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**DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS
REGARDING THE MAINTENANCE OF DRAINAGE FACILITIES**

This Declaration of Easements and Restrictive Covenants Regarding the Maintenance of Drainage Facilities for The Bluffs at Balcones , (the "Restrictive Covenant"), is executed on NOVEMBER 20TH, 2009, by SDI 2008 - Bluffs, LTD., ("Declarant"), and Bluffs at Balcones Condominium Community, Inc. ("Association"), and is as follows:

GENERAL RECITALS:

OWNER: SDI 2008 - Bluffs, LTD.

ADDRESS: 7756 Northcross Drive, Suite 200
Austin, TX 78757

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Declarant owns land (the "Property") within Travis County, more particularly described on **EXHIBIT A** attached and incorporated by reference.

A. Definitions.

1. **Owners.** The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
2. **Facilities.** The term "Facilities" means those drainage facilities that convey and receive stormwater runoff and that are more particularly described on **EXHIBIT B** attached and incorporated by reference.
3. **Association.** The term "Association" means the Bluffs at Balcones Condominium Community, Inc., which has been duly formed under the laws of the State of Texas and in accordance with that certain Declaration filed of record in Document No. 2008171271 of the Official Public Records of Travis County, Texas.

B. Declaration.

Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance. Declarant declares that the Property is subject to the following covenants, conditions and restrictions which run with the Property and bind all parties having right, title, or interest in or to the Property or any part, their respective heirs, successors, and assigns and inure to the benefit of each Owner.

AGREEMENTS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
- 2.1 Easement to the Association. Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto the Association, whose address is 7756 Northcross Drive, Suite 200, Austin, TX 78757, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of the Facilities, upon and across portions of the Property as more particularly described in **EXHIBIT C** attached hereto and incorporated by reference (the "Easement Tract").

TO HAVE AND TO HOLD the same perpetually to the Association and its successors and assigns, together with the privilege at any and all times to enter the Easement Tract for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

- 2.2 Easement to the Owners. Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto the Owners, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of the Facilities in, upon and the Easement Tract.

TO HAVE AND TO HOLD the same perpetually to the Owners and their respective successors and assigns, together with the privilege at any and all times to enter the Easement Tracts for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

- 2.3 Easement to the City of Austin. Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto the City of Austin, whose address is Post Office Box 1088, Austin, Texas 78767-1088, Attn: Watershed Protection and Development Review Department, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of the Facilities in, upon and across the Easement Tract.

TO HAVE AND TO HOLD the same perpetually to the City of Austin and its successors and assigns, together with the privilege at any and all times to enter the Easement Tracts for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

3. Maintenance. The Association shall continuously maintain the Facilities in accordance with the requirements of the City and in a good and functioning condition. The portion of the Property on which the Facilities are located may not be used for any purpose inconsistent with or detrimental to the proper operation of the Facilities. The Association may levy assessments against each Owner to discharge the maintenance obligation set forth herein. Each Owner is jointly and severally liable for the maintenance of the Facilities, but only in the event the Association fails to discharge its obligations to maintain the Facilities.
4. Notice of City Entry. The City shall give the Association, or the Owner if the Association has failed to discharge its obligations to maintain the Facility, thirty (30) days' prior written notice of the City's intent to enter all or part of the Easement Tract for the purpose of operating, maintaining, replacing, upgrading or repairing, as applicable, the Facilities; provided, however, that in the event of an emergency, the City shall be required to give prior notice within a reasonable period of time. Reasonableness shall be determined in accordance with the nature of circumstances of the emergency. The City shall have the right to enter the Easement Tract without prior written notification for the purposes of monitoring and inspection only.
5. General Provisions.
- A. Enforcement. If any person, persons, corporation, or entity of any other character violates or attempts to violate this Restrictive Covenant, it will be lawful for the City of Austin, its successors and assigns, to prosecute proceedings at law, or in equity, against the person, or entity violating or attempting to violate such covenant and to prevent the person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.

