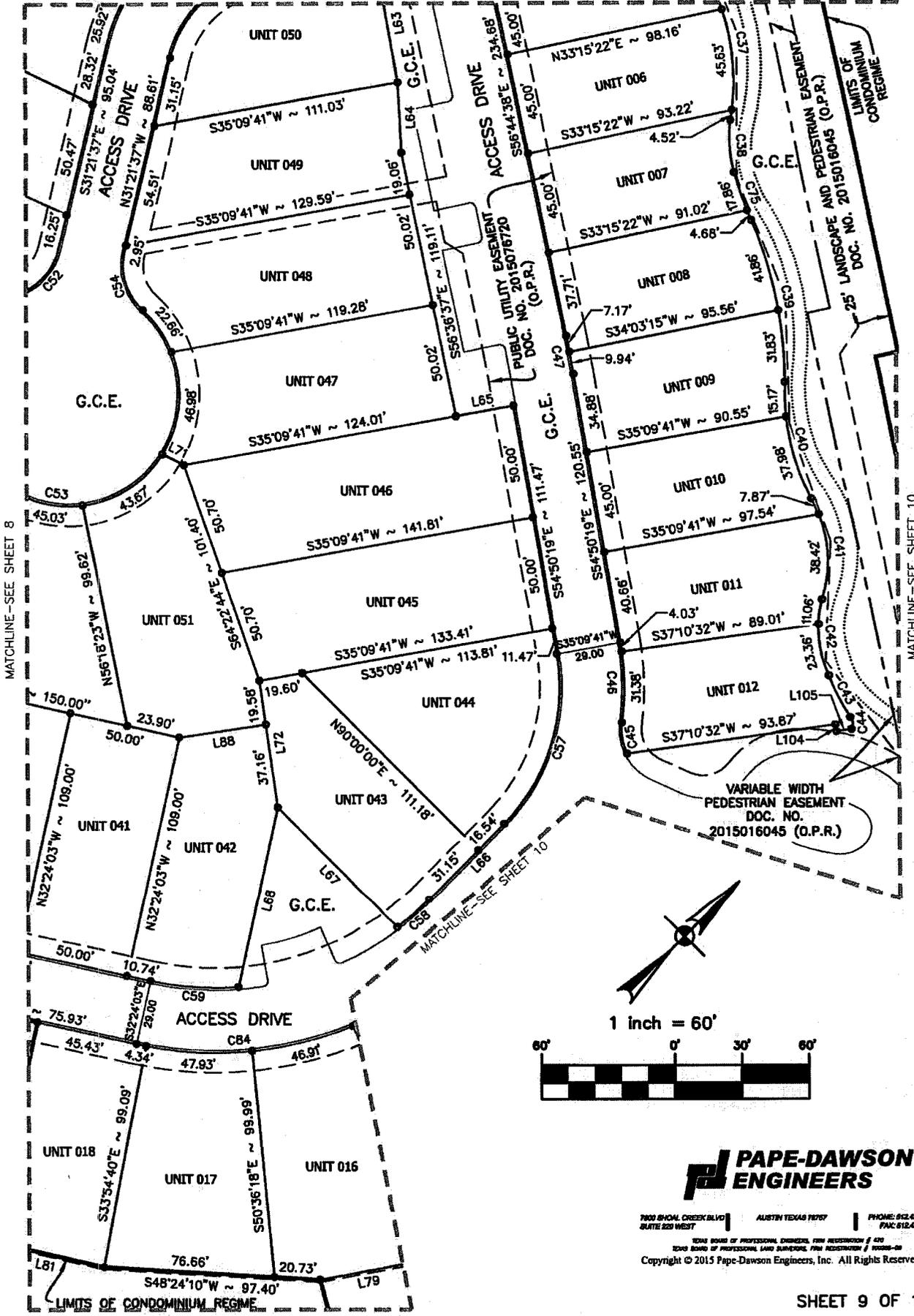
DECEMBER 2015

SHEET 8 OF 13
50863-00



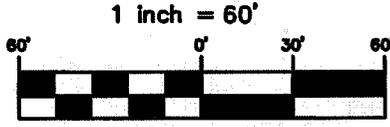
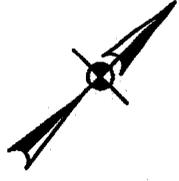
MATCHLINE-SEE SHEET 9

MATCHLINE--SEE SHEET 7



MATCHLINE--SEE SHEET 8

MATCHLINE--SEE SHEET 10



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ENGINEERS

7800 SPICAL CREEK BLVD SUITE 220 WEST AUSTIN TEXAS 78757 PHONE: 512.458.8711 FAX: 512.458.8887

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SHEET 9 OF 13
50863-00

DECEMBER 2015

MATCHLINE--SEE SHEET 10

| LINE TABLE | | |
|------------|--------|-------------|
| LINE # | LENGTH | BEARING |
| L1 | 34.57' | S08°16'01"E |
| L2 | 42.71' | S27°11'50"E |
| L3 | 35.79' | N43°24'20"W |
| L4 | 25.61' | N43°24'20"W |
| L5 | 57.27' | N41°13'50"W |
| L6 | 53.21' | N42°40'41"W |
| L7 | 56.25' | N42°11'53"W |
| L8 | 58.00' | N40°36'47"W |
| L9 | 58.65' | N41°54'22"W |
| L10 | 53.62' | N40°08'49"W |
| L11 | 55.05' | N44°22'32"W |
| L12 | 59.43' | N44°22'48"W |
| L13 | 45.35' | N48°21'32"W |
| L14 | 36.74' | N55°36'57"W |
| L15 | 35.97' | N62°19'39"W |
| L16 | 33.96' | N66°09'04"W |
| L17 | 33.69' | N76°02'32"W |
| L18 | 57.09' | N86°53'29"W |
| L19 | 29.62' | S80°09'26"W |
| L20 | 73.72' | N19°34'39"W |
| L21 | 23.97' | S81°43'59"W |
| L22 | 14.37' | S57°35'57"W |
| L23 | 14.50' | S81°43'59"W |
| L24 | 19.00' | N08°16'01"W |
| L26 | 14.50' | S81°43'59"W |

| LINE TABLE | | |
|------------|--------|-------------|
| LINE # | LENGTH | BEARING |
| L27 | 15.88' | N81°43'59"E |
| L28 | 17.00' | S08°16'01"E |
| L29 | 10.63' | N81°43'59"E |
| L30 | 16.95' | N15°15'55"E |
| L31 | 17.00' | N46°33'32"E |
| L32 | 57.00' | N43°26'28"W |
| L33 | 17.00' | S46°33'32"W |
| L34 | 53.99' | S81°43'59"W |
| L35 | 59.74' | N80°32'24"W |
| L36 | 15.88' | N81°43'59"E |
| L37 | 30.00' | N08°16'01"W |
| L38 | 29.02' | S86°28'31"E |
| L39 | 29.04' | N59°34'22"E |
| L40 | 29.89' | N27°11'50"W |
| L41 | 12.41' | N43°19'44"E |
| L42 | 51.20' | N45°37'10"E |
| L43 | 51.03' | S69°46'21"W |
| L44 | 35.75' | N29°00'50"W |
| L45 | 44.65' | N44°05'45"W |
| L46 | 55.59' | N41°35'18"W |
| L47 | 55.71' | N43°17'07"W |
| L48 | 53.17' | N42°28'37"W |
| L49 | 54.11' | N43°22'56"W |
| L50 | 56.16' | N42°50'12"W |
| L51 | 43.35' | N68°54'27"E |

| LINE TABLE | | |
|------------|--------|-------------|
| LINE # | LENGTH | BEARING |
| L53 | 48.05' | N25°29'36"W |
| L54 | 50.61' | N29°49'08"W |
| L55 | 10.25' | S21°05'33"E |
| L56 | 53.12' | S23°15'09"E |
| L57 | 48.05' | S25°29'36"E |
| L58 | 50.61' | N29°49'08"W |
| L59 | 62.11' | N12°17'17"W |
| L60 | 7.61' | S56°19'58"E |
| L61 | 24.77' | S33°52'28"W |
| L62 | 49.92' | N33°52'28"E |
| L63 | 59.87' | S54°50'19"E |
| L64 | 31.18' | S47°56'28"E |
| L65 | 26.21' | N35°09'41"E |
| L66 | 47.69' | S00°00'00"E |
| L67 | 75.72' | N90°00'00"W |
| L68 | 82.44' | S32°24'03"E |
| L69 | 40.64' | N67°01'12"E |
| L70 | 21.82' | N09°48'13"W |
| L71 | 10.73' | S71°23'48"W |
| L72 | 56.73' | S53°12'50"E |
| L73 | 28.69' | N81°43'59"E |
| L75 | 2.59' | N68°51'45"E |
| L76 | 47.32' | S05°10'56"W |
| L77 | 11.18' | N69°33'21"W |
| L78 | 19.44' | S05°10'56"W |

| LINE TABLE | | |
|------------|--------|-------------|
| LINE # | LENGTH | BEARING |
| L79 | 42.59' | S34°26'51"W |
| L81 | 52.37' | S57°35'57"W |
| L82 | 23.03' | N66°26'15"E |
| L83 | 8.50' | N08°16'01"W |
| L84 | 30.03' | N66°26'15"E |
| L86 | 39.37' | N36°47'10"E |
| L89 | 38.54' | N04°50'08"E |
| L90 | 19.56' | S43°19'44"W |
| L94 | 1.21' | S46°02'45"W |
| L97 | 17.00' | S81°43'59"W |
| L99 | 2.43' | N27°33'18"E |
| L102 | 49.45' | S41°02'18"W |
| L104 | 3.03' | N52°39'51"W |
| L105 | 6.57' | S36°18'18"W |



CURVE TABLE

| CURVE # | RADIUS | DELTA | CHORD BEARING | CHORD | LENGTH |
|---------|---------|------------|---------------|---------|---------|
| C1 | 52.50' | 045°23'34" | S30°57'48"E | 40.51' | 41.59' |
| C2 | 485.50' | 010°13'08" | S48°33'02"E | 86.48' | 86.59' |
| C3 | 52.50' | 094°08'17" | S89°29'24"W | 76.88' | 86.26' |
| C4 | 23.50' | 097°04'40" | S89°02'25"E | 35.22' | 39.82' |
| C5 | 135.50' | 013°18'15" | S33°50'57"E | 31.39' | 31.46' |
| C8 | 23.50' | 067°14'51" | S76°57'09"W | 26.03' | 27.58' |
| C9 | 89.50' | 028°50'36" | N83°50'43"W | 44.58' | 45.06' |
| C10 | 55.50' | 035°41'14" | N63°53'22"E | 34.01' | 34.57' |
| C11 | 26.50' | 085°39'13" | S88°52'22"W | 36.03' | 39.62' |
| C15 | 1.50' | 090°00'00" | S53°16'01"E | 2.12' | 2.36' |
| C16 | 42.00' | 025°34'44" | S85°28'39"E | 18.59' | 18.75' |
| C17 | 1.50' | 092°54'53" | N61°43'21"E | 2.17' | 2.43' |
| C18 | 60.50' | 028°22'45" | S57°37'50"E | 29.66' | 29.97' |
| C19 | 114.50' | 015°24'44" | S51°08'50"E | 30.71' | 30.80' |
| C20 | 23.50' | 098°24'35" | S09°38'54"E | 35.58' | 40.36' |
| C21 | 23.50' | 097°00'09" | S88°03'28"W | 35.20' | 39.79' |
| C22 | 1.50' | 090°00'00" | N01°33'32"E | 2.12' | 2.36' |
| C23 | 1.50' | 090°00'00" | N88°26'28"W | 2.12' | 2.36' |
| C24 | 26.50' | 125°10'26" | N19°08'45"E | 47.05' | 57.89' |
| C25 | 332.53' | 005°47'29" | S40°41'52"E | 33.60' | 33.61' |
| C27 | 125.66' | 030°06'04" | N57°00'55"W | 65.26' | 66.02' |
| C28 | 49.00' | 059°05'05" | S09°53'57"E | 48.32' | 50.53' |
| C29 | 164.50' | 017°18'49" | N35°51'14"W | 49.52' | 49.71' |
| C30 | 23.50' | 084°04'02" | N02°28'38"W | 31.47' | 34.48' |
| C31 | 52.50' | 098°24'35" | N09°38'54"W | 79.49' | 90.17' |
| C32 | 85.50' | 015°24'44" | N51°08'50"W | 22.93' | 23.00' |
| C33 | 23.50' | 086°46'12" | N00°03'22"W | 32.28' | 35.59' |
| C34 | 44.70' | 056°36'55" | N68°01'19"E | 42.39' | 44.16' |
| C35 | 165.42' | 040°58'37" | S61°42'22"E | 115.80' | 118.31' |
| C36 | 108.63' | 040°39'31" | S55°54'40"E | 75.48' | 77.08' |
| C37 | 105.08' | 036°40'21" | S53°55'24"E | 66.12' | 67.26' |
| C38 | 59.06' | 022°42'15" | S49°20'12"E | 23.25' | 23.40' |
| C39 | 180.83' | 023°21'00" | S56°30'27"E | 73.19' | 73.70' |
| C40 | 97.92' | 031°05'59" | S57°49'53"E | 52.50' | 53.15' |
| C41 | 55.98' | 047°22'25" | S50°44'24"E | 44.98' | 46.29' |
| C42 | 53.47' | 036°52'46" | S49°46'44"E | 33.83' | 34.42' |
| C43 | 102.83' | 011°29'12" | S71°33'13"E | 20.58' | 20.62' |
| C44 | 4.74' | 068°00'16" | S50°24'49"E | 5.31' | 5.63' |
| C45 | 23.50' | 034°41'59" | S54°28'15"E | 14.02' | 14.23' |
| C46 | 114.50' | 017°43'03" | S45°58'48"E | 35.27' | 35.41' |

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7700 BIRCHAL CREEK BLVD | ALBUQUERQUE TEXAS 77077 | PHONE: 817-464-7111
SUITE 220 WEST | FAX: 817-464-8887

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 17028-01

DECEMBER 2015

SHEET 12 OF 13
50863-00

| CURVE TABLE | | | | | |
|-------------|---------|------------|---------------|---------|---------|
| CURVE # | RADIUS | DELTA | CHORD BEARING | CHORD | LENGTH |
| C47 | 514.50' | 001°54'19" | S55°47'29"E | 17.11' | 17.11' |
| C48 | 114.50' | 042°36'59" | S78°03'08"E | 83.21' | 85.16' |
| C49 | 85.50' | 035°29'41" | N81°36'47"W | 52.12' | 52.97' |
| C50 | 114.50' | 021°43'54" | S67°11'55"E | 43.17' | 43.43' |
| C51 | 79.50' | 065°14'06" | S01°15'25"W | 85.71' | 90.52' |
| C52 | 26.50' | 052°45'08" | S04°59'03"E | 23.55' | 24.40' |
| C53 | 49.50' | 294°28'43" | N54°09'09"E | 53.57' | 254.41' |
| C54 | 26.50' | 061°43'35" | N62°13'25"W | 27.19' | 28.55' |
| C55 | 50.50' | 065°14'06" | N01°15'25"E | 54.44' | 57.50' |
| C56 | 23.50' | 008°36'59" | N38°10'58"E | 3.53' | 3.53' |
| C57 | 85.50' | 054°50'19" | N27°25'10"W | 78.75' | 81.83' |
| C58 | 135.50' | 007°59'45" | S03°59'53"W | 18.89' | 18.91' |
| C59 | 135.50' | 016°50'41" | S49°10'37"W | 39.69' | 39.84' |
| C60 | 185.50' | 102°03'41" | S71°22'13"E | 288.45' | 330.43' |
| C61 | 185.50' | 102°03'41" | N71°22'13"W | 288.45' | 330.43' |
| C62 | 23.50' | 012°17'04" | N14°11'50"W | 5.03' | 5.04' |
| C63 | 23.50' | 005°51'39" | S23°16'12"E | 2.40' | 2.40' |
| C64 | 214.50' | 042°45'54" | S55°54'19"E | 156.41' | 160.10' |
| C66 | 214.50' | 042°45'54" | N55°54'19"W | 156.41' | 160.10' |
| C67 | 23.50' | 083°15'05" | N35°39'44"W | 31.22' | 34.15' |
| C68 | 23.50' | 092°26'20" | N11°22'47"E | 33.93' | 37.91' |
| C69 | 164.50' | 034°32'31" | S40°19'42"W | 97.68' | 99.17' |
| C70 | 164.50' | 017°49'51" | S08°54'56"W | 50.99' | 51.19' |
| C71 | 114.50' | 005°09'14" | N02°34'37"W | 10.30' | 10.30' |
| C72 | 23.50' | 074°00'59" | S31°51'15"W | 28.29' | 30.36' |
| C73 | 23.55' | 080°37'12" | S43°55'52"W | 30.47' | 33.13' |
| C74 | 40.11' | 034°35'54" | S55°21'02"E | 23.86' | 24.22' |
| C75 | 143.30' | 009°00'49" | S65°11'44"E | 22.52' | 22.54' |
| C76 | 82.74' | 030°27'50" | N24°31'53"W | 43.47' | 43.99' |
| C77 | 82.03' | 030°08'29" | S24°22'13"E | 42.66' | 43.15' |
| C78 | 220.73' | 007°22'08" | S80°32'43"W | 28.37' | 28.39' |
| C79 | 214.50' | 019°09'16" | S67°10'35"W | 71.38' | 71.71' |
| C81 | 23.50' | 090°00'00" | N77°24'03"W | 33.23' | 36.91' |
| C83 | 23.50' | 027°02'12" | N40°08'30"W | 10.99' | 11.09' |
| C84 | 164.50' | 034°32'31" | S40°19'42"W | 97.68' | 99.17' |
| C86 | 1.50' | 090°00'00" | S53°16'01"E | 2.12' | 2.36' |
| C87 | 514.50' | 005°21'34" | S50°58'49"E | 48.11' | 48.13' |
| C89 | 164.50' | 017°49'51" | S08°54'56"W | 50.99' | 51.19' |



7800 SIGNAL CREEK BLVD | AUSTIN TEXAS 78757 | PHONE: 812-454-8711
 SUITE 220 WEST | FAX: 812-454-8857

BOARD MEMBER OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 476
 TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 18228-10

DECEMBER 2015

SHEET 13 OF 13

50863-00

ATTACHMENT 2

ENCUMBRANCES

1. The restrictive covenants of recorded in Document No. 2015016045 and Document No. 2015009160, Official Public Records of Williamson County, Texas.
2. Any and all easements and/or building setback lines as set out on plat recorded in Document No. 2015016045, Official Public Records of Williamson County, Texas.
3. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
 - Granted to: Brushy Creek Water Control and Improvement District No. 1
 - Purpose: As provided in said instrument
 - Recording Date: June 5, 1959
 - Recording No: Volume 430, Page 693, Deed Records of Williamson County, Texas, and as affected by Partial Release recorded in Document No. 2015009698, Official Public Records of Williamson County, Texas
4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
 - Granted to: Upper Brushy Creek Water Control and Improvement District
 - Purpose: As provided in said instrument
 - Recording Date: February 9, 2015
 - Recording No: Document No. 2015009699, Official Public Records of Williamson County, Texas
5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
 - Granted to: Upper Brushy Creek Water Control and Improvement District
 - Purpose: As provided in said instrument
 - Recording Date: February 9, 2015
 - Recording No: Document No. 2015009700, Official Public Records of Williamson County, Texas
6. Matters contained in that certain document:
 - Entitled: Agreement
 - Recording Date: October 27, 1971
 - Recording No: Volume 541, Page 292, Deed Records of Williamson County, Texas

7. Easements and matters contained in that certain document:

Entitled: Declaration of Easements and Restrictive Covenants Regarding the Maintenance of Common Area
Dated: February 5, 2015
Executed by: Spanish Creek Investments, LP
Recording Date: February 5, 2015
Recording No: Document No. 2015009160, Official Public Records of Williamson County, Texas

8. Easements and matters contained in that certain document:

Entitled: Declaration of Utility Easement
Executed by: Spanish Creek Development, Inc.
Recording Date: August 31, 2015
Recording No: Document No. 2015076720, Official Public Records of Williamson County, Texas

ATTACHMENT 3

COMMON INTEREST ALLOCATION

The Common Interest Allocation and percentage of liability for common expenses for each Unit is 1/103. Each Unit is allocated one (1) vote.

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

ATTACHMENT 4

GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The examination is required by *Section 9.3* of the Declaration and is a necessary prerequisite to establishing sufficient reserves. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

In developing a plan, the age and condition of Common Elements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Common Elements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:
 - Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

- **Threshold Funding:** Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40% to 50% results in a 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See "Measuring the Adequacy of Reserves", *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09 and 1.4%.

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc), a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 9.3* of the Declaration, the Board must reevaluate its funding level each year based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to, roofing, electrical systems, plumbing, information technology equipment, floor coverings, air conditioning systems, heating and hot water equipment, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

ATTACHMENT 5**GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS**

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Association's Board may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Association and/or the Board should not use this Guide without taking account of applicable changes in law and practices.

| MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS | PERFORMED BY HOA OFFICERS OR DIRECTORS | DELEGATED TO HOA EMPLOYEE OR AGENT |
|--|--|---|
| <u>FINANCIAL MANAGEMENT</u> | | |
| Adopt annual budget and levy assessments, per Declaration. | X | |
| Prepare annual operating budget, periodic operating statements, and year-end statement. | | X |
| Identify components of the property the HOA is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule for 5, 10, and 20-year periods. Annually update same. | | X |
| Collect assessments and maintain HOA accounts. | | X |
| Pay HOA's expenses and taxes. | | X |
| Obtain annual audit and income tax filing. | | X |
| Maintain fidelity bond on whomever handles HOA funds. | | X |
| Report annually to members on financial status of HOA. | | X |
| <u>PHYSICAL MANAGEMENT</u> | | |
| Inspect, maintain, repair, and replace, as needed, all components of the property for which the HOA has maintenance responsibility. | | X |

| MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS | PERFORMED BY HOA OFFICERS OR DIRECTORS | DELEGATED TO HOA EMPLOYEE OR AGENT |
|--|--|------------------------------------|
| Contract for services, as needed to operate or maintain the property. | | X |
| Prepare specifications and call for bids for major projects. | | X |
| Coordinate and supervise work on the property, as warranted. | | X |
| <u>ADMINISTRATIVE MANAGEMENT</u> | | |
| Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the HOA. | | X |
| Conduct hearings with owners to resolve disputes or to enforce the governing documents. | | X |
| Obtain and supervise personnel and/or contracts needed to fulfill HOA's functions. | | X |
| Schedule HOA meetings and give owners timely notice of same. | | X |
| Schedule board meetings and give directors timely notice of same. | | X |
| Enforce the governing documents. | | X |
| Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area. | | X |
| Maintain HOA books, records, and files. | | X |
| Maintain HOA's corporate charter and registered agent & address. | | X |
| <u>OVERALL FUNCTIONS</u> | | |
| Promote harmonious relationships within the community. | | X |
| Protect and enhance property values in the community. | | X |
| Encourage compliance with governing documents and Applicable Laws and ordinances. | | X |

{W0635323.2}

| MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS | PERFORMED BY HOA OFFICERS OR DIRECTORS | DELEGATED TO HOA EMPLOYEE OR AGENT |
|--|--|------------------------------------|
| Act as liaison between the community of owners and governmental, taxing, or regulatory bodies. | | X |
| Protect the HOA and the property from loss and damage by lawsuit or otherwise. | | X |

ATTACHMENT 6

MAINTENANCE RESPONSIBILITY CHART

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

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

[W0635323.2]

| COMPONENT OF PROPERTY | ASSOCIATION RESPONSIBILITY | OWNER RESPONSIBILITY |
|--|--|--|
| Landscaped areas. | All aspects with respect to General Common Elements. "Landscape Services" to be provided as set forth in Article 9 of the Declaration. | All aspects, other than "Landscape Services" to be provided by the Association as set forth in Article 9 of the Declaration. |
| Roofs. | None. | All aspects. |
| Gutters and downspouts. | None. | All aspects. |
| Roof-mounted attachments. | None. | All aspects. |
| Building exteriors. | None. | All aspects. |
| Building foundations, patio slabs and A/C slabs. | None. | All aspects. |
| Driveways serving individual Units. | None. | All aspects. |
| Exterior light fixtures on Buildings. | None. | All aspects. |
| Garages. | None. | All aspects. |
| Fireplaces & chimneys. | None. | All aspects. |
| Skylights, if any. | None. | All aspects. |
| Attics. | None. | All aspects. |
| Insulation & weatherstripping. | None. | All aspects. |
| Building interior, including Improvements, fixtures, partition walls and floors within Unit. | None. | All aspects. |

{W0635323.2}

DECLARATION OF CONDOMINIUM REGIME
EDGEWATER CONDOMINIUMS

| COMPONENT OF PROPERTY | ASSOCIATION RESPONSIBILITY | OWNER RESPONSIBILITY |
|--|---|----------------------|
| Sheetrock in Building (walls and ceilings) & treatments on walls. | None. | All aspects. |
| Exterior doors of Units. | None. | All aspects. |
| Windows of Units. | None. | All aspects. |
| Underground water, wastewater, electrical lines & systems. | All aspects. | None. |
| Interior water, wastewater, electrical lines & systems serving a Unit exclusively. | None | All aspects. |
| Heating and cooling systems & water heaters. | None. | All aspects. |
| Intrusion alarms smoke/heat detectors, monitoring equipment. | None. | All aspects. |
| Cable for television or internet. | Standards for location and appearance of exterior cable and/or conduit. | All other aspects. |
| Television antennas & satellite dishes. | Standards for location and appearance of exterior cable and/or conduit. | All other aspects. |

ATTACHMENT 7

TAX CERTIFICATE

[attached]

Tax Certificate

AVS15885

GF#: A15-22302-19
 Order submitted: 11/2/2015 11:53 PM
 Order completed: 1/27/2016 4:00 PM

Remit certificate fee to:
AVS TAX SERVICE, LLC
 P.O. Box 366, Addison, TX 75001

Fee: \$50.00 (includes sales tax)

TOTAL SUMMARY OF CURRENT YEAR TAXES - ALL PARCELS

| <u>Jurisdiction</u> | <u>Tax Year</u> | <u>Actual Tax</u> |
|--|-----------------|---------------------------|
| Austin Community College (Williamson County) | 2015 | \$903.97 |
| City of Cedar Park (Williamson County) | 2015 | \$4,312.99 |
| Leander ISD | 2015 | \$13,598.92 |
| Upper Brushy Creek WCID 1A | 2015 | \$179.89 |
| Williamson County | 2015 | \$3,971.46 |
| Williamson County FM/RD | 2015 | \$359.79 |
| | | TOTAL: \$23,327.02 |

SUMMARY OF TAXES DUE BY COLLECTOR - ALL PARCELS

| <u>Payable to:</u> | <u>Actual tax total</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|--|-----------------------------------|------------------------------------|------------------------------------|
| Williamson County Tax Assessor-Collector 904 South Main Georgetown, TX 78626 (512) 943-1603 | CYR: \$23,327.02 Total Payoff: | \$0.00 \$0.00 | \$0.00 \$0.00 |

***** ATTENTION *** IMPORTANT TAX CERTIFICATE NOTATIONS BELOW ******

Per order sheet, legal description ordered as:
 Lot 1 Block A Edgewater per Plat 2015016045

This Subdivision is new for Tax Year 2016
 2015 Subdivision Parent Account(s) are being Reported for the Current Year Tax Roll.

Please refer to notes in Important Tax Account Comments section.

GENERAL APPRAISAL INFORMATION - PARCEL 1 OF 3

Tax Account Number: R031408

Property Site Address: 2731 WHITESTONE BLVD E, LEANDER, TX 78641

Owner Name: SPANISH CREEK INVESTMENTS LP

Mailing Address: 4801 MONDONEDO CV,
AUSTIN, TX 78738-6028

Legal Description: AW0009 PARKER, W.S. SUR., ACRES 28.292

Parcel ID: R-17-W000-9000-0003-E005

Acreage: 28.292

2015 Exemptions: Agricultural Use

2015 Assessed Values

| | |
|---------------|------------------|
| Land: | \$640,278 |
| Impr: | \$58,271 |
| Ag: | \$920 |
| Total: | \$211,651 |

Total Est. Taxes w/o Exemptions: \$18,116.16

Total Tax Rate: 2.593399

***** ATTENTION *** IMPORTANT TAX ACCOUNT COMMENTS *****

This property currently holds a 1-D-1 Agricultural Exemption. Any changes, such as a change in ownership, change in use, land development, etc... may result in a request for reapplication by the Appraisal District and/or may initiate agricultural rollback taxes being issued based on a 5 year value history.

2015 Parent Account for Edgewater per plat document 2015016045 filed in the Official Public records of Williamson County.

2015 Taxes were Paid in Full on 12/28/2015

SUMMARY OF TAXES DUE BY COLLECTOR - Tax Account Number R031408 - Parcel 1 of 3

| <u>Payable to:</u> | <u>Actual tax total</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|--|----------------------------------|------------------------------------|------------------------------------|
| Williamson County Tax Assessor-Collector 904 South Main Georgetown, TX 78626 (512) 943-1603 | CYR: \$5,488.96 Total Payoff: | \$0.00 \$0.00 | \$0.00 \$0.00 |

TAX BILL DETAIL - Tax Account Number R031408 - Parcel 1 of 3

Austin Community College (Williamson County)
Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.1005
Est. Taxes w/o Exempt: \$702.04

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$212.71 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R031408 - Parcel 1 of 3

City of Cedar Park (Williamson County)
Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.4795
Est. Taxes w/o Exempt: \$3,349.54

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$1,014.86 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R031408 - Parcel 1 of 3

Leander ISD
Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 1.51187
Est. Taxes w/o Exempt: \$10,561.15

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$3,199.89 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R031408 - Parcel 1 of 3**Upper Brushy Creek WCID 1A**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.02

Est. Taxes w/o Exempt: \$139.71

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$42.33 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R031408 - Parcel 1 of 3**Williamson County**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.441529

Est. Taxes w/o Exempt: \$3,084.30

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$934.51 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R031408 - Parcel 1 of 3**Williamson County FM/RD**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.04

Est. Taxes w/o Exempt: \$279.42

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$84.66 | \$0.00 | \$0.00 |

GENERAL APPRAISAL INFORMATION - PARCEL 2 OF 3

| | |
|---|--|
| Tax Account Number: R000024 | 2015 Assessed |
| Property Site Address: 2731 WHITESTONE BLVD E, CEDAR PARK, TX 78613 | Values |
| Owner Name: SPANISH CREEK INVESTMENTS LP | Land: \$1,876,099 |
| Mailing Address: 4801 MONDONEDO CV, AUSTIN, TX 78738-6028 | Impr: \$361,478 |
| Legal Description: AW0015 - Anderson, W. Sur., SERIAL # 12334258A, TITLE # 01204777, LABEL # PFS0700894, ACRES 22.788 | Ag: \$693 |
| Parcel ID: R-17-W001-5000-0003-AA05 | Total: \$609,156 |
| Acreage: 22.788 | |
| 2015 Exemptions: Agricultural Use | Total Est. Taxes w/o Exemptions: \$58,029.30 |

Total Tax Rate: 2.593399

*** ATTENTION *** IMPORTANT TAX ACCOUNT COMMENTS ****

This property currently holds a 1-D-1 Agricultural Exemption. Any changes, such as a change in ownership, change in use, land development, etc... may result in a request for reapplication by the Appraisal District and/or may initiate agricultural rollback taxes being issued based on a 5 year value history.

2015 Parent Account for Edgewater per plat document 2015016045 filed in the Official Public records of Williamson County.

2015 Taxes were Paid in Full on 12/28/2015

SUMMARY OF TAXES DUE BY COLLECTOR - Tax Account Number R000024 - Parcel 2 of 3

| <u>Payable to:</u> | <u>Actual tax total</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|---|-------------------------|------------------------------------|------------------------------------|
| Williamson County Tax Assessor-Collector 904 South Main Georgetown, TX 78626 (512) 943-1603 | CYR: \$15,797.84 | \$0.00 | \$0.00 |
| | Total Payoff: | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3

| | |
|---|--|
| Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector | 2015 Tax Rate: 0.1005 Est. Taxes w/o Exempt: \$2,248.76 |
|---|--|

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$612.20 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3

| | |
|---|---|
| City of Cedar Park (Williamson County) Collected by: Williamson County Tax Assessor-Collector | 2015 Tax Rate: 0.4795 Est. Taxes w/o Exempt: \$10,729.18 |
|---|---|

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$2,920.91 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3

| | |
|--|--|
| Leander ISD Collected by: Williamson County Tax Assessor-Collector | 2015 Tax Rate: 1.51187 Est. Taxes w/o Exempt: \$33,829.26 |
|--|--|

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$9,209.64 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3**Upper Brushy Creek WCID 1A**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.02

Est. Taxes w/o Exempt: \$447.52

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$121.83 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3**Williamson County**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.441529

Est. Taxes w/o Exempt: \$9,879.55

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$2,689.60 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3**Williamson County FM/RD**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.04

Est. Taxes w/o Exempt: \$895.03

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$243.66 | \$0.00 | \$0.00 |

GENERAL APPRAISAL INFORMATION - PARCEL 3 OF 3

Tax Account Number: R524206

Property Site Address: RONALD W REAGAN BLVD, CEDAR PARK, TX 78613

Owner Name: SPANISH CREEK INVESTMENTS LP

Mailing Address: 4801 MONDONEDO CV,
AUSTIN, TX 78738-6028

Legal Description: AW0009 AW0009 - Parker, W.s. Sur., ACRES 1.032

Parcel ID: R-17-W000-9000-0019-A005

Acreage: 1.032

2015 Exemptions: No exemptions

2015 Assessed Values

Land: \$78,670

Impr: \$0

Total: \$78,670

Total Est. Taxes w/o Exemptions: \$2,040.23

Total Tax Rate: 2.593399

*** ATTENTION *** IMPORTANT TAX ACCOUNT COMMENTS ***

This property held a 1-D-1 Agricultural Exemption for Tax Years 2013 and Prior Any changes, such as a change in ownership, change in use, land development, etc... may result in a request for reapplication by the Appraisal District and/or may initiate agricultural rollback taxes being issued based on a 5 year value history.

Property is currently being assessed as Vacant Land - Please Verify No improved structures are situated on the land.

2015 Parent Account for Edgewater per plat document 2015016045 filed in the Official Public records of Williamson County.

2015 Taxes were Paid in Full on 12/28/2015

SUMMARY OF TAXES DUE BY COLLECTOR - Tax Account Number R524206 - Parcel 3 of 3

| <u>Payable to:</u> | <u>Actual tax total</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|--|----------------------------------|------------------------------------|------------------------------------|
| Williamson County Tax Assessor-Collector 904 South Main Georgetown, TX 78626 (512) 943-1603 | CYR: \$2,040.22 Total Payoff: | \$0.00 \$0.00 | \$0.00 \$0.00 |

TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3

Austin Community College (Williamson County)
Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.1005
Est. Taxes w/o Exempt: \$79.06

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$79.06 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3

City of Cedar Park (Williamson County)
Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.4795
Est. Taxes w/o Exempt: \$377.22

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$377.22 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3

Leander ISD
Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 1.51187
Est. Taxes w/o Exempt: \$1,189.39

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$1,189.39 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3**Upper Brushy Creek WCID 1A**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.02

Est. Taxes w/o Exempt: \$15.73

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$15.73 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3**Williamson County**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.441529

Est. Taxes w/o Exempt: \$347.35

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$347.35 | \$0.00 | \$0.00 |

TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3**Williamson County FM/RD**

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 0.04

Est. Taxes w/o Exempt: \$31.47

| <u>Tax Year</u> | <u>Actual Tax</u> | <u>Amount Due</u> <u>1/2016</u> | <u>Amount Due</u> <u>2/2016</u> |
|-----------------|-------------------|------------------------------------|------------------------------------|
| 2015 | \$31.47 | \$0.00 | \$0.00 |

***Disclaimer: All applicable ad valorem taxes on the above referenced property have been checked and are found to have the status provided except: Status does not cover any changes made to the tax records of the agencies listed after the "Order completed" date hereof. Does not include and is not a certification of any mineral taxes, personal property taxes (including mobile homes), or any other non-ad valorem taxes. The event a parcel or tract of real property covered in a request had been previously re-subdivided, whereas previous tax account was assigned, and/or is to be split, creating a new tax account, and specific tax information is not readily available, AVS Tax Services shall only be required to, and claims limited to, furnish Appraisal and Tax Information for the parcel or tract as shown on the Current Records of the Appraisal and Taxing Authority.

APPENDIX A

DECLARANT RESERVATIONS AND REPRESENTATIONS

A.1. General Provisions.

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

A.1.2. General Reservation and Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this Appendix A and any other Document, this Appendix A controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "**Development Period**", as specifically defined in *Section 1.15* of the Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's recordation of a notice of termination. Declarant Control Period is defined in *Section 1.13* of the Declaration. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days' written notice.

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

A.2.1. Association Budget. During the Declarant Control Period, the Declarant-appointed Board will establish a projected budget for the Property as a fully developed, fully constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the

{W0635323.2}

Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.

A.2.2. Officers and Directors. During Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation: within one hundred and twenty (120) days after fifty percent (50%) of the maximum number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third (1/3) of the Board must be elected by Owners other than Declarant.

A.2.3. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments and Landscape Assessments, during the Declarant Control Period only, Declarant at Declarant's option may support the Association's budget by either of the following methods: (i) Declarant will pay Regular Assessments and Landscape Assessments on each Declarant owned Unit in the same manner as any Owner; or (ii) Declarant will assume responsibility for the difference between the Association's actual common expenses as they are paid and the Regular Assessments and Landscape Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant owned Unit according to the Unit's allocated Interest for Assessments.

A.2.4. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association working capital or reserve funds to pay operational expenses of the Association.

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

A.2.6. Expenses of Declarant. Expenses related to the marketing of the Property will be paid by Declarant and are not expenses of the Association.

A.2.7. Management Contract. If Declarant enters into a professional management contract on behalf of the Association during Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at

least thirty (30) days written notice to the manager, at any time after a Board elected by the Owners other than Declarant takes office.

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

A.3.1. Annexation. The Property is subject to expansion by phasing for up to seven (7) years from the date this Declaration is recorded. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by recording an amendment or supplement of this Declaration, executed by Declarant, in the Official Public Records of Williamson County, Texas.

A.3.2. Creation of Units. When created, the Property contains one hundred three (103) Units; however, Declarant reserves the right to create up to and including three hundred (300) Units upon full buildout of all phases of the project which may include land added by the Declarant in accordance with *Section 2.2* of the Declaration. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit in the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests.

A.3.3. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, configurations, materials, and appearances of Units, and Common Elements.

A.3.4. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control. Notwithstanding the foregoing, during the Development Period and after termination of Declarant Control, or earlier if Declarant permits, the Board may appoint or serve as a "modifications committee" to respond exclusively to modifications of Occupied Units that are owned by persons other than Declarant. A modifications committee may not involve itself with the approval of new Units or Common Elements.

A.3.5. Transfer Fees. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.

A.3.6. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.

A.3.7. Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

A.3.8. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Property; (ii) to create Units, General Common Elements, and Limited Common Elements within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A.3.9. Development Rights Reserved. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.10. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (ii) To correct any defects in the execution of this Declaration or the other Documents.
- (iii) To add real property to the Property, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.
- (v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.

- (vi) To withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights" in the exercise of statutory Development Rights.
- (vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (viii) To change the name or entity of Declarant.
- (ix) For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

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

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

- (vi) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- (vii) The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

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

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

- (vi) The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with the active marketing of Units by Declarant.

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

A.7. Common Elements. Because the Common Elements are owned by the Owners, collectively and in undivided interest, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may “accept” or “refuse” the Common Elements.

A.8. Successor Declarant. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and Recorded in the Official Public Records of Williamson County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2016008168

Nancy E. Rister

Nancy E. Rister, County Clerk
Williamson County, Texas

January 29, 2016 04:01 PM

FEE: \$465.00 TKIRK



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ARMBRUST & BROWN PLLC
100 CONGRESS AVENUE
STE 1300
AUSTIN, TX 78701

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DECLARATION OF CONDOMINIUM REGIME
EDGEWATER CONDOMINIUMS

Appendix B



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2004

The Honorable Michael S. Wenk
Hays County Criminal District Attorney
Hays County Justice Center
110 East Martin Luther King
San Marcos, Texas 78666

Opinion No. GA-0223

Re: Whether a condominium development is a subdivision subject to county regulation under Local Government Code chapter 232 (RQ-0177-GA)

Dear Mr. Wenk:

You ask whether a condominium development is a subdivision subject to county regulation under Local Government Code chapter 232.¹

I. Background

Your questions involve the relationship between chapter 232 of the Local Government Code and chapter 82 of the Property Code, the Uniform Condominium Act. Chapter 232, subchapter A generally requires the owner of a tract of land located outside the limits of a municipality to have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out, among other things, a subdivision of the tract. *See* TEX. LOC. GOV'T CODE ANN. § 232.001(a)(1) (Vernon Supp. 2004). The commissioners court is authorized to approve or disapprove a plat based on whether it meets statutory requirements. *See id.* § 232.002. In addition, you indicate that Hays County falls within subchapter E of chapter 232, *see id.* § 232.100 (applicability), which governs subdivisions in urban and adjacent counties and generally authorizes the commissioners court in such a county to “adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county,” *id.* § 232.101(a); *see also* Request Letter, *supra* note 1, at 1 (noting that Hays County is an “urban county”).

Chapter 82 of the Property Code provides for ownership of land separately and commonly by condominium owners. Under chapter 82, a “condominium” means

a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real

¹Letter from Honorable Michael S. Wenk, Hays County Criminal District Attorney, to Honorable Greg Abbott, Texas Attorney General (Jan. 28, 2004) (on file with the Opinion Committee; *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter].

property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

TEX. PROP. CODE ANN. § 82.003(a)(8) (Vernon 1995). A condominium is created “by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property The declaration shall be recorded in each county in which any portion of the condominium is located.” *Id.* § 82.051(a); *see also id.* § 82.003(a)(11) (“‘Declaration’ means a recorded instrument, however denominated, that creates a condominium, and any recorded amendment to that instrument.”). Chapter 82 also requires the filing of condominium plats and plans. *See id.* § 82.059(a) (“Plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately.”); *see also id.* § 82.003(a)(18) (“‘Plan’ means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings.”), (a)(19) (defining “plat”).

You explain that Hays County regulates the subdivision of land in all unincorporated areas of Hays County pursuant to chapter 232. *See* Request Letter, *supra* note 1, at 1. The Hays County Environmental Health Department administers these regulations and seeks the commissioner court’s approval of subdivision plats. *See id.* A developer in Hays County is proposing to develop a 12-acre parcel of land as a condominium governed by chapter 82 of the Property Code. *See id.* A brief submitted on behalf of the Hays County Commissioners Court describes the development as follows: “The proposed development comprises 17 condominium units None of the . . . units share any walls, foundations, roofs or structural elements and each . . . unit exclusively occupies the land on which it is located, similar to a typical single family residence.”² It further states that each unit will be situated on a .13 acre parcel “that will be designated on the condominium declaration as a ‘limited common element’ reserved for the exclusive use and enjoyment of the owner of the condominium unit.” *Id.*; *see also* TEX. PROP. CODE ANN. § 82.003(a)(17) (Vernon 1995) (defining “limited common element” to mean “a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units”).

Hays County has obtained a legal opinion concluding that the condominium development is a subdivision subject to regulation under chapter 232. *See* Request Letter, *supra* note 1, at 2; *see also id.* Exhibit B (brief from David B. Brooks (Dec. 1, 2003)). The developer, on the other hand, takes the position that “the development does not qualify as a ‘subdivision’ and is therefore exempt from development regulations.” *Id.*; *see also id.* Exhibit C (brief from James M. Butler (Jan. 26, 2004)) [hereinafter Butler Brief]. The Hays County Commissioners Court has asked you to seek an

²Brief from Phillip H. Schmandt, McGinnis, Lochridge & Kilgore, L.L.P., to Honorable Greg Abbott, Texas Attorney General, at 2 (Apr. 27, 2004) (on file with the Opinion Committee).

opinion from this office clarifying whether chapter 232 applies to condominium developments. You ask us to address two issues:

- 1) Whether a condominium development pursuant to Chapter 82, Texas Property Code, is subject to the regulatory control of the county under the subdivision statutes contained in Chapter 232 of the Local Government Code?
- 2) Does Section 232.100, Texas Local Government, allow urban counties to require condominium or other multi-unit developments (a building, structure or combination of structures which have been designed to contain units in which more than two families may reside) to meet subdivision or infrastructure planning requirements?

Request Letter, *supra* note 1, at 2.

II. Analysis

A. **Local Government Code Chapter 232, Subchapter A and Property Code Chapter 82**

To answer your first question, we must determine whether a condominium development such as the one described above may be a “subdivision” within the meaning of Local Government Code, chapter 232, subchapter A. If we conclude that it may be, we then consider whether Property Code chapter 82 exempts a condominium from county regulation.

Section 232.001 of the Local Government Code establishes when a landowner must file a plat:

(a) The owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out:

(1) a subdivision of the tract, including an addition;

(2) lots; or

(3) streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.

(a-1) A division of a tract under Subsection (a) includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

TEX. LOC. GOV'T CODE ANN. § 232.001 (Vernon Supp. 2004). In addition, section 232.0015 authorizes a county to define when plats are not required: "To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter." *Id.* 232.0015(a). *See generally* Tex. Att'y Gen. Op. No. JC-0260 (2000) (concluding that section 232.0015(a) authorizes a county to "define and classify divisions" to except from the platting requirement particular subdivisions that would otherwise be subject to the requirement, even though the exception is not one listed in section 232.0015(b)-(k)). Section 232.0015(b)-(k) excepts various subdivisions from the platting requirement, but neither the county nor the developer suggests that any one of those exceptions is relevant here. *See* TEX. LOC. GOV'T CODE ANN. § 232.0015(b)-(k) (Vernon Supp. 2004).

Courts have broadly construed the term "subdivision" in section 232.001 and similar land regulation statutes. In 1985, a court considered whether the statutory predecessors to section 232.001, former Revised Civil Statutes articles 6626a and 6702-1, required a landowner who intended to lease spaces on his land for mobile homes to file a plat. *See Cowboy Country Estates v. Ellis County*, 692 S.W.2d 882 (Tex. App.—Waco 1985, no writ). The landowner argued that the land in question did not constitute a "subdivision" within the statutes because the landowner "ha[d] no intention of selling lots, but only to lease spaces for mobile homes; that since the land [was] not being divided for purpose of sale, that it [was] not a 'subdivision' under these statutes." *Id.* at 886. The court disagreed:

[T]he statutes concerned do not make any requirement that the lots be for fee simple purchases in order for a tract of land to be constituted as a subdivision. The manifest overall purpose of the statutes concerned is to give counties the power to control subdivisions to protect its citizens in matters of public health and sanitation, drainage, and maintenance of public roads. These public problems and concerns are just as great in the case of mobile home parks where the spaces are leased as in the case where lots are subdivided for purpose of sale.

Id. at 886-87. Cases construing the term "subdivision" in statutes providing for municipal land use regulation also construe the term broadly. *See City of Lucas v. N. Tex. Mun. Water Dist.*, 724 S.W.2d 811, 823 (Tex. App.—Dallas 1987, writ ref'd n.r.e.) (the term "subdivision" as used in former article 970a, section 4 "may be simply a division of a tract of land into smaller parts"); *City of Weslaco v. Carpenter*, 694 S.W.2d 601, 603 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.) (the term "subdivision" as used in former article 970a, section 4 "may refer simply to the act of partition itself"). As one court stressed, "a subdivision of land, whether it refers to merely partitioning

property or instead refers to sales of residential sites involving separate owners, suggests *development.*" *City of Weslaco*, 694 S.W.2d at 603.

By contrast, in *Elgin Bank of Texas v. Travis County*, 906 S.W.2d 120, 124 (Tex. App.—Austin 1995, writ denied), the court construed the section 232.001 platting requirement narrowly, holding that it did not apply to an owner who subdivides but who does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts. The court relied in part on an opinion of this office, Attorney General Opinion JM-1100 (1989). *See id.* at 121. In 1999, the legislature amended section 232.001 and other subchapter A provisions to clarify the platting requirement's breadth and commissioners courts' authority to regulate subdivisions. *See* Act of May 5, 1999, 76th Leg., R.S., ch. 129, §§ 1-2, 1999 Tex. Gen. Laws 574, 575-76. Bill analyses for the 1999 legislation indicate that the legislature expressly intended to close the loophole in county subdivision authority created by the *Elgin Bank* construction of section 232.001.³

A brief for the developer asserts that "by its very definition, a condominium unit cannot exist on a subdivided tract of land," because owners of condominium units "retain an interest in the undivided common elements, that is, they own an undivided interest in land; not divided separate interests in land." Butler Brief, *supra* p. 2, at 3. We disagree that a condominium unit cannot exist on tract of land that is "subdivided" within the meaning of section 232.001 of the Local Government Code.

First, under the case law, how land is to be owned is not dispositive of whether a division of land constitutes a subdivision under section 232.001. In *Cowboy Country Estates*, 692 S.W.2d 882, the only case to address the meaning of the word "subdivision" in section 232.001 or its predecessors, the court concluded that the landowner planned to subdivide the land even though he would continue to own it in fee simple. *See id.* at 886 ("[T]he statutes concerned do not make any requirement that the lots be for fee simple purchases in order for a tract of land to be constituted as [a] subdivision."); *see also City of Weslaco*, 694 S.W.2d at 603 (rejecting landowner's contention that "the term 'subdivision' must be construed as requiring the land to be split into at least two different lots which are owned by different people"). Thus, land may be subdivided for purposes of section 232.001 even though the land is owned by a single owner or commonly owned by multiple owners.

Second, in *Cowboy Country Estates*, the landowner divided the land by leasing separate parcels as spaces for mobile homes. As the term is defined in the Property Code, a "condominium" also involves dividing property into separate parcels, *see* TEX. PROP. CODE ANN. § 82.003(a)(8) (Vernon 1995) ("Condominium" means a form of real property *with portions of the real property*

³*See* SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (As Filed dated Mar. 22, 1999); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Comm. Rpt. dated Mar. 25, 1999); HOUSE COMM. ON LAND & RES. MGMT., BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Engrossed Version dated Apr. 22, 1999); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Enrolled Version dated July 6, 1999).

designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions”) (emphasis added), including condominium “units,” which are “physical portion[s] of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration,” *id.* § 82.003(a)(23). Moreover, in the case of the proposed condominium development at issue here, units will be located on .13 acre parcels of land designated as “limited common elements,” which are “portion[s] of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units.” *Id.* § 82.003(a)(17). The developer’s brief asserts that the designation of a unit for separate ownership is not the subdivision of land because “the underlying physical land will not and cannot be subdivided,” Butler Brief, *supra* p. 2, at 4, but, again, land need not be separately owned in order to be subdivided under section 232.001. *See Cowboy Country Estates*, 692 S.W.2d 882. The seventeen .13 acre parcels, each reserved for the unit owner’s exclusive use, are as much a division of land as the mobile home spaces at issue in *Cowboy Country Estates*. *See id.* at 885; *see also City of Weslaco*, 694 S.W.2d at 602 (concluding that plan to develop a 8.17 acre park by renting spaces for mobile homes and recreational vehicles constituted a subdivision of land). Accordingly, we conclude that section 232.001 authorizes a commissioners court to determine that such a condominium development constitutes a subdivision that must be platted.⁴

Having concluded that subchapter A authorizes a commissioners court to determine that a condominium development is a subdivision for which the landowner must prepare and file a plat, we consider whether chapter 82 of the Property Code, the Uniform Condominium Act, forecloses county regulation of condominium developments.

The developer’s brief asserts that chapter 82 exclusively regulates condominiums and excepts condominiums from regulation under chapter 232 of the Local Government Code. *See* Butler Brief, *supra* p. 2, at 4. However, no provision in chapter 82 expressly states that a condominium is exempt from chapter 232 and several provisions indicate that the legislature did not intend to except a condominium from regulation as a subdivision under chapter 232. First, section 82.006 indicates that chapter 82 precludes a county or city from prohibiting or discriminating against condominium ownership. *See* TEX. PROP. CODE ANN. § 82.006 (Vernon 1995) (“A zoning, subdivision, building code, or other real property use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership.”). But the same provision expressly indicates that chapter 82 does not otherwise invalidate or modify subdivision laws or regulations: “Otherwise, this chapter does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.” *Id.* (emphasis

⁴Section 232.021(11), cited as authority in a brief submitted to the county on behalf of the developer, is in Local Government Code chapter 232, subchapter B, which does not apply to the county. *See* Butler Brief, *supra* p. 2, at 2; *see also* TEX. LOC. GOV’T CODE ANN. § 232.022 (Vernon Supp. 2004) (applicability of subchapter B to county located near international border). We note, however, that this office has also broadly construed the meaning of the terms “subdivision” and “subdivide” in subchapter B. *See* Tex. Att’y Gen. Op. No. DM-485 (1998) (concluding that a residential lease used by a school district that conveyed to a teacher the right to occupy a manufactured home on a distinct tract of land divided the surface area of land).

added). Section 82.006 precludes a county from discriminating against condominiums but expressly preserves a county's authority to regulate them as subdivisions.

Second, chapter 82 defines the term "plat" to exclude Local Government Code chapter 232 subdivision plats:

"Plat" means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. *As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.*

Id. § 82.003(a)(19) (emphasis added); *see also id.* § 82.051(d) ("The book for the condominium plat records shall be the same size and type as the book for recording subdivision plats."). Thus, a condominium plat is legally distinct from a subdivision plat. Section 82.051(d) requires a county clerk to record condominium plats or plans in the real property records "without prior approval from any other authority." *Id.* § 82.051(d). Importantly, however, section 82.051(e) expressly provides that chapter 82 "does not affect or diminish the rights of municipalities and *counties to approve plats of subdivisions* and enforce building codes as may be authorized or required by law." *Id.* § 82.051(e) (emphasis added). Section 82.051(e) expressly preserves cities' and counties' rights to apply building codes and subdivision requirements to condominiums. Thus, while a commissioners court lacks the authority to approve a *condominium plat*, chapter 82 does not affect county authority to require or approve a *subdivision plat* for a condominium for which a subdivision plat is required under chapter 232 of the Local Government Code.

For these reasons, we conclude that chapter 82 does not prohibit a county from requiring a condominium development to file a plat under chapter 232, subchapter A.

B. Local Government Code Chapter 232, Subchapter E

You also ask us to address whether section 232.100 of the Local Government Code "allow[s] urban counties to require condominium or other multi-unit developments . . . to meet subdivision or infrastructure planning requirements." Request Letter, *supra* note 1, at 2.

Section 232.100 makes subchapter E applicable to certain urban counties and counties adjacent to them. *See* TEX. LOC. GOV'T CODE ANN. § 232.100 (Vernon Supp. 2004).⁵ Section 232.101(a) provides subchapter E counties with broad authority to regulate subdivisions:

⁵Section 232.100 provides that subchapter E applies only to the subdivision in a county that "(A) has a population of 150,000 or more and is adjacent to an international border; (B) has a population of 700,000 or more; (C) is adjacent to a county with a population of 700,000 or more and is within the same metropolitan statistical area as that adjacent county, as designated by the United States Office of Management and Budget; or (D) is adjacent to a county with a population of 700,000 or more, is not within the same metropolitan statistical area as that adjacent county, and has a population that has increased after the 1990 decennial census, from one decennial census to the next, by more than 40 percent." TEX. LOC. GOV'T CODE ANN. § 232.100(2) (Vernon Supp. 2004).

(a) By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

Id. § 232.101(a).⁶ The legislature enacted subchapter E in 2001 to give affected counties greater authority to regulate subdivision infrastructure. As a bill analysis explains,

Current law allows cities to make certain requirements in the development of infrastructure for subdivisions. No such provision exists for counties. S.B. 873 grants counties the authority to: adopt subdivision regulations, including lot size and setback limitations; enforce a major thoroughfare plan and establish right of way; require possession of a plat compliance certificate before utility hookups; and enact other regulations relevant to responsible development.⁷

In addition to the broad regulatory authority granted in section 232.101, sections 232.102 through 232.106 authorize counties to adopt various requirements. *See, e.g., id.* §§ 232.102 (major thoroughfare right-of-ways), .103 (lot frontages), .104 (set-backs).

You ask whether this regulatory authority applies to condominium developments or other multi-unit developments. The authority granted to a county to regulate subdivisions in section 232.101(a) applies to a subdivision of land subject to county regulation under subchapter A and is subject to the same exemptions provided in subchapter A in section 232.0015. *See id.* §§ 232.100(1) (“This subchapter applies only to the subdivision of the land that is [] subject to county regulations under Subchapter A or B.”), 232.101(c) (“The authority granted under Subsection (a) is subject to the exemptions to plat requirements provided for in Section 232.0015.”). Furthermore, section 232.107 expressly states that the authority granted to a county by subchapter E is “cumulative of and in addition to the authorities granted under this chapter and all other laws to counties to regulate the subdivision of land.” *Id.* § 232.107. These provisions indicate that the legislature expressly intends subchapter E to add to a county’s authority to regulate subdivisions subject to platting under

⁶*See also id.* § 232.101(b) (“Unless otherwise authorized by state law, a commissioners court shall not regulate under this section: (1) the use of any building or property for business, industrial, residential, or other purposes; (2) the bulk, height, or number of buildings constructed on a particular tract of land; (3) the size of a building that can be constructed on a particular tract of land, including without limitation and restriction on the ratio of building floor space to the land square footage; or (4) the number of residential units that can be built per acre of land.”).

⁷SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (Enrolled Version dated June 5, 2001); *see also* SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (As Filed dated Mar. 15, 2001); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (Comm. Rpt. dated Mar. 28, 2001); HOUSE COMM. ON LAND & RES. MGMT., BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (Comm. Rpt. dated Apr. 30, 2001).

subchapter A. Thus, we conclude that the term “subdivision” has the same meaning in both subchapters and that subchapter E authorizes a county to further regulate a subdivision regulated under subchapter A.

In answer to your specific question, section 232.100 of the Local Government Code and the other provisions of subchapter E “allow urban counties to require condominium or other multi-unit developments” that are subject to subchapter A “to meet subdivision or infrastructure planning requirements.” Request Letter, *supra* note 1, at 2.

S U M M A R Y

Local Government Code chapter 232, subchapter A authorizes a county to determine that a condominium development is a subdivision of land for which the landowner must prepare and file a plat. Subchapter E of chapter 232 authorizes an urban county to regulate a condominium development that constitutes a subdivision under subchapter A.

Very truly yours,



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