ELECTRONICALLY RECORDED 2014133230
TRV 106 PGS

AFTER RECORDING RETURN TO:

ROBERT D. BURTON, ESQ.
WINSTEAD, PC
401 CONGRESS AVE., SUITE 2100
AUSTIN, TEXAS 78701
EMAIL: RBURTON@WINSTEAD.COM

DECLARATION OF CONDOMINIUM REGIME FOR SPICEWOOD CONDOMINIUMS

(A Residential Condominium in Travis County, Texas)

Declarant: SPICEWOOD SPRINGS, LP, a Texas limited partnership

TABLE OF CONTENTS

Page

Table of Contents
(Continued)

Page

Table of Contents
(Continued)

Page

Page

Page

DECLARATION OF CONDOMINIUM REGIME FOR SPICEWOOD CONDOMINIUMS

SPICEWOOD SPRINGS, LP, a Texas limited partnership ("**Declarant**"), is the owner of certain real property located in Travis County, Texas, as more particularly described on Attachment 1, attached hereto and incorporated herein, together with all Improvements thereon and all easements, rights, and appurtenances thereto (the "**Land**"). The Land is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Spicewood Condominiums.

Declarant desires to create upon the Land a residential community and carry out a uniform plan for the improvement and development of the Land for the benefit of the present and future owners thereof.

Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Land to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Land, and each owner thereof.

NOW, THEREFORE, it is hereby declared that: (i) the Land will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Land and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) each contract or deed which may hereafter be executed with regard to the Land, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE 1
DEFINITIONS

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

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

1.2 "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are

"Applicable Law" on the date of the Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

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

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

1.5 "**Association**" means Spicewood Condominium Community, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of Units within the Regime. The term "Association" shall have the same meaning as the term "property owners' association" in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and the Act.

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

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

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

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

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

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

1.12 "**Community Manual**" means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies

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

1.13 "**Declarant**" means **SPICEWOOD SPRINGS, LP**, a Texas limited partnership. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Declaration.

1.14 "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration. The duration of Declarant Control Period is from the date this Declaration is Recorded for a maximum period not to exceed one hundred and twenty (120) days after title to seventy-five percent (75%) of the Units that may be created hereunder have been conveyed to Owners other than Declarant.

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

1.16 "**Development Period**" means the seven (7) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by the Recording of a notice of termination.

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

1.17 "**Documents**" mean, singly or collectively as the case may be, this Declaration, the Plat and Plans attached hereto as Attachment 2, the Certificate, Bylaws, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.18 "**General Common Elements**" mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment 2, attached hereto.

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

1.20 "**Irrigation Maintenance Services**" means the repair and maintenance of irrigation systems which will include the following: (a) repair or replacement of broken, damaged or clogged sprinkler heads; (b) repair or replacement of cut surface mounted drip tubes or broken pipes below ground; (c) repair or replacement of master and zone level control valves; (d) repair or replacement of system controllers; and (e) repair or replacement of cut/damaged control wires. Irrigation Maintenance Services shall not include: (i) alterations, additions or modifications to the irrigation system (based on reconfigured landscaping or otherwise) or (ii) the costs of the electricity and water required to operate the irrigation and water retention system(s). Notwithstanding the forgoing, the Board will have the right to modify the Irrigation Maintenance Services provided hereunder from time to time.

1.21 "**Landscape Services**" mean the following services to be provided to the Yard Area: (a) mowing and edging all turf areas at least once per week during the months of May through September of each year and on an as-needed basis during the months of October through April; (b) removing all organic debris (leaves, small downed branches, dead plants) from all turf areas and flower beds at least once per week primarily during the months of October through April and as-needed May through September; (c) removing small (under 4 inches in diameter) dead branches and trimming bushes up to a maximum height of six (6) feet (those not requiring a ladder for access or a chain saw for cutting); (d) applying fertilizer and pre-emergent weed killer to the turf area at least once per year (normally in the spring); (e) manually and mechanically/chemically controlling weeds as required to maintain a reasonably manicured appearance; and (f) controlling fire ants in the turf areas with applications of chemical control agents as necessary. "**Landscape Services**" shall not include: (a) soil preparation of flower or garden beds or the planting of seasonal flowers or maintenance of Yard Area flower beds beyond limited weeding and removal of dead plants as indicated above; (b) the purchase, installation or replacement of new shrubs, trees or plants; (c) trimming of bushes above a height of six (6) feet or removal of large limbs (over 4 inches in diameter or higher than six (6) feet from base of tree) or dead or damaged bushes or trees (over six (6) feet in height); or (d) any aspects of the maintenance or installation of any vegetable garden, if such is allowed by the Board, including but not limited to soil preparation, weeding, plant installation or removal, fertilization, or the replacement of an area previously converted to a vegetable

garden with turf or flower beds, etc. Notwithstanding the foregoing, the Board will have the right to modify the Landscape Services provided hereunder from time to time.

1.22 "**Limited Common Elements**", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", or "Limited Common Elements", or "Limited Common Areas" on Attachment 2, attached hereto and as provided in *Section 5.3* of this Declaration.

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

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

1.25 "**Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a Recorded senior or first deed of trust lien against a Unit.

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

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

1.28 "**Perimeter and Privacy Fencing**" means the fencing located along or near the outer boundary of the Property and includes the fencing located along the back boundary of the Units. Perimeter Fencing also includes the fencing which runs parallel to and between adjoining Unit boundaries and fencing enclosing the rear yard of Units.

1.29 "**Plat and Plans**" means the plat and plans attached hereto as Attachment 2, as changed, modified, or amended in accordance with this Declaration.

1.30 "**Property**" means certain real property located in Travis County, Texas, as more particularly described on Attachment 1, attached hereto and incorporated herein, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.31 "**Rain Garden Facility**" or "**Rain Garden Facilities**" means a vegetated, depressed landscape area and any related facilities designed to capture and infiltrate and/or filter storm water runoff.

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

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

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

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

1.36 "**Underwriting Lender**" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or Government National Mortgage Association (Ginnie Mae), singularly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any institution.

1.37 "**Unit**" means the physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans attached hereto as Attachment 2, as further described in *Section 5.2* of this Declaration.

1.38 "**Yard Area**" means any yard space within a Unit.

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

2.1. **Additional Property**. Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association on approval of the Owners holding at least two thirds (2/3) of the total votes in the Association, or, during the Development Period, by Declarant acting without the consent of any Owners. Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added into the Regime.

2.2. **Recorded Easements and Licenses**. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of Record, including those described in the attached Attachment 3, and any shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-Recorded easements, licenses, leases,

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

ARTICLE 3
PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. **General**. In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this *Article 3*.

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

3.3. **Owner's Maintenance Easement**. Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit must be approved in advance and in writing by the Board. The Board may require that the Owner abide by reasonable rules with respect to use and protection of the Common Elements and adjacent Units during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit and/or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Unit, as applicable.

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

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

easement shall be subject, in any event, to any Rules governing or limiting each Owner's right of ingress and egress granted hereby.

3.5. **Owner's Encroachment Easement.** Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings.

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

3.7. **Association's Access Easement.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the following purposes:

(i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.

(ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.

(iii) To enforce the Documents.

(iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.

(v) To respond to emergencies.

(vi) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.8. **Utility Easement.** The Association and Declarant (during the Development Period) may grant permits, licenses, and easements over the Common Elements for utilities, and

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

NOTICE

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

3.9. **Security**. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS GUESTS, THAT THE DECLARANT AND 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 THE DECLARANT AND 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 THE DECLARANT AND 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.

3.10. **Injury to Person or Property**. NEITHER THE DECLARANT AND THE ASSOCIATION, NOR 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; (B) TO FENCE OR OTHERWISE ENCLOSE ANY UNIT, LIMITED COMMON ELEMENT, GENERAL COMMON ELEMENT, OR OTHER IMPROVEMENT; OR (C) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, RESIDENT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS *SECTION 3.10* ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE DECLARANT AND THE ASSOCIATION. EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DECLARANT AND THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, HIS GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

3.11. **Easement to Inspect and Right To Correct**. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Buildings and Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 3.11* may not be construed to create a duty for Declarant or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the purposes contained in this *Section 3.11*.

ARTICLE 4
DISCLOSURES

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

4.2. **Use of Adjacent Property.** No representations are made regarding the current or future use or zoning (if applicable) of adjacent property.

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

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

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

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

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

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

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

4.10. **Budgets**. Any budgets with costs and expenses expected to be incurred by the Association are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

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

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

4.13. **Urban Environment**. The Property is located in an urban environment. Land adjacent or near the Property may currently contain, or may be developed to contain in the future, residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors and light (from signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living. The Units are not constructed to be soundproof or free from vibrations. Sounds and vibrations can also be generated from sources located within a Unit or the Common Elements including heating and air conditioning equipment, pump rooms, other mechanical equipment, dogs barking and the playing of certain kinds of music.

4.14. **Driveways and Parking Areas**. Unless otherwise designated as Limited Common Elements assigned exclusively to a single Unit, or included within the boundary of a Unit, streets, driveways, and parking areas within the Property are maintained and administered by the Association. If a driveway or portion thereof is included within the boundary of a Unit, the Owner of the Unit is responsible for the maintenance and repair.

4.15. **Drainage Facilities, Drainage Pond**. The General Common Elements include one or more water drainage and detention facilities, including but not limited to pipes, inlets, controls, diverters, walls, and channels, which serve all or a portion of the Property (the "Utility

Facilities"). The Utility Facilities must be maintained by the Association in good condition and repair and in accordance with Applicable Law. The costs incurred by the Association to maintain the Utility Facilities is a Common Expense. Access to the Utility Facilities is limited to Persons engaged by the Association to periodically maintain such facilities. Each Owner is advised that the Utility Facilities are an active utility feature integral to the proper operation of the Regime and that entry thereon may result in injury.

4.16. **Easement Agreement for Access and Road Improvements Maintenance**. The Property is subject to that certain Easement Agreement for Access, recorded as Document No. 2013184066 in the Official Public Records of Travis County, Texas, which provides ingress to and egress from the Property to Spicewood Springs Road (the "**Road Easement**"). The Association is responsible for all of the obligations of the "dwelling unit owners" as defined and pursuant to the Road Easement, including the obligation to pay all costs to maintain the Road Improvements, as such term is defined in the Road Easement. The cost for maintenance of the Road Improvements is a Common Expense. The Property is also subject to that certain Amended and Restated Joint Use Easement and Residential Restriction Agreement, recorded in Volume 12299, Page 52, of the Real Property Records of Travis County, Texas, as affected by Volume 12821, Page 1574, of the Real Property Records of Travis County, Texas, and Document No. 2000008952, of the Official Public Records of Travis County, Texas (the "**Easement Agreement**"). Any maintenance required to be performed by the Owner of the Property pursuant to the Easement Agreement shall be performed by the Association and any expense incurred pursuant to the Easement Agreement is a Common Expense.

ARTICLE 5
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. **Submitted Units and Maximum Number of Units.** The Regime initially consists of thirteen (13) Units, which shall be the minimum number of Units, and the maximum number of Units which may be created is fifteen (15). During the Development Period, Declarant, as permitted in Appendix "A", has reserved the right to create a maximum of fifteen (15) Units on the Property. To add Units to the Regime, Declarant during the Development Period may, from time to time, file an amendment to this Declaration creating such additional Units. To add additional Units to the Regime established by the Declaration, Declarant shall prepare, execute, and Record an amendment to this Declaration and the Plat and Plans which amendment will: (i) assign an identifying number to each new Unit; (ii) reallocate the Common Interest Allocation among all Units then existing within the Regime; (iii) describe Limited Common Elements; if any, assigned or designated to each new Unit; and (iv) with respect to new Units, include the information required by Section 82.055 and Section 82.059(b) of the Texas Uniform Condominium Act.

5.2. **Units**.

5.2.1. Unit Boundaries. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached hereto as Attachment 2. The boundaries of each Unit are further described as follows:

(i) Lower Boundary of the Unit: The horizontal plane corresponding to the finished grade of the land within the Unit as described and defined on Attachment 2.

(ii) Upper Boundary of the Unit: The horizontal plane parallel to and fifty feet (50') above the lower boundary of the Unit.

(iii) Lateral Boundaries of the Unit: A plane located on each side of a Unit perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit.

Ownership of a Unit includes the entire Building, including the roof and foundation, and all other Improvements located within the Unit.

5.2.2. What a Unit Includes. Each Unit includes the spaces and Improvements within the lower, upper, and lateral boundaries defined in *Section 5.2.1.* above, including without limitation the Building, the roof and foundation of the Building, landscaping, driveways, sidewalks, fences, yards, utility lines and meters, and all other Improvements located within the Unit. In addition to the Building and the Improvements within the Unit, each Unit also includes Improvements, fixtures, and equipment serving the Building or Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Building, including but not limited to any below-grade foundation, piers, retaining walls, fence, or other structural supports; sewage injection pumps, sewage grinder pumps, plumbing, sewerage, and utility lines, pipes, drains, and conduits; solar panels; landscape irrigation, drainage facilities, and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Building or Unit exclusively.

Not a Typical Condominium Unit

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

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

5.3. **Designation and Allocation of Limited Common Elements.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as Attachment 2, by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only pursuant to the provisions of this Article. Declarant reserves the right in Appendix A of this Declaration, to create and assign Limited Common Elements within the Property.