- B. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, approved and executed by (a) the Director of the Watershed Protection and Development Review Department of the City of Austin or successor department; and (b) a majority of the Board of Directors of the Association at the time of such modification, amendment, or termination; (c) the Owners of the Property, and (d) any mortgagees holding first lien security interests on any portion of the Property. Such action only becomes effective after it is reduced to writing, signed by all Owners and their respective mortgagees, if any, and the Director of the Watershed Protection and Development Review Department of the City of Austin or its successor department and filed in the Real Property Records of Travis County.
- C. Duration. Unless modified, amended, or terminated in accordance with Paragraph 5(B), this Restrictive Covenant remains in effect in perpetuity.
- D. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind the Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, the former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- E. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Any change in ownership or address requires notice to all Owners and the City.

City of Austin:

City of Austin
Watershed Protection and Development Review Department
P.O. Box 1088
Austin, Texas 78767-1088
ATTN: Ron Czajkowski
Case No. _____

Declarant:

SDI 2008 - Bluffs, LTD
7756 Northcross Drive, Suite 200
Austin, TX 78757

- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, the Association, any Owner, or the City of Austin in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
- K. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
- L. Existing Encumbrances. The easement and other rights granted or created by this Restrictive Covenant are subject to any and all matters of record affecting the Property.

- M. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- N. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto, contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.

Executed to be effective on NOVEMBER 20TH, 2009.

DECLARANT:

SDI 2008 - Bluffs, LTD.

By: [Signature]
 RYAN EIEHE, VICE PRESIDENT OF
 SPICEWOOD DEVELOPMENT INC, ITS
 GENERAL PARTNER OF SDI 2008-BLUFF LTD.

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me SUE FITZPATRICK, Notary Public, on this day personally appeared Ryan Eiehe (name), Vice President (title) of Spicewood Development Inc, General Partner of SDI 2008-Bluff LTD. (name of Corporation/Partnership) a Corporation, Texas [type of entity and state of incorporation or partnership], known to me to through Business Association to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on November 20, 2009.



[Signature]
 Notary Public, State of Texas

ASSOCIATION:

BLUFFS AT MALONES CONDOMINIUM
COMMUNITY, INC.

By: [Signature]

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me Sue Fitzpatrick, Notary Public, on this day personally appeared Ryan Ziehe (name), Director (title) of Bluffs At Malones Condominium Community (name of Corporation/Partnership) a Corporation, Texas [type of entity and state of incorporation or partnership], known to me to through Business Association to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on November 30, 2007



[Signature]
Notary Public, State of Texas

ACCEPTED: WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT

CITY OF AUSTIN

By: [Signature]
Name: BENNY HO
Title: Engineer C

APPROVED AS TO FORM:

By: [Signature]
JAMES M. WILLIAMS, SR.
ASSISTANT CITY ATTORNEY

LIENHOLDER CONSENT TO GRANT OF RESTRICTIVE COVENANT

STATE OF TEXAS §

COUNTY OF TRAVIS §

Recitals:

SDI 2008 - Bluffs, LTD, is the Owner (called "Owner", whether one or more) of the following property:

That tract of land situated in Travis County, Texas described in the attached and incorporated **EXHIBIT "A"** ("Property").

Compass Bank ("Lienholder") holds a lien against the Property under the following described documents:

Deed of Trust dated July 15, 2008, from SDI 2008 - Bluffs, LTD to James D. Alfred, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$2,130,000.00, payable to Compass Bank, of record in Document Number 2008120212, of the Official Public Records of Travis County, Texas.

SDI 2008 – Bluffs, LTD has granted to the City of Austin ("City") a Restrictive Covenant against and running with the Property.

Agreement

In consideration of \$10, and other good and valuable consideration, the receipt of which is acknowledged, the Lienholder agrees as follows:

1. Compass Bank consents to the grant of Restrictive Covenants against and running with the Property, which is executed contemporaneously herewith.

2. Compass Bank subordinates all of its liens on this Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests in the Restrictive Covenants or the Property.

