STATE OF TEXAS
COUNTY OF NUECES

AMENDED MANAGEMENT CERTIFICATE
PURSUANT TO SECTION 209.004, TEXAS PROPERTY CODE

VILLAGEWAK OWNERS CONDOMINIUMS OWNERS ASSOCIATION, INC.; a Texas Non-profit Property Owners Association files this management certificate as required by Section 209.004,

Texas Property Code:

1. Name of subdivision: VILLAGE WALK CONDOMINIUMS located at: 2525 South 11th Street Port Aransas, TSX 78373

2. Name of the association: VILLAGEWALK CONDOMINIUMS OWNERS ASSOCIATION, INC. and the mailing address is: PO BOX 3528 DULUTH, MN 55803

3. The name and mailing address of the person managing the association is: Office Manager, Bridget Friday, PO Box 3528 Duluth, Mn 55803

4. Other information the association considers appropriate:

A. Current Bylaws Revised 5/4/2019,
B. Rules and Regulations adopted by the Board of Directors
C. Declaration of Condominium Regime
D. Design and Construction Documents

SIGNED this 8th day of November, 2021.

Village Walk Condominium Owners Association, Inc.

By: _____

John McKinney, President

The STATE OF TEXAS

COUNTY OF Rockwall

The above instrument was acknowledged to before me by John McKinney, President, Village Walk Condominium Owners Association, Inc., on this 8th day of November, 2021.

_____

Notary Public, State of Texas

KRISTIN M. RICE
ID #10909172
My Commission Expires
August 27, 2025

VG-51-2021-2021060674

Nueces County
Kara Sands
Nueces County Clerk

Instrument Number: 2021060674

Official Public Records

AMENDMENT

Recorded On: November 18, 2021 11:15 AM

Number of Pages: 3

" Examined and Charged as Follows: "

Total Recording: $25.00

STATE OF TEXAS
Nueces County
I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Nueces County, Texas

Kara Sands
Nueces County Clerk
Nueces County, TX

Kara Sands

********** **THIS PAGE IS PART OF THE INSTRUMENT** **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	2021060674
Receipt Number:	20211118000090
Recorded Date/Time:	November 18, 2021 11:15 AM
User:	Catherine R
Station:	CLERK02

Record and Return To:

FRIDAY PROPERTIES MANAGEMENT LLC
P O BOX 3528
DULUTH MN 55803

DECLARATION OF CONDOMINIUM REGIME FOR VILLAGE WALK CONDOMINIUMS

First American Title Ins. Co.
GF# 869655-CC4D

DECLARATION OF CONDOMINIUM REGIME FOR VILLAGE WALK CONDOMINIUMS

BANYAN BEACH, LP, a Texas limited partnership ("**Declarant**") is the owner of the real property more particularly described on Exhibit "A" attached hereto and incorporated herein for all purposes, together with all improvements thereon and all easements, rights, and appurtenances thereto, and hereby submits such real property to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating the Village Walk Condominiums.

NOW, THEREFORE, it is hereby declared that the real property more particularly described on Exhibit "A" attached hereto and incorporated herein for all purposes, together with all improvements thereon and all easements, rights, and appurtenances thereto will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Exhibit "D", attached hereto, which will run with such real 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. "**Additional Land**" means the real property more particularly described on Exhibit E" attached hereto and incorporated herein for all purposes, together with all improvements thereon and all easements, rights, and appurtenances thereto.

1.3. "**Architectural Reviewer**" means the Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Architectural Control Committee appointed by 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 public law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments as defined in Article 5 of this Declaration.

1.5. "**Association**" means the Village Walk Condominium Owners Association, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of Units within the Regime. The term "Association" shall have the same meaning as the term "unit 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 of Formation, the Bylaws, and the Act.

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

1.7. "**Building**" means the Improvements in which any Attached Units are located.

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

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

1.10. "**Common Element**" means all portions of the Property save and except the Units. Without limiting, in any way, the generality of the foregoing, the Common Elements shall include those items defined as "General Common Elements" and "Limited Common Elements" in the Act.

1.11. "**Declarant**" means Banyan Beach, LP, a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of Banyan Beach, LP, as Declarant, must be expressly set forth in writing and recorded in the Real Property Records of Nueces County, Texas.

1.12. "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Exhibit "D" of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is recorded until one hundred twenty (120) days after title to seventy-five percent (75%) of the Units, including any hereinafter created within the Additional Land if added to the Regime prior to the expiration of the then effective Declarant Control Period, have been conveyed to Owners other than Declarant.

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

1.14. "**Development Period**" means the twenty-five (25) year period beginning on the date this Declaration is recorded in the Real Property Records of Nueces County, Texas, during which Declarant has certain rights as more particularly described on Exhibit "D", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by the recordation of a notice of termination, executed by Declarant and recorded in the Real Property Records of Nueces County, Texas.

During the Development Period, in the event of any conflict between the terms and provisions of this Declaration and the terms and provisions of Exhibit "D", attached hereto, the terms and provisions of Exhibit "D" will control.

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

1.16. "**General Common Elements**" mean Common Elements which are not Limited Common Elements, including without limitation the Recreational Facilities and the areas, if any, designated as "Common Area" on the Plat and Plans.

1.17. "**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, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, pavilions, 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.

1.18. "**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", or "Limited Common Elements", or "Limited Common Areas" on Exhibit "B", attached hereto.

1.19. "**Majority**" means more than half of the Owners of all of the Units.

1.20. "**Member**" means any person(s), entity, or entities holding membership rights in the Association.

1.21. "**Mortgagee**" means a holder, insurer, or guarantor of a loan secured by a recorded senior or first deed of trust lien against a Unit, the proceeds of which were used for the acquisition or construction of the Unit.

1.22. "**Notice of Revision**" means the notice described in the definition of Unit below, filed after completion of construction of a Unit, which includes the vertical and horizontal boundaries of a Unit as constructed. Prior to the expiration of the Declarant Control Period, the Notice of Revision shall be prepared and filed by the Declarant. After the expiration of the Declarant Control Period, the Notice of Revision shall be prepared and filed by the Association, at the cost and expense of the Owner(s) of the Unit(s). A filed Notice of Revision amends the Plat and Plans.

1.23. "**Owner**" means shall mean the person(s), entity, or entities, including Declarant, holding a fee simple interest to a Unit, but shall not include a Mortgagee.

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

1.25. "**Plat and Plans**" means the plat and plans attached hereto as Exhibit "B", as changed, modified, or amended in accordance with this Declaration.

1.26. "**Property**" means the real property more particularly described on Exhibit "A" attached hereto and incorporated herein for all purposes, together with all improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.27. "**Recreational Facilities**" means the swimming pool, pavilion and greenbelt to be constructed on the Property, as shown on the Plat and Plans.

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

1.29. "**Resident**" means an occupant of a Unit, regardless of whether the person owns the Unit.

1.30. "**Rules and Regulations**" mean rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules and Regulations may be adopted by Declarant for the benefit of the Association.

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

1.32. "**Unit**" means a physical portion of the Property designated by this Declaration for separate ownership. There are 2 types of possibly Units: "**Attached Units**" and "**Detached Units**" (each as herein so defined). Initially, all of the Units will be Detached Units. Declarant has reserved the right to relocate the boundary lines between two or more Detached Units, so that such Units are combined with a common boundary line, to create Attached Units. The initial boundaries of the Units are shown on the Plat and Plans attached hereto as Exhibit "B" and until construction of the Improvements thereon such Units shall consist solely of the airspace contained within the perimeter boundaries described on Exhibit B. The boundaries of the Detached Units after construction shall be the exterior boundaries of such Units as actually constructed upon the Land within the Unit boundaries shown on "Exhibit "B", and as will be specifically shown in a Notice of Revision filed with respect to such Unit. The boundaries of any Attached Units shall be as set forth in the amendment document creating such Attached Units, as revised pursuant to the applicable Notice of Revision, and shall be as described in Section 4.3 below. Upon completion of construction of a Unit, a Notice of Revision shall be filed in the real property records of Nueces County, Texas, which shall include an as constructed vertical and horizontal description of the Unit, if a Detached Unit, or Building and Units, in the case of an Attached Unit. Such Notice of Revision, upon recordation in the real property records of Nueces County, Texas, shall automatically amend this Declaration for the purpose of defining the Units and, if applicable, Building in which any Units are located for purposes of this Declaration.

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

2.1. **Subject To Documents**. The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Exhibit "D", 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. **Recorded Easements and Licenses**. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all covenants, conditions, restrictions, easements, licenses, leases, and encumbrances of record, 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.

2.3. **Additional Land**. As more particularly described in Exhibit "D", the Declarant has reserved the option and right, but not the obligation, to expand the Regime; and, subject to this Declaration and the Act, to submit to the Regime all or any portion of the Additional Land, together with all improvements thereon and all easements, rights, and appurtenances thereto. Except as provided in Exhibit "D", there are no limitations upon this option to expand. The maximum number of Units that may be created on the Additional Land is 43.

ARTICLE 3
PROPERTY EASEMENT AND RIGHTS

3.1. **Owner's Easement of Enjoyment**. Each Owner is hereby granted a right and easement of enjoyment over and across the General Common Elements and any improvement located thereon, subject to other rights and easements set forth in the Documents.

3.2. **Owner's Maintenance Easement**. Each Owner is hereby granted a non-exclusive easement over and across any of the Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Association, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the Common Elements. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit shall be made in advance to 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 other portions of the Regime during any such maintenance or reconstruction. If an Owner damages another Unit or any Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Unit.

3.3. **Owner's Ingress/Egress Easement**. Each Owner is hereby granted a perpetual easement over all paved roadways located within the Property, as may be reasonably required, for vehicular ingress to and egress from his Unit or the Limited Common Elements assigned thereto.

3.4. **Owner's Encroachment Easement**. As long as the Improvement is constructed in accordance with the plans and specifications approved by the Architectural Reviewer and in the location approved by the Architectural Reviewer, each Owner is hereby granted an easement for the existence and continuance of any encroachment of an Improvement located on such Owner's Unit on any Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of an Improvement, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement remains.

3.5. **Association's Access Easement**. The Association is hereby granted an easement of access and entry into each Unit and the Common Elements to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

3.6. **Utility Easement**. The Association may grant permits, licenses, and easements over the Common Elements for utilities, roads, and other purposes necessary for the proper operation of the Regime. 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 THE DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

3.7. **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 PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND ACCEPTS HIS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, 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 PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

3.8. **Injury to Person or Property**. **NEITHER THE ASSOCIATION NOR DECLARANT, OR THEIR RESPECTIVE PARTNERS, 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, INCLUDING ANY MINOR CHILD OR PERSON USING THE RECREATIONAL FACILITIES; (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 PARTNERS, EMPLOYEES AND 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.**

ARTICLE 4
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

4.1. **Initial Submitted Units and Maximum Number of Units.** The Regime initially consists of fifty-six (56) Units, all of which are Detached Units. During the Development Period, Declarant as provided in Section 2.3 and Exhibit "D", has reserved the right to submit all or portions of the Additional Land to the Regime and create up to an additional forty-three (43) Units in the Additional Land. The initial Units subject to the Regime and each Unit added to the Regime by Declarant NEED NOT BE BUILT by Declarant. However, Declarant has agreed to construct and install the Recreational Facilities and the streets shown on the Plat and Plans, as well as related landscaping, lighting, signage,

fencing, gates and irrigation systems for the General Common Elements. In addition, Declarant in its discretion may require that purchasers of uncompleted Units agree to construct the Units within a set period of time.