5.4. **Common Interest Allocation.** The percentage of interest in the Common Elements (the "**Common Interest Allocation**") allocated to each Unit is set forth on Attachment 4 and is assigned in accordance with a ratio of 1 to the total number of Units. The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units the reallocation will be effective on the date such amendment is Recorded.

5.5. **Common Expense Liability.** The percentage of liability for Common Expenses (the "**Common Expense Liability**") allocated to each Unit and levied pursuant to *Article 6* is equivalent to the Common Interest Allocation assigned to the Unit pursuant to *Section 5.4*.

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

ARTICLE 6
COVENANT FOR ASSESSMENTS

6.1. **Purpose of Assessments.** The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the Association was formed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

6.2. **Personal Obligation**. An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person regarding any matter to which this Declaration pertains. No Owner may exempt itself from such Owner's liability for Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Owner's Unit. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

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

6.4. **Regular Assessments**.

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

(i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, and Improvements, equipment, signage, and property owned by the Association.

(ii) Maintenance examination and report, as required by *Section 9.4.*

(iii) Utilities billed to the Association.

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

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

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

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

(viii) Insurance premiums and deductibles.

(ix) Contributions to reserves.

(x) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

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

6.4.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget. Each Unit will be liable for its allocated share of the annual budget equal to the Common Expense Liability assigned to the Owner's Unit. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

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

6.5. **Special Assessments**. The Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget or reserves. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by at least a Majority of the votes in the Association.Special Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.6. **Utility Assessments**. This *Section 6.6* applies to utilities serving the individual Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to Regular and Special Assessments, the Board may levy a Utility Assessment against each Unit. If the Units are submetered for consumption of a utility, the Utility Assessment may be based on the submeter reading. If the Units are not submetered, the Board may allocate the Association's utility charges among the Units receiving the utilities by any conventional method for similar

types of properties. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The Board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all Units.

6.7. **Individual Assessments**. In addition to Regular, Special, and Utility Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and project documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Unit; (viii) Common Expenses that benefit fewer than all of the Units, which may be assessed according to benefit received; (ix) fees or charges levied against the Association on a per-Unit basis; and "pass through" expenses for services to Units provided through the Association and which are equitably paid by each Unit according to benefit received.

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

6.9. **Due Date**. Regular Assessments are due annually, with quarterly installments of the total annual Regular Assessments to be paid on the first calendar day of each calendar quarter or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Utility, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Utility, Individual, or Deficiency Assessment is given.

6.10. **Reserve Funds**. The Association may maintain reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, replacement or major repair of components of the General Common Elements, and deductibles on insurance policies maintained by the Association. Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner of a Unit, and transfers from one Owner to a subsequent Owner), a reserve fund contribution in an amount equal to one (1) quarterly installment of the total annual Regular Assessment will be paid from the transferee of the Unit to the Association for the Association's reserve fund. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any reserve fund contribution payable on the transfer of a Unit. Each reserve fund contribution will be

collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the reserve fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any reserve fund contribution attributable to a Unit (or all Units) by Recordation of a waiver notice, which waiver may be temporary or permanent.

6.11. **Declarant's Right to Inspect and Correct Accounts.** For a period of ten (10) years after termination or expiration of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the formation of the Association until the termination of the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This *Section 6.11* may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's advance written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and Development Period.

6.12. **Association's Right to Borrow Money.** The Board is granted the right to borrow money on behalf of the Association, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Board has the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred by the Association.

6.13. **Limitation of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of unpaid Assessments to which such excess interest was applied, or reimbursed to the Owner if those Assessments are paid in full.

6.14. **Audited Financial Statements**. The Association shall have an audited financial statement for the preceding full fiscal year of the Association prepared and made available within one hundred and twenty (120) days after the Association's fiscal year-end.

ARTICLE 7
ASSESSMENT LIEN

7.1. **Assessment Lien**. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner is placed on notice that title to the Unit may be subject to the continuing lien for Assessments attributable to a period prior to the date the Owner purchased the Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of all Assessments.

7.2. **Superiority of Assessment Lien**. The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a Recorded deed of trust lien securing a loan for construction or acquisition of the Unit; (iii) a deed of trust or vendor's lien Recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due. The Assessment lien is also superior to any Recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

7.3. **Effect of Mortgagee's Foreclosure**. Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale.

7.4. **Notice and Release**. The Association's lien for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, the Board, at its option, may cause a notice of the lien to be Recorded. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

7.5. **Power of Sale**. By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the

Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

7.6. **Foreclosure of Lien**. The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 8
EFFECT OF NONPAYMENT OF ASSESSMENTS

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

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

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

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

8.4. **Acceleration**. If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

8.5. **Suspension of Vote**. Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds twenty percent (20%) of the total Members (co-owners of a Unit constituting one Member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

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

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

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

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

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

9.1. **Association Maintains.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a Common Expense, all General Common Elements, any Limited Common Elements assigned to more than one (1) Unit, Perimeter and Privacy Fencing, Rain Garden Facilities, if any (in accordance with *Section 9.5* below) and, subject to the provisions of *Section 1.20* and *Section 9.2* of this Declaration, the Yard Area. The Association also maintains, as a Common Expense, any component of a Unit delegated to the Association by this Declaration.

9.2. **Irrigation Maintenance Services and Landscape Services.**

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

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

9.2.3. Irrigation. Each Owner of a Unit will be responsible for (i) ensuring the proper irrigation of the yard turf areas and (ii) shutting down the irrigation system serving such Owner or Resident's Unit in the event of a malfunction or leak. Each Owner will refrain from irrigating the Yard Area twelve (12) hours prior to performance of Landscape Services or Irrigation Maintenance Services or during the performance of Landscape Services or Irrigation Maintenance Services. Each Unit Owner will be required to pay the costs charged by the utility service provider for all water consumed by the water meter associated with the irrigation of the Yard Area within such Owner's Unit.

9.2.4. Cost. The cost of all Irrigation Maintenance Services and Landscape Services will be a Common Expense. Notwithstanding the forgoing, in the event that Irrigation Maintenance Services or Landscape Services are due to negligence or willful misconduct of an Owner, an Owner's tenant, or an Owner's pet, as determined by the Board in its sole discretion, the cost of such maintenance or repair may be levied as an Individual Assessment. In no circumstance will the costs of the electricity and water required to operate the irrigation and water retention system(s) within an Owner's Unit be a Common Expense including any costs incurred from water loss as a result of a system malfunction, leak or delay in repairing an irrigation system.

9.2.5. Alterations. Any alterations in the landscaping of any portion of a Yard Area must be approved in writing by Declarant pursuant to the Declaration and/or the Architectural Reviewer prior to the alterations being made. In the event the Association performs alterations, additions or modifications to an Owner's irrigation system (based on reconfigured landscaping or otherwise), the cost of the alterations, additions or modifications will be levied as an Individual Assessment.

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

9.2.7. THE ASSOCIATION SHALL NOT BE LIABLE FOR INJURY OR DAMAGE TO PERSON OR PROPERTY CAUSED BY THE ELEMENTS OR BY THE OWNER OR RESIDENT OR ANY OTHER PERSON OR RESULTING FROM ANY UTILITY, RAIN, SNOW OR ICE WHICH MAY LEAK OR FLOW FROM ANY PIPE, DRAIN, CONDUIT, APPLIANCE OR EQUIPMENT WHICH THE ASSOCIATION IS RESPONSIBLE FOR MAINTAINING HEREUNDER. THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT FOR LOSS OR DAMAGE, BY THEFT OR OTHERWISE, OF ANY PROPERTY, WHICH MAY BE STORED IN OR UPON THE YARD AREA OF ANY UNIT. THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT, FOR ANY DAMAGE OR INJURY CAUSED IN WHOLE OR IN PART BY THE ASSOCIATION'S FAILURE TO DISCHARGE ITS RESPONSIBILITIES UNDER THIS *SECTION 9.2*. NO DIMINUTION OR ABATEMENT OF ASSESSMENTS SHALL BE CLAIMED OR ALLOWED BY REASON OF ANY ALLEGED FAILURE OF THE ASSOCIATION TO TAKE SOME ACTION OR PERFORM SOME FUNCTION REQUIRED TO BE TAKEN OR PERFORMED BY THE ASSOCIATION UNDER THIS DECLARATION OR FOR INCONVENIENCE OR DISCOMFORT ARISING FROM THE MAKING OF REPAIRS OR IMPROVEMENTS

WHICH ARE THE RESPONSIBILITY OF THE ASSOCIATION OR FROM ANY ACTION TAKEN BY THE ASSOCIATION TO COMPLY WITH APPLICABLE LAW.

9.3. **Perimeter and Privacy Fencing**.

9.3.1. Maintenance of Perimeter Fencing. The Association will cause seal, stain, repair, replace and/or maintain the Perimeter and Privacy Fencing. Accordingly, the Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designated contractor to perform the maintenance and repair services necessary to seal, stain, repair, replace and/or maintain the Perimeter and Privacy Fencing located within or adjacent to a Unit. Access to each Unit is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual performance of maintenance and repair services on the Perimeter and Privacy Fencing. If the Association damages any Improvements located within a Unit in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements. Once every four (4) years, the Association will cause the Perimeter and Privacy Fencing to be sealed and stained. The cost of all maintenance and repair services, including the cost of sealing and staining the Perimeter and Privacy Fencing, will be a Common Expense.

9.4. **Inspection Obligations**.

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

9.4.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements is attached to this Declaration as Attachment 5. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identity any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

9.4.3. Notice to Declarant. During the Development Period, the Association shall deliver to Declarant ten (10) days advance written notice of all such inspections

(and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

9.4.4. Limitation. The provisions of this *Section 9.4* shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

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

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

(ii) Unless otherwise provided by the Association pursuant to *Section 9.2*, the maintenance of Yard Area located within the Owner's Unit, keeping same in a neat, clean, odorless, orderly, and attractive condition.

(iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.

(iv) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.

(v) To be responsible for the Owner's willful or negligent acts and those of the Owner or Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.6. **Rain Garden Facilities Maintenance.** It is anticipated the Regime may include one or more Rain Garden Facilities. In the event the Regime includes one or more Rain Garden Facilities, the Association shall be required to continuously maintain the Rain Garden Facilities on the Property in a good and functioning condition, and in accordance with the requirements of this *Section 9.6* (the "**Rain Garden Facility Obligations**"). In the event that the Association fails to maintain the Rain Garden Facility Obligations as required by this *Section 9.6*, each Owner shall be obligated to discharge the Rain Garden Facility Obligations for any Rain Garden Facility located within their Unit.

9.6.1. Annual Inspection. The Rain Garden Facilities must be inspected at least once annually, or during or within seventy-two (72) hours of a significant rainfall event, to evaluate the system's operation. During each inspection, erosion areas inside of a Rain Garden Facility and at the Rain Garden Facility's outfall must be identified and repaired. With each inspection, any damage to the structural elements of the system must be identified and repaired immediately. Cracks, voids and undermining should be patched and/or filled to prevent additional structural damage.

9.6.2. Drawdown Report. At least once every four (4) years, a pond drawdown report (the "**Drawdown Report**") for each Rain Garden Facility shall be completed in conjunction with a rainfall event (the "**Rainfall Event**") equal to or greater than the design capture depth of the Rain Garden Facility. The Drawdown Report shall indicate the date and time the pond(s) were observed full during or after the Rainfall Event, against the date and time the ponds were subsequently observed to be empty after the Rainfall Event.

9.6.3. Bi-Annual Inspection (Third-Party). At least one inspection of the Rain Garden Facilities shall be done every two (2) years by a third party inspector; after said inspection, a third party inspection report shall be submitted to City of Austin Watershed Protection Department ("**WPD**") for review. WPD shall be notified at least seven (7) days prior to the third party inspection to allow for the opportunity for observation. The third party inspection report shall: (a) be sealed by a Texas Professional Engineer, (b) include photographs of the Rain Garden Facilities, and (c) include the most recent Drawdown Report.

9.6.4. Sediment Removal. Sediment should be removed from the Rain Garden Facilities as needed, or when such sediment impairs the proper functioning of any inlet, outlet, or infiltration structures related to the Rain Garden Facilities. Corrective maintenance will be required if the Rain Garden Facilities do not drain completely within ninety-six (96) hours (i.e., no standing water is allowed).

9.6.5. Media Replacement. Maintenance of the filtration media is necessary when the drawdown time exceeds ninety-six (96) hours, provided all other components of the pond are functioning correctly. At such time, the upper layer of mulch and at least 3" of soil should be removed and replaced with new material. The design depth of the filtration media must account for consolidation. If insufficient depth is present, additional media must be added and pre-soaked until the design depth is achieved.

9.6.6. Debris and Litter Removal. Debris and litter should be removed regularly.

9.6.7. Additional Requirements. If storm water runoff enters a Rain Garden Facility prior to the completion of any construction (including revegetation), and said

storm water runoff drains directly into the Rain Garden Facility, inspection and maintenance of all temporary erosion and sedimentation controls are required to prevent any heavy sediment loads as a result of the construction from clogging the filtration media.

9.7. **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by delegating responsibility to the individual Owners. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this *Article 9* that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

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

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

9.10. **Ad Valorem Taxes.** Each Owner acknowledges and agrees that if the Owner acquires a Unit during the calendar year or subsequent calendar year in which the Declaration is Recorded, on the date of acquisition of such Unit, the Unit may not have been separately assessed for ad valorem taxes. On the date Declarant transferred the Unit to the Owner, a proration of ad valorem taxes occurred, with the party purchasing the Unit either paying to the Declarant or placing in escrow the estimated portion of the ad valorem taxes attributable to the Unit for remainder of the calendar year. Due to the date when ad valorem taxes are assessed by the taxing authority, in the calendar year in which the Owner acquired the Unit, the Declarant-rather than the Owner- may receive the tax statement which may be more, or less, than the prorated amounts. This Section will be utilized in the event a tax statement is received by the Declarant which includes ad valorem taxes attributable to Units which were not separately assessed during a calendar year.

If ad valorem taxes with respect to all or any portion of the Property are not separately assessed to the Owner of a Unit, then the Declarant will calculate and allocate the ad valorem taxes as follows:

CIA:	Common Interest Allocation attributable to the Unit pursuant to this Declaration, as amended.
TCIA:	The sum of Common Interest Allocations attributable to all Units not separately assessed for ad valorem tax purposes.
ODAYS:	Number of days the Owner held title to the Unit during the period to which the ad valorem taxes apply.
OTP:	Owner Tax Proration, being the amount of taxes prorated to the Owner when the Unit was transferred to the Owner.
DTP:	Declarant Tax Proration, being the amount of taxes prorated to the Declarant when the Unit was transferred to the Owner.
AVT:	The total amount of ad valorem taxes attributable to Units not separately assessed for ad valorem tax purposes.
OAVT:	The amount allocated to the Owner of the Unit.
STEP 1:	Total Allocation Amount = AVT – (OTP + DTP)
STEP 2:	Total Unit Allocation Amount per Unit = Total Allocation Amount x (CIA/TCIA)
STEP 3:	**OAVT= Total Unit Allocation Amount x (ODAYS/365)**

For example, assume ad valorem taxes in the amount of $16,000.00 for a calendar year are unpaid and attributable to three (3) Units. At the close of each of the Units, the estimated ad valorem tax for each Unit was $5,000.00. Assume that Unit 1 was transferred by the Declarant to the Owner on February 1st of the calendar year and the amount of ad valorem taxes prorated to the Owner was $4,575.35; Unit 2 was transferred by Declarant to the Owner on June 30th of the calendar year and the amount of ad valorem taxes prorated to the Owner was $2,534.25; and Unit 3 was transferred by the Declarant to the Owner thereof on December 1st of the calendar year and the amount of ad valorem taxes prorated to the Owner was $424.66.

STEP 1: Total Allocation Amount =

$16,000 –

[($4,575.35+$2,534.25+$424.66) +

($424.65+$2,465.75+$4575.34)]
=$1,000.00

STEP 2: Total Unit Allocation Amount per Unit=
$3,000 x (0.10/0.30) = $333.34

STEP 3: OAVT

Unit 1: $333.34 x (334/365) = $305.03
Unit 2: $333.34 x (185/365) = $168.96
Unit 3: $333.34 x (31/365) = $28.32

Declarant shall prepare the calculation on or before the expiration of thirty (30) days after the ad valorem tax statement is received by the Declarant, but in any event at least thirty (30) days prior to the date such ad valorem taxes are due. Declarant shall provide written notice to each Owner whose Unit was not separately assessed for ad valorem tax purposes and is being allocated a portion of such ad valorem tax as contemplated by this *Section 9.10* (the "**AVT Notice**"). The AVT Notice will include the calculation attributable to the Unit.If, as a result of the allocation of ad valorem taxes to a Unit, the OAVT is greater than 0, such amount shall be remitted by the Owner to the Declarant on or before ten (10) days after the Declarant has provided the AVT Notice to the Owner. If the OAVT is less than 0, then such amount shall be remitted by the Declarant to the Owner on or before ten (10) days after the Declarant has provided the AVT Notice to the Owner.

ARTICLE 10
ARCHITECTURAL COVENANTS AND CONTROL

10.1. **Purpose**. Because the Units are part of a single, unified community, the Architectural Reviewer has the right to regulate the appearance of all Improvements in order to preserve and enhance the Property's value and architectural harmony. The Architectural Reviewer has the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation. During the Development Period, the primary purpose of this *Article 10* is to reserve and preserve Declarant's right of architectural control. Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property and all architectural modifications made thereto that are made by the Declarant or its permittees shall not be subject to approval pursuant to this *Article 10*.

10.2. **Architectural Reviewer**. Until expiration or termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. Upon expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

10.3. **Architectural Control by Declarant**.

10.3.1. Declarant as Architectural Reviewer. During the Development Period, the Architectural Reviewer shall mean Declarant or its designee, and neither the Association or the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the review and approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this *Article 10*.

10.3.2. Declarant's Rights Reserved. Each Owner agrees that during the Development Period, no Improvements will be started or progressed without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

10.3.3. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its rights as Architectural Reviewer to the Board or a committee appointed by the Board comprised of Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral right of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

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

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

10.6. **Prohibition of Construction, Alteration and Improvement**. Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property.

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

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

10.8. **Application.** To request Architectural Reviewer approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

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

(i) The Owner complies with *Section 3.3*.

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

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

(iv) If the approved application is for work that requires a building permit from a municipality of other regulatory authority, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that such plans and specifications comply with a municipality or other regulatory authority requirements. Alternatively, approval by a municipality or other regulatory authority does not ensure Architectural Reviewer approval.

ARTICLE 11
CONSTRUCTION & USE RESTRICTIONS

11.1. **Variance**. The Property is subject to the restrictions contained in this *Article 11*, and subject to the Rules. The Declarant may grant a variance or waiver of a restriction or Rule during the Development Period. The Board, with the Declarant's written consent during the Development Period, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by the Declarant and/or a Majority of the Board, as applicable. The grant of a variance shall not constitute a waiver or estoppel of the right to deny a variance in other circumstances.

11.2. **Declarant Privileges**. In connection with the development and marketing of Units, Declarant has reserved a number of rights and privileges that are not available to other Owners or Residents. Declarant's exercise of a right or privilege that appears to violate the Documents does not constitute waiver or abandonment of the applicable provision of the Documents.

11.3. **Association's Right to Promulgate Rules and Amend Community Manual**. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Board is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines.

11.4. **Rules and Regulations**. In addition to the restrictions contained in this *Article 11*, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

(i) Use of Common Elements.

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

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

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

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

(vi) The occupancy and leasing of Units.

(vii) Animals.

(viii) Vehicles.

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

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

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

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

11.7. **Animals - Household Pets**. Except for fish and two (2) birds, there shall be allowed no more than three household pets in a Unit; and *provided, further,* that said pets may consist only of domesticated dogs, cats, and/or birds and may not be kept, bred, or maintained for any commercial purpose and not become a nuisance or annoyance to neighbors. Owners must immediately pick up all solid waste of their pets and dispose of such waste appropriately. All individual pets, including cats, must be leashed at all times when outside a Unit. Without limiting the generality of this *Section 11.7*, violations of the provisions of this *Section 11.7* will entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Owners and/or to require, through order of the Board, any pet to be permanently removed from the Regime. No one other than an Owner or an Owner's tenant is permitted to keep any pet.

11.8. **Annoyance**. No Unit may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Residents of other Units; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

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

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

11.11. **Driveways**. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access or as designated parking.

11.12. **Garages**. The original garage of any Building or Improvement constructed within a Unit may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein, without the Board's written authorization.

11.13. **Landscaping**. No Person may perform landscaping, planting, or gardening anywhere within the General Common Elements or Yard Area without the Board's prior written authorization. If the installation of landscaping within a Yard Area is approved in advance by the Board, such landscaping should not include any invasive plants. A list of plants that are considered invasive can be found at http://www.ci.austin.tx.us/growgreen/downloads/pg_invasive.pdf.

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

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

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

11.17. **Signs.** No sign of any kind, including signs (including signs advertising Units for sale, for rent or for lease), may be erected, placed, or permitted to remain on the Property unless written approval has been obtained in advance from the Architectural Reviewer. The Architectural Reviewer may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Unit. As used in this *Section 11.17*, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Architectural Reviewer cause the immediate removal of any sign or object which has not been approved in advance by the Architectural Reviewer.

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

11.18. **Solar Energy Device.** During the Development Period this *Section 11.18* does not apply and the Declarant must approve in advance and in writing the installation of any solar

energy device or apparatus (a "**Solar Energy Device**"). Until expiration or termination of the Development Period, the Declarant may prohibit the installation of any Solar Energy Device. After expiration or termination of the Development Period, Solar Energy Devices may be installed with the advance written approval of the Architectural Reviewer.

11.18.1.Application. To obtain Architectural Reviewer approval of a Solar Energy Device, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 10*.

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

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

(i) The Solar Energy Device must be located on the roof of the residence located within the Owner's Unit, entirely within a fenced area within the Owner's Unit, or entirely within a fenced patio located within the Owner's Unit. If the Solar Energy Device will be located on the roof of the residence located within the Owner's Unit, the Architectural Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the

Architectural Reviewer. If the Owner desires to contest the alternate location proposed by the Architectural Reviewer, the Owner should submit information to the Architectural Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the or patio located within the Owner's Unit, no portion of the Solar Energy Device may extend above the fence line.

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

11.19. **Energy Efficient Roofing**. For the proposes of this *Section 11.19* "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. Approval by the Architectural Reviewer pursuant to *Article 10* is required prior to installing Energy Efficient Roofing. The Architectural Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in *Article 10*.

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

11.20.1. Application. To obtain Architectural Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner.

11.20.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10*. Any proposal to install a Rainwater Harvesting

System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

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

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

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

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

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

(v) If the Rainwater Harvesting System will be installed on or within the side yard within the Owner's Unit, or would otherwise be visible from a street, common area, or another Owner's Unit, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 11.20.4* for additional guidance.

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

prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

11.21. **Flags – Approval Requirements**. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States Military, (**"Permitted Flag"**) and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence located within the Owner's Unit (**"Permitted Flagpole"**). Only two (2) Permitted Flagpoles are allowed per residence located within the Owner's Unit. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural Reviewer. Approval by the Architectural Reviewer is required prior to installing vertical freestanding flagpole in the front or back yard area located within the Owner's Unit (**"Freestanding Flagpole"**).To obtain Architectural Reviewer approval of any Freestanding Flagpole, the Owner shall provide the Architectural Reviewer with the following information: (a) the location of the Freestanding Flagpole to be installed on the Unit; (b) the type of Freestanding Flagpole to be installed; (c) the dimensions of the Freestanding Flagpole; and (d) the proposed materials of the Freestanding Flagpole (the **"Flagpole Application"**). A Flagpole Application may only be submitted by an Owner. The Flagpole Application shall be submitted in accordance with the provisions of *Article 10* of this Declaration.

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

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

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

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

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

(v) The display of a flag, or the location and construction of the flagpole must comply with Applicable Law, easements and setbacks of record;

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

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

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

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

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

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

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

11.23.3. One Permitted Antenna Limitation. Unless otherwise approved by the Architectural Reviewer, only one Permitted Antenna per Unit is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the Architectural Reviewer. Upon notification, the Owner will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.

11.23.4. Permitted Installation Locations – Generally. An Owner or Resident may erect a Permitted Antenna (after written notification has been provided to the Architectural Reviewer) if the Owner or Resident has an exclusive use area in which to

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

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

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

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

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

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

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

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

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

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Architectural Reviewer. For purposes of this *Section 11.24* "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's plan may be denied if the Architectural Reviewer determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or 2) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Unit.

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

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

11.24.3.Process. The decision of the Architectural Reviewer will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 11.24* when considering any such request.

11.24.4.Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Architectural Reviewer, installation of the Xeriscaping must: (i) strictly

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

11.25. **Vehicles; Guest Parking.** All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this *Section 11.25* and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle from which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or restorations of vehicles on the Property. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. The Association may affect the removal of any vehicle in violation of this *Section 11.25* or the Rules without liability to the owner or operator of the vehicle. The General Common Element includes a limited number of surface parking spaces (the "**Surface Spaces**"). The Surface Spaces may only be used for guest parking and may not be used by the Residents of a Unit. Parking within the Surface Spaces is limited to a period of no more than twelve (12) consecutive hours unless otherwise approved in advance by the Declarant during the Development Period, and upon expiration or termination of the Development Period, the Board. Except for parking in the Surface Space pursuant to this Section 11.25, no parking is allowed within the General Common Element roadway.

ARTICLE 12
UNIT LEASING

12.1. **Lease Conditions.** The leasing of Units is subject to the following conditions: (i) no Unit may be rented for transient or hotel purposes or from an Owner to the Owner's initial lessee for a period less than one (1) year, unless otherwise approved in advance by the Board, provided that the initial lease may be extended with the same lessee for a shorter time period, but no less than a thirty (30) day period; (ii) no Unit may be subdivided for rent purposes, and not less than an entire Unit may be leased unless the Owner remains a Resident of the Unit during the term of the lease; (iii) all leases must be in writing and must be made

subject to the Documents; (iv) an Owner is responsible for providing the Owner's tenant with copies of the Documents and notifying the tenant of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

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

12.2.1. Compliance with Documents. The tenant shall comply with all provisions of the Documents and shall control the conduct of all other Residents and guests of the leased Unit, as applicable, in order to ensure such compliance. The Owner shall cause all Residents of the Owner's Unit to comply with the Documents and shall be responsible for all violations by such Residents notwithstanding the fact that such Residents of the Unit are fully liable and may be sanctioned for any such violation. If the tenant or Resident violates the Documents or a Rule for which a fine is imposed, notice of the violation shall be given to the Owner and Residents, and such fine may be assessed against the Owner or Resident. Unpaid fines shall constitute a lien against the Unit.