3. Compass Bank affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on September 18, 2009.

Compass Bank
A State Banking Association

By: [Signature]
Name: Jim Alfred
Title: SVP

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me Cabrina A. Seuthe (Notary name), Notary Public, on this day personally appeared Jim Alfred (signer's name), Senior Vice President (title) of Compass Bank, a State Banking Association known to me to through Jim Alfred to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 18 day of September, 2009

[Signature]
Notary Public, State of _____

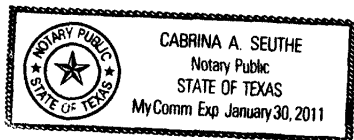
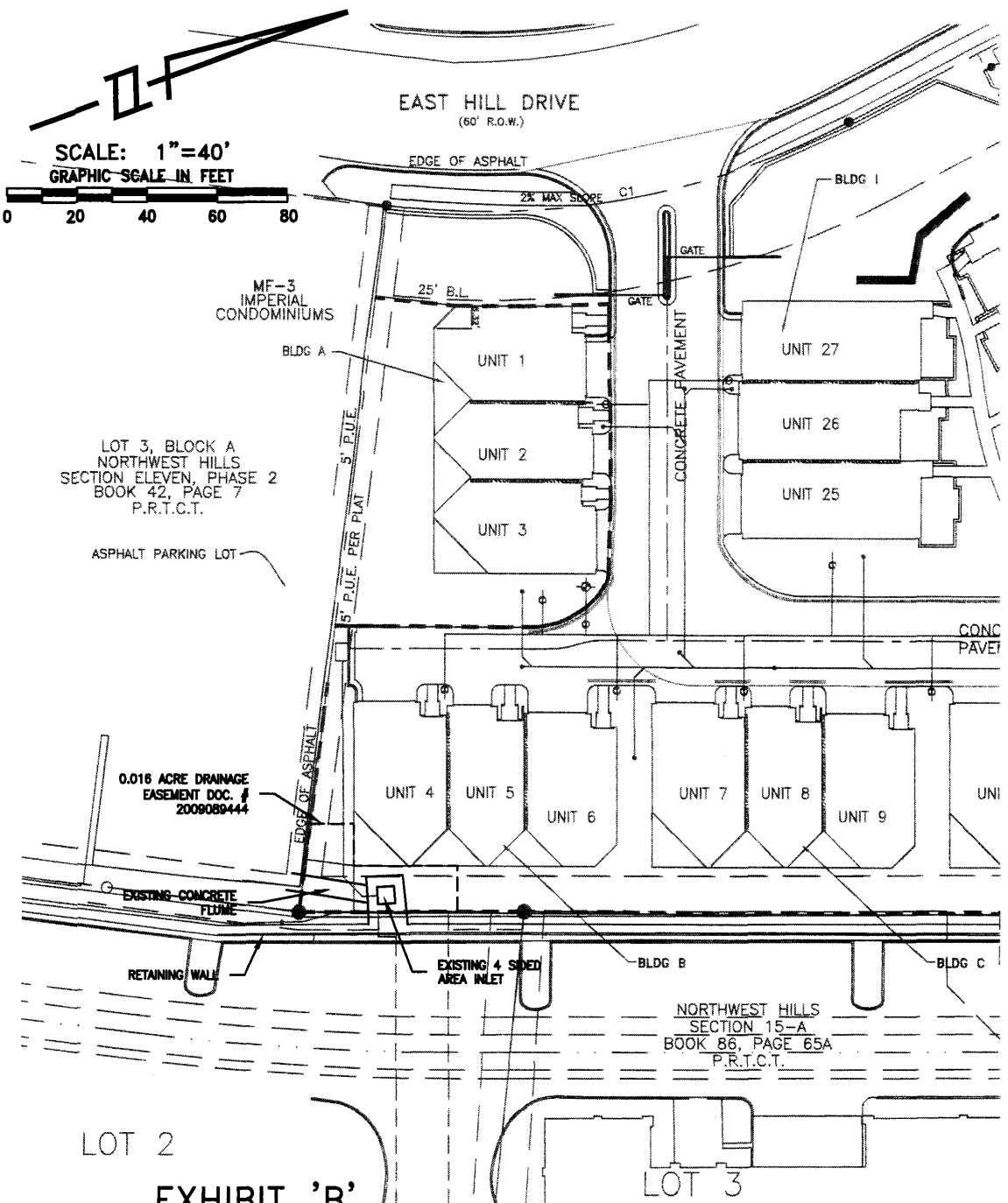


EXHIBIT "A"

LEGAL DESCRIPTION

LOT 2, BLOCK A, NORTHWEST HILLS SECTION ELEVEN, PHASE TWO
A SUBDIVISION LOCATED IN THE CITY OF AUSTIN, TRAVIS COUNTY,
TEXAS. THE PLAT OF SAID SUBDIVISION BEING RECORDED IN PLAT BOOK
42, PAGE 7 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.