4.2. **Detached Units.**

4.2.1. **Detached Unit Boundaries.** The initial boundaries and identifying number of each Detached Unit are shown on the Plat and Plans attached hereto as Exhibit "B" and until such time as the Improvements for a Detached Unit are actually constructed, the Unit shall consist solely of the airspace contained within the perimeter boundaries of such Unit shown on the Plat and Plans. The boundaries of each Detached Unit after completion of construction will be further described or depicted in a Notice of Revision so as to be follows:

(i) **Lower Boundary of the Unit:** The horizontal plane represented by the finished grade of the Unit after construction of the Unit.

(ii) **Upper Boundary of the Unit:** For Units 1 through 44, the horizontal plane parallel to and thirty (30) feet above the lower boundary of the Unit and for Units 45 thought 56, the horizontal plane parallel to and thirty-five (35) feet above the lower boundary of the Unit.

(iii) **Lateral Boundaries of the Unit:** The exterior walls of each Unit after construction thereof.

After completion of construction of a Unit or Units, a Notice of Revision shall be filed amending the Plat and Plans to specifically describe and depict the exterior boundaries of such Unit(s) in accordance with the foregoing provisions.

Ownership of a Detached Unit includes the entire building structure, including the roof and foundation, and all other Improvements located within the exterior boundaries of the Unit.

4.2.2. **What the Detached Unit Includes.** Each Detached Unit includes the spaces and improvements within the lower, upper, and vertical boundaries defined in Section 4.2.1. above, including without limitation the building structure, the roof and the foundation of such structure and all other Improvements located within the exterior boundaries of the Unit after completion of construction thereof. Each Unit also includes improvements, fixtures, and equipment serving the Detached Unit exclusively, whether located within, outside, or below the Detached Unit, whether or not attached to or contiguous with the Detached Unit, including but not limited to any below-grade foundation, piers or other structural supports; plumbing, sewerage, and utility lines, pipes, drains, and conduits; and any other below-grade item that serves or supports the Detached Unit exclusively. A Detached Unit does not include the land on which the Detached Unit is located, the conveyance of a Detached Unit is not a metes and bounds conveyance of land and the creation of a Detached Unit does not constitute a subdivision of land.

4.3. **Attached Units.**

4.3.1. Attached Unit Boundaries. The boundaries and identifying number of any Attached Unit hereafter created will be shown on an amendment to this Declaration hereafter filed by Declarant in accordance with the provisions of Exhibit "D" or on a Notice of Revision

and will be the walls, floors, and ceilings of each Attached Unit within the Building in which such Attached Unit is located. Until such time as the Attached Units are constructed, the Attached Unit shall consist solely of the airspace contained within the perimeter boundaries of such Unit shown on the amendment to the Plat and Plans creating such Unit.

4.3.2. What an Attached Unit Includes.

(i) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the Attached Unit, and all other portions of the walls, floors, or ceilings are hereby designated as Limited Common Elements assigned to all Attached Units within the Building in which the Attached Unit is located;

(ii) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of an Attached Unit, then the portion serving only that Attached Unit is a Limited Common Element allocated solely to that Attached Unit, and the portion serving more than one Attached Unit is hereby designated as a Limited Common Element assigned to all Attached Units within the Building in which the Attached Unit is located;

(iii) Unless otherwise provided in (ii) above, the spaces, interior partitions, and other fixtures and improvements within the boundaries of a Attached Unit are a part of the Attached Unit; and

(iv) Shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve a single Attached Unit, but located outside the Attached Unit's boundaries, are Limited Common Elements allocated exclusively to that Attached Unit.

4.4. **Designation of Limited Common Elements**. Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans attached hereto as Exhibit "B". A Common Element not allocated by this Declaration as a Limited Common Element may be allocated only pursuant to the provisions of this Article. Declarant has reserved the right, as set forth on Exhibit "D", attached hereto, to create and assign Limited Common Elements within the Property.

4.5. **Reallocation of Limited Common Elements**. A Limited Common Element may not be reallocated, except by an amendment to this Declaration. An amendment reallocating Limited Common Elements must be executed by the Unit Owners between or among whose Units the reallocation is made and their Mortgagees. The amendment will be delivered to the Association which shall record it at the expense of the reallocating Unit Owners. The Unit Owners executing the amendment will prepare the amendment at their sole cost and expense and will reimburse the Association for its reasonable attorneys' fees in connection with review and recording of the amendment. Declarant has reserved the right. as set forth on Exhibit "D", attached hereto, to reallocate Limited Common Elements.

4.6. **Allocation of Interests**. The allocated interests set forth on Exhibit "C" are assigned to each Unit in accordance with a ratio of 1 to the total number of Units. The same formula is to be used in the event the allocated interests are 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 allocated interests 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 in the Real Property Records of Nueces County, Texas

4.7. **Common Expense Liabilities**. The percentage of liability for common expenses levied pursuant to Section 5.5 (Regular Assessments) and Section 5.6 (Special Assessments) allocated to each Unit obligated to pay such assessments under Article V is uniform for all similarly obligated Units, regardless of the size, location, or value of a Unit.

4.8. **Votes**. One (1) vote is allocated to each Unit and such vote is weighted equally for all Units, regardless of any other allocation appurtenant to the Unit.

ARTICLE 5
COVENANT FOR ASSESSMENTS

5.1. **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, operation and maintenance of the Recreational Facilities, 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.

5.2. **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 or entity 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.

5.3. **Control for Assessment Increases**. This Section 5.3 may not be amended without the approval of Owners representing at least seventy-five percent (75%) of the votes in the Association. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget. At least thirty (30) days prior to the effective date of a special assessment levied pursuant to Section 5.7 or increase in regular assessments levied pursuant to Section 5.5, the Board will notify the Owner of each Unit to which the assessment will be levied of the amount of, the budgetary basis for, and the effective date of the special assessment or increase in regular assessments. The special assessment or increase in regular assessments will automatically become effective unless at least sixty-seven percent (67%) of the votes in the Association held by the Owners against which the assessment will be levied disapprove the special assessment or increase in the regular assessments by petition or at a meeting of the Association. In such event, the last budget approved by the Association will continue in effect until a revised budget is approved by the Board. Notwithstanding the foregoing provision, in the event a prior year's budget is to be applied to the next fiscal year as a result of Owner disapproval as provided in this Section, the prior year's budget will be increased by the Board to discharge any actual expenses properly incurred by the Association and required to be paid by the Association in accordance with the Act.

5.4. **Types of Assessments**. There are four (4) types of Assessments: Regular, Special, Individual, and Deficiency Assessments.

5.5. **Regular Assessments**.

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

(i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, including without limitation the Recreational Facilities, and improvements, equipment, signage, and property owned by the Association.

(ii) Utilities billed to the Association.

(iii) Services billed to the Association and serving all Units.

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

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

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

(vii) Insurance premiums and deductibles for insurance maintained by the Association.

(viii) Contributions to the reserve funds.

(ix) Any other expense which the Association is required by 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.

5.5.2. Annual Budget. The Board will prepare and approve an estimated annual budget for the estimated expenses to be incurred by the Association pursuant to Section 5.5.1 above, 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 the Owner of each Unit, although failure to receive a budget or budget summary will not affect an Owner's liability for assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

5.5.3. Basis of Regular Assessments. Regular assessments will be based on the annual budget prepared in accordance with Section 5.5.2, 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.

5.5.4. 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, or collect a supplemental assessment if assessments are being collected annually, for the remainder of the fiscal year in an amount that covers the estimated deficiency.

If you own a Unit, you are required to pay Assessments to the Association.

5.6. **Special Assessments**. In addition to regular assessments, and subject to Section 5.3 above, the Board may levy one or more special assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the Owners, except that special assessments for the following purposes must be approved by at least a Majority of the votes in the Association: (i) acquisition of real property; and (ii) construction of additional improvements within the Regime (excluding the repair or replacement of existing improvements).

5.7. **Individual Assessments**. In addition to regular and special assessments, the Board may levy an individual assessment against an Owner and the Owner's Unit. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner, the Owner's Unit or any Limited Common Elements appurtenant to the Owner's Unit into compliance with the Documents; fines for violations of the Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; sub-metered utilities serving the Unit; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Unit; common expenses that benefit fewer than all of the Units, which may be assessed according to benefit received; 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.

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

5.9. **Due Date**. Regular assessments are due on such date as the Board may designate in its sole and absolute discretion, will be payable monthly, quarterly, semi-annually or annually as the Board may elect in its sole and absolute discretion and are delinquent if not received by the Association on or before the required due date. Special, individual, and deficiency assessments are due on the date stated in the notice of assessment or, if no date is stated, within twenty (20) days after notice of the special, individual, or deficiency assessment is given.

5.10. **Reserve Funds**. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and may fund reserves out of regular assessments.

5.10.1. Operations Reserves. 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.

5.10.2. Replacement & Repair Reserves-General Common Elements. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements.

5.11. **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.

5.12. **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 the 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 do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (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. 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 managing agent to levy transfer related fees.

5.13. **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.

ARTICLE 6
ASSESSMENT LIEN

6.1. **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.

6.2. **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 deed of trust or vendor's lien recorded before this Declaration; (iii) a first or senior vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due securing sums advanced for the acquisition or construction of a Unit. Unless otherwise provided herein, the assessment lien is 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.

6.3. **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.

6.4. **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 in the Real Property Records of Nueces County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

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

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

6.6. **Foreclosure of Lien**. The assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by 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 7
EFFECT OF NONPAYMENT OF ASSESSMENTS

An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect past-due 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.

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

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

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

7.4. **Acceleration**. If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to

the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

7.5. **Suspension of Use and Vote**. If an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right of the Owner and the Residents of the Owner's Unit to use Common Elements, including without limitation the Recreational Facilities, and common services during the period of delinquency. Services include master-metered or sub-metered utilities serving the Unit. The Association may not suspend an Owner or Resident's right of access to the Unit. The Association may also suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension of rights under this Section 7.5 does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

7.6. **Collection of Rent**. If a Unit for which Assessments are delinquent is occupied by a tenant who is obligated to pay rent to the Owner, the Association may require that Unit rents be used to pay the Unit's delinquent Assessments and may demand that the Unit tenant deliver Unit rent to the Association until the Unit's Assessment delinquency is cured.

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

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

7.9. **Application of Payments**. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special 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 8
MAINTENANCE AND REPAIR OBLIGATIONS

8.1. **Overview**. Generally, the Association maintains the General Common Elements, and the Owner maintains his Unit and any appurtenant Limited Common Elements. If an Owner fails to maintain his Unit or any appurtenant Limited Common Elements, the Association may perform the work at the Owner's (or, in the case of Limited Common Elements benefiting more than one Unit, Owners') expense.

8.2. **Association Maintains**. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association performs the services or maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Units or Common Elements.

(i) The General Common Elements.

(ii) Any real and personal property owned by the Association but which is not a Common Element, such as a Unit owned by the Association.

(iii) Any area, item, easement, or service, the maintenance of which is assigned to the Association by this Declaration or by the Plat and Plans.

8.3. **Owner Responsibility**. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of his Unit:

8.3.1. Detached Units. The following provisions apply to Owners of Detached Units:

(i) Unit Maintenance. Each Owner, at the Owner's expense, must maintain all Improvements on or adjacent to his Unit, including but not limited to the Unit, including but not limited to the roof and foundation of the Unit, fences, sidewalks, and driveway. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Unit and the Improvements located on the Unit at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces; provided, however, that no Owner may make any change to the overall architectural design, the exterior color or exterior materials of his Unit without the written approval of the Architectural Reviewer.

(ii) Yard Maintenance. Each Owner, at the Owner's expense, must maintain the yard area designated as a Limited Common Elements to his Unit at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must:

1) Maintain an attractive ground cover or lawn on all yards visible from a street.

2) Edge the street curbs at regular intervals.

3) Mow the lawns and grounds at regular intervals.

4) Prevent lawn weeds or grass from exceeding six (6) inches in height.

5) Not plant vegetable gardens that are visible from a street.

6) Maintain an attractive appearance for shrubs and trees visible from a street.

(iii) Owner's Right to Alter Interior of Unit. Each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of his Unit, provided that such action does not affect any other Unit or Common Element. However, window treatments and other improvements that are visible from the exterior of any Unit are subject to the approval of the Architectural Reviewer.

8.3.2. Attached Units. The following provisions apply to Owners of Attached Units:

(i) Unit Maintenance. Each Owner, at the Owner's expense, must maintain his Unit and the Limited Common Elements assigned to such Owner's Unit. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Unit and the Limited Common Elements appurtenant thereto in good order and repair at all times. With respect to the

Building in which the Attached Unit is located, the Owners of the Units within such Building shall be jointly responsible for maintaining it to a level, to a standard and with an appearance that is commensurate with the neighborhood. Specifically, the Owners must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces; provided, however, that no Owner may make any change to the overall architectural design, the exterior color or exterior materials of a Building without the written approval of the Architectural Reviewer.

(ii) Yard Maintenance. Each Owner, at the Owner's expense, must maintain the yard area designated as a Limited Common Elements to his Unit at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must:

1) Maintain an attractive ground cover or lawn on all yards visible from a street.

2) Edge the street curbs at regular intervals.

3) Mow the lawns and grounds at regular intervals.

4) Prevent lawn weeds or grass from exceeding six (6) inches in height.

5) Not plant vegetable gardens that are visible from a street.

6) Maintain an attractive appearance for shrubs and trees visible from a street.

(iii) Owner's Right to Alter Interior of Unit. Each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of his Unit, provided that such action does not affect any other Unit or Common Element. However, window treatments and other improvements that are visible from the exterior of any Unit are subject to the approval of the Architectural Reviewer.

8.3.3. Avoid Damage. An Owner may 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, increase insurance premiums to the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

8.3.4. Responsible for Damage. An Owner is responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Elements or the property of another Owner.

8.4. **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 the Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at the Owner's expense, which is an individual assessment against the Owner and the Owner's Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the

Board may take any action it deems necessary to protect persons or property, the cost of the action being at the Owner's expense.

8.5. **Warranty Claims**. If the Owner is the beneficiary of a warranty against major structural 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.

ARTICLE 9
ARCHITECTURAL COVENANTS AND CONTROL

9.1. **Purpose**. Because the Units are part of a single unified community, this Declaration creates rights to regulate the design, use, and appearance of the Units and Common Elements in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent Improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to the then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing Improvements, including but not limited to dwellings, buildings, fences, landscaping, retaining walls, yard art, sidewalks, and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

9.2. **Architectural Control During the Development Period**. During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements or Units. During the Development Period, the Architectural Reviewer for Improvements and Units is the Declarant or its designee.

9.2.1. 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 the developer of the Regime and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

9.2.2. 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 under this Article to: (i) an architectural control committee appointed by the Board; or (ii) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

9.3. **Architectural Control by Association**. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "**ACC**"), or

the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control.

9.3.1. ACC. The ACC will consist of at least three (3) but not more than five (5) persons appointed by the Board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

9.3.2. Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

9.4. **Prohibition of Construction, Alteration and Improvement**. Unless otherwise permitted under Sections 8.3.1 and 8.3.2 with respect to the redecoration of the interiors of Detached Attached Units, no Unit or any Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction of any Unit, any other Improvement or any landscaping may occur unless approved in advance by the Architectural Reviewer. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

9.5. **Architectural Approval**. Prior to the initial construction of any Unit by any Owner other than Declarant, and prior to any other action requiring approval of the Architectural Reviewer as provided elsewhere in this Declaration, an Owner must comply with the procedures and requirements set out in the Design and Construction Guidelines issued by the Declarant during the Development Period (and the Association or ACC thereafter). Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer, which must be in writing.

9.5.1. Building Permit. If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

9.5.2. Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any Improvement constructed or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

9.6. **Architectural and Landscaping Guidelines; Special Development Requirements**. In addition to the Rules and Regulations that may be adopted by the Board, the Declarant during the Development Period (and the Association thereafter) may publish architectural and/or landscaping restrictions, guidelines, and standards, which may be revised from time to time to reflect changes in technology, style, and taste, governing the design and construction of Units and Limited Common

Elements, including without limitation regulations governing exterior design, textures, finishes and colors and construction materials. Unless the Declarant otherwise consents, the following specific restrictions on height, size and alterations shall apply to all construction on the Property:

9.6.1 Unit Height. No Detached Unit and no Building in which an Attached Unit is contained shall exceed two (2) stories, other than Unit Nos. 45 through 56 which shall be permitted to be three (3) stories. In no event shall any Improvement constructed on the Property, including without limitation any Detached Unit or Building, exceed thirty-five (35) feet in height, when measured from finished grade ground level.

9.6.2 Unit Size. A Unit must contain a minimum of 1,000 square feet of air conditioned space, not counting the garage. No two (2) story Unit shall contain more than 2,500 square feet of air conditioned space, not counting the garage. No three (3) story Unit shall contain more than 3,500 square feet of air conditioned space, not counting the garage.

9.6.3 Garages. No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Board.

9.7. **Control for Variances**. If, following the Development Period, an Owner requests a variance or approval of a matter that, in the Architectural Reviewer's opinion, would constitute a variance of the Regime's established standards, the Architectural Reviewer must notify the Owners of each Unit of the nature of the proposed variance at least twenty (20) days prior to approval. The Architectural Reviewer may approve the variance unless Owners representing of at least a Majority of the Units disapprove the proposed variance by petition or at a duly called meeting of the Association. During the Development Period, if the Architectural Reviewer is the Declarant or its designee, the Architectural Reviewer may grant variances from architectural guidelines and the provisions of Article 10 without the necessity of notifying the Owners of each Unit if, in its sole and absolute discretion, such variance is justified due to visual or aesthetic considerations or unusual circumstances.

ARTICLE 10
CONSTRUCTION & USE RESTRICTIONS

10.1. **Variance**. The use of the Property is subject to the restrictions contained in this Article, and subject to Rules and Regulations adopted pursuant to this Article. The Architectural Reviewer, or the Board after the Development Period, may grant a variance or waiver of a restriction or Rule on a case by case basis, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances.

10.2. **Construction**. All Improvements must: (i) comply with any applicable ordinances and codes of governmental entities; (ii) have a building permit issued by the applicable governmental entity, if the Improvement requires a permit and if the Unit is located in a jurisdiction that issues permits; **and** (iii) have the Architectural Reviewer's prior written approval, if required.

10.3. **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, acting for the Association, to adopt, amend, repeal, and enforce reasonable Rules and Regulations, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property, including without limitation Rules and Regulations governing:

(i) Use of Common Elements.

(ii) Hazardous, illegal, or annoying materials or activities on the Property.

(iii) The use of Property-wide services provided through the Association.

(iv) The consumption of utilities billed to the Association.

(v) The use, maintenance, and appearance of exteriors of Units and Improvements.

(vi) Landscaping and maintenance of yards and grounds.

(vii) The occupancy and leasing of Units.

(viii) Animals.

(ix) Vehicles.

(x) Disposition of trash and control of vermin, termites, and pests.

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

10.4. **Hazardous Activities**. No activities will be conducted on the Regime and no Improvements constructed on the regime, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon the Regime, no open fires may be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

10.5. **Insurance Rates**. Nothing may be done or kept on the regime which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Elements, or the improvements located thereon, without the prior written approval of the Board.

10.6. **Mining and Drilling**. No portion of the Regime will be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

10.7. **Noise and Odor**. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property, and no strong odor shall be permitted to emanate from any Units, or its Limited Common Elements, so as to be offensive or detrimental to any other portion of the Property or any occupants. Without limiting the generality of the foregoing, if any noise, odor or nuisance emanates from any Improvement on any Unit or related Limited Common Element, the Association may (but shall not be obligated to) enter any such Improvement or Limited Common Element and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm), odor or nuisance.

10.8. **Animals – Non-Household Pets**. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a usual and common household pet may be kept, maintained, or cared for on the Property.

10.9. **Single-Family Residential Use**. The Units must be used solely for private single family residential purposes. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Unit, except an Owner or occupant of a Unit may conduct business activities within a Unit so long as: (i) the existence or operation of the business activity is not apparent or

detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of Residents within the Property; (iv) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity in intended to or does generate a profit; or (z) a license is required.

Leasing of a Unit will not be considered a business or trade within the meaning of this Section. This Section will not apply to any activity conducted by the Declarant or its designee, which is engaged in the business of constructing homes for resale who acquires a Unit for the purpose of constructing a Unit or Improvements thereon for resale to a third party.

10.10. **Rentals**. Nothing in this Declaration will prevent the rental of any Unit by the Owner thereof for residential purposes; provided that all rentals must comply with the limitations and restrictions set forth in the Rules and Regulations, including without limitation those with respect to the minimum term and maximum number of occupants. All leases must be in writing. The Owner shall be responsible for ensuring that his tenant complies with the Documents.

10.11. **Appearance**. The exterior and interior of a Unit, any Building and any Improvement located on or adjacent to any Unit or Building must be maintained in a manner so as not to be unsightly, as determined by the Board, when viewed from the Common Elements or any other Unit.

10.12. **Drainage**. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Board.

10.13. **New Construction**. Each Unit must be constructed on site. A dwelling or addition constructed elsewhere may not be moved onto a Unit. Factory-built homes are not permitted, even though assembled or finished on the Unit. The construction of a dwelling must be started promptly after the Architectural Reviewer approves the dwelling's plans and specifications. At the start of construction - but not before - building material to be used in the construction may be stored on the Unit. Once started, all Improvements on the Unit must be completed with due diligence.

10.14. **Declarant Privileges**. In connection with the development and marketing of the Property, Declarant has reserved certain rights and privileges to use the Property in ways that are not available to other Owners and Residents, which rights and privileges are described on Exhibit "D", attached hereto. 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.

ARTICLE 11
ASSOCIATION OPERATIONS

11.1. **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."

11.2. **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.

11.3. **Governance**. The Association will be governed by a board of directors elected by the Members. Unless the Bylaws or Certificate of Formation 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 ownership interests.

11.4. **Membership**. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Unit is owned by more than one person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit. A Member who sells his Unit under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all assessments attributable to his Unit until fee title to the Unit is transferred.

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

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

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

11.7.1. Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address, phone number, and driver's license number, if any; (iii) any Mortgagee's name, address, and loan number; (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.

11.7.2. Pay Assessments. Each Owner will pay assessments properly levied by the Association against the Owner or such Owner's Unit.

11.7.3. Comply. Each Owner will comply with the Documents as amended from time to time.

11.7.4. Reimburse. 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.

11.7.5. Liability. 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.

11.8. **Authority To License Common Elements**. The Association, acting through its Board, is expressly authorized to grant licenses for portions of the Common Elements to one or more for-profit businesses that provides services or products to the Owners or Residents of the Property, provided that such use of the Common Elements: (i) is only for Property-related services or products; (ii) does not entail visits to the Property by the public; (iii) is compatible with neighborhood values and standards; and (iv) is terminable at will and without penalty by the Association.

ARTICLE 12
ENFORCING THE DOCUMENTS

12.1. **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 right to enforce the Documents:

12.1.1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

12.1.2. 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.

12.1.3. Suspension. The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress), including the right to use the Recreational Facilities, 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.

12.1.4. 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.

12.2. **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.

12.3. **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.

12.4. **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.

12.5. **Notice And Hearing**. Before levying a fine for violation of the Documents, 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 the Act. 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 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine, unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. 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 Act's requirements.

ARTICLE 13
INSURANCE

13.1. **General Provisions**. All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. 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. Each Owner irrevocably appoints the Association, acting

through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

13.1.1. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least ten (10) days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

13.1.2. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or Resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

The Association does NOT insure the individual Units.

13.2. **Property**. To the extent reasonably available, the Association will obtain blanket all-risk insurance for insurable Common Element improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Unit owned by the Association.

13.3. **General Liability**. 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. 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.

13.4. **Directors And Officers Liability**. To the extent it is reasonably available, the Association will 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 ad or omission in carrying out their duties in those capacities.

13.5. **Fidelity Coverage**. The Association will 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 by its own fidelity insurance policy with the same coverages.

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

13.7. **Owner's Responsibility For Insurance**. Each Owner will obtain and maintain fire and extended coverage on the Owner's Unit, and on Limited Common Element assigned to a Unit which are not insured by the Association, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Unit and on Limited Common

Element assigned to a Unit which are not insured by the Association. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an individual assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and Resident is solely responsible for insuring his personal property, including furnishings, vehicles, and stored items. **THE ASSOCIATION DOES NOT INSURE INDIVIDUAL UNITS OR ANY LIMITED COMMON ELEMENTS.**

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

13.9. **Association Does Not Insure Personal Property**. The Association does not insure an Owner or Resident's personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Unit and on the Property, including furnishings, vehicles, and stored items. The Association strongly recommends that each Owner and Resident purchase and maintain insurance on his personal belongings.

ARTICLE 14
RECONSTRUCTION OR REPAIR AFTER LOSS

14.1. **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.

14.2. **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.

14.2.1. 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.

14.2.2. 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.

14.2.3. Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If deficiency assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any delinquent assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

14.3. **Costs And Plans**.

14.3.1. 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.

14.3.2. Plans and Specifications. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Owners will cause their Units and other Improvements to be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of Common Elements, Units or other Improvements must be approved by the Architectural Reviewer, by Owners representing at least two-thirds of the votes in the Association and by certain mortgagees if so required by the Mortgagee Protection article of this Declaration.

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

14.4.1. Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Unit not covered by the Association's blanket insurance policy.

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

14.4.3. Failure to Repair. If an Owner fails to repair or restore damage as required by this Section, the Association may effect the necessary repairs and levy an individual assessment against the Owner and Unit for the cost thereof, after giving an Owner of the Unit reasonable notice of the Association's intent to do so.

14.4.4. Prohibition on or Election Against Restoration. If any Owner is prohibited from repairing or restoring the damage to his Unit, or if pursuant to the Act a sufficient number of Owners elect not to require restoration, the Owner of the damaged Unit shall remove all improvements that constituted a part of the Unit from the Property and landscape the real property on which the Improvements were situated in accordance with the reasonable requirements of the Architectural Reviewer, and any insurance proceeds shall be made available for such purpose.

14.5. **Owner's Liability For Insurance Deductible**. If repair or restoration of Common Elements, Units or other Improvements 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 15
TERMINATION AND CONDEMNATION

15.1. **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.

15.2. **Termination**. Termination of the terms of this Declaration and the condominium status of the Property will be governed by Section 82.068 of the Act.

15.3. **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 16
MORTGAGEE PROTECTION

16.1. **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.

16.1.1. 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.

16.1.2. Eligible Mortgagees. "**Eligible Mortgagee**" means the holder, insurer, or guarantor of a first priority recorded deed of trust lien against a Unit securing sums advanced for the acquisition or construction of such 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, "fifty-one percent (51%) of Eligible Mortgagees" means Eligible Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Eligible Mortgagees.

16.2. **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.

16.3. **Termination-Substantial Destruction or Condemnation**. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by owners representing at least eighty percent (80%) of the votes in the Association, and by at least fifty-one percent (51%) of Eligible Mortgagees. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least sixty-seven percent (67%) of Eligible Mortgagees.

16.4. **Implied Approval**. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within thirty (30) 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.

16.5. **Other Mortgagee Rights**.

16.5.1. 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.

16.5.2. Financial Statements. If a Mortgagee submits a written request, the Association will give the Mortgagee an audited statement for the preceding fiscal year within one hundred and twenty (120) days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

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

16.5.4. Right of First Refusal. 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.

16.5.5. 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.

16.6. **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 at a reasonable cost and are in reasonable amounts, 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.

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

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

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

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

(iv) Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

(v) Any proposed amendment of a material nature, as provided in this Article.

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

16.8. **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 all votes in the Association, and by at least fifty one percent (51%) of Eligible Mortgagees, determined in accordance with Section 16.1.2. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT PROVIDED IN EXHIBIT "D" ATTACHED HERETO**. A change to any of the provisions governing the following would be considered material:

(i) Voting rights.

(ii) Increases in assessments that raise the previously assessed amount by more than twenty five percent (25%), assessment liens, or the priority of assessment liens.

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

(iv) Responsibility for maintenance and repairs.

(v) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action.

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

(vii) Convertibility of Units into Common Elements or Common Elements into Units.

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

(ix) Property or fidelity insurance requirements.

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

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

(xii) A decision by the Association to establish self-management when professional management had been required previously by the Documents or an Eligible Mortgagee.

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

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

ARTICLE 17
AMENDMENTS

17.1. **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.

17.2. **Method of Amendment**. This Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives the Owner of each Unit the substance if not exact wording of the proposed amendment, a description in layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment. 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.

17.3. **Effective**. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Property, 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; and (iii) recorded in the Real Property Records of Nueces County, Texas.

17.4. **Declarant Provisions**. 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 Exhibit "D" of this Declaration is destined to become obsolete, beginning 25 years after the date this Declaration is first recorded, the Board may restate, rerecord, or publish this Declaration without Exhibit "D", provided the other exhibits are not re-lettered. The automatic expiration and subsequent deletion of Exhibit "D" does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

ARTICLE 18
DISPUTE RESOLUTION

Declarant may assign its rights and obligations pursuant to this Article 18; unilaterally and in whole or in part, to any party (referred to herein as a "**Builder**") who constructs any General Common Elements, Limited Common Elements, Unit or any Improvement within the Regime. In the event of a partial assignment of the rights and obligations of this Article 18 to a Builder, such assignment shall only govern defects in General Common Elements, Limited Common Elements, Units and/or Improvements constructed or caused to be constructed by the Builder.

18.1. **Owner Claims for Alleged Defects, Personal Injury, Survival, Wrongful Death, or Damage to Goods – Arbitration**. It is Declarant's intent that each Unit and Improvement will be constructed in compliance with all applicable building codes and ordinances and that such Unit and Improvements be of a quality that is consistent with good construction and development practices for similar projects. Nevertheless, disputes may arise concerning the existence of defects within a Unit. It is Declarant's intent that all such disputes and claims pertaining to construction defects be resolved amicably, and without the necessity of time-consuming and costly litigation. Declarant hereby reserves the right and easement for itself and any successor or assign to inspect, repair, and/or replace defects in any General Common Elements, Limited Common Elements, Unit or any Improvement.

18.1.1. Binding Arbitration. In the event an Owner asserts or alleges a claim for damages for any alleged defect in the construction or design of the General Common Elements,

Limited Common Elements, Unit or any Improvement, or any personal injury, survival, wrongful death, or damage to goods that was caused by any defect associated with construction or design of the General Common Elements, Limited Common Elements, Unit or any Improvement (collectively, an "**Owner Dispute**"), then such Owner shall be obligated to arbitrate such Owner Dispute unless Declarant specifically waives arbitration in writing. Declarant 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 Owner Dispute not referred to arbitration as required by this Section 18.1.

18.1.2. Governing Rules. Each Owner Dispute shall be resolved by binding arbitration in accordance with the terms of this Section 18.1, the Commercial Arbitration Rules of the American Arbitration Association, and, to the maximum extent applicable, the Federal Arbitration Act (Title 9 of the United States Code). In the event of any inconsistency between this Section 18.1 and such statute and rules, this Section 18.1 shall control. Judgment upon the award rendered by the arbitrators shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction.

18.1.3. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 18.1 shall limit the right of Declarant or any Owner, and Declarant and such Owner shall have the right during any Owner Dispute, 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 an Owner Dispute, 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, including the plaintiff, to submit the Owner Dispute to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

18.1.4. Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 18.1.

18.1.5. Arbitrators. Unless the parties to the arbitration agree in writing to the contrary, all arbitration proceedings shall be arbitrated by a panel of three arbitrators, which shall be appointed by the American Arbitration Association in accordance with its procedures.

18.1.6. Scope of Award; Modification or Vacation of Award. The arbitrators shall resolve all Owner Disputes in accordance with the applicable substantive law. The arbitrators may grant any remedy or relief that the arbitrators deem just and equitable and within the scope of this Section 18.1; provided, however, that in no event shall the arbitrator's award damages which exceed the damages for construction defects the Owner or Declarant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrators 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 arbitrators 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 Owner Dispute within fifteen (15) days from the date

the award is rendered. The arbitrators' findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

18.1.7. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Owner Dispute for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Corpus Christi, Texas. Arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem 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. To the extent permitted by Chapter 27 of the Texas Property Code, the arbitrators shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrators' fees) to the prevailing party. Each party agrees to keep all Owner Disputes 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 an Owner Dispute or issue any press release regarding any Owner Dispute without the written consent of the other parties to the Owner Dispute.

18.2. **Declarant's Right to Cure Alleged Defects-Claims by the Association**.

18.2.1. In the event that the Association claims, contends, or alleges that any portion of the General Common Elements, the Limited Common Elements, a Unit or any other Improvement is defective or claims, contends, or alleges that Declarant or a Builder, its agents, consultants, contractors, or subcontractors (collectively, "**Agents**") were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction, or other development of all or any portion of the General Common Elements, the Limited Common Elements, a Unit or any other Improvement (collectively, an "**Alleged Defect**"), Declarant hereby reserves the right and easement for itself and any successor or assign to inspect, repair, and/or replace the Alleged Defect as proved in this Section 18.2.

18.2.2. The Association shall, within fifteen (15) days of after discovery of any Alleged Defect, deliver a written notice (the "**Notice of Alleged Defect**") to Declarant, which shall include all of the following:

(i) A preliminary list of Alleged Defects (the "**Preliminary List of Alleged Defects**");

(ii) A summary of the results of a survey or questionnaire distributed to the Members to determine the nature and extent of the Alleged Defects, if such a survey has been conducted or questionnaire has been distributed; and

(iii) Either a summary of the results of testing conducted to determine the nature and extent of the Alleged Defects or the actual test results, if such testing has been conducted.

18.2.3. The Notice of Alleged Defect shall, upon delivery to Declarant, commence a period of time not to exceed sixty (60) days, unless the Association and Declarant agree to a longer period, during which the Association and Declarant shall attempt to settle the dispute in accordance with the provisions of this Section 18.2.

18.2.4. Except as provided in this Section 18.2, the Notice of Alleged Defect shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be

responsible for the defects claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of one hundred and fifty (150) days or a longer period agreed to in writing by the Association and Declarant; provided, however, at any time, Declarant may give written notice (the "**Cancellation Notice**") to cancel the tolling of the statute of limitations provided in this subsection. Upon delivery of a Cancellation Notice, the Association and Declarant shall be relieved of any further obligation to satisfy the requirements of this Section 18.2 except that the Association shall not be relieved of the obligations under Sections 18.2.9(ii) and 18.2.10 below. The tolling of all applicable statutes of limitations shall cease sixty (60) days after a Cancellation Notice is delivered to the Association.

18.2.5. Within twenty five (25) days of the date the Association delivers the Notice of Alleged Defect to Declarant, Declarant may request in writing to meet and confer with the Board (the "**Request to Meet and Confer**"), and to inspect the alleged defect and conduct testing, including testing that may cause physical damage to the portion of the General Common Elements, the Limited Common Elements, a Unit or any other Improvement on which the defect exists, in order to evaluate the claim. If Declarant does not make a timely Request to Meet and Confer, the Association and Declarant shall be relieved of any further obligation to satisfy the requirements of this Section; provided, however, that the Association shall not be relieved of the obligations of Sections 18.2.9(ii) and 18.2.10 below. Unless Declarant and the Association otherwise agree, the meeting (the "**Initial Meeting**") shall take place no later than ten (10) days from the date of the Request to Meet and Confer at a mutually agreeable time and place. The Association shall provide to each Member a notice of the time and place of the Initial Meeting pursuant to the provisions of the Bylaws. The discussions at the Initial Meeting shall be privileged communications and shall not admissible in evidence in any civil action or arbitration, unless Declarant and the Board consent to such admission. The Initial Meeting shall be for the purpose of discussing all of the following:

(i) the nature and extent of the Alleged Defects;

(ii) proposed methods of correction, to the extent there is sufficient information; and

(iii) proposals for submitting the dispute to arbitration; and

(iv) requests from Declarant to inspect the portion of the General Common Elements, the Limited Common Elements, a Unit or any other Improvement on which the defect exists.

18.2.6. If the Association has conducted any inspection or testing of the alleged defect prior to the date the Association sent the Notice of Alleged Defect to Declarant, the Association shall, at the earliest practicable date after the Initial Meeting and no later than five (5) days after the Initial Meeting, make available to Declarant for inspection and testing at least those areas inspected or tested by the Association. Declarant shall further have the right to enter onto or into, as applicable, any General Common Elements, the Limited Common Elements, any Unit or any other Improvement for the purpose of conducting inspections and tests necessary or required by Declarant, and at Declarant's sole cost and expense, to evaluate the Alleged Defect, and each Owner and the Association shall cooperate with such efforts. The results of any inspection or testing conducted by Declarant shall not be inadmissible in evidence in any action for arbitration solely because the inspection and testing was conducted pursuant to this Section 18.2.

18.2.7. Within thirty (30) days of the completion of inspection and testing or within thirty (30) days of the Initial Meeting, if no inspection and testing is conducted pursuant to this Section, Declarant shall submit to the Association the following:

(i) a request to meet with the Board to discuss a written settlement offer; and

(ii) a written settlement offer (the "**Settlement Offer**")and a concise explanation of the specific reasons for the terms of the offer.

If Declarant does not timely submit the items required by this Section 18.2.7, the Board shall be relieved of any obligations to meet and confer with Declarant about the Settlement Offer; otherwise, the Board shall meet and confer with Declarant about the Settlement Offer no less than ten (10) days after Declarant submits the items described in this Section 18.2.7.

18.2.8. At any time after the Notice of Alleged Defect is delivered to Declarant, the Association and Declarant may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section 18.2. Except for the notice required pursuant to Section 18.2.9 below, all notices, requests, statements, or other communications required pursuant to this Section shall be delivered by first-class registered or certified mail, return receipt requested.

18.2.9. The Association shall comply with either Section 18.2.9(i) or 18.2.9(ii) below.

(i) If the Board rejects the Settlement Offer, then the Board shall hold a meeting (the "**Member Meeting**") open to every member of the Association no less than fifteen (15) days before the Association submits a claim to arbitration pursuant to Section 18.3. No less than fifteen (15) days before the Member Meeting is held, a written notice shall be sent to each Member specifying all of the following:

1) that a meeting will take place to discuss alleged problems that may lead to the submission of a claim to binding arbitration, and the time and place of this meeting;

2) the options that are available to address the Alleged Defects, including the submission of the claim to binding arbitration, and a statement of the various alternatives that are reasonably foreseeable by the Association to pay for those options and whether those payments are expected to be made from the use of the Association's reserve funds or the imposition of special assessments;

3) the complete text of any Settlement Offer and a concise explanation of the specific reasons for the terms of the Settlement Offer received from Declarant;

4) the Preliminary List of Alleged Defects provided by the Association to the Declarant and a list of any other documents provided by the Association to the Declarant pursuant to this Section, and information about where and when Members may inspect those documents;

5) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect;

6) the estimated cost to repair such Alleged Defect;

7) the name and professional background of the attorney retained by the Association to submit the claim to binding arbitration and a description of the relationship (if any) between such attorney and any members of the Board;

8) a description of the fee arrangement between such attorney and the Association;

9) the estimated attorneys' fees and expert fees and costs necessary to submit and pursue the arbitration and the source of the funds that will be used to pay such fees and expenses; and

10) the estimated time necessary to conclude the arbitration.

The discussions at the Member Meeting and the contents of the notice of Member Meeting and the items required to be specified in such notice are privileged communications and are not admissible in evidence in any civil action or arbitration, unless the Association consents to their admission.

(ii) If the Association is relieved of its obligation to satisfy the requirements of this Section 18.2 other than this Section 18.2.9(ii) and Section 18.2.10 below, then the Association may submit the claim to binding arbitration only if the Association sends a written notice to each Member at least thirty (30) days prior to commencing such action, which notice shall include all of the following:

1) the Preliminary List of Alleged Defects provided by the Association to Declarant and a list of any other documents provided by the Association to Declarant pursuant to this Section 18.2, and information about where and when Members may inspect those documents;

2) the options, including the submission of the claim to binding arbitration, that are available to address the alleged problems;

3) a statement informing the Members of the procedures required by the Bylaws of the Association for the Members to call a special meeting of the Members and that if the Members meet such procedures, a special meeting of the Members shall be called;

4) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect;

5) the estimated cost to repair such Alleged Defect;

6) the name and professional background of the attorney retained by the Association to submit the claim to binding arbitration and a description of the relationship (if any) between such attorney and any members of the Board;

7) a description of the fee arrangement between such attorney and the Association;

8) the estimated attorneys' fees and expert fees and costs necessary to submit and pursue the arbitration and the source of the funds which will be used to pay such fees and expenses; and

9) the estimated time necessary to conclude the arbitration.

18.2.10. Any judgment or award in connection with any arbitration alleging damages: (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Association for any costs actually incurred by the Association in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Declarant (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund unless at least eighty percent (80%) of the votes in the Association elect to allocate or distribute the remaining funds otherwise.

18.2.11. As soon as is reasonably practicable after the Association and the Declarant have entered into a settlement agreement or the matter has otherwise been resolved regarding the Alleged Defects, where the defects giving rise to the dispute have not been corrected, the Association shall, in writing, inform only the Members whose names appear on the records of the Association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(i) A general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced;

(ii) A good faith estimate, as of the date of the disclosure, of when the Association believes that the defects identified in Section 18.2.11(i) above, will be corrected or replaced. The Association may state that the estimate may be modified; and

(iii) The status of the claims for defects that were not identified in Section 18.2.11(i) above, whether expressed in a Preliminary List of Alleged Defects sent to each Member or otherwise claimed and disclosed to the Members.

18.2.12. Nothing set forth in this Section 18.2 shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the Official Records of Nueces County, Texas.

18.3. **Mandatory Arbitration-Claims by the Association**.

18.3.1. Binding Arbitration. In the event a claim is asserted by the Association against the Declarant for damages caused by a defect in the design or construction of any General Common Elements, Limited Common Elements, Unit or any other Improvement, or for any personal injury, survival, wrongful death, or damage to goods that was caused by such defect (collectively, the "**Group Dispute**"), then after the Association has complied with the provisions of Section 18.2, or Declarant has provided a Cancellation Notice to the Association in accordance with Section 18.2.3, the Association and the Declarant shall be obligated to arbitrate such Group Dispute unless Declarant specifically waives arbitration in writing. Declarant 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 Group Dispute not referred to arbitration as required by this Section 18.3.

18.3.2. Governing Rules. Each Group Dispute shall be resolved by binding arbitration in accordance with the terms of this Section 18.3, the Commercial Arbitration Rules of the American Arbitration Association, and, to the maximum extent applicable, the Federal Arbitration Act (Title 9 of the United States Code). In the event of any inconsistency between this Section 18.3 and such statute and rules, this Section 18.3 shall control. Judgment upon the award rendered by the arbitrators shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction.

18.3.3. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 18.3 shall limit the right of Declarant or the Association, and Declarant and the Association shall have the right during any Group Dispute, 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, which is involved in a Group Dispute, 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, including the plaintiff, to submit the Group Dispute to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

18.3.4. Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding.

18.3.5. Arbitrators. Unless the parties to the arbitration agree in writing to the contrary, all arbitration proceedings shall be arbitrated by a panel of three arbitrators, which shall be appointed by the American Arbitration Association in accordance with its procedures.

18.3.6. Scope of Award; Modification or Vacation of Award. The arbitrators shall resolve each Group Dispute in accordance with the applicable substantive law; provided, however, that in no event shall the arbitrator's award damages which exceed the damages for construction defects the Association or Declarant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrators may grant any remedy or relief that the arbitrators deem just and equitable unless otherwise limited by this subsection. Also, unless otherwise limited by this subsection, the arbitrators 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 arbitrators 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 Group Dispute within fifteen (15) days from the date the award is rendered. The arbitrators' findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

18.3.7. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Group Dispute for arbitration by

notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Corpus Christi, Texas. Unless otherwise limited by Section 18.3.7 the arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem 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. To the extent permitted by Chapter 27 of the Texas Property Code, the arbitrators shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrators' fees) to the prevailing party. Each party agrees to keep all Group Disputes 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 Group Dispute or issue any press release regarding any Group Dispute without the written consent of the other parties to the Group Dispute.

ARTICLE 19
DISPUTE RESOLUTION

THE PROVISIONS OF THIS ARTICLE 19 DO NOT APPLY TO ANY DISPUTE GOVERNED BY ARTICLE 18 OF THIS DECLARATION.

19.1. **Agreement to Encourage Resolution of Disputes Without Litigation**.

19.1.1. Declarant and the Association and its officers, directors, and committee members, all Persons subject to this Declaration (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Regime without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (defined below), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim. As used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to the interpretation, application, or enforcement of the Declaration, any architectural guidelines, the Certificate of Formation, Bylaws, and Rules and Regulations.

19.1.2. The following shall not be considered a Claim unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of the Documents;

(iii) any suit that does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by Section 19.2.1,

unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

19.2. **Dispute Resolution Procedures**.

19.2.1. Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

19.2.2. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

19.2.3. Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 19.2.1 (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Nueces County, Texas. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator.

19.2.4. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

19.3. **Initiation of Litigation by Association**. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy five percent (75%) of the votes in the Association, excluding the votes held by the Declarant, except that no such approval shall be required for actions or proceedings:

(i) initiated while Declarant owns any Unit within the Regime;

(ii) initiated to enforce the provisions of the Documents, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment shall also be approved by the Declarant for so long as Declarant owns any Unit within the Regime.

ARTICLE 20
GENERAL PROVISIONS

20.1. **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.

20.2. **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.

20.3. **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.

20.4. **Injury to Person or Property**. Each Owner acknowledge that the Declarant and the Association shall have no duty or obligation to any Owner or their guests: (i) to supervise minor children or any other person; (ii) to fence or otherwise enclose any Limited Common Element, General Common

Element or other Improvement; or (iii) 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 20.4 are reasonable and constitute the exercise of ordinary care by the Association and Declarant.

20.5. **Declarant as Attorney in Fact and Proxy**. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Exhibit "D" 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 Exhibit "D" 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 Exhibit "D" 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 Exhibit "D" or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in the 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 Nonprofit Corporation Law the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing the 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 the 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 the 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 Exhibit "D" 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.

20.6. **Exhibits**. The following appendixes are attached to this Declaration and are incorporated herein by reference:

A	The Real Property
B	Plats and Plans
C	Schedule of Allocated Interests
D	Declarant Representations and Reservations
E	Additional Land

20.7. **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 law.

EXECUTED on this 19th day of December, 2006.

DECLARANT:

BANYAN BEACH, LP, a Texas limited partnership

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

By: _____

Printed Name: Vance D. Hoffmaster

Title: Managing Member

Date: December 19, 2006

THE STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged on December 19, 2006, by Vance D. Hoffmaster, Managing Member of Banyan Beach GP, LLC, a Texas limited liability company, on behalf of said limited liability company as general partner on behalf of Banyan Beach, LP, a Texas limited partnership.

V BRUNDRETT
Notary Public
STATE OF TEXAS
My Comm. Exp. 06-19-2010

_____

Notary Public, State of Texas

Printed Name: V. Brundrett

My Commission Expires: 06-19-2010

EXHIBIT "A"

REAL PROPERTY

6.513 Acre Tract

State of Texas
County of Nueces

Field Notes for a 6.513 acre tract (not based on an on-the-ground survey) out of Lot 2, Block 1, Voltz Tract, a map of which is recorded in Volume 65, Page 64, Map Records of Nueces County, Texas, said 6.513 acres being more fully described by metes and bounds as follows:

Beginning at a point on the southeast boundary of Eleventh Street, a 60.00 foot wide public roadway, for the north corner of Lot 1, said Block 1, same being the west corner of said Lot 2, and of this tract;

Thence, North 37°02'00" East, along the southeast boundary of said Eleventh Street, a distance of 435.07 feet for the north corner of this tract;

Thence, along the northeast boundary of this tract as follows:

South 52°58'00" East, a distance of 37.00 feet;
South 37°02'00" West, a distance of 9.00 feet;
South 52°58'00" East, a distance of 464.10 feet;
North 37°02'00" East, a distance of 12.44 feet;
South 52°58'00" East, a distance of 129.92 feet to a point on the southeast boundary of said Lot 2, for the east corner of this tract;

Thence, South 37°02'47" West, at 40.78 feet pass the north corner of Oceanside Addition, a map of which is recorded in Volume 62, Page 163, Map Records of Nueces County, Texas, in all a total distance of 438.41 feet to the east corner of Lot 2, Block 1, Goldsmith and Faulkner Addition, a map of which is recorded in Volume 63, Page 102, Map Records of Nueces County, Texas, for the south corner of said Lot 2, Block 1, Voltz Tract, and of this tract;

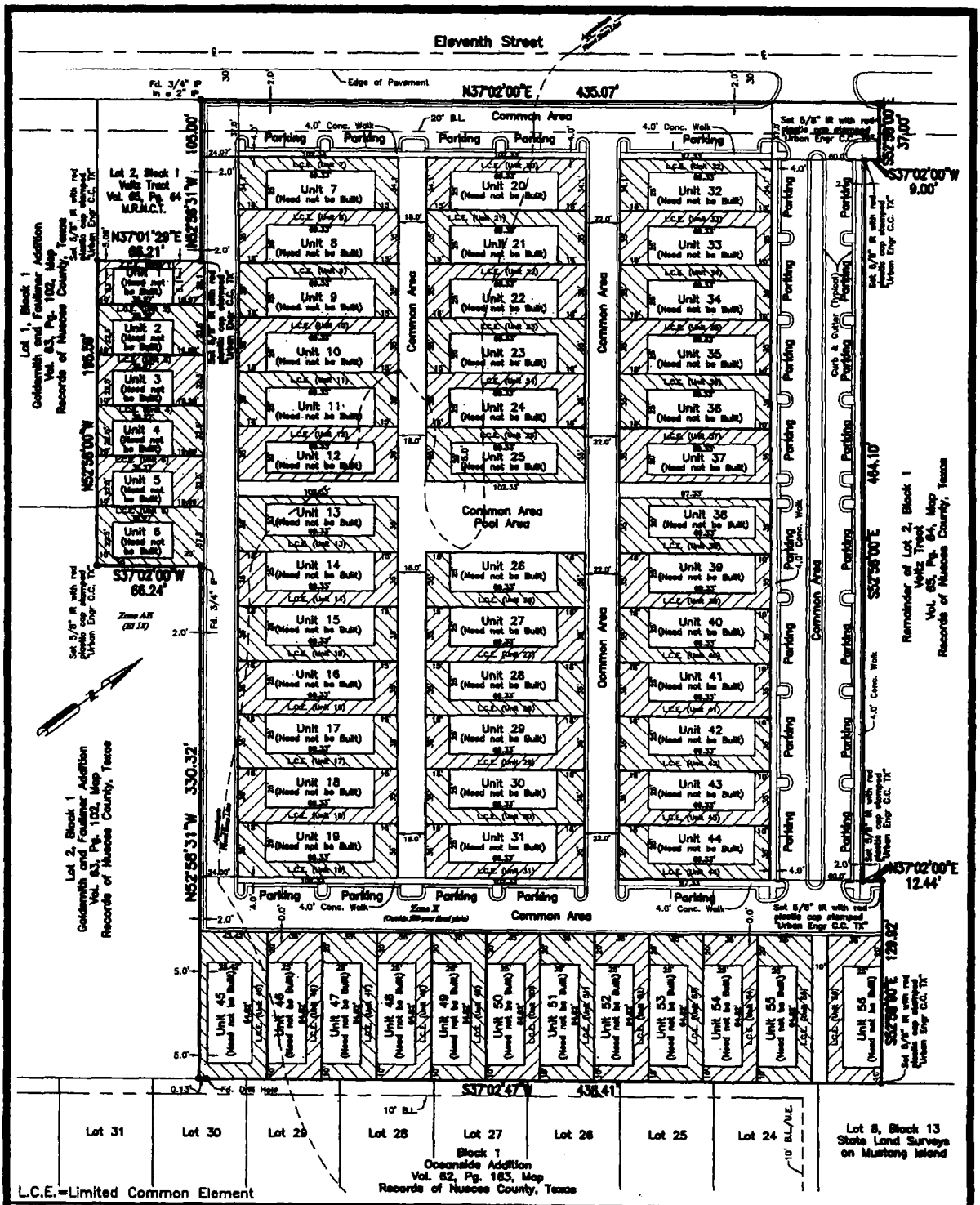
Thence, along the southwest boundary of said Lot 2, Block 1, Voltz Tract as follows:

North 52°58'31" West, a distance of 330.35 feet;
South 37°02'00" West, a distance of 66.24 feet;
North 52°58'00" West, a distance of 195.59 feet;
North 37°02'00" East , a distance of 66.29 feet;
North 52°58'00" West, a distance of 105.00 feet to the Point of Beginning and containing 6.513 acres (283,705 square feet) of land.

Bearings are based on the recorded plat of Block 1, Lots 1 and 2, Voltz Tract, a map of which is recorded in Volume 65, Page 64, Map Records of Nueces County, Texas.

EXHIBIT B

Plat and Plans
[attached]



L.C.E.=Limited Common Element

Village Walk Condominiums

6.513 Acres out of Lot 2, Block 1, Voltz Tract, City of Port Aransas, Nueces County, Texas, a map of which is recorded in Vol. 65, Page 64, Map Records of Nueces County, Texas

Bearings are based on the northwest boundary of Lot 2, Block 1, Voltz Tract, same being the northwest boundary of this survey, as monumented on the ground and shown as North 37°02'00" East on the recorded map of Voltz Tract, a map of which is recorded in Volume 65, PAGE 64, Map Records of Nueces County, Texas.

By Graphic plotting, this property is located within Zones "X" and "AE(EL8) of the Flood Insurance Rate Map, Community Panel No. 485496 0006 F, City of Port Aransas, Texas, dated September, 30, 1992 and is in a Special Flood Hazard Area.

Improvements shown within boundary have not been constructed as of 02/07/06

The Upper horizontal boundary of Units 45–56, as a plane will be located 35 feet above grade level.

The upper horizontal boundary of Units 1–44, as a plane will be located 30 feet above grade level.

We, Urban Engineering, have made on the ground field survey, under my direction and supervision, of the property legally described hereon; said property has access to and from a dedicated roadway; this map contains information required by Section 82–059 of the Texas Property Code.

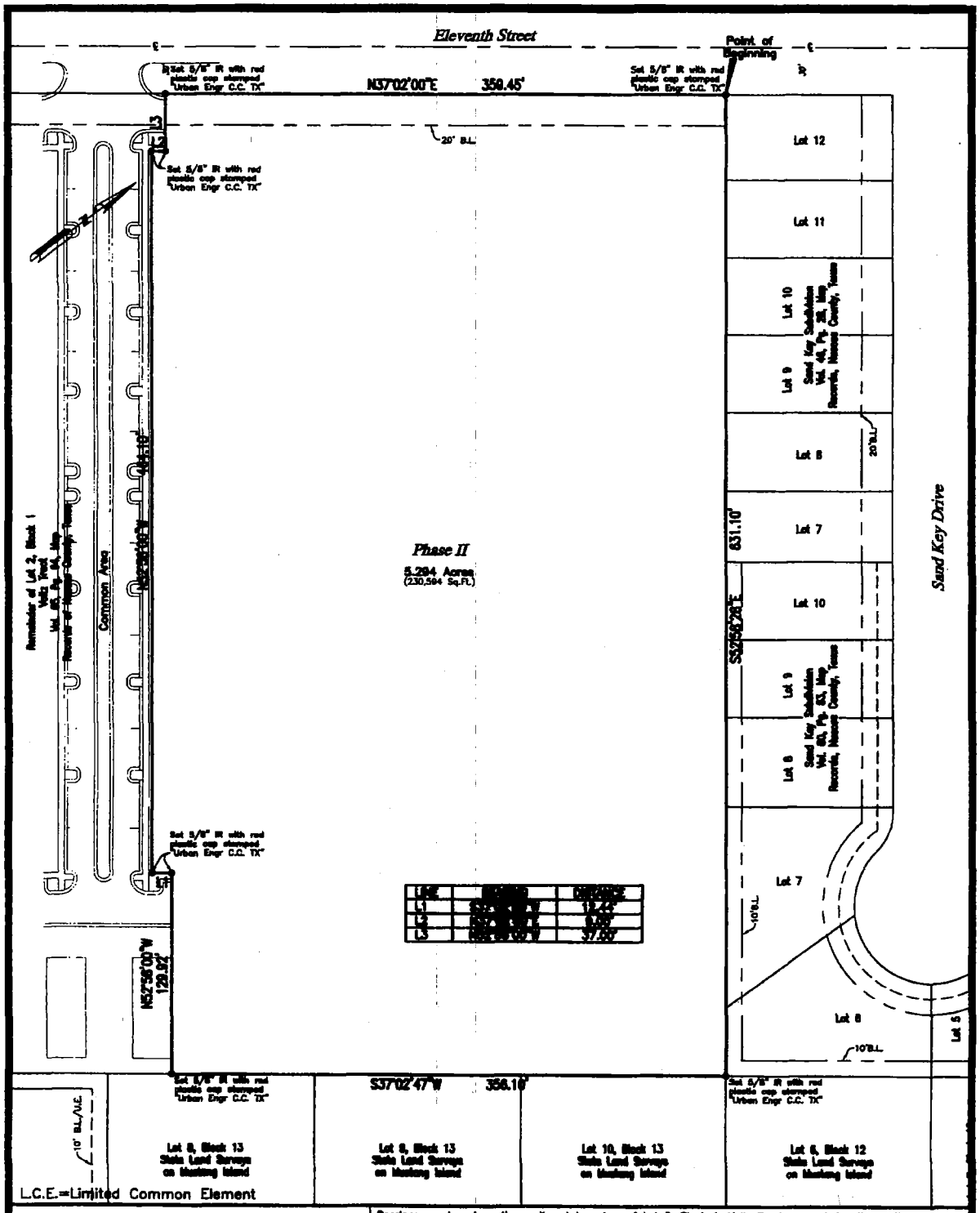
Juan J. Salazar, R.P.L.S. No. 4909

STATE OF TEXAS REGISTERED JUAN JOSE SALAZAR 4909 PROFESSIONAL LAND SURVEYOR

Revised: 2/16/06
Revised: 2/17/06
Revised: 4/19/06
Revised: 6/14/06
Revised: 6/23/06
Revised: 12/22/06

URBAN ENGINEERING

SHEET: 1 OF 2
DATE: February 7, 2006
SCALE: 1"=60'
JOB NO. 36830.A8.00
DRAWN BY: JB



L.C.E.=Limited Common Element

Village Walk Condominiums Additional Development Land Vacant Portion

5.294 Acres out of Lot 2, Block 1, Voltz Tract, City of Port Aransas, Nueces County, Texas, a map of which is recorded in Vol. 65, Page 64, Map Records of Nueces County, Texas

Bearings are based on the northwest boundary of Lot 2, Block 1, Voltz Tract, same being the northwest boundary of this survey, as monumented on the ground and shown as North 37°02'00" East on the recorded map of Voltz Tract, a map of which is recorded in Volume 65, PAGE 64, Map Records of Nueces County, Texas.

By Graphic plotting, this property is located within Zones "X" and "AE(EL8) of the Flood Insurance Rate Map, Community Panel No. 485466 0006 F, City of Port Aransas, Texas, dated September, 30, 1982 and is in a Special Flood Hazard Area.

URBAN ENGINEERING

SHEET: 2 OF 2
DATE: February 7, 2008
SCALE: 1"=60'
JOB NO. 36830.A8.00
DRAWN BY: SB

EXHIBIT "C"

ALLOCATED INTERESTS

The Percentage of Common Element Ownership and Share of Common Expenses for each Unit is 1/56 or 1.7857%. Each Unit is allocated one (1) vote.

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

EXHIBIT "D"

DECLARANT RESERVATIONS AND REPRESENTATIONS

D.1. General Provisions.

D.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 the Declarant-related provisions in this Exhibit.

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

D.1.3. Purpose of Development and Declarant Control Periods. This Exhibit gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build-out and sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "**Development Period**", as specifically defined in the Declaration, means the twenty-five (25) year period beginning on the date this Declaration is recorded in the Real Property Records of Nueces County, Texas, unless such period is earlier terminated by Declarant's recordation of a notice of termination in the Real Property Records of Nueces County, Texas. The Declarant Control Period is defined in Section A.2 below. 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.

D.2. Declarant Control Period Reservations and Limitations. 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:

D.2.1. Duration. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period expiring on the earlier of: (i) one hundred and twenty (120) days after title to seventy-five percent (75%) of the Units, including any hereinafter created within the Additional Land if added prior to the expiration of the then applicable Declarant Control Period, have been conveyed to Owners other than Declarant; or (ii) the date when, in the sole opinion of Declarant, the Association is viable, self-supporting, and operational.

D.2.2. Officers and Directors. During the Declarant Control Period, the Board may consist of three (3) persons. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation: within one hundred and twenty (120) days after title to fifty percent (50%) percent of the Units, including any hereinafter created within the Additional Land if added prior to such date, have been conveyed to Owners

other than Declarant, at least one-third of the Board must be elected by Owners other than Declarant.

D.2.3. Organizational Meeting. Before the end of the Declarant Control Period, the Owners will elect directors to the Board at an organizational meeting of the Members of the Association. Declarant or the Association will give written notice of the organizational meeting to an Owner of each Unit at least ten (10) days before the meeting. For the organizational meeting, Owners of twenty percent (20) of the Units will constitute a quorum. The Board elected at the organizational meeting will elect the officers of the Association not later than thirty (30) days after the end of the Declarant Control Period.

D.2.4. Obligation for Assessments. Until the Association first levies regular assessments, Declarant must pay all the expenses of the Property as they accrue. After the initial levy, the Declarant has the following options until the earlier of: (a) the end of the Declarant Control Period; or (b) three (3) years after the date on which Declarant first conveys a Unit:

(i) For each Unit owned by Declarant, Declarant is liable for assessments in the same manner as any Owner; or

(ii) Declarant will assume responsibility for the difference (the "red ink") between the Association's common expenses and the regular assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the option period, Declarant must begin paying assessments on each Declarant owned Unit according to the Unit's allocated interest for assessments.

D.2.5. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

D.2.6. Budget Control. During the Declarant Control Period, the right of Owners to veto special assessments or increases in regular assessments is not effective and may not be exercised.

D.2.7. Management Contract. If Declarant enters into a professional management contract on behalf of the Association during the 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 the Declarant takes office.

D.3. Development Period Rights; Representations & Reservations. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

D.3.1. Leasehold. No part of the Property is a leasehold condominium, as defined by the Act.

D.3.2. Conversion. None of the Improvements in the Property is a conversion building as defined by the Act.

D.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, changes in the sizes, styles, configurations, materials, and appearances of Units and Common Elements, including without

limitation relocation of Units and their boundary lines and the combination of Detached Units to create Attached Units.

D.3.4. Architectural Control. During the Development Period, Declarant has the absolute right to appoint the Architectural Reviewer, consisting of any number of persons who serve at the pleasure of Declarant, and who may be removed and replaced by Declarant.

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

D.3.6. 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.

D.3.7. 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.

D.3.8. 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, including without limitation the Additional Land as described in Paragraph D.3.9 below, in the exercise of statutory Development Rights.

(iv) To create Units, General Common Elements, and Limited Common Elements within the Property, including without limitation within the Additional Land, in the exercise of statutory Development Rights.

(v) To create Attached Units by relocating and combining Detached Units, in the exercise of statutory Development Rights.

(vi) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.

(vii) 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.

(viii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.

(ix) To change the name or entity of Declarant.

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

D.3.8. Additional Land. As provided in Section 2.3 of the Declaration, the Declarant expressly reserves the option and right, but not the obligation, to expand the Regime; and, subject to this Declaration and the Act, to submit to the Regime all or any portion of the Additional Land, together with all improvements thereon and all easements, rights, and appurtenances thereto. Except as contained in this Paragraph, there are no limitations upon this option to expand. The right and option to add the Additional Land to the Regime is subject to the following provisions:

(i) This option to expand shall expire at the end of the Development Period, unless all of the Additional Land shall have been added to the Regime before that time.

(ii) The Addition Land may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or boundaries thereof. The boundaries of any part of the Additional Land to be included shall be determined by amendments to this Declaration made by the Declarant as the Regime is expanded. The real property submitted to the Regime need not be contiguous to the existing Property and the exercise of the option as to any portion of the Additional Land shall not bar the further exercise of the option as to any other portions of the Additional Land.

(iii) There are no limitations on the locations or dimensions of improvements to be located on the Additional Land or on the number of Attached Units or Detached Unit; provided, however, that the maximum number of Units that may be created on the Additional Land is 43.

(iv) The Additional Land, when and if added to the Regime, shall be subject to the use restrictions contained in this Declaration or subsequently promulgated in accordance with the terms of this Declaration. Accordingly, any structure erected on the Additional Land, when and if added to the Regime, will be restricted exclusively to residential use to the same extent as all other structures comprising the Regime.

(v) No assurances are made as to what, if any, further improvements will be made by Declarant on any portion of the Additional Land.

(vi) No assurances are made that Units constructed on the Additional Land will be substantially identical to those in the Regime.

(vii) The Declarant shall have the unlimited right to create Limited Common Elements within any portion of the Additional Land or to designate Common Elements therein which may subsequently be assigned as Limited Common Elements.

(viii) If the option to expand the Condominium is exercised, the undivided interest in the Common Elements, the liability for common expenses, and votes in the Association shall all be reallocated so that the undivided interest in the Common

Elements and liability for Common Expenses of each Unit in the Condominium is equal to that of every other Unit in the Regime and the vote of each Unit shall be equal to that of every other Unit in the Regime, both as expanded.

(ix) This option to expand the Condominium shall be exercisable by the Declarant in its sole discretion and the consent of Unit Owners shall not be required. Declarant shall have the unilateral right to reallocate percentages of undivided interests in the Common Elements, liability for payment of common expenses, and allocation of votes in the Association, all to be done in accordance with the limitations described elsewhere in the Declaration. The Declarant shall exercise the option to expand the Regime by adopting, executing, and recording an amendment to this Declaration and by recording such plats, certificates, and plans as required by the Act.

D.4. Special Declarant Rights. As permitted by the Act, Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by 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 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.

(iv) 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.

(v) 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.

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

D.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.

1) 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 within one hundred and twenty (120) days after termination of the Development Period.

D.6. Working Capital Fund. Declarant may establish a working capital fund for the Association. If Declarant establishes this fund, each Unit's contribution will be collected when the sale of the Unit closes to an Owner other than Declarant, an affiliate of Declarant or an entity acquiring the Unit for resale on its own account. Contributions to the fund are not advance payments of regular assessments and are not refundable. Not later than termination of the Declarant Control Period, the working capital fund will be transferred to the Association for deposit to a segregated fund. During the Declarant Control Period, the fund may not be used to pay the Association's operational expenses. Declarant may not use the fund to defray Declarant's expenses, reserve contributions, or construction costs, or to cover the Association's budget deficits during the Declarant Control Period. Declarant is not required to make contributions for any Unit owned or retained by Declarant, or for any Unit for which the contribution was not collected at closing.

D.7. 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 Real Property Records of Nueces 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.

EXHIBIT "E"

ADDITIONAL LAND

5.294 Acre Tract

State of Texas
County of Nueces

Field Notes for a 5.294 acre tract (not based on an on-the-ground survey) out of Lot 2, Block 1, Voltz Tract, a map of which is recorded in Volume 65, Page 64, Map Records of Nueces County, Texas, said 5.294 acre tract being more fully described by metes and bounds as follows:

Beginning at a point on the southeast boundary of Eleventh Street, a 60.00 foot wide public roadway, for the west corner of Lot 12, Sand Key Subdivision, a map of which is recorded in Volume 46, Page 28, Map Records of Nueces County, Texas, same being the north corner of said Lot 2, and of this tract:

Thence, South 52°58'28" East, along the northeast boundary of said Lot 2, a distance of 631.10 feet to the east corner of said Lot 2, and of this tract;

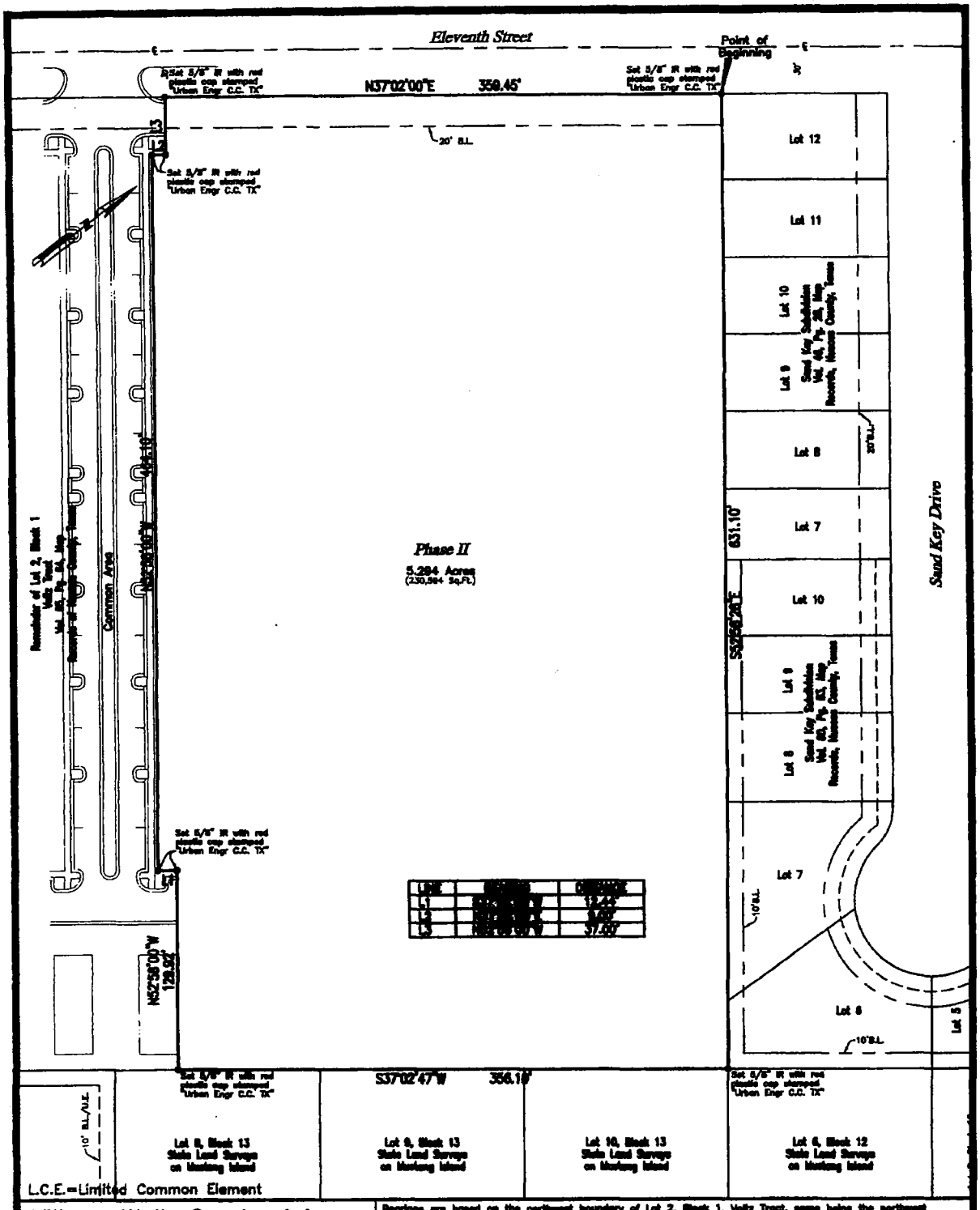
Thence, South 37°02'47" West, along the southeast boundary of said Lot 2, a distance of 356.10 feet for the south corner of this tract;

Thence, along the southwest boundary of this tract as follows:

North 52°58'00" West, a distance of 129.92 feet;
South 37°02'00" West, a distance of 12.44 feet;
North 52°58'00" West, a distance of 464.10 feet;
North 37°02'00" East, a distance of 9.00 feet;
North 52°58'00" West, a distance of 37.00 feet to a point on the southeast boundary of said Eleventh Street, for the west corner of this tract;

Thence, North 37°02'00" East, along the southeast boundary of said Eleventh Street, a distance of 359.45 feet to the Point of Beginning and containing 5.294 acres (230,594 square feet) of land.

Bearings are based on the recorded plat of Block 1, Lots 1 and 2, Voltz Tract, a map of which is recorded in Volume 65, Page 64, Map Records of Nueces County, Texas.



Village Walk Condominiums
Additional Development Land
Vacant Portion

5.294 Acres out of Lot 2, Block 1, Voltz Tract, City of Port Aransas, Nueces County, Texas, a map of which is recorded in Vol. 65, Page 64, Map Records of Nueces County, Texas

Bearings are based on the northwest boundary of Lot 2, Block 1, Voltz Tract, same being the northwest boundary of this survey, as monumented on the ground and shown as North 37°02'00" East on the recorded map of Voltz Tract, a map of which is recorded in Volume 65, PAGE 64, Map Records of Nueces County, Texas.

By Graphic plotting, this property is located within Zones "X" and "AE(EL8) of the Flood Insurance Rate Map, Community Panel No. 485469 0006 F, City of Port Aransas, Texas, dated September, 30, 1982 and is in a Special Flood Hazard Area.

URBAN ENGINEERING

SHEET: 2 OF 2
DATE: February 7, 2008
SCALE: 1"=60'
JOB NO. 36830.A6.00
DRAWN BY: SB

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of certain liens (the "**Liens**") against the Property herein described, including without limitation those created by (a) a Deed of Trust recorded as Document No. 2005054717 in the Real Property Records of Nueces County, Texas, and (b) a Deed of Trust recorded as Document No. 2005054719 in the Real Property Records of Nueces County, Texas, 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 further consents, and subordinates the Liens to any subsequent amendments to this Declaration executed by Declarant for the sole purpose of exercising the rights reserved by Declarant described on Exhibit "D" to the Declaration. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

AMERICAN BANK, N.A.

By: _____
Name: George Horner, Jr
Title: Port Aransas Branch President

Date: 12-22, 2006

THE STATE OF TEXAS §
§
COUNTY OF Nueces §

This instrument was acknowledged on 12-22, 2006, by George Horner Jr Port Aransas Branch Pres of American Bank, N.A., a national banking association, on behalf of said association.

Amelia M. Barnes
Notary Public, State of Texas

AMELIA M BARNES
Notary Public
STATE OF TEXAS
My Comm. Exp. 10-24-2007

Printed Name: Amelia Barnes

My Commission Expires: 10-24-2007

RECORDER'S MEMORANDUM
CLERK'S NOTE:

NOTARY SEAL TOO LIGHT

Doc# 2007000326
Pages 59
01/03/2007 2:53PM
Official Records of
NUECES COUNTY
DIANA T. BARRERA
COUNTY CLERK
Fees $247.00

STATE OF TEXAS
COUNTY OF NUECES
I hereby certify that this instrument was FILED in file number sequence on the date and at the time stamped herein by me, and was duly RECORDED in the Official Public Records of Nueces County, Texas



Diana T. Barrera

DIANA T. BARERRA
NUECES COUNTY, TEXAS

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin is invalid and unenforceable under FEDERAL LAW, 3/12/89.