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

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

12.2.4. Association as Attorney-in-Fact. Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Documents by the

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

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

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

ARTICLE 13
ASSOCIATION OPERATIONS

13.1. **Board**. Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through a Majority of the Board."

13.2. **The Association**. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members and the Regime, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

13.3. **Name**. A name is not the defining feature of the Association. Although the initial name of the Association is the Spicewood Condominium Community, Inc., the Association may operate under any name that is approved by the Board and: (i) filed with the Travis County Clerk as an assumed name; or (ii) filed with the Secretary of State of Texas as the name of the filing entity. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration.

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

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

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

13.7. **Membership**. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at a meeting of the Association. If a Unit is owned by more than one Person, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit.

13.8. **Manager**. The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Attachment 6. The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its board members, officers, employees, and agents. The Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or

functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

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

13.10. **Indemnification**. The Association indemnifies every officer, director, and committee member (for purposes of this *Section 13.10*, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a Common Expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation.

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

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

13.11.2. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay Regular Assessments without demand by the Association.

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

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

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

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

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

13.12.2.No Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association.

13.12.3.Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees.

13.12.4.Exclusions. The requirements of this *Section 13.12* do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (iv) a disposition by a government or governmental agency. Additionally, the requirements of this *Section 13.12* do not apply to the initial conveyance from Declarant. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

ARTICLE 14
ENFORCING THE DOCUMENTS

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

14.2. **Remedies**. The remedies provided in this *Article 14* for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following rights to enforce the Documents:

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

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

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

14.2.4. Self-Help. The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an

Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish any Improvement within a Unit without judicial proceedings.

14.2.5. Suit. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

14.3. **Board Discretion**. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

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

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

ARTICLE 15
INSURANCE

15.1. **General Provisions.** The broad purpose of this *Article 15* is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Units. The Board will make every reasonable effort to comply with the requirements of this *Article 15*.

15.1.1. Unavailability. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this *Article 15* or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

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

15.1.3. Requirements. The cost of insurance coverages and bonds maintained by the Association is a Common Expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be prejudiced by the act or omission of any Owner or Resident who is not under the Association's control.

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

15.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled,

terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Mortgagees, and the insurer will give Mortgagees, prior notices of cancellation, termination, expiration, or material modification.

15.1.6. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an Underwriting Lender. In the event of an insured loss, the deductible is treated as a Common Expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Resident or their guest or invitee, then the Board may levy an Individual Assessment against the Owner and the Owner's Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with *Section 14.1* of this Declaration.

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

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

15.2.2. Units Not Insured by Association. In no event will the Association maintain property insurance on the Units. Accordingly, each Owner of a Unit will be obligated to maintain property insurance on such Owner's Unit and any Limited Common Elements assigned exclusively to such Owner's Unit, including any betterments and Improvements constructed within or exclusively serving such Unit, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. In addition, the Association does not insure an Owner or Resident's personal property. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON THEIR PERSONAL BELONGINGS.

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

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

15.3. **Liability Insurance.** The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Resident within their Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

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

15.5. **Fidelity Coverage.** The Association may maintain blanket fidelity coverage for any Person who handles or is responsible for funds held or administered by the Association, whether or not the Person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to one quarterly installment of the total annual Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages; however, the Board may waive such a requirement or agree that the Association will pay for a manager's fidelity insurance coverage specific to the Association's funds. To the extent the Association is required to obtain and maintain Fidelity Coverage for any party, any and all costs associated with maintaining Fidelity Coverage shall be a Common Expense.

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

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

ARTICLE 16
RECONSTRUCTION OR REPAIR AFTER LOSS

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

16.2. **Restoration Funds**. For purposes of this *Article 16*, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Common Elements. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Board members.

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

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

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

16.3. **Costs And Plans**.

16.3.1. Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Common Elements. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

16.3.2. Plans and Specifications. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction.

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

16.5. **Owner's Liability For Insurance Deductible**. If repair or restoration of Common Elements is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 17
TERMINATION AND CONDEMNATION

17.1. **Association As Trustee**. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration or by the Act; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

17.2. **Termination**. Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and *Section 18.3* below.

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

ARTICLE 18
MORTGAGEE PROTECTION

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

18.2. **Notice of Mortgagee**. As provided in this *Article 18*, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as

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

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

18.4. **Termination**. Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant during the Development Period; and (iii) sixty-seven percent (67%) of Mortgagees.

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

18.6. **Other Mortgagee Rights**.

18.6.1. Inspection of Books. The Association will maintain current copies of the Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Documents and records, by appointment, during normal business hours.

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

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

18.6.4. Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

18.6.5. Management Contract. If professional management of the Association is required by this *Article 18*, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

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

18.8. **Notice of Actions**. The Association will send timely written notice to Mortgagees of the following actions:

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

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

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

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

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

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

18.9. **Amendments of a Material Nature**. A Document amendment of a material nature must be approved by Owners representing at least sixty-seven percent (67%) of the total votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. **THIS**

APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT AS PROVIDED IN APPENDIX "A" ATTACHED HERETO. A change to any of the provisions governing the following would be considered material:

(i) Voting rights.

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

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

(iv) Responsibility for maintenance and repairs.

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

(vi) Redefinitions of boundaries of Units, except pursuant to any rights reserved by Declarant pursuant to Appendix "A"

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

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

(ix) Property or fidelity insurance requirements.

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

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

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

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

ARTICLE 19
AMENDMENTS

19.1. **Consents Required**. As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the total votes in the Association.

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

19.3. **Effective**. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the Recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Mortgagees; provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration; and (iii) Recorded.

19.4. **Declarant Rights**. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix "A". An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect the Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because Appendix "A" of this Declaration is destined to become obsolete, beginning fifteen (15) years after the date this Declaration is first Recorded, the Board may restate, rerecord, or publish this Declaration without Appendix "A". The automatic expiration and subsequent deletion of Appendix "A" does not constitute an amendment of this Declaration. This *Section 19.4* may not be amended without Declarant's advance written consent.

ARTICLE 20
DISPUTE RESOLUTION

20.1. **Introduction And Definitions.** The Association, the Owners, Declarant, all Persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this *Article 20* (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this *Article 20* applies to all Claims as hereafter defined. Notwithstanding the foregoing provisions of this *Section 20.1*, or any other provision in this *Article 20* to the contrary, the Declarant, Architectural Reviewer, or the Association may elect, in writing, as to any specific Claim, that such Claim not be resolved pursuant to all or any portion of the dispute resolution process set forth in this *Article 20*. As used in this *Article 20* only, the following words, when capitalized, have the following specified meanings:

20.1.1. "**Claim**" means:

(i) Claims relating to the rights and/or duties of Declarant or its permitted assigns, under the Documents or the Act.

(ii) Claims relating to the acts or omissions of the Declarant during its control and administration of the Association, any claim asserted against the Architectural Reviewer if the claim relates to any act or omission of the Architectural Reviewer while controlled by the Declarant, and any claims asserted against a Person appointed by the Declarant to serve as a Board member or officer of the Association.

(iii) Claims relating to the design or construction of the Property, Units, or any Improvement made by or on behalf of the Declarant, or its permitted assigns.

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

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

20.2. **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this *Article 20*. As provided in *Section 20.7* below, a Claim will be resolved by binding arbitration.

20.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the

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

20.4. **Negotiation**. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

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

20.6. **Termination Of Mediation**. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this *Article 20*.

20.7. **Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 20.7*. This *Section 20.7* may not be amended without the prior written approval of the Declarant and Owners holding a Majority of the total votes in the Association.

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

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

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

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

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

personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

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

20.7.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *Section 20.7*; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of Applicable Law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Applicable Law; (ii) conclusions of Applicable Law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

20.7.5. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Travis County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any

press release regarding any Claim without the written consent of the other parties to the Claim.

20.8. **Allocation Of Costs.** Except as otherwise provided in this *Article 20*, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

20.9. **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

20.10. **Period of Limitation.**

20.10.1. For Actions by an Owner or Resident of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of a Unit, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim, (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Unit to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Unit.

20.10.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, two (2) years and one (1) day after the Declarant Control Period.

20.11. **Approval & Settlement.** Notwithstanding any provision in this *Article 20* to the contrary, the initiation of binding arbitration for a Claim as required by this *Article 20* is subject to the following conditions:

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

20.11.2.Owner Approval. The Association may not initiate binding arbitration or any judicial proceeding without the prior approval of Owners holding at least a Majority of the total votes in the Association.

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

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

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

ARTICLE 21
GENERAL PROVISIONS

21.1. **Notices**. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by **electronic mail**, personally or by mail. Such notice shall be deemed delivered at the time of personal or **electronic delivery**, and if delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Person to the Association of created.

21.2. **Compliance**. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and Applicable Law.

21.3. **Higher Authority**. The Documents are subordinate to Applicable Law. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law.

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

this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

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

21.6. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

21.7. **Construction.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof. Throughout this Declaration there appears text enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions of this Declaration. In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of the Declaration will control.

21.8. **Declarant as Attorney in Fact and Proxy.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Appendix "A" and elsewhere in this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit within the Regime, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit in the Regime, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to Appendix "A" or elsewhere in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage against a Unit in the Regime, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit in the Regime, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and

perform each and every act permitted or required pursuant to Appendix "A" or elsewhere in this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to Appendix "A" or elsewhere in this Declaration and to execute and Record amendments on their behalf to such effect; and the power hereby reserved in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Non-profit Corporation Act the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant pursuant to Appendix "A" or elsewhere in this Declaration on the date Declarant no longer has the right to exercise such rights. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

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

Attachment 1	Property Description
Attachment 2	Plats and Plans
Attachment 3	Encumbrances
Attachment 4	Schedule of Allocated Interests
Attachment 5	Guide to Association's Examination of Common Elements
Attachment 6	Guide to Association's Major Management and Governance Functions
Appendix A	Declarant Reservations

[SIGNATURE PAGE FOLLOWS]

EXECUTED on this 27th day of August, 2014.

DECLARANT:

SPICEWOOD SPRINGS, LP, a Texas limited partnership

By: _____
Printed Name: Anthony Siela
Title: Managing Member

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this 27th day of August 2014, by Anthony Siela Managing Member of Spicewood Springs, LP, a Texas limited partnership, on behalf of said limited partnership.

(SEAL)

MARCIA LEIGH
Notary Public, State of Texas
My Commission Expires
August 16, 2017

_____
Notary Public Signature

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by a Deed of Trust (the "Lien") recorded as Document No. 2013184067 in the Official Public Records of Travis County, Texas, securing a note of even date therewith, executes this Declaration solely for the purpose of evidencing the consent required pursuant to Section 82.051(b) of the Texas Property Code. This Consent shall not be construed or operate as any release of lien or security interest owned and held by undersigned or any part thereof.

GREEN BANK, N.A.

By: _____

Printed Name: Jim C. Floyd

Title: Senior Vice President

THE STATE OF Texas §
COUNTY OF Travis §

This instrument was acknowledged before me on this 26 day of August, 2014 by Jim C. Floyd, Sr. Vice President, of Green Bank N.A, on behalf of said _____.

ALMA S ELLAZAR
MY COMMISSION EXPIRES
August 19, 2018

Alma S. Ellazar
Notary Public, State of Texas

ATTACHMENT 1

PROPERTY DESCRIPTION

2.38 acres of land, more or less, being out of and a part of Lot 1, Block A of Mesa Forest Addition, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 93, Pages 386-387, of the Plat Records of Travis County, Texas, and being more fully described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found in the westerly right-of-way line of Spicewood Springs Road at the northwest corner of Lot 1, Block A, Mesa Forest Addition, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 93 Pages 386-387 of the Plat Records of Travis County, Texas, and being at the northeast corner of Lot 1, Spicewood Springs Road Office Park, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 85 Page 124A of the Travis County Plat Records, and being at the northwest corner and PLACE OF BEGINNING of the herein described tract of land;

THENCE with the westerly right-of-way line of Spicewood Springs Road, the following two courses:

1) S 14 deg. 00′ 41″ E 116.89 ft. to a ½ inch iron rod found at a point of curvature;

2) 266.73 ft. along the arc of a curve to the left, having a radius of 826.00 ft. and chord bearing S 22 deg. 58′ 50″ E 265.58 ft., to a ½ inch iron rod set with plastic cap marked "Holt Carson, Inc." at the northeast corner of this tract, and from which a ½ inch iron rod found at the northeast corner of said Lot 1, Block A, Mesa Forest Addition, and being the northwest corner of Lot 3, Charleston Place 1-B, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 85 Page 178A of the Plat Records of Travis County, Texas, bears S 32 deg. 59′ 33″ E 21.94 ft.;

THENCE leaving the westerly right-of-way line of Spicewood Springs Road on a line 20 ft. from and parallel to the common line of said Lot 1, Block A, Mesa Forest Addition and said Lot 3, S 32 deg. 44′ 12″ W 192.78 ft. to a ½ inch iron rod set with plastic cap marked "Holt Carson, Inc." at the southeast corner of this tract;

THENCE continuing across the interior of said Lot 1, Block A, Mesa Forest Addition, the following four courses:

1) N 67 deg. 06′ 45″ W 65.70 ft. to a ½ inch iron rod set with plastic cap marked "Holt Carson, Inc.";

2) N 57 deg. 00′ 19″ W 58.98 ft. to a ½ inch iron rod set with plastic cap marked "Holt Carson, Inc.";

3) N 43 deg. 15' 49" W 80.81 ft. to a spindle set;

4) N 77 deg. 03' 28" W 139.24 ft. to a ½ inch iron rod found at the northeast corner of Lot 30, Block D, of said Mesa Forest P.U.D., a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 93 Page 388 of the Plat Records of Travis County, Texas, and being at an angle point of said Lot 1, Block A, Mesa Forest Addition, and being an angle point of this tract;

THENCE with the west line of said Lot 1, Block A, Mesa Forest Addition, the following two courses:

1) N 62 deg. 54' 20" W 25.57 ft. to a ½ inch iron rod set with plastic cap marked "Holt Carson, Inc." at the southeast corner of said Lot 1, Spicewood Springs Road Office Park, and being the southwest corner of this tract;

2) N 39 deg. 22' 53" E 466.70 ft. to the Place of Beginning, containing 2.38 Acres of land.

ATTACHMENT 2

[CONDOMINIUM PLATS AND PLANS]

The plats and plans, attached hereto as Attachment 2 contains the information required by the Texas Uniform Condominium Act.

Printed Name:_____
RPLS or License No._____

SEE NEXT PAGE FOR ORIGINAL CERTIFICATION

Plat of

Spicewood Condominiums

page 1 of 10

page 1: LEGEND, easement notes and certification

page 2: legal description

page 3: general schematic and perimeter boundary survey

pages 4-6: boundary and as-built survey

pages 7-9: UNIT dimensions

page 10: general notes

Prepared: July 20, 2014 from survey of January 16, 2013 and site plans provided by declarant in June 2014

THIS PLAT CONTAINS THE INFORMATION RE14UIRED BY SECTION 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT

preliminary - version 2

Anne Thayer — date

Registered Professional
Land Surveyor No. 5850

LEGEND

- ◎ ½" Iron Rod Found
- ½" Iron Rod Set with Plastic Cap Marked "Holt Carson, Inc."
- ⊕ Cotton Spindle Found
- —//— Wood Fence
- —··—o—··— Overhead Utility Line
- guy wire
- wm● Water Meter
- wv● Water Valve
- wwmh● Wastewater Manhole
- co● Clean-Out
- emh● Electric Manhole
- ⊕ Fire Hydrant
- GCE- General Common Element
- ▨ Proposed Parking Space
- (Record Bearing and Distance)

CURVE DATA

(i)

S23°44'29"E C=287.21'
A=288.67' R=826.00'
(S23°41'28"E)
(C=287.04' A=288.51')
(R=826.00')

(ii)

S22°58'50"E C=265.58' A=266.73'
R=826.00'

DEED INFORMATION

(a)

Spicewood Springs, L.P.
(2.38 Acres)
Document No. 2013184065

(b)

LOT 30
BLOCK D
MESA FOREST P.U.D.
VOLUME 93 PAGE 388

(c)

COMMON AREA
LOT 3
CHARLESTON
PLACE IB
VOLUME 85 PAGE 178A

EASEMENT NOTES

According to Volume 12299 Page 52 of the Travis County Real Property Records, Lot 1 has has rights for ingress and egress over private roadways situated in Mesa Forest P.U.D., a subdivision in Travis County Texas, according to the map or plat thereof recorded in Volume 93 Page 388 of the Travis County Plat Records. These access rights are subject to limitations described in said document and also in Volume 12821 Page 1574 of the Travis County Real Property Records and in Document No. 2000008952 of the Travis County Official Public Records.

According to the plat recorded in Volume 93 Page 386 of the Travis County Plat Records, building setback lines shall be in conformance with the City of Austin Zoning Ordinance requirements.

Easements recorded in Volume 7627 Page 408, Volume 3643 Page 1122, Volume 2621 Page 338 of the Travis County Deed Records do not apply to this tract.

This tract appears to be subject to an easement for electric and telephone lines as described in Volume 680 Page 31 of the Travis County Deed Records.

HOLT CARSON, INC.
1904 FORTVIEW ROAD AUSTIN, TX 78704
(512) 442-0990 908040

Plat of

Spicewood Condominiums

LEGAL DESCRIPTION:

2.38 ACRES OF LAND OUT OF LOT 1, BLOCK A, MESA FOREST ADDITION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 93 PAGES 386-387 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AND AND BEING ALL OF THAT CERTAIN TRACT CONVEYED BY I. HAROLD SILBERBERG AND ADELE G. SILBERBERG TO SPICEWOOD SPRINGS, LP BY DEED RECORDED IN DOCUMENT NO. 2013184065 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod found in the westerly right-of-way line of Spicewood Springs Road at the northwest corner of Lot 1, Block A, Mesa Forest Addition, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 93 Pages 386-387 of the Plat Records of Travis County, Texas, and being at the northeast corner of Lot 1, Spicewood Springs Road Office Park, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 85 Page 124A of the Travis County Plat Records, and being at the northwest corner and PLACE OF BEGINNING of the herein described tract of land;

THENCE with the westerly right-of-way line of Spicewood Springs Road, the following two courses:

1) S 14 deg. 00' 41" E 116.89 ft. to a 1/2 inch iron rod found at a point of curvature;

2) 266.73 ft. along the arc of a curve to the left, having a radius of 826.00 ft. and chord bearing S 22 deg. 58' 50" E 265.58 ft., to a 1/2 inch iron rod set with plastic cap marked "Holt Carson, Inc." at the northeast corner of this tract, and from which a 1/2 inch iron rod found at the northeast corner of said Lot 1, Block A, Mesa Forest Addition, and being the northwest corner of Lot 3, Charleston Place 1-B, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 85 Page 178A of the Plat Records of Travis County, Texas, bears S 32 deg. 59' 33" E 21.94 ft.;

THENCE leaving the westerly right-of-way line of Spicewood Springs Road on a line 20 ft. from and parallel to the common line of said Lot 1, Block A, Mesa Forest Addition and said Lot 3, S 32 deg. 44' 12" W 192.78 ft. to a 1/2 inch iron rod set with plastic cap marked "Holt Carson, Inc." at the southeast corner of this tract;

THENCE continuing across the interior of said Lot 1, Block A, Mesa Forest Addition, the following four courses:

1) N 67 deg. 06' 45" W 65.70 ft. to a 1/2 inch iron rod set with plastic cap marked "Holt Carson, Inc.";

2) N 57 deg. 00' 19" W 58.98 ft. to a 1/2 inch iron rod set with plastic cap marked "Holt Carson, Inc.";

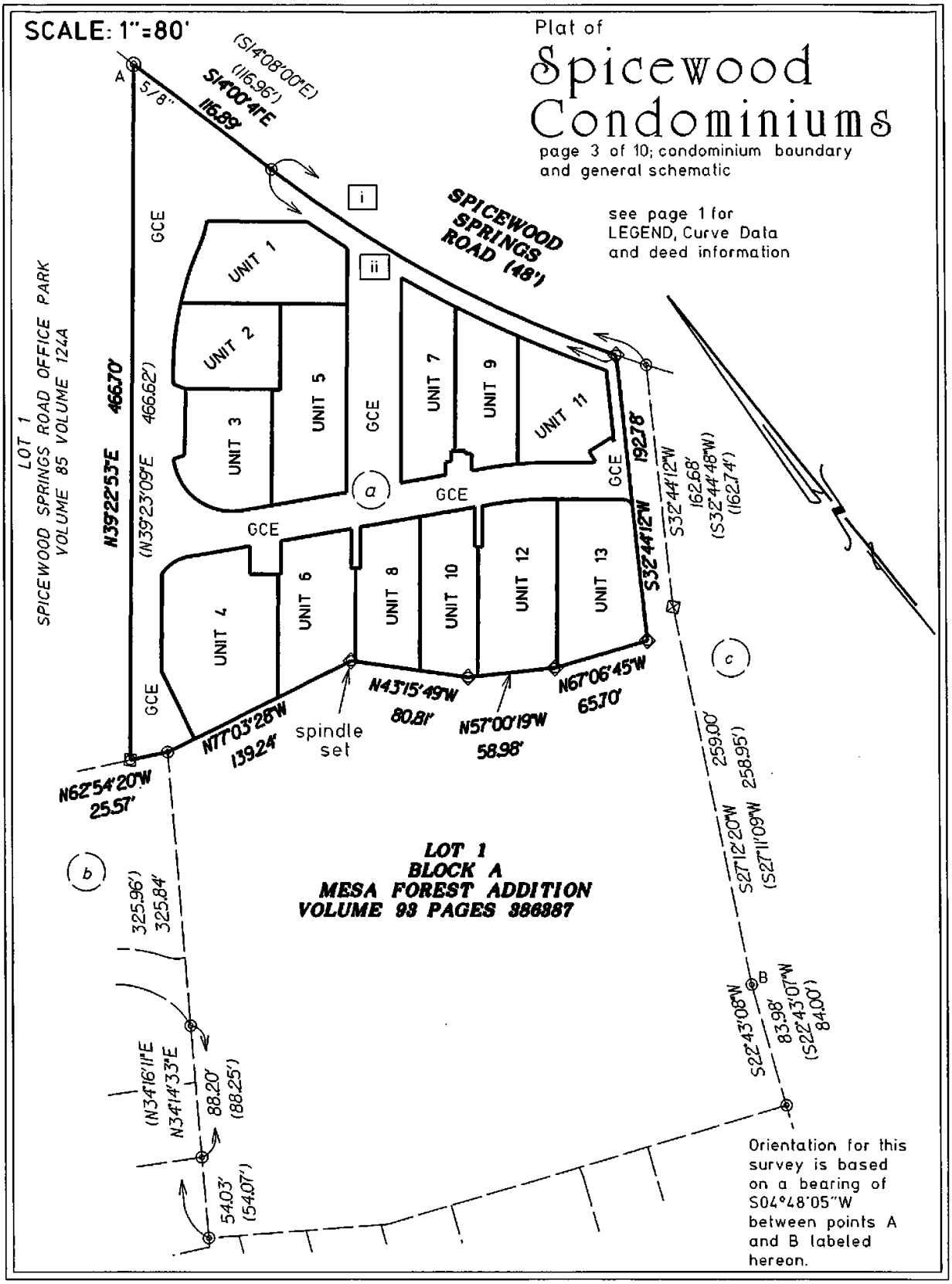
3) N 43 deg. 15' 49" W 80.81 ft. to a spindle set;

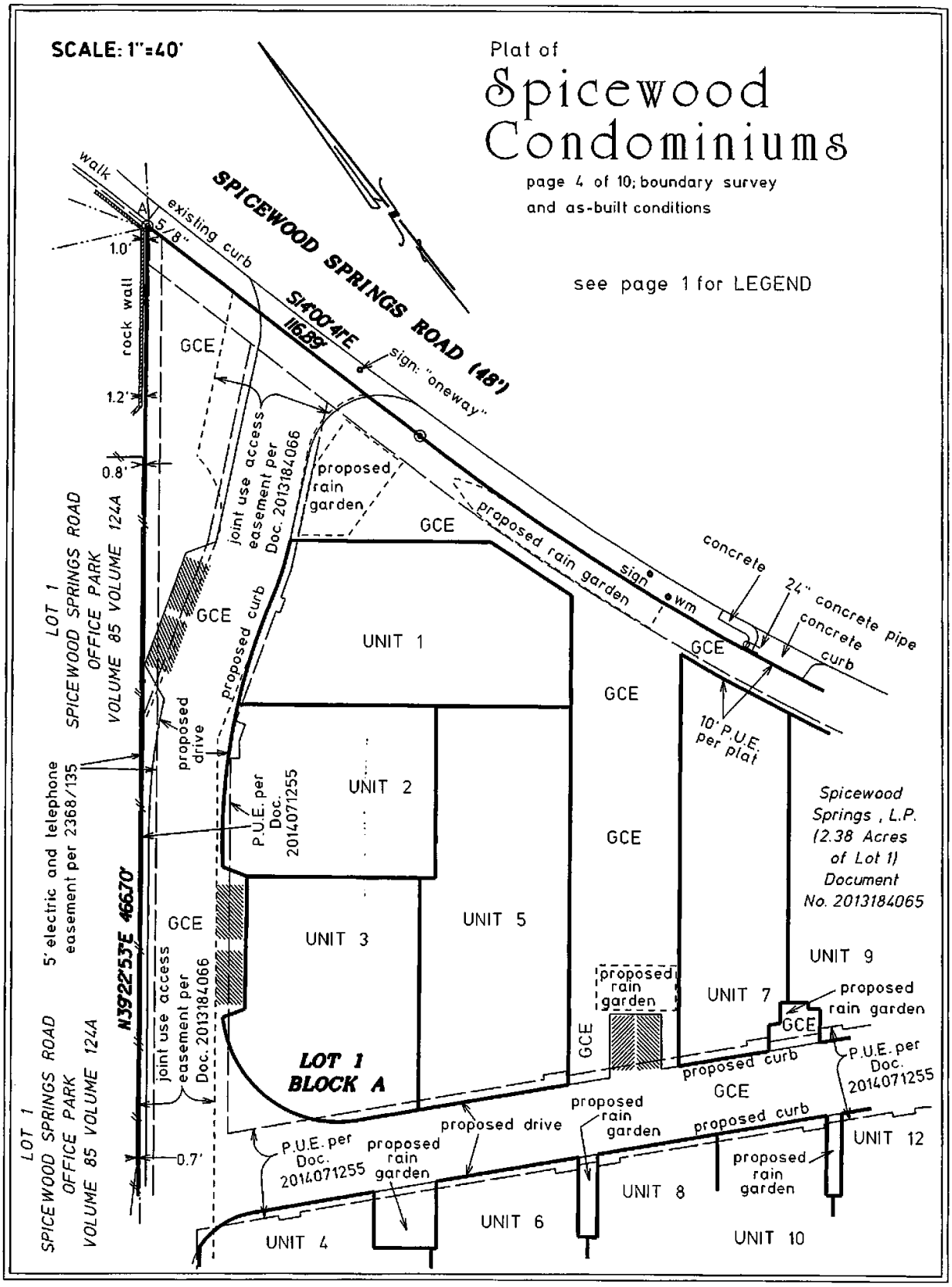
4) N 77 deg. 03' 28" W 139.24 ft. to a 1/2 inch iron rod found at the northeast corner of Lot 30, Block D, of said Mesa Forest P.U.D., a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 93 Page 388 of the Plat Records of Travis County, Texas, and being at an angle point of said Lot 1, Block A, Mesa Forest Addition, and being an angle point of this tract;

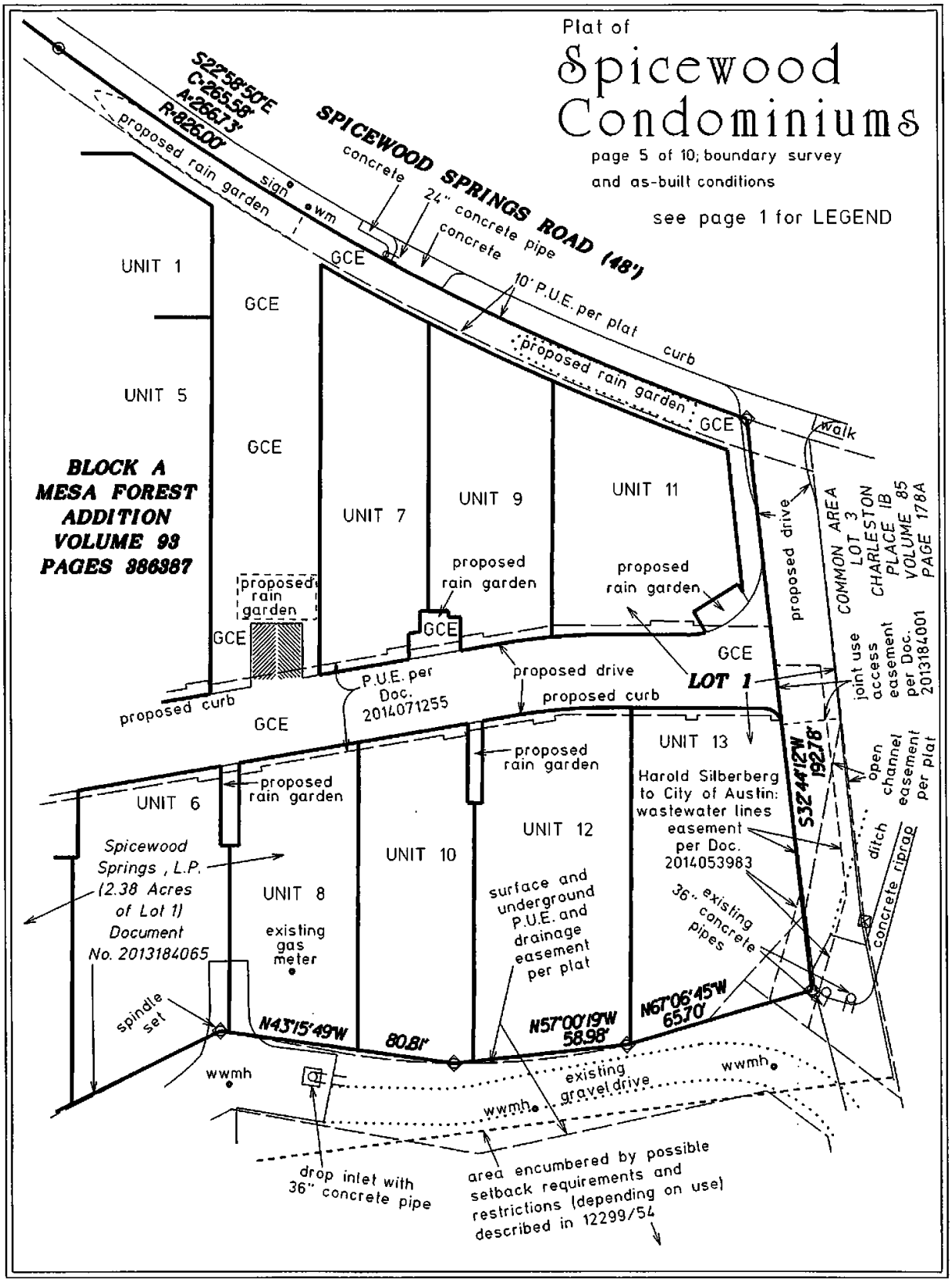
THENCE with the west line of said Lot 1, Block A, Mesa Forest Addition, the following two courses:

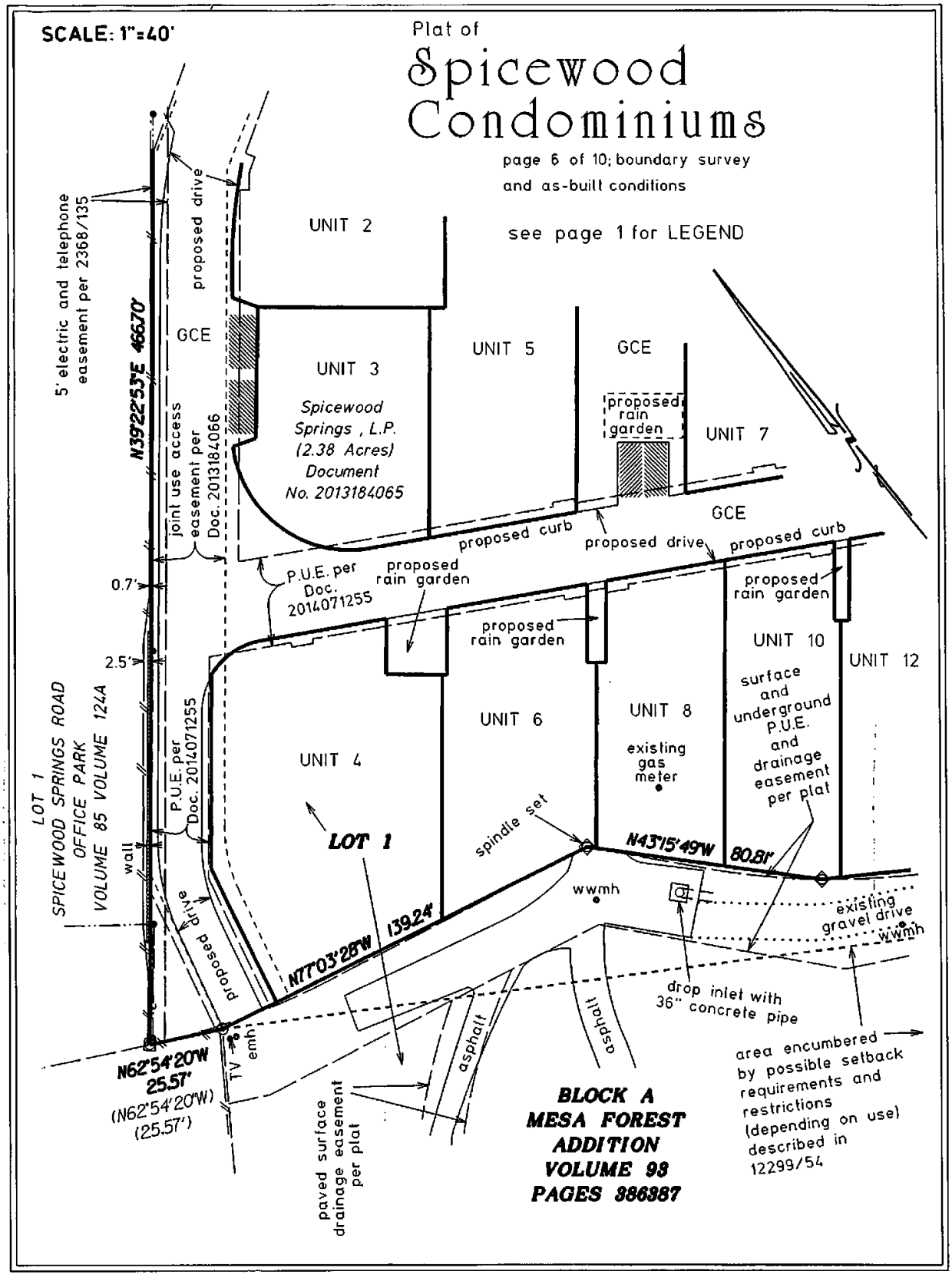
1) N 62 deg. 54' 20" W 25.57 ft. to a 1/2 inch iron rod set with plastic cap marked "Holt Carson, Inc." at the southeast corner of said Lot 1, Spicewood Springs Road Office Park, and being the southwest corner of this tract;

2) N 39 deg. 22' 53" E 466.70 ft. to the Place of Beginning, containing 2.38 Acres of land.


SCALE: 1"=80'
Plat of
Spicewood Condominiums
page 3 of 10; condominium boundary and general schematic
see page 1 for LEGEND, Curve Data and deed information
(S14°08'00"E) (116.96')
S14°00'41"E 116.89'
A
5/8"
SPICEWOOD SPRINGS ROAD (48')
i
ii
GCE
UNIT 1
UNIT 2
UNIT 3
UNIT 4
UNIT 5
UNIT 6
UNIT 7
UNIT 8
UNIT 9
UNIT 10
UNIT 11
UNIT 12
UNIT 13
a
b
c
LOT 1
SPICEWOOD SPRINGS ROAD OFFICE PARK
VOLUME 85 VOLUME 124A
N39°22'53"E 466.70'
(N39°23'09"E 466.62')
N17°03'28"W 139.24'
spindle set
N43°15'49"W 80.81'
N57°00'19"W 58.98'
N67°06'45"W 65.70'
S32°44'12"W 192.78'
S32°44'12"W 162.68'
(S32°44'48"W) (162.74')
N62°54'20"W 25.57'
LOT 1
BLOCK A
MESA FOREST ADDITION
VOLUME 93 PAGES 886887
325.96')
325.84'
(N34°16'11"E
N34°14'33"E 88.20'
(88.25')
54.03'
(54.07')
S27°12'20"W 259.00'
(S27°11'09"W 258.95')
S22°43'08"W 83.98'
(S22°43'07"W 84.00')
B
Orientation for this survey is based on a bearing of S04°48'05"W between points A and B labeled hereon.


SCALE: 1"=40'
Plat of
Spicewood Condominiums
page 4 of 10; boundary survey and as-built conditions
see page 1 for LEGEND
SPICEWOOD SPRINGS ROAD (48')
S14°00'41"E 116.89'
walk
existing curb
5/8"
1.0'
rock wall
1.2'
0.8'
GCE
joint use access easement per Doc. 2013184066
proposed rain garden
proposed curb
proposed drive
sign: "oneway"
proposed rain garden
concrete
24" concrete pipe
concrete curb
sign
wm
UNIT 1
UNIT 2
UNIT 3
UNIT 5
UNIT 7
UNIT 9
UNIT 12
UNIT 8
UNIT 6
UNIT 4
UNIT 10
10' P.U.E. per plat
P.U.E. per Doc. 2014071255
5' electric and telephone easement per 2368/135
N39°22'53"E 466.70'
LOT 1 BLOCK A
LOT 1 SPICEWOOD SPRINGS ROAD OFFICE PARK VOLUME 85 VOLUME 124A
Spicewood Springs, L.P. (2.38 Acres of Lot 1) Document No. 2013184065
0.7'


Plat of
Spicewood Condominiums
page 5 of 10; boundary survey and as-built conditions
see page 1 for LEGEND
SPICEWOOD SPRINGS ROAD (48')
S22°58'50"E
C=265.58'
A=26°13'
R=826.00'
proposed rain garden
sign
wm
concrete
24" concrete pipe
concrete
10' P.U.E. per plat
curb
proposed rain garden
GCE
Walk
UNIT 1
UNIT 5
UNIT 7
UNIT 9
UNIT 11
BLOCK A
MESA FOREST
ADDITION
VOLUME 93
PAGES 886887
proposed rain garden
proposed drive
COMMON AREA LOT 3 CHARLESTON PLACE IB VOLUME 85 PAGE 178A
joint use access easement per Doc. 2013184001
LOT 1
P.U.E. per Doc. 2014071255
proposed curb
UNIT 13
Harold Silberberg to City of Austin: wastewater lines easement per Doc. 2014053983
S32°44'12"W 192.78'
open channel easement per plat
ditch
concrete riprap
UNIT 6
UNIT 8
UNIT 10
UNIT 12
Spicewood Springs, L.P. (2.38 Acres of Lot 1) Document No. 2013184065
existing gas meter
surface and underground P.U.E. and drainage easement per plat
36" existing concrete pipes
spindle set
N43°15'49"W
80.81'
N57°00'19"W
58.98'
N67°06'45"W
65.70'
wwmh
existing gravel drive
drop inlet with 36" concrete pipe
area encumbered by possible setback requirements and restrictions (depending on use) described in 12299/54


SCALE: 1"=40'
Plat of
Spicewood
Condominiums
page 6 of 10; boundary survey
and as-built conditions
see page 1 for LEGEND
5' electric and telephone easement per 2368/135
proposed drive
UNIT 2
GCE
UNIT 3
Spicewood Springs, L.P. (2.38 Acres) Document No. 2013184065
UNIT 5
GCE
proposed rain garden
UNIT 7
GCE
N39°22'53"E 466.70'
joint use access easement per Doc. 201318406G
proposed curb
proposed drive
proposed curb
P.U.E. per Doc. 2014071255
proposed rain garden
proposed rain garden
proposed rain garden
UNIT 10
UNIT 12
0.7'
2.5'
SPICEWOOD SPRINGS ROAD
OFFICE PARK
VOLUME 85 VOLUME 124A
LOT 1
P.U.E. per Doc. 2014071255
UNIT 6
UNIT 8
existing gas meter
surface and underground P.U.E. and drainage easement per plat
UNIT 4
LOT 1
spindle set
N43°15'49"W
80.81'
wall
drive
proposed
wwmh
existing gravel drive
wwmh
N77°03'28"W 139.24'
drop inlet with 36" concrete pipe
N62°54'20"W
25.57'
(N62°54'20"W)
(25.57')
TV emh
asphalt
asphalt
area encumbered by possible setback requirements and restrictions (depending on use) described in 12299/54
paved surface drainage easement per plat
BLOCK A
MESA FOREST
ADDITION
VOLUME 98
PAGES 986987

Plat of Spicewood Condominiums

page 7 of 10; Unit dimensions

see page 1 for LEGEND

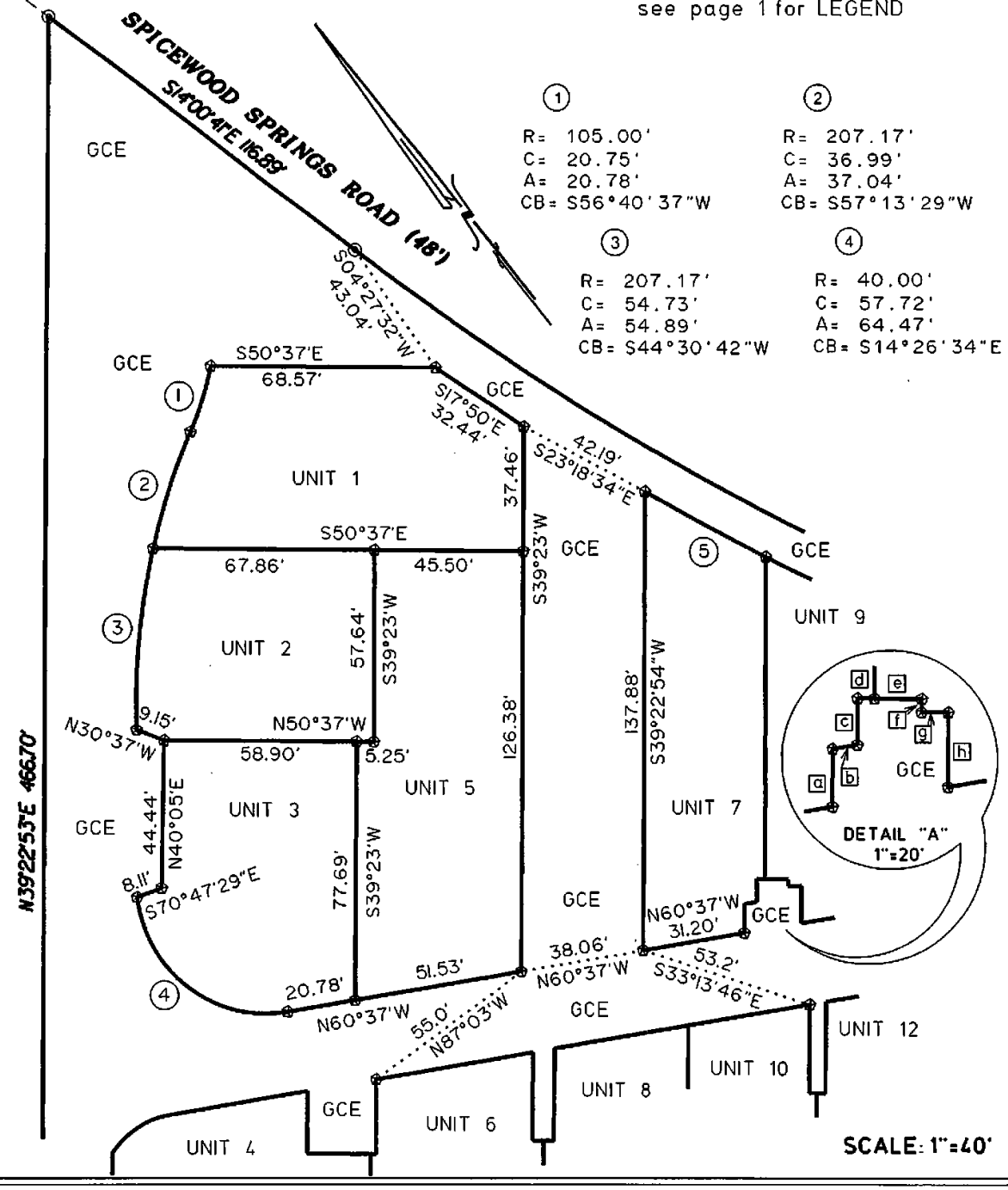
[a]	N 39°28' E	17.35'	
[b]	S 60°32' E	7.62'	
[c]	N 39°28' E	13.93'	
[d]	S 50°32' E	5.00'	
[e]	S 50°32' E	14.19'	
[f]	S 39°28' W	4.00'	
[g]	S 50°31'56" E	8.31'	
[h]	S 39°28' W	22.38'	

(1) R= 105.00' C= 20.75' A= 20.78' CB= S56°40'37"W

(2) R= 207.17' C= 36.99' A= 37.04' CB= S57°13'29"W

(3) R= 207.17' C= 54.73' A= 54.89' CB= S44°30'42"W

(4) R= 40.00' C= 57.72' A= 64.47' CB= S14°26'34"E



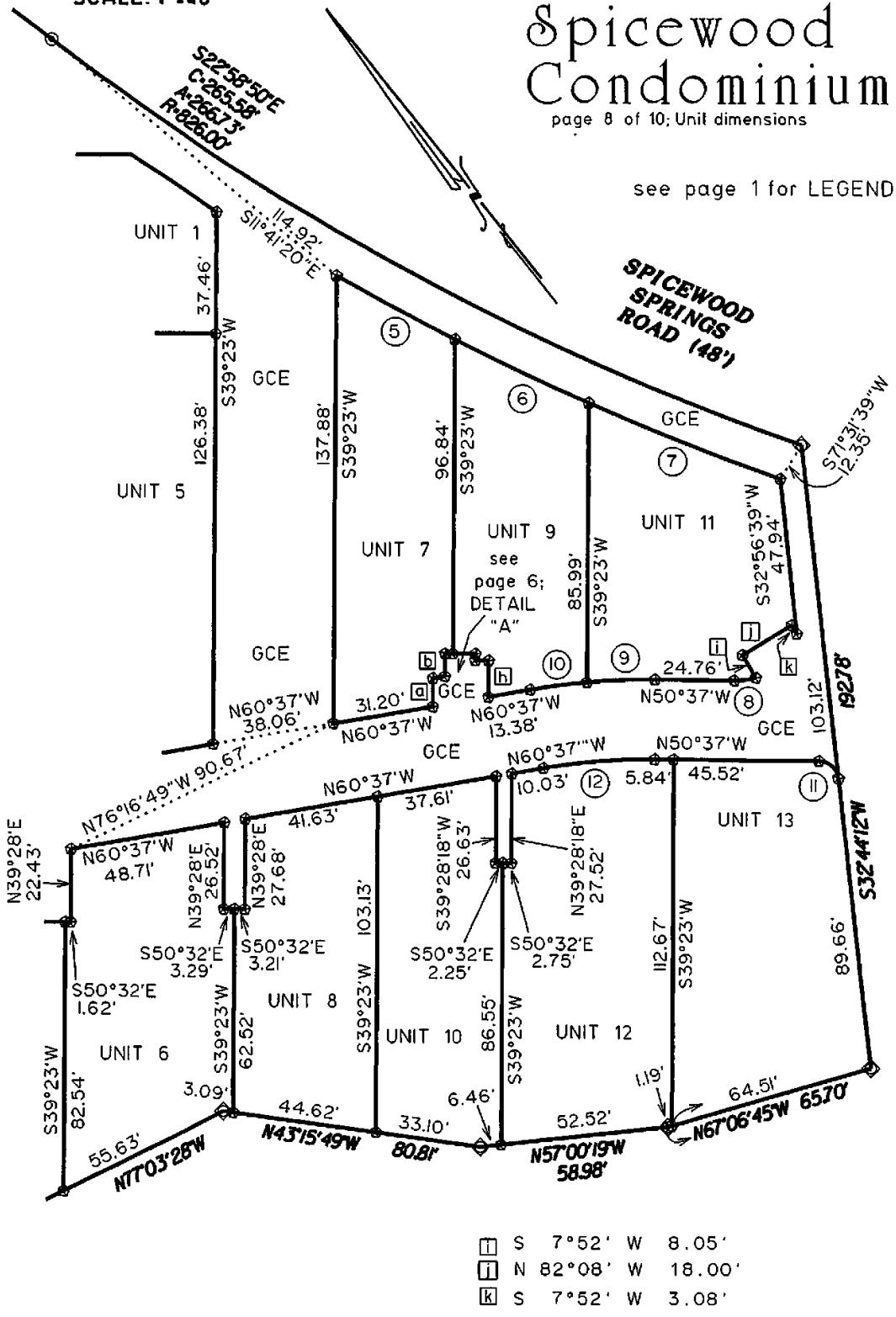
Plat of

Spicewood Condominiums

page 8 of 10; Unit dimensions

see page 1 for LEGEND

SCALE: 1"=40'



h	S	7°52'	W	8.05'
i	N	82°08'	W	18.00'
k	S	7°52'	W	3.08'

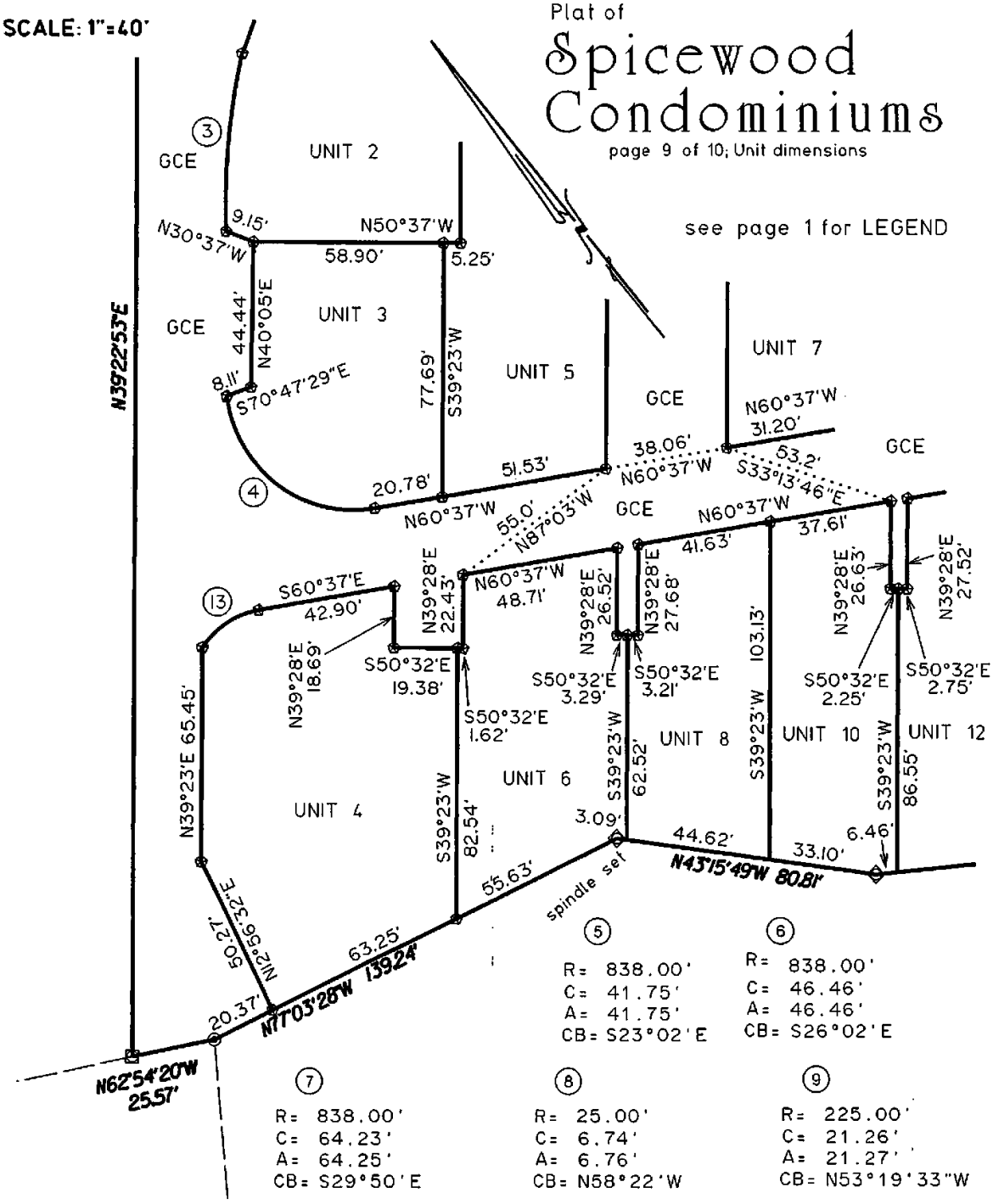
SCALE: 1"=40'

Plat of

Spicewood Condominiums

page 9 of 10; Unit dimensions

see page 1 for LEGEND



⑤
R= 838.00'
C= 41.75'
A= 41.75'
CB= S23°02'E

⑥
R= 838.00'
C= 46.46'
A= 46.46'
CB= S26°02'E

⑦
R= 838.00'
C= 64.23'
A= 64.25'
CB= S29°50'E

⑧
R= 25.00'
C= 6.74'
A= 6.76'
CB= N58°22'W

⑨
R= 225.00'
C= 21.26'
A= 21.27'
CB= N53°19'33"W

⑩
R= 225.00'
C= 18.00'
A= 18.01'
CB= N58°19'34"W

⑪
R= 6.00'
C= 7.98'
A= 8.73'
CB= S8°56'26"E

⑫
R= 200.52'
C= 34.95'
A= 35.00'
CB= N55°37'W

⑬
R= 26.00'
C= 20.87'
A= 21.47'
CB= S84°04'E

GENERAL NOTES

1) All improvements and land reflected on the plat are designated as general common elements, save and except portions of the regime designated as limited common elements or units: (i) in the Declaration of Condominium Regime for Spicewood Condominiums (the "Declaration") or (ii) on the plats and plans of the regime.

2) Ownership and use of condominium units are subject to the rights and restrictions contained in the Declaration.

3) Each unit, building, limited common element and general common element is subject to special rights reserved by the Declarant as provided in Appendix "A" to the Declaration. Pursuant to such provisions, among other things, Declarant has reserved the right to (i) complete or make improvements indicated on the plat and plans, (ii) exercise any development right permitted by the Texas Uniform Condominium Act (the "Act") and the Declaration, including the addition of real property to the regime, which property may be added as units, general common elements and/or limited common elements, as provided in the Declaration (iii) make the property part of a larger condominium or planned community.

(iv) use units owned or leased by Declarant as models storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the property, as provided in the Declaration; and (v) appoint or remove any Declarant-appointed officer or director of the Association during the Declarant control period (as defined in the Declaration) consistent with the Act, as provided in the Declaration. As provided in the Declaration, for purposes of promoting, identifying, and marketing the property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the property, including items and locations that are prohibited to other owners. Declarant reserves an easement and right to maintain, relocate replace, or remove the items listed in the foregoing sentence from time to time As provided in the Declaration, Declarant has an easement and right of ingress and egress in and through the common elements (as defined in the Declaration) and units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the property, and for discharging Declarant's obligations under the Act and the Declaration.

Plat of

Spicewood Condominiums

908040

HOLT CARSON, INC.
1904 FORTVIEW ROAD
AUSTIN, TX 78704
(512) 442-0990

TAX CERTIFICATE NO 8219

Bruce Elfant
Travis County Tax Assessor-Collector
P.O. Box 1748
Austin, Texas 78767
(512) 854-9473

ACCOUNT NUMBER: 01420206640000 PID 838158
ACCOUNT NUMBER: 01420206290000
ACCOUNT NUMBER:

PROPERTY OWNER:
SPICEWOOD SPRINGS LP
2003 S 1ST ST
AUSTIN, TX 78704

PROPER PROPERTY DESCRIPTION:
2.38 AC OF LOT 1 BLK A MESA FOREST ADDN

ACRES 2.38

SITUS INFORMATION: SPICEWOOD SPRINGS RD 78759

This is to certify that after a careful check of tax records of this office, the following taxes, delinquent taxes, penalties and interest are due on the described property of the following tax unit(s):

ACCOUNT NUMBER: 01420206290000

YEAR	ENTITY	TOTAL
2013	AUSTIN ISD	*PAID*
	CITY OF AUSTIN	*PAID*
	TRAVIS COUNTY	*PAID*
	TRAVIS COUNTY HEALTHCARE DISTRICT	*PAID*
	AUSTIN COMMUNITY COLLEGE	*PAID*

TOTAL TAX:	*PAID*
FEES:	*NONE*
INTEREST:	*NONE*
TOTAL DUE:	*PAID*

PARCEL # 01420206640000 IS OUT OF THE SAME TRACT AS PARCEL # 01420206640000.
ALL TAXES PAID IN FULL PRIOR TO AND INCLUDING THE YEAR 2013.

The above described property may be subject to special valuation based on its use, and additional rollback taxes may become due. (Section 23.55, State Property Tax Code). Pursuant to Section 31.08 of the State Property Tax Code, there is a fee of $10.00 for all Tax Certificates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS DATE OF

Fee Paid: $10.00

Bruce Elfant
Tax Assessor-Collector
By:

ATTACHMENT 3

[ENCUMBRANCES]

1. Restrictive covenants contained in Volume 93, Pages 386-387, of the Plat Records of Travis County, Texas, and Volume 12299, Page 52, of the Real Property Records of Travis County, Texas, and as affected by Volume 12821, Page 1574, of the Real Property Records of Travis County, Texas, and Document No. 2000008952, of the Official Public Records of Travis County, Texas.

2. A 10' public utility easement reserved along Spicewood Springs Road, as shown on the plat of record in Volume 93, Pages 385-387, of the Plat Records of Travis County, Texas.

3. A 5' electrical easement granted to the City of Austin, as described in Volume 2368, Page 135, of the Deed Records of Travis County, Texas, and shown (labeled "Vol. 2368 Page 1350) on the plat of record in Volume 93, Pages 386-387, of the Plat Records of Travis County, Texas.

4. Building setback line(s) as shown and/or described on plat of record in Volume 93, Pages 386-387, of the Plat Records of Travis County, Texas.

5. A blanket electric transmission and/or distribution line easement granted to the City of Austin, as described in Volume 680, Page 31, of the Deed Records of Travis County, Texas.

6. All terms, conditions, and provisions of that certain Notice Concerning Construction of Subdivision Improvements, filed October 24, 1994, of record in Volume 12299, Page 6 of the Real Property Records of Travis County, Texas.

7. All terms, conditions, and provisions of that certain Multi-Service Contract, dated August 1, 1995, of record in Volume 12494, Page 26, of the Real Property Records of Travis County, Texas.

8. All terms and conditions of that certain joint use access agreement as created in Document 2013184066, of the Official Public Records of Travis County, Texas.

9. Vendor's lien retained in Warranty Deed from I. Harold Silberberg and Adele G. Silberberg to Spicewood Springs, LP, dated October 3, 2013, securing a note in the original principal amount of $1,329,000.00, payable to Green Bank, NA, additionally secured by a Deed of Trust of even date, therewith to Geoffrey D. Greenwade, Trustee, recorded on October 7, 2013, in Document No. 2013184067, in the Official Public Records of Travis County, Texas.

10. Assignment of Leases, Rents and Rights, recorded in Document No. 201384068, in the Official Public Records of Travis County, Texas.

ATTACHMENT 4

COMMON INTEREST ALLOCATION AND VOTES

The Common Interest Allocation and Common Expense Liability for each Unit is 1/13. Each Unit is allocated one (1) vote.

ATTACHMENT 5

GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The annual examination is required by *Section 9.4* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 6.11* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration or current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

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

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

account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

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

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

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists, "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 9.4* of the Declaration, the Board must reevaluate its funding level periodically based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually.

ATTACHMENT 6

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

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

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
FINANCIAL MANAGEMENT		
To adopt annual budget and levy assessments, per Declaration.		
Prepare annual operating budget, periodic operating statements, and year-end statement.		
Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule. Annually update same.		
Collect assessments and maintain Association accounts.		
Pay Association's expenses and taxes.		
Obtain annual audit and income tax filing.		
Maintain fidelity bond on whomever handles the Association funds.		
Report annually to Members on financial status of the Association.		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
PHYSICAL MANAGEMENT Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility. Contract for services, as needed to operate or maintain the property. Prepare specifications and call for bids for major projects. Coordinate and supervise work on the property, as warranted.		
ADMINISTRATIVE MANAGEMENT Receive and respond to correspondence from Owners, and assist in resolving Owners' problems related to the Association. Conduct hearings with Owners to resolve disputes or to enforce the Documents. Obtain and supervise personnel and/or contracts needed to fulfill Association's functions. Schedule Association meetings and give Owners timely notice of same. Schedule Board meetings and give directors timely notice of same. Enforce the Documents. Maintain insurance and bonds as required by the Documents or Applicable Law, or as customary for similar types of property in the same geographic area.		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Maintain Association books, records, and files. Maintain Association's corporate charter and registered agent & address.		
<u>OVERALL FUNCTIONS</u> Promote harmonious relationships within the community. Protect and enhance property values in the community. Encourage compliance with Documents and Applicable Laws and ordinances. Act as liaison between the community of Owners and governmental, taxing, or regulatory bodies. Protect the Association and the property from loss and damage by lawsuit or otherwise.		

APPENDIX "A"

DECLARANT RESERVATIONS

A.1. General Provisions.

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

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

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. The "**Development Period**", as specifically defined in *Section 1.16* of the Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination. The Declarant Control Period is defined in *Section 1.14* of the Declaration.

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

A.2.1. Appointment of Board and Officers. Declarant may appoint, remove, and replace each 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 limitations: (i) within one hundred and twenty (120) days after fifty percent (50%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third of the Board members must be elected by the Owners other than Declarant; and (ii) within one hundred and twenty (120) days

after seventy-five percent (75%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, all Board members must be elected by all Owners, including the Declarant.

A.2.2. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments, Declarant at Declarant's option may support the Association's budget by either of the following methods: (i) Declarant will pay Regular Assessments on each Declarant owned Unit in the same manner as any Owner; or (ii) Declarant will assume responsibility for the difference between the Association's actual operational expenses as they are paid and the Regular Assessments received from Owners other than Declarant. **On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or termination of the Declarant Control Period, Declarant must begin paying Regular Assessments on each Declarant owned Unit.**

A.2.3. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association reserve funds to pay operational expenses of the Association.

A.2.4. Common Elements. At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of conveyance. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

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

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

A.3.2. Creation of Units. When created, the Property contains thirteen (13) Units; however, Declarant reserves the right to create up to and including fifteen (15) Units upon full buildout of all phases of the project which may include land added by the Declarant in accordance with *Section 2.1* of the Declaration. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit within

the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests.

A.3.3. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, configurations, materials, and appearances of Units, and Common Elements. Notwithstanding the foregoing provisions, "Improvements", as such term is defined in the Covenant, must be approved in advance and in writing by the Architectural Reviewer.

A.3.4. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control.

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

A.3.6. Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

A.3.7. 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 and modify Units, General Common Elements, and Limited Common Elements within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A.3.8. Development Rights Reserved. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.9. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:

(i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.

(ii) To correct any defects in the execution of this Declaration or the other Documents.

(iii) To add real property to the Property, in the exercise of statutory Development Rights.

(iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.

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

(vi) To withdraw from the Property any portion of the real property marked or noted on the Plat and Plans as "Development Rights Reserved" or 'Subject to Development Rights" in the exercise of statutory Development Rights.

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

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

A.4. **Special Declarant Rights**. As permitted by the Act, Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Property during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right, except the right to appoint and remove Board members and officers of the Association, may be exercised by Declarant until expiration or termination of the Development Period.

(i) The right to complete or make Improvements indicated on the Plat and Plans, provided that all "Improvements", as such term is defined in the Covenant, are approved in advance and in writing by the Architectural Reviewer.

(ii) The right to exercise any Development Right permitted by the Act and this Declaration.

(iii) The right to make the Property part of a larger condominium or planned community.

(iv) The right to use Units owned or leased by Declarant or Common Elements as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.

(v) For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Resident, provided that signs must be approved in advance and in writing by the Architectural Reviewer. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and brokers parties – at the Property to promote the sale of Units.

(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 Declarant Control Period consistent with the Act.

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

(i) An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property; provided, that all "Improvements", as such term is defined in the Covenant, are approved in advance and in writing by the Architectural Reviewer.

(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 in the Documents.

(iii) The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered or Common Elements. Requests for entry must be made in advance for a time

reasonably convenient for the Owner who may not unreasonably withhold consent.

(iv) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done no later than one hundred and twenty (120) days after termination of the Development Period.

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

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

A.6. **Common Elements.** Because the Common Elements are owned by the Owners, collectively and in undivided interest, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS
September 04 2014 03:38 PM
FEE: $ 446.00 **2014133230**