Date: Aug 11, 2009 - 7:15am User: jborrego File: H:\Projects\1551\9978 Bluffs, Balcones Condos Site Plan\EXHIBITS\bluffs exhibit 7-09.dwg

EXHIBIT 'B'
EXISTING FACILITIES
THE BLUFFS AT BALCONES
6533 EAST HILL DRIVE,
AUSTIN, TEXAS.

PROJECT NO. 1551-9978.68	DESIGNED BY: JMB
FILE NO. BLUFFS EXHIBIT.DWG	DRAWN BY: JB
DATE: AUGUST 2009	CHECKED BY: JMB
SCALE: 1"=40'	REVIEWED BY: JMB

	GRAY & JANSING & ASSOCIATES, INC.
	Consulting Engineers
	8217 Shoal Creek Blvd., Suite 200
	Austin, Texas 78757-7502
	(512)482-0871 FAX(512)454-9933

EXHIBIT "C"

DRAINAGE EASEMENT

BEING ALL THAT CERTAIN 0.016 ACRE DRAINAGE EASEMENT LYING IN, UPON AND ACROSS LOT 2, BLOCK A, NORTHWEST HILLS SECTION ELEVEN, PHASE TWO, A SUBDIVISION LOCATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. THE PLAT OF SAID SUBDIVISION BEING RECORDED IN PLAT BOOK 42, PAGE 7 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS. SAID EASEMENT IS THE REMAINDER OF THE ORIGINAL 0.274 ACRE DRAINAGE EASEMENT OF RECORD IN DOCUMENT NUMBER 2002031615 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND THE SAID 0.258 ACRE TRACT OF LAND OF SAID DRAINAGE EASEMENT TO BE RELEASED IN IT'S ENTIRETY BEING DESCRIBED BY METES AND BOUNDS IN DOCUMENT NUMBER 2009089444 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.



NORTH HILLS DRIVE

NORTHWEST HILLS SECTION ELEVEN
PHASE ONE
BK 4 0; PG 3 1
LOT 1

LOT 4

NORTHWEST HILLS
SECTION ELEVEN
PHASE TWO
BK 42; PG 7
LOT 2, BLOCK 4

0.258 ACRES OF DE VACATED IN
DOC. # ~~2009089444~~

LOT 3

0.016 ACRE DRAINAGE EASEMENT
REMAINING FROM ORIGINAL 0.274
ACRE DE IN DOC. # 2002031615

LOOP 1 (MOPAC BLVD.) ROAD

LOT 2

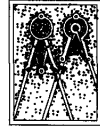
LOT 3

NORTHWEST HILLS
SECTION 15-A
BK 86; PG. 83A

EXHIBIT "C"
PAGE 2 OF 2

HART LANE

PROJECT NO: 1461-9166-21	DESIGNED BY: JMB
FILE NO: 9166VAC.DWG	DRAWN BY: CLB
DATE: MAY, 2009	CHECKED BY: JMB
SCALE: 1" = 100	REVISED BY:



GRAY · JANSING & ASSOCIATES, INC.
 Consulting Engineers
 8217 Shoal Creek Blvd., Suite 200
 Austin, Texas 78757-7592
 (512)452-0371 FAX(512)454-9833

AFTER RECORDING, RETURN TO:

City of Austin
Department of Watershed Protection and Development Review Department
P.O. Box 1088
Austin, Texas 78767

Project Name: _____
Attn: _____ [Project Manager]
CIP No. _____ [if applicable]

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2009 Dec 16 01:44 PM 2009207107

CARTERT \$64.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS