

# **Condominium Declaration for The Hillside**

**A Condominium Project  
in Travis County, Texas**

# Table of Contents

## **TOC "1-2"** Article 1.

Defined Terms

PAGEREF \_Toc21748141 \h 5

Section 1.1 Defined Terms.

PAGEREF \_Toc21748142 \h 5

Article 2. General Provisions

PAGEREF \_Toc21748143 \h 9

Section 2.1 Creation of Units; Map.

PAGEREF \_Toc21748144 \h 9

Section 2.2 Allocation of Undivided Ownership Percentage Interests in Common Elements; Creation of Limited Common Elements.

PAGEREF \_Toc21748145 \h 10

Section 2.3 Inseparability of Units: No Partition.

PAGEREF \_Toc21748146 \h 10

Section 2.4 Permissible Relationships; Description.

PAGEREF \_Toc21748147 \h 10

Section 2.5 Mortgage of Unit.

PAGEREF \_Toc21748148 \h 11

Section 2.6 Alteration of Boundaries of Units.

PAGEREF \_Toc21748149 \h 11

Section 2.7 Declarant's Right to Subdivide Units.

PAGEREF \_Toc21748150 \h 12

Article 3. Uses, Reservations and Restrictions

PAGEREF \_Toc21748151 \h 12

Section 3.1 Permitted Uses.

PAGEREF \_Toc21748152 \h 12

Section 3.2 Further Requirements of Use.

PAGEREF \_Toc21748153 \h 13

Section 3.3 Compliance with Declaration, Bylaws and Regulations.

PAGEREF \_Toc21748154 \h 13

Section 3.4 Reservations by Declarant.

PAGEREF \_Toc21748155 \h 13

Section 3.5 Easements.

PAGEREF \_Toc21748156 \h 14

Section 3.6 Mechanic's Liens: Indemnification.

PAGEREF \_Toc21748157 \h 14

Section 3.7 Prohibitions.

PAGEREF \_Toc21748158 \h 15

Article 4. The Association

PAGEREF \_Toc21748159 \h 15

Section 4.1 Authority.

PAGEREF \_Toc21748160 \h 15

Section 4.2 Allocation of Votes in the Association.

PAGEREF \_Toc21748161 \h 15

Section 4.3 Right of Action by Owners.

PAGEREF \_Toc21748162 \h 15

Article 5. Maintenance, Alterations, Insurance, Taxes and Utilities

PAGEREF \_Toc21748163 \h 15

Section 5.1 Maintenance.

PAGEREF \_Toc21748164 \h 15

Section 5.2 Alterations.

PAGEREF \_Toc21748165 \h 17

Section 5.3 Insurance.

PAGEREF \_Toc21748166 \h 17

Section 5.4 Taxes.

PAGEREF \_Toc21748167 \h 19

Section 5.5 Utilities.

PAGEREF \_Toc21748168 \h 19

Article 6. Assessments

PAGEREF \_Toc21748169 \h 19

Section 6.1 Monthly Assessments, Budget.

PAGEREF \_Toc21748170 \h 19

Section 6.2 Special Assessments.

PAGEREF \_Toc21748171 \h 20

Section 6.3 Obligation to Pay Assessments.

PAGEREF \_Toc21748172 \h 20

Section 6.4 Lien to Secure Payment of Assessments.

PAGEREF \_Toc21748173 \h 21

Section 6.5 Commencement of Obligation to Pay Assessments.

PAGEREF \_Toc21748174 \h 21

Section 6.6 Redemption by Owner.

PAGEREF \_Toc21748175 \h 22

Section 6.7 Notice of Default.

PAGEREF \_Toc21748176 \h 22

Section 6.8 Alternative Actions.

PAGEREF \_Toc21748177 \h 22

## Article 7. Loss and Obsolescence

PAGEREF \_Toc21748178 \h 22

Section 7.1 Loss or Damage.

PAGEREF \_Toc21748179 \h 22

Section 7.2 Matters Relating to Restoration and Repairs.

PAGEREF \_Toc21748180 \h 23

Section 7.3 Obsolescence of Common Elements.

PAGEREF \_Toc21748181 \h 23

Section 7.4 Association as Attorney-in-Fact.

PAGEREF \_Toc21748182 \h 23

## Article 8. Condemnation

PAGEREF \_Toc21748183 \h 24

Section 8.1 General Provisions.

PAGEREF \_Toc21748184 \h 24

Section 8.2 Taking of One Unit.

PAGEREF \_Toc21748185 \h 24

Section 8.3 Taking of Common Elements.

PAGEREF \_Toc21748186 \h 24

Section 8.4 Taking of Several Units.

PAGEREF \_Toc21748187 \h 25

Section 8.5 Payment of Awards and Damages.



PAGEREF \_Toc21748188 \h 26

Article 9. Development Period  
PAGEREF \_Toc21748189 \h 26

Section 9.1 Initial Directors.  
PAGEREF \_Toc21748190 \h 26

Section 9.2 Declarant Control Period.  
PAGEREF \_Toc21748191 \h 26

Section 9.3 Working Capital Contributions.  
PAGEREF \_Toc21748192 \h 26

Article 10. Miscellaneous  
PAGEREF \_Toc21748193 \h 27

Section 10.1 Revocation or Termination of Declaration.  
PAGEREF \_Toc21748194 \h 27

Section 10.2 Amendment to Declaration.  
PAGEREF \_Toc21748195 \h 27

Section 10.3 Enforcement.  
PAGEREF \_Toc21748196 \h 28

Section 10.4 Partial Invalidity.  
PAGEREF \_Toc21748197 \h 28

Section 10.5 Conflicts.  
PAGEREF \_Toc21748198 \h 28

Section 10.6 Captions and Exhibits.  
PAGEREF \_Toc21748199 \h 28

Section 10.7 Usury.  
PAGEREF \_Toc21748200 \h 28

Section 10.8 Use of Number and Gender.  
PAGEREF \_Toc21748201 \h 29

Section 10.9 Non-Liability of Association, Manager and Declarant for Security.  
PAGEREF \_Toc21748202 \h 29

Section 10.10 DISCLAIMERS OF WARRANTIES AND LIMITATION OF LIABILITY.  
PAGEREF \_Toc21748203 \h 30

Section 10.11 Governing Law.  
PAGEREF \_Toc21748204 \h 31



# **Condominium Declaration for The Hillside**

## **A Condominium Project in Travis County, Texas**

This Condominium Declaration for The Hillside, a condominium project in Travis County, Texas, is made and established on October \_\_\_\_, 2006 by Declarant.

### ***RECITALS:***

Declarant is the fee simple owner of the Property.

Declarant desires to create a Condominium pursuant to the provisions of the Act.

Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of Units and the appurtenant undivided ownership percentage interests in the Common Elements.

**NOW, THEREFORE**, Declarant does hereby submit the Property to the provisions of the Act and the Condominium established hereby, and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations, and obligations are hereby established and shall be deemed to be covenants running with the Land and shall be a burden and benefit to Declarant, the Association, the Owners and their respective heirs, legal representatives, successors and assigns.

### **Defined Terms**

#### ***Defined Terms.***

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the meanings specified or used in the Act. As used in this Declaration, the following terms shall have the meanings set forth below:

“**Access Easement**” means a perpetual, irrevocable and non-exclusive easement and right of access and entry to each Unit and the Limited Common Elements, from time to time as may be reasonably necessary for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom, (ii) the making of emergency repairs therein necessary to prevent harm or damage to the Common Elements, any Unit or any occupant, (iii) lawncare, landscape planting, and maintenance, and (iv) such other reasonable purposes as are deemed by the Association to be necessary for the performance of the obligations of the Association as described herein, in the Act or the Bylaws.

“**Act**” means the Uniform Condominium Act, Texas Property Code, Chapter 82, as amended from time to time.

“**Articles**” means the articles of incorporation of the Association filed with the Texas Secretary of State, as amended from time to time.

**“Assessments”** means Monthly Assessments and Special Assessments established under this Declaration, together with dues, fees, charges, interest, late fees, fines, collection costs, attorney’s fees, and any other amount due to the Association by the Owner of a Unit or levied against a Unit by the Association.

**“Association”** means **The Hillside Condominium Owners Association, Inc.**, a Texas non-profit corporation.

**“Board of Directors”** means the Board of Directors of the Association named in the Articles, and their successors duly elected or appointed and qualified from time to time.

**“Building”** means each individual building to be constructed on the Land, whether inclusive of one or more Units.

**“Bylaws”** means the bylaws of the Association adopted by the Board of Directors, as amended from time to time.

**“Common Elements”** means all portions of the Condominium other than the Units, including both the General Common Elements and the Limited Common Elements.

**“Common Elements Easement”** means a perpetual, irrevocable and non-exclusive easement over the General Common Elements for ingress to and egress from each Unit, together with the non-exclusive right to use and enjoy the General Common Elements, and the exclusive right to use and enjoy the Limited Common Elements appurtenant to each Owner’s Unit (subject to the rights of other Owners to use and enjoy such Limited Common Elements if appurtenant to more than one Unit).

**“Common Expenses”** means all costs, expenses and financial obligations of the Association, together with any allocations to reserves made pursuant to the provisions of this Declaration, the Bylaws or a resolution duly adopted by the Board of Directors or the Owners.

**“Condominium”** means the form of real property established by this Declaration with respect to the Property, in which portions of the Property are designated for separate ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the Owners of such remainder.

**“Construction Easement.”** means a perpetual, irrevocable and non-exclusive easement and right of access and entry to each Unit and the Limited Common Elements as may be expedient or necessary for the construction, servicing and completion of adjacent Units, Buildings, and landscaping.

**“Declarant”** means **CSGM CANYON RIDGE, LP**, a Texas limited partnership, whose address for notice is 8012 Bee Caves Road, Suite 300, Austin TX 78746, and any successor party to whom Declarant shall expressly assign, in a writing filed for record in the Official Public Records of Travis County, Texas, the rights, powers, privileges, duties, obligations and/or prerogatives of Declarant. Any such successor party will be required to assume in writing all obligations and duties of Declarant under this Declaration. The conveyance of a Unit to an Owner will not constitute a conveyance of any rights, privileges, powers, prerogatives, duties or obligations of Declarant under this Declaration.

**“Declarant Control Period”** means the period commencing on the date of this

Declaration and continuing until the date which is one hundred twenty (120) days after the date that deeds to seventy-five percent (75%) of the Units (in number) have been recorded in the Official Public Records of Travis County, Texas.

**"Declaration"** means this Condominium Declaration for The Hillside and all recorded amendments thereto.

**"Development Rights"** means a right or combination of rights to: (i) add real property to the Condominium; (ii) create Units, General Common Elements, or Limited Common Elements within the Condominium; (iii) combine or subdivide Units or convert Units into Common Elements; (iv) withdraw any real property from the Condominium; and (v) exercise any other development rights permitted to be exercised by Declarant under the Act. The Development Rights so reserved may be exercised by Declarant to the extent and only if permitted by the Act and at all times while Declarant owns any Unit or other real property interest in the Condominium, or for such lesser time as may be permitted by the Act.

**"Easements"** means, collectively, the Access Easement, the Common Elements Easement, the Construction Easement, and the Utility Easement.

**"First Lien Loan"** means any indebtedness secured by a first and prior lien or encumbrance upon a Unit.

**"First Mortgagee"** means any Person which is the holder, insurer or guarantor of a First Lien Loan and which has provided the Association with written notice of its name, address and description of the Owner's Unit upon which it holds the First Lien Loan.

**"General Common Elements"** means all portions of the Common Elements that are not Limited Common Elements.

**"Improvements"** means each Building and all pavement, fencing, landscaping, recreational facilities, plumbing, electrical, telephone and telecommunication lines, computer cables and any other fixtures affixed to any Building and/or the Land.

**"Insurance Proceeds"** means any and all proceeds received by an Owner from an insurance company as a result of a casualty loss in connection with a Unit.

**"Land"** means that certain lot, tract or parcel of real property located in Travis County, Texas, and more particularly described on **Exhibit A** attached to this Declaration, together with any and all rights and appurtenances pertaining thereto.

**"Limited Common Elements"** means those portions of the Common Elements that are allocated by the Act, this Declaration, the Map or by deed executed by Declarant for the exclusive use of one or more, but less than all, of the Units.

**"Manager"** means any Person with whom Declarant or the Association contracts for the management of the Property and/or the administration of the Association and the Condominium.

**"Map"** means the plats and plans attached hereto as **Exhibit B** and hereby made a part hereof for all purposes.

**"Monthly Assessment"** means the monthly Assessment established by the Board of

Directors pursuant to Section 6.1 of this Declaration.

**“Owner”** means any Person (including Declarant) who owns fee title to a Unit, but does not include any Person having an interest in a Unit solely as security for an obligation.

**“Past Due Rate”** means the maximum lawful rate of interest under Texas law. If there is no maximum lawful rate of interest under Texas law, the Past Due Rate means eighteen percent (18%) per annum.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Property”** means the Land and the Improvements.

**“Regulations”** means the rules and regulations of the Association, and all amendments thereto, as from time to time adopted by the Board of Directors, and relating to the appearance, use and occupancy of the Property, including exterior appearance, use and occupancy of Units.

**“Rents”** means any and all rental or other income received by an Owner in connection with the leasing of an Owner’s Unit.

**“Residence”** means each single family residential dwelling situated upon a Unit. For purposes of this Declaration, the “size” of each Residence shall be the square footage thereof which is subject to HVAC service (thereby being exclusive of garage and patio/deck space).

**“Special Assessments”** means Assessments established by the Board of Directors under the provisions of Section 6.2 and Article 7 of this Declaration.

**“Special Declarant Rights”** means rights reserved for the benefit of Declarant to: (i) complete Improvements shown on the Map; (ii) exercise any Development Right; (iii) make the Condominium a part of a larger condominium or planned community; (iv) maintain the sales, management and leasing offices and models described in Section 3.1.3 of this Declaration, as well as signs advertising the Units or the Condominium; (v) use Easements through any Common Elements for the purpose of making improvements within the Condominium or the Property; (vi) appoint or remove any officer or member of the Board of Directors of the Association during Declarant Control Period; or (vii) exercise the rights and powers enumerated in Section 3.4 of this Declaration or any other similar rights permitted to be reserved to Declarant under the Act.

**“Systems”** includes, but is not limited to, all fixtures, equipment, pipes, lines, wires, computer cables, conduits, and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, wastewater, sewage, and audio, video and other electronic medium signals.

**“Tenant”** means any Person having the right to occupy a Unit pursuant to a lease granted by an Owner.

**“Unit”** means a physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Map) and

includes (i) all Systems which exclusively serve such Unit and (ii) the finish materials, fixtures and appliances contained within the Unit, but excludes Systems which serve more than one Unit, all as subject to and further described in Section 82.052 of the Act. Additionally, the firewalls between individual Units are Limited Common Elements and not part of the Units themselves.

**“Utility Easement”** means all existing recorded easements for utilities and any additional utility easements which Declarant may grant.

**“Working Capital Contribution”** means an amount equal to the Monthly Assessment multiplied by two (2) to be contributed to the Association by each Owner.

## **General Provisions**

### ***Creation of Units; Map.***

The Property is hereby divided into fee simple estates comprised of one hundred one (101) separately designated Units, and such Unit's undivided interest in and to the Common Elements. Each Unit, together with such Unit's undivided interests in the Common Elements, is for all purposes a separate parcel of and estate in real property. Accordingly, each such separate parcel of and estate in real property shall be deemed to include the Common Elements Easement that is hereby granted and conveyed to each Owner by Declarant. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Declaration in the Official Public Records of Travis County, Texas, and shall continue until this Declaration is revoked or terminated in the manner herein provided.

The Map sets forth, inter alia, the following: (1) a general description and diagrammatic plan of the Condominium; (2) the location and dimension of all real property subject to Declarant's Development Rights; (3) all Improvements, including each Unit showing its location and Unit number; and (4) such other information as is desirable or required pursuant to Section 82.054 of the Act, including a certification as to compliance with Section 82.059 of the Act. It is expressly agreed, and each and every purchaser of a Unit, his heirs, executors, administrators, assigns, successors and grantees hereby agree, that the square footage, size and dimensions of each Unit and any Limited Common Elements appurtenant thereto, as set out and shown in this Declaration or on the Map, are approximate and are shown for descriptive purposes only, and that Declarant does not warrant, represent or guarantee that any Unit or any Limited Common Element actually contains or will contain the area, square footage or dimensions shown on the Map. Each purchaser and owner of a Unit or interest therein has had full opportunity (or will have had prior to closing on the purchase thereof) and is under a duty to inspect and examine the Unit and any appurtenant Limited Common Element purchased by him prior to his purchase thereof and agrees that the Unit, together with any Limited Common Element, is purchased as actually and physically constructed and existing. Each purchaser of a Unit hereby expressly waives any claim or demand which he may have against Declarant or any other person whomsoever, on account of any difference, shortage or discrepancy between the Unit and any appurtenant Limited Common Element as actually and physically constructed or existing and as they are shown on the Map. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of any Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be boundaries, regardless of settling, rising or lateral movement of any Building and regardless of variances between the boundaries shown on the Map and those of any Building. Further, Declarant reserves the right for a period of one hundred twenty (120) days after the sale and conveyance of the last

Unit by Declarant to a third party purchaser to amend this Declaration and the Map to correct any such discrepancies.

***Allocation of Undivided Ownership Percentage Interests in Common Elements; Creation of Limited Common Elements.***

The Common Elements shall remain undivided. The undivided ownership percentage interest of each Owner in and to the Common Elements is set forth opposite the Unit numbers in Exhibit C attached hereto and made a part hereof under the heading "Undivided Ownership Interest". If at any time the undivided ownership percentage interest in and to the Common Elements is required to be reallocated by the Act or this Declaration, the formula to be used in establishing the allocations shall be a fraction the denominator of which shall be the total square footage in all Residences and the numerator of which shall be the square footage in each Residence. The fractional ownership interest shall then be converted to a percentage ownership interest.

As part of Declarant's Development Rights, Declarant reserves the right to designate and assign portions of the General Common Elements as Limited Common Elements for the exclusive use of an Owner of a Unit to which the portions so designated and assigned shall become appurtenant. Declarant may make such designation and assignment in any one or more of the following ways: (i) in a recorded instrument signed by Declarant, (ii) in a deed to the Unit to which such Limited Common Elements shall be appurtenant, or (iii) in an amendment to this Declaration signed by Declarant.

***Inseparability of Units: No Partition.***

Each Unit shall be inseparable, and shall be acquired, owned, conveyed, transferred, leased and encumbered only in its entirety. In no event shall a Unit held by more than one Owner be subject to physical partition and no Owner or Owners shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements; provided, that Declarant shall be entitled to subdivide Units as provided herein. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided ownership percentage interest in the Common Elements without the Unit to which such Common Elements is allocated is void.

***Permissible Relationships; Description.***

A Unit may be acquired and held by more than one Person in any form of ownership recognized by the laws of the State of Texas.

Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Unit shall be in writing and shall legally describe such Unit by its identifying Unit number, followed by the words "The Hillside, a condominium project in Travis County, Texas," with further reference to the recording data for this Declaration (including the Map and any amendments to this Declaration). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Unit. Any such description shall be construed to include all incidents of ownership relating to a Unit.

***Mortgage of Unit.***

An Owner shall be entitled from time to time to mortgage or encumber such Owner's Unit, to the extent allowed by applicable law, but any lien created thereby shall be subject to the terms and provisions of this Declaration. Any mortgagee or other lien holder who acquires a Unit through judicial or non-judicial foreclosure, public sale or other means shall be subject



to the terms and provisions of this Declaration, except as expressly provided herein. An Owner who mortgages a Unit shall notify the Association, giving the name and address of said Owner's mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Units," and shall notify an Owner's First Mortgagee, in writing, of any default by such Owner in the performance of such Owner's obligations as set forth in this Declaration that continues uncured for sixty (60) days if such Owner's First Mortgagee has requested from the Association such notice in writing. The Board of Directors may authorize the Association to enter into such agreements with any First Mortgagee as the Board of Directors shall approve, subject to the provisions of the Act and other applicable law.

### ***Alteration of Boundaries of Units.***

If an Owner (including Declarant) owns or if two (2) or more Owners own Units which adjoin horizontally (on the same floor), such Owner or Owners shall have the right to relocate the boundaries between such adjoining Units by removing and relocating all or any part of any intervening partition, notwithstanding the fact that such partition may in whole or in part be a Common Element, so long as those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Unit or any Building; provided, however, that the Owner or Owners shall have the right to relocate certain Common Elements which are located within the said partition (such as pipes, flues, conduits, shafts, vents, ducts, wiring and the like) so long as such relocation is performed in a good and workmanlike manner by a capable and experienced workman and such Common Elements are fully operational upon completion of such relocation. Notwithstanding the above, prior to the commencement of any such alterations, such Owner or Owners shall submit to the Board of Directors of the Association for its approval full and complete plans and specifications relating to such alterations and a report of a licensed structural engineer evidencing the feasibility of such proposed alterations. The Board of Directors may request such additional information as it deems necessary to evaluate the alteration request. Within a reasonable period of time following its receipt of the plans and specifications and all such other requested information, the Board of Directors shall provide to the Owner written acknowledgment of the Board of Directors' receipt of the alteration request and the Board of Directors shall be deemed to have approved such plans and specifications if it fails to disapprove of such plans and specifications in writing within thirty (30) days after the Owner's receipt of the Board of Directors' written acknowledgment of receipt of the request for approval of the alterations. In such event, the Association shall cause an appropriate instrument of amendment to this Declaration to be prepared, executed and recorded in accordance with the provisions of Section 10.2 hereof. The instrument of amendment shall (i) contain such plats and plans as are necessary to show the relocation of the boundaries between the Units involved, which shall be certified as to their accuracy by a registered architect or engineer, (ii) recite the occurrence of any conveyancing between the Owners of the Units affected, (iii) specify any reasonable reallocation of the aggregate percentage ownership interest in the Common Elements and percentage liability for expenses of the Association pertaining to the Units affected (provided, that the aggregate of the percentage ownership interests and percentage liabilities for expenses of the Units after such relocation shall be the same as the aggregate of such interests and liabilities prior to such relocation), and (iv) Limited Common Elements appurtenant to either of the Units affected. The Association will cooperate reasonably with such Owner or Owners in effectuating such amendment to this Declaration, provided that all costs and expenses incurred by the Association in connection therewith, including attorneys' architect's, engineer's and management fees, shall be paid exclusively by such Owner or Owners. In the event any damage is caused to any load-bearing wall, Common Element, or another Owner's Unit as a result of an Owner's exercise of the rights granted hereunder, all such damage shall be repaired at the sole cost and expense of the Owner or Owners exercising such rights and the

Association shall be entitled to assess the applicable Owner(s) for such amount, and such assessed amount shall thereafter be considered an assessment for purposes of this Declaration.

***Declarant's Right to Subdivide Units.***

Declarant reserves the right to subdivide Units owned by Declarant into additional Units. If Declarant elects to so subdivide any Units, Declarant must, on or before the end of Declarant Control Period, comply with TUCA Section 82.059(f) and 82.060 by preparing, executing and recording in the Official Public Records of Travis County, Texas an appropriate instrument of amendment to this Declaration. The instrument of amendment shall (i) contain such plats and plans as are necessary to show the new boundaries between the new Units created from the Unit or Units so subdivided, which shall be certified as to their accuracy by a registered architect or engineer and (ii) specify any reasonable reallocation of the aggregate percentage ownership interest in the Common Elements and percentage liability for expenses of the Association pertaining to the Units so created (provided, that the aggregate of the percentage ownership interests and percentage liabilities for expenses of the new Units after such relocation shall be the same as the aggregate of such interests and liabilities for the Unit or Units so subdivided prior to such relocation). All such new Units shall be the property of Declarant and Declarant shall have the right to sell or assign the same. The preceding special right of Declarant may be exercised as to all Units owned by Declarant during Declarant Control Period or as to only some of them, subject to the maximum number of Units that may exist hereunder.

**Uses, Reservations and Restrictions**

***Permitted Uses.***

Except as hereinafter provided with respect to the Units owned by Declarant, no Unit shall be used or occupied for other than single family residential purposes; provided, however, that this prohibition shall not be construed to prohibit an Owner from having a home-office within his Unit as part of the overall residential use of such Unit. Each Unit shall also be subject to limitations on use, occupancy, architectural standards and such other matters as are set forth in the Regulations.

Units may be leased; however, no Unit shall be leased for transient or hotel purposes or for any term of less than six (6) months (except by a First Mortgagee following a foreclosure of liens securing a First Lien Loan). No Owner shall lease less than an entire Unit. Any such lease shall be in writing, shall state that it is subject in all respects to the provisions of this Declaration, the Bylaws and the Regulations, and shall provide that any failure by the Tenant thereunder to comply with the terms and provisions of this Declaration, the Bylaws or the Regulations shall be and constitute a default under such lease. A copy of each lease shall be delivered to the Association by the Owner promptly following execution. EACH OWNER SHALL BE RESPONSIBLE FOR SUCH OWNER'S TENANT COMPLYING WITH THIS DECLARATION, THE BYLAWS AND THE REGULATIONS AND SHALL INDEMNIFY AND HOLD THE ASSOCIATION HARMLESS FROM ANY LOSS, COST, EXPENSE, DAMAGE, OR LIABILITY INCURRED BY THE ASSOCIATION AS A RESULT OF SUCH TENANT'S ACTIONS OR OMISSIONS. In addition, the Board of Directors may (i) bring any action to evict a Tenant for the Tenant's violation of this Declaration, the Bylaws or the Regulations; (ii) bring an action to evict a Tenant who fails to pay the Association for the cost of repairs to Common Elements damaged substantially by the Tenant; or (iii) collect rents from a Tenant who is at least sixty (60) days delinquent in the payment of any amount due to the Association. Notwithstanding the Association's attempt to collect the cost of repairs to Common Elements damaged by the Tenant from the Tenant, the Owner is liable and may be

assessed for such costs if not paid by the Tenant within a reasonable period of time.

At all times while Declarant is the Owner of any Unit, Declarant may (i) maintain a management office, a sales office, models, and other sales facilities in the Units and/or (ii) operate within the Condominium a sales, leasing or management office which is not located within a Unit, in which event such office shall be a Common Element subject to the exclusive use of Declarant. Declarant may, upon prior written notice to all Owners, change the location of any Units used as offices or models.

#### ***Further Requirements of Use.***

Each Owner shall maintain such Owner's Unit in a safe, clean and sanitary condition (including without limitation the repair of the sources of any unintended water intrusion into Owner's Unit and the repair of any water damage to the Owner's Unit, including any related mold growth), and shall not maintain at such Unit, nor permit such Unit or the Limited Common Elements appurtenant thereto to become, a public or private nuisance. Each Owner shall as soon as is practicable notify in writing the Association of any unintended water intrusion into the Owner's Unit and any water damage to the Owner's Unit (including related mold growth, if any). No odors shall be permitted by an Owner to arise from his Unit, the appurtenant Limited Common Elements or any portion thereof, that are reasonably offensive or detrimental to any other Unit Owner or occupant.

#### ***Compliance with Declaration, Bylaws and Regulations.***

Each Owner and any occupant of any Unit automatically shall be deemed to have agreed to comply strictly with the provisions of this Declaration, the Bylaws and the Regulations. A failure or refusal to so comply with the provisions of any such instrument after written notice shall be grounds for an action to recover damages or sums due, with interest thereon at the Past Due Rate, or for injunctive relief, or both, and for reimbursement of all attorneys' fees incurred in connection therewith, which action may be maintained by the Board of Directors or the Manager in the name of the Association on behalf of all of the Owners or, in a proper case, by an aggrieved Owner. In addition, an Owner's voting rights in the Association and Owner's or Owner's Tenant's right to use and enjoy the General Common Elements may by written notice be suspended by the Association during the period of such noncompliance.

#### ***Reservations by Declarant.***

To the extent and only if permitted by the Act, at all times while Declarant owns any Unit or any other real property interest in the Condominium or for such lesser time as may be permitted by the Act, Declarant reserves, as a part of the Special Declarant Rights, the following rights: (i) to make and record corrections to the Map to conform the same to the actual location of the Improvements, the actual size and location of the Units and/or the proper designation of the elements of the Improvements as Units, General Common Elements or Limited Common Elements, (ii) to establish, vacate, relocate and use the Easements as set forth in this Declaration, and such other easements, licenses, and rights as Declarant shall deem necessary or appropriate, in its discretion; provided, however, that no modification of any Easement or establishment of any other easement, license, and right shall have the effect of altering or destroying a Unit or a Limited Common Element unless (A) the location of such Easement is shown on the Map, or (B) it is otherwise consented to by the Owner of such Unit or by the Owner to whose Unit such Limited Common Element is appurtenant, as well as by the First Mortgagee of any such Unit; (iii) to include, in any instrument initially conveying a Unit, such additional reservations, exceptions and exclusions as it may deem consistent with and in the best interests of the Owners and the Association; (iv) to have and use an easement over, under and across any and all of the Common Elements to the extent

that same may be necessary or useful in constructing, repairing or completing the Units or as may be reasonably necessary for the exercise of any Special Declarant Rights or the performance of any obligations of Declarant; and (v) to exercise any Development Right.

### ***Easements.***

Reservation. Declarant hereby reserves the Access Easement, the Construction Easement, and the Utility Easement for the benefit of Declarant, all Owners, the Association and its agents, employees and representatives, including the Manager and the Manager's agents and employees as the case may be, and each Owner shall by virtue of the recordation of this Declaration, accept the deed to such Owner's Unit subject to the Access Easement, the Construction Easement, and the Utility Easement. Declarant hereby reserves for the benefit of each Owner, the Common Elements Easement and declares that by virtue of this Declaration the Common Elements shall be subject to the Common Elements Easement. Each Owner shall, upon request, provide the Association with a key to such Owner's Unit which may be used in such Owner's absence for Access Easement purposes. The Owner of each Unit, by acceptance of the deed to a Unit, hereby grants Declarant an irrevocable power of attorney, coupled with an interest with full power and authority to locate, grant, create and convey any additional utility easement. In addition, Declarant shall have an easement through the Common Elements as may be reasonably necessary for discharging Declarant's obligations or exercising the Special Declarant Rights under the Act or this Declaration.

Waiver. Each Owner and Tenant, by the possession or acceptance of title to a Unit, hereby waives any and every claim which arises or may arise in its or his favor against the Association, the Manager or Declarant for any and all loss of, or damage to, its or his property located within or upon, or constituting a part of, the Condominium, which loss or damage is caused by the Association's, the Manager's or Declarant's exercise of its rights under the Access Easement, except to the extent such loss or damage is caused by gross negligence or willful misconduct of any such Person.

Encroachments. To the extent that a Unit, Improvement, or Common Element encroaches on another Unit, Improvement, or Common Element, a valid easement for the encroachment exists.

### ***Mechanic's Liens: Indemnification.***

No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner, his agents or representatives, shall be the basis for the filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners, Declarant, the Association and the Manager from and against all liabilities and obligations arising from the claim of any lien against the Unit of such other Owners or the Common Elements.

### ***Prohibitions.***

No amenities or facilities related to the Property shall be (a) subject to any restriction or reservation in favor of Declarant (or any affiliate of Declarant); or (b) leased to the Association or any Owner. The Condominium is not a "master" project and is not associated with any "master" project documents, owner's association (or cooperative corporation) or similar entity as such terms are used in Part XII (Project Standards), Chapter 6 (Legal Guidelines) of the Federal National Mortgage Association ("FNMA") Selling Guide.

## **The Association**

### ***Authority.***

The business affairs of the Condominium shall be managed by the Association, acting through its Board of Directors. In addition to the powers conferred on the Association under the Bylaws and hereunder, the Association may take all actions authorized by Section 82.102 of the Act. Any and all actions taken by the Association pursuant to this Declaration, the Act, the Bylaws and/or the Regulations are binding on all Owners. This Declaration does not provide for any limitations or restrictions on the power of the Association or the Board of Directors.

### ***Allocation of Votes in the Association.***

Each Owner shall automatically be a member of the Association, and shall possess a vote with respect to each Unit owned by such Owner equal to such Owner's undivided ownership percentage interest in and to the Common Elements as set forth opposite the Unit's number on **Exhibit C** attached to this Declaration under the heading "Undivided Ownership Interest". All voting rights of an Owner may be suspended during any period that such Owner is delinquent in the payment of any Assessment duly established pursuant to Article 6, or otherwise in default under the terms of this Declaration, the Bylaws or the Regulations. Any matter described herein as requiring approval by a stated percentage or a majority of the Owners shall mean a stated percentage or a majority of the allocated votes held by those Owners who are then eligible to vote.

### ***Right of Action by Owners.***

Owners, acting collectively or individually, shall have the right to maintain actions against the Association or any other Owner for its or their failure to comply with the provisions hereof or to perform its duties and responsibilities hereunder.

## **Maintenance, Alterations, Insurance, Taxes and Utilities**

### ***Maintenance.***

Each Owner, at the Owner's sole cost and expense, shall maintain the Owner's Unit (including, without limitation, the exterior, the roof, any patios and decks, and all Systems that serve only or are a part of the Owner's Unit), in good condition and repair and shall repair and, where appropriate replace, the fixtures and appliances therein contained and all interior doors and interior windows within the Unit and doors and windows servicing only such Owner's Unit. Front and side yard landscaping shall be the responsibility of the Association, and each Owner acknowledges the availability of the Access Easement to the Association to facilitate lawn and landscape installation and maintenance. Any maintenance and repair work done by or at the instance of an Owner shall be done in a good and workmanlike manner using materials of equal or better quality than the original quality of the materials removed and/or replaced, and shall be done in such a manner as not to impair the structural soundness or integrity or to alter the color or exterior appearance of any Common Element, any Building or any Unit without the express consent of the Board of Directors. In the event an Owner fails to discharge the Owner's maintenance and repair obligations hereunder, the Association shall be entitled (but not obligated) to cause such work to be done, and the cost and expense thereof (together with interest thereon at the Past Due Rate from the date paid by the Association until the date such sum is repaid to the Association by such Owner) shall be assessed against such Owner and secured by a lien upon

such Owner's Unit. Such lien may be enforced in the same method as is provided for the enforcement of Assessment liens pursuant to the provisions of Section 6.4 of this Declaration. Damage to the interior of any Unit resulting from such maintenance, repair or replacement activities by the Association, whether by reason of an emergency or otherwise, shall constitute a Common Expense and be payable by the Association; provided, however, that if such maintenance, repairs or replacements are the result of the misuse or negligence of an Owner, or its guests or invitees, then such Owner shall be responsible and liable for all such damage and the Association shall be entitled to assess the applicable Owner for such amount, and such assessed amount shall thereafter be considered an assessment for purposes of this Declaration.

All Common Elements shall be maintained by the Association, the cost and expense of which shall constitute a Common Expense and be payable by the Association. The Association shall maintain the Common Elements in good condition and repair. The Association shall repair and, where applicable, replace the Common Elements (excepting only those portions of the Systems that serve only or are part of an individual Unit), and shall establish and maintain an adequate reserve fund for such purposes, to be funded by Monthly Assessments. Nothing herein shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Elements caused by the negligence or misconduct of such Owner or such Owner's Tenants, occupants or invitees.

Neither Declarant nor the Association shall be liable for injury or damage to any person or property caused by the elements or by the Owner of any Unit or its Tenant, family members, guests and invitees, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, including without liability any mold growth resulting therefrom. The Association shall not be liable to any Owner or occupants of any Unit or such Owner's or occupant's tenant, guest or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner or occupant of any Unit or such Owner's or occupant's tenant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities hereunder where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

In the event a dispute shall arise among Owners or between an Owner and the Association as to the proper party to bear a maintenance, repair, or replacement cost or expense, the Board of Directors shall be entitled to resolve such dispute, provided, however, that nothing herein shall be deemed or construed as limiting an Owner's right to have the provisions of Section 5.1 interpreted by a court of competent jurisdiction; provided further, however, that any such cost or expense so disputed shall be paid in accordance with the determination of the Board of Directors pending final judgment in any such legal proceedings.

### ***Alterations.***

No Owner or Tenant shall be entitled to alter, add to or improve his Unit, or the Limited Common Elements appurtenant thereto, in a manner which will or might reasonably be expected to affect the structural soundness, integrity, or the exterior appearance of any of the Improvements (including, without limitation, landscaping and the appearance from the exterior of the interior window treatment of a Unit), any System that services more than one Unit, or any warranty in favor of the Association, without the prior written consent of the Board of Directors and in compliance with all Regulations established by the Association; provided, however, that an Owner may, without the prior written consent of the Board of Directors, clear and/or xeriscape within an area located on the back of a Residence (the "back" being that portion of a Residence located opposite from the garage) that extends five

feet from the end of the Residence's deck or patio and runs the width of the Residence. In addition, no Owner or Tenant shall be entitled to make any alteration, addition or improvement to a Limited Common Element appurtenant to more than his Unit unless the prior written approval of all Owners having an interest therein is obtained. Any alterations, additions and improvements made pursuant to this Section 5.2 shall be made at the individual cost and expense of the Owner desiring to alter, add to or improve the Unit or Limited Common Element.

### ***Insurance.***

The Association shall obtain and maintain insurance coverage required pursuant to Section 82.111 of the Act and such additional coverage as the Board of Directors may deem necessary or appropriate including, without limitation, liability insurance for all officers, directors, trustees and employees of the Association. The premiums for all insurance coverage maintained by the Association shall constitute a Common Expense and be payable by the Association. An Owner shall be responsible for obtaining and maintaining, at his sole cost and expense, property insurance covering all alterations, additions, betterments and improvements made by an Owner or Tenant to his Unit and all personal property located therein. Nothing herein shall be deemed or construed as prohibiting an Owner, at his sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as he may deem necessary or appropriate. If the Property is accepted by FNMA, insurance coverages shall also comply with Part XII, Chapter 7 of the FNMA Selling Guide or as otherwise required by FNMA for condominium projects.

Insurance policies shall provide that:

each Owner is an insured person under such policies with respect to liability arising out of the Owner's ownership of an undivided interest in the Common Elements or membership in the Association;

insurance trust agreements will be recognized;

any right of subrogation of the issuer of the insurance against individual Owners is waived;

the coverage of the policy is not prejudiced by any act or omission of an individual Owner to the extent that such act or omission is not within the collective control of all Owners;

such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy;

no action or omission by any Owner, unless validly exercised on behalf of the Association, will void the policy or be a condition to recovery under the policy;

the policy may not be canceled or renewal refused, except after thirty (30) days prior written notice to the Association;

such policy will not lapse or be cancelled or modified except after fifteen (15) days' prior written notice to the Association and to each First Mortgagee listed as such in the insurance policy;

the Manager shall be reflected as an additional insured on any commercial general liability policy carried by the Association.

The Board of Directors shall have the express authority, on behalf of the Association, to designate an authorized representative, including any trustee (or successor thereto) with whom the Association has entered into any insurance trust agreement, for the purpose of purchasing and maintaining the insurance required or permitted hereunder as well as for submission of and adjustment of any claim for loss, the collection and appropriate disposition

of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purpose.

By acceptance of a deed to a Unit, each Owner shall be deemed to have irrevocably appointed the Association (which appointment shall be deemed a power coupled with an interest), together with any insurance trustee, successor trustee or authorized representative designated by the Association, as such Owner's attorney-in-fact for the purpose of purchasing and maintaining the insurance required or permitted hereunder as well as for submission of and adjustment of any claim for loss, the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purpose.

The Association or such insurance trustee, successor trustee or authorized representative must receive, hold and otherwise properly dispose of any proceeds of insurance in trust for the Owners and the First Mortgagees as their interests may appear based on the fair market value of the interests damaged or destroyed. Any proceeds paid under such policy shall be disbursed first for the repair or restoration of any damaged Common Elements and Units, and no Owner or First Mortgagee or other lienholder shall receive payment of any portion of such proceeds unless a surplus remains after the Condominium has either been completely restored or the Condominium has been terminated. The Association may adopt reasonable rules and regulations relating to responsibility for payment of the deductible on any insurance obtained by the Association, which amounts shall be payable by Owners in accordance with their undivided ownership interests.

The Association, and each Owner by his possession or acceptance of title to a Unit, hereby waives any and every claim which arises or may arise in its or his favor against any other Owner, the Association, the Manager or Declarant for any and all loss of, or damage to, its or his property located within or upon, or constituting a part of, the Condominium, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent such loss or damage is recoverable thereunder. Inasmuch as the foregoing mutual waivers will preclude the assignment of any of such claim by way of subrogation (or otherwise) to an insurance company (or any other party), the Association and each Owner immediately shall give, to each insurance company which has issued policies of insurance to such Owner, written notice of the terms of this mutual waiver, and cause such policies to be endorsed, if necessary, to prevent the invalidation of such coverages by reason hereof.

### ***Taxes.***

Each Owner shall be responsible for and shall pay when due all taxes, assessments and other governmental impositions lawfully levied or assessed with respect to such Owner's Unit. Any taxes, assessments or other governmental impositions lawfully levied or assessed with respect to the Property not separately billed to the Owners shall constitute a Common Expense and be payable by the Association.

### ***Utilities.***

Each Owner shall be responsible for and shall pay all utility charges relating to services used or consumed at or with respect to the occupancy of the Owner's Unit, to the extent such charges are separately metered. Any utility charges not so separately metered, including without limitation charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Association. Any "hook up" charges under any agreements entered into or assumed by the Association or to which the Association, any Building or the Units are subject, and any



other charges under such agreements which are not separately billed to the Unit Owners, and the cost of any utilities generated or provided by the Association to the Unit Owners, unless separately metered, shall constitute a Common Expense and be payable by the Association.

## **Assessments**

### ***Monthly Assessments, Budget.***

The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment sufficient in the judgment of the Board of Directors to pay all Common Expenses when due. Such Monthly Assessments so established shall be assessed to the Owners in accordance with Section 6.3 and shall be payable by the Owners on the first day of each calendar month, and shall be applied to the payment of charges for which the Association is responsible, including, without limitation, charges relating to maintenance and repair of the portions of the Property not the responsibility of one or more, but less than all, of the Owners, care of the Common Elements, casualty, general liability and other insurance coverages required or permitted to be maintained by the Association, governmental impositions not separately levied and assessed, utilities relating to the Common Elements or not separately metered, professional services, such as management, accounting and legal, and such other costs and expenses as may reasonably relate to the proper maintenance, care, operation and management of the Property, and the administration of the Association and the Condominium, including an adequate reserve fund for the periodic maintenance, repair, replacement and improvement of the Common Elements. No consent or approval of the Owners shall be required for the establishment of the Monthly Assessments. Collection of Monthly Assessments, as to each Owner, shall commence upon the acquisition by such Owner of title to his Unit. Until such time as Declarant Control Period shall have terminated, the Association's reserve funds may not be used for payment of operating expenses of the Condominium.

Prior to the commencement of each fiscal year of the Association, the Board of Directors shall prepare and deliver to each of the Owners a budget setting forth the anticipated Common Expenses for the ensuing year. Such budget shall be in sufficient detail so as to inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred, and shall be accompanied by a statement setting forth each Owner's monthly share thereof and the date as of which such Monthly Assessment commences. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder, and the failure of the Board of Directors to timely deliver the budget provided for herein shall in no event excuse or relieve an Owner from the payment of the Monthly Assessments contemplated hereby. Any budget prepared and delivered to the Owners as hereby contemplated may be amended as and to the extent reasonably necessary, and the amount of an Owner's Monthly Assessment changed to correspond therewith.

### ***Special Assessments.***

In addition to the Monthly Assessments contemplated by Section 6.1 above, the Association shall possess the right, power, authority and obligation to establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Board of Directors to pay nonrecurring Common Expenses relating to the proper maintenance, care, alteration, improvement, operation and management of the Property, and the administration of the Association and the Condominium. No consent or approval of the Owners shall be required for the establishment of a Special Assessment, except for any Special Assessment relating to the alteration or improvement of any element of the Property, which must be approved by the affirmative vote of those Owners holding not less than sixty-seven percent (67%) of the

votes allocated by this Declaration at a meeting of the Association duly called for purposes of considering same. Nothing contained in this Section shall be construed to limit the right of an Owner to alter, add to or improve its Unit at such Owner's costs and expense in accordance with Section 5.2.

***Obligation to Pay Assessments.***

Each Owner shall be personally obligated to pay when due his share (i.e., in accordance with his undivided interest in and to the Common Elements as set forth opposite such Owner's Unit in **Exhibit C**) of all Assessments duly established. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than such new Owner's pro rata share thereof which is allocable to any periods of time after such new Owner acquired title to the Unit); however, the old Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exempt himself from liability for his obligation to pay such Assessments by waiver of the use or enjoyment of the Common Elements, by an abandonment of his Unit, or by any action whatsoever. Any Assessment not paid within five (5) days after the date due shall bear interest at the Past Due Rate from the date due until paid, and shall be recoverable by the Association, together with interest as aforesaid, reasonable late fees as determined and set by the Board of Directors from time to time, and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the county where the Land is located. It shall be the responsibility of the Board of Directors to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's First Mortgagee. The Association shall give written notice of any sixty (60) day delinquency in the payment of Assessments or charges by an Owner to the First Mortgagee of such Owner's Unit to the extent the First Mortgagee has requested such notices to be provided.

If at any time the percentage interest in the Common Expenses of the Association is required to be reallocated by the Act or this Declaration, the formula to be used in establishing the allocations shall be a fraction the denominator of which shall be the total square footage in all Units and the numerator of which shall be the square footage in each Unit. The fractional interest shall then be converted to a percentage interest.

***Lien to Secure Payment of Assessments.***

Declarant hereby reserves and assigns to the Association a lien, pursuant to the provisions of Section 82.113 of the Act, against each Unit, the Rents, if any, payable to the Owner of any Unit and Insurance Proceeds received by the Owner of any Unit to secure the payment of all Assessments and other amounts payable by an Owner to the Association hereunder, which lien shall be and constitute a lien and encumbrance, in favor of the Association, upon such Owner's Unit, the Rents, and any Insurance Proceeds. The liens established herein shall be prior and superior to all other liens and encumbrances subsequently created upon such Unit, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of a First Lien Loan (provided such lien securing the payment of the First Lien Loan was recorded prior to the date on which the Assessment became delinquent) and the liens for unpaid taxes, assessments and other governmental impositions. Without in any way limiting the foregoing, the liens established herein shall be prior and superior to any lien for construction of improvements to the Unit or an assignment of the right to Insurance Proceeds on the Unit, even if the lien or assignment is recorded or duly perfected before the date on which the Assessment sought to be enforced becomes delinquent under this Declaration, the Bylaws or the Regulations. The liens and encumbrances created herein may be enforced by any means available at law or in equity, including, without limitation, a non-judicial foreclosure sale of the Unit of a defaulting Owner; such sale to be

conducted in the manner set forth in Section 51.002 of the Texas Property Code (as now written or as hereafter amended). The Owner of each Unit, by acquisition of such Unit, grants to the Association a power of sale in connection with the Association's liens. By written resolution, the Board of Directors may appoint, from time to time, an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Unit, as a Common Expense, at any such foreclosure sale. The foreclosure by a First Mortgagee of a Unit in order to satisfy the First Lien Loan will extinguish the lien for any Assessments which became payable prior to the date of such foreclosure sale, but otherwise the conveyance of a Unit by an Owner will not extinguish the Association's lien for past due or future assessments. In the event of a foreclosure by a First Mortgagee of a Unit in order to satisfy a First Lien Loan, and the extinguishment of the lien for any Assessments payable prior to the date of such foreclosure, the Owner who owned the Unit immediately prior to such foreclosure shall be and remain personally liable for such outstanding Assessments but the Person acquiring the Unit at such foreclosure, including without limitation the First Mortgagee if applicable, shall not be liable for the Assessments payable prior to the date of such foreclosure. As used in the preceding two sentences, "foreclosure" means a judicial foreclosure of the lien securing a First Lien Loan, a non-judicial foreclosure pursuant to a private right of sale granted in the documents creating the lien securing a First Lien Loan or a conveyance in lieu of foreclosure of the lien securing a First Lien Loan..

#### ***Commencement of Obligation to Pay Assessments.***

The obligation to pay Assessments shall begin on the first day of the calendar month following the date that the first Unit is conveyed by Declarant to a third party purchaser. Each Owner, including Declarant, shall be obligated to commence payment of all Assessments against his Unit on such date. Prior to the date the obligation to pay Assessments commences, Declarant shall pay all Common Expenses (excluding portions thereof allocable to reserves); provided, however, that nothing contained herein shall prevent Declarant from collecting from the purchaser of a Unit at closing any expenses, such as taxes and insurance, to the extent that Declarant prepaid on behalf of the Unit being purchased.

#### ***Redemption by Owner.***

The Owner of a Unit purchased by the Association, at a foreclosure sale of the Association's lien for Assessments, may redeem the Unit no later than the ninetieth (90th) day after the date of foreclosure. To redeem the Unit, the Owner must pay to the Association all amounts due to the Association at the time of foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the Past Due Rate, reasonable attorney's fees, and costs incurred by the Association in foreclosing the lien, any Assessment levied against the Unit by the Association after the foreclosure sale, and any reasonable costs incurred by the Association, as Owner of the Unit, including costs of maintenance and leasing. Upon redemption, the Association shall execute a special warranty deed to the redeeming Owner of the Unit. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming Owner of the Unit records prior to such date the deed from the Association or an affidavit stating that the Owner has exercised the right of redemption. A Unit that has been redeemed remains subject to all liens and encumbrances of the Unit before foreclosure. All Rents collected from the Unit by the Association from the date of foreclosure sale to the date of redemption belong to the Association, but the Rents shall be credited against the redemption amount. If the Association purchases a Unit at a sale foreclosing the Association's lien, the Association may not transfer ownership of the Unit during the redemption period to

a person other than a redeeming Owner.

***Notice of Default.***

If the Owner of a Unit defaults in the Owner's monetary obligations to the Association, the Association may, but shall not be required to, notify other lien holders of the default and the Association's intent to foreclose its lien. However, the Association shall notify any First Mortgagee who has given the Association a written request for notification of a particular Owner's default of the Association's intent to foreclose its lien as a result of such default.

***Alternative Actions.***

Nothing contained in this Declaration shall prohibit the Association from taking any other legal actions including, without limitation, accepting a deed in lieu of foreclosure, filing a suit for judicial foreclosure, or filing a suit to recover a money judgment for sums that may be secured by the lien.

**Loss and Obsolescence**

***Loss or Damage.***

The following provisions shall govern in the event the Improvements, or any part thereof, are damaged or destroyed by fire or other casualty:

Prompt written notice of any such substantial damage or destruction shall be given to all First Mortgagees.

The Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) at least eighty percent (80%) of Owners (including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired) vote not to rebuild.

The amount by which such restoration and repair costs exceed collectible insurance proceeds shall be and constitute a Special Assessment payable by the Owners within thirty (30) days of the date notice of such Special Assessment is delivered by the Association.

Any excess insurance proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Association in separate accounts for each Owner according to each Owner's individual interest in the General Common Elements as set forth in Exhibit C, and be applied, without contribution from one such account to another, as follows:

first, to the payment of any taxes and special assessment liens or other governmental impositions in favor of any assessing entity having authority with respect to such Owner's unit;

second, to the payment of the balance of the First Lien Loan of such Owner;

third, to the payment of any delinquent Assessment with respect to such Owner's Unit; and

the balance, if any, to such Owner or such other parties as shall be entitled thereto.

***Matters Relating to Restoration and Repairs.***

Any restoration and repair work undertaken by the Association pursuant to Section 7.1 shall

be performed in a good and workmanlike manner with a view to restoring the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Association be responsible for restoring, repairing or replacing any improvements to a Unit made by an Owner, or the contents located in such Owner's Unit. All such restoration and repair work, whether done by the Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal Unit boundaries existing prior to such damage or destruction.

#### ***Obsolescence of Common Elements.***

If the Owners holding not less than sixty-seven percent (67%) of the allocated votes shall vote, at a meeting of the Association duly called for purposes of considering same, that the Common Elements, or any part thereof, including those Limited Common Elements consisting of Systems which serve only, or are a part of, individual Units, are obsolete the Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment payable by all Owners within thirty (30) days of the date notice of such Special Assessment is delivered to them by the Association.

#### ***Association as Attorney-in-Fact.***

Each Owner, by acceptance or possession of title to a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every of its successors in interest hereunder, as Owner's true and lawful attorney-in-fact, for and in Owner's name, place and stead, upon the damage or destruction of the Property, or any part thereof, or upon any determination by the Owners made pursuant to this Article or Section 10.1 (with respect to a sale following termination), to take any and all actions, and to execute and deliver any and all instruments, as the Board of Directors may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article and Section 10.1 (with respect to a sale following termination), hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article and Section 10.1 as aforesaid, including, without limitation, the power and authority to make and settle claims under insurance policies maintained by the Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Elements (to the extent authorized as contemplated by Section 7.3) to contract for and with respect to a sale of the Property in connection with a termination (to the extent contemplated by Section 10.1), and to execute and deliver all instruments necessary or incidental to any such actions.

#### **Condemnation**

##### ***General Provisions.***

If all or any part of the Property is taken or threatened to be taken by eminent domain or by action in the nature of eminent domain (whether permanent or temporary) the Board of Directors and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board of Directors shall give such notice as it receives of the existence of such proceeding to all Owners and to all First Lien Mortgagees which have requested such notice. The expense of participation in such proceedings by the Board of

Directors shall be a Common Expense. The Board of Directors is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board of Directors, in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board of Directors, acting as trustee, and such damages or awards shall be applied or paid as hereinafter provided. Any restoration or repair of the Property following a partial condemnation shall be performed in accordance with the provisions of this Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by all First Mortgagees.

### ***Taking of One Unit.***

In the event of any taking of an Owner's Unit or a part thereof by eminent domain or sale or other transfer in lieu thereof if an Owner shall vacate and abandon an Owner's Unit by virtue of such taking, the Owner and any First Mortgagee of such Owner shall be entitled to the award for such taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and after payment thereof, such Owner and Owner's First Mortgagee shall be divested of all interest in the Property. If any repair or rebuilding of the remaining portions of the Property is required as a result of such taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners owning a majority of interests in the Common Elements either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to proportionately readjust the percentages of ownership of the remaining Owners based upon a continuing total ownership of the Property of one hundred percent (100%) and such amendment shall be duly recorded.

### ***Taking of Common Elements.***

If an action in eminent domain is brought to condemn a portion of the Common Elements together with or apart from any Unit, the Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking of Common Elements only, all damages and awards shall be determined for such taking as a whole and not for any Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be held by the Board of Directors, acting as trustee for each Owner, or Owner's mortgagee or mortgagees, as their interests shall appear, in proportion to such Owner's percentage interest in the Common Elements, except that the portion of any such award attributable to the condemnation of a Limited Common Element shall be allocated among the Owners of the Condominium Units served by such Limited Common Elements, as such Owner's interests existed in the Limited Common Elements condemned. The Board of Directors may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore as far as possible the Common Elements taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Map attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and duly recorded.

***Taking of Several Units.***

In the event that an eminent domain proceeding results in the taking of all or part of those Units comprising less than two-thirds (2/3) of the total number of Units in the Condominium, then the damage and awards for such taking shall be determined for each Unit and the following shall apply:

The Board of Directors shall determine which of the Units damaged by such taking may be habitable for the purposes set forth in the Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged.

The Board of Directors shall determine whether it is reasonably practicable to operate the remaining Units of the Property, including those damaged Units which may be habitable, as a condominium project in the manner provided in this Declaration.

If the Board of Directors determines, with the consent of fifty-one percent (51%) of the First Mortgagees, that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be made habitable as a condominium project, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in the undivided interest by all Owners, as tenants-in-common, in the percentage interests previously owned by each Owner in the Common Elements.

If the Board of Directors determines that it will be reasonably practicable to operate the undamaged Units and the damaged Units which can be made habitable as a condominium project, then the damages and awards made with respect to each Unit which has been determined to be capable of being made habitable shall be applied to repair and reconstruct such Unit so that it is made habitable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rate against the Owners of those Units which are being repaired or reconstructed so as to be made habitable. With respect to those Units which may not be made habitable, the award made with respect to each such Unit shall be paid to the Owner of such Unit or Owner's mortgagee or mortgagees, as their interests may appear, and the remaining portion of such Units, if any, shall become a part of the Common Elements and repair and use of such Units shall be determined by the Board of Directors. Upon the payment of such award for the account of such Owner as provided herein, such Unit shall no longer be a part of the Property, and the percentage interest in the Common Elements appurtenant to each remaining Unit which shall continue as part of the Property shall be equitably adjusted to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Owners.

If the entire Property is taken, or two-thirds (2/3) or more of the Units are taken or damaged by such taking, all damages and awards shall be held for the accounts of all Owners, and their mortgagees, as their interests shall appear, as provided herein, in proportion to their percentage interests in the Common Elements and this Condominium shall terminate upon such payment. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Owners as tenants-in-common in the percentage interest previously owned by each Owner in the Common Elements.

***Payment of Awards and Damages.***

Any damages or awards provided in this Article to be paid to or for the account of any Owner by the Board of Directors, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any mortgage instruments duly perfected; thirdly, to the payment of any Assessments charged to or made against the Unit and unpaid; and finally to the Owner.

## **Development Period**

### ***Initial Directors.***

The Board of Directors shall be initially established by Declarant as set forth in the Bylaws.

### ***Declarant Control Period.***

Except as is provided in the Act, Declarant shall have the right to appoint and remove members of the Board of Directors during Declarant Control Period. If Declarant voluntarily surrenders control prior to the end of Declarant Control Period, Declarant may require that specified actions of the Board of Directors be subject to Declarant's approval until the end of Declarant Control Period.

Not later than one hundred twenty (120) days after Declarant has conveyed to Owners other than Declarant title to fifty percent (50%) of the Units in the Property, not less than one-third (1/3) of the members of the Board of Directors must be elected by the Owners other than Declarant.

Not later than the expiration of Declarant Control Period, the Unit Owners shall elect a Board of Directors of at least three members who do not need to be Unit Owners.

### ***Working Capital Contributions.***

Each Owner purchasing a Unit from Declarant shall, at the time he purchases a Unit from Declarant, contribute an amount to the Association equal to the Working Capital Contribution. Such amount shall be a contribution of working capital to the Association, shall not be considered as an advance payment of Monthly Assessments and is in addition to any reasonable reserves which may be assessed from time to time in accordance with Section 6.1.1

Notwithstanding the foregoing, Declarant shall not later than the expiration of Declarant Control Period make the Working Capital Contribution on behalf of each Unit then owned by Declarant. Anyone who purchases a Unit from Declarant after Declarant has made the Working Capital Contribution shall, at the time of such purchase, in lieu of the obligation set forth in Section 9.3.1 above, reimburse Declarant for any Working Capital Contribution made by Declarant on behalf of such Unit.

Any purchaser of a Unit from an Owner other than Declarant shall contribute an amount to the Association equal to one-half (1/2) of the Working Capital Contribution at the time of purchase. Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance payment of Monthly Assessments.

## **Miscellaneous**

### ***Revocation or Termination of Declaration.***

This Declaration may be revoked or the Condominium may be terminated, only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than eighty percent (80%) of the votes allocated by this Declaration and not less than one hundred percent (100%) vote of First Mortgagees. With respect to the vote of a First Mortgagee, such approval shall be deemed given by such eligible holder if such holder fails to submit a response to any written notice to revoke or terminate within twenty (20) business days of the date of such written notice, provided such notice was delivered by certified mail, return receipt requested. Without in any way limiting the foregoing, until the first Unit is sold to a third party by Declarant, Declarant, acting alone and in its sole discretion, may revoke this Declaration or terminate the Condominium by an instrument in writing duly executed



and acknowledged by Declarant. Any instrument of revocation or termination shall be duly filed of record in the appropriate records of Travis County, Texas. If the Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of Section 82.068(c) of the Act.

### ***Amendment to Declaration.***

Unless otherwise prohibited by the Act, this Declaration may be amended at a meeting of the Owners at which the amendment is approved by those Owners holding not less than sixty-seven percent (67%) of the allocated votes and not less than fifty-one percent (51%) of the First Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Association on behalf of the consenting Owners and on behalf of the consenting First Mortgagees and filed of record in the county in which the Property is located. Any such amendment so effected shall be binding upon all of the Owners, provided however that except as permitted or required by the Act, no such amendment shall (i) cause the alteration or destruction of a Unit or of a Limited Common Element unless such amendment has been consented to by the Owner and the First Mortgagee of the Unit which is to be altered or destroyed or by the Owner and First Mortgagee of a Unit to which the Limited Common Element that is to be altered or destroyed is appurtenant, (ii) create or increase Special Declarant Rights, (iii) increase the number of Units, (iv) change the boundaries of a Unit (except as permitted by Section 2.6 of this Declaration), (v) change the use restrictions on a Unit, or (vi) change the formula or method for calculating the Owner's share of Common Expenses, unless such amendment has been consented to by one hundred percent (100%) of the votes of the Association. The Association shall give each First Mortgagee written notice of any proposed action or amendment requiring the approval of a First Mortgagee. Notwithstanding the foregoing, no such amendment shall become effective unless approved by Declarant if Declarant still owns one or more Units and the amendment would, in Declarant's reasonable determination; (a) increase or otherwise modify Declarant's obligations; (b) reduce or modify any Special Declarant Rights; or (c) materially inhibit or delay Declarant's ability to complete the Improvements or to convey any portion of the Property owned by Declarant. The Board of Directors or Declarant, if Declarant owns a Unit that has never been occupied, may without a vote of the Owners or approval of the Association amend this Declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration. In addition, Declarant shall have the continuing right until the end of Declarant Control Period, without the consent of other Owners or the representatives of any mortgagee, to amend this Declaration for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any misstatements, errors or omissions herein, provided that no such amendment shall change the stated number of Units or the undivided ownership percentage interest in the Common Elements attributable thereto (except as set forth in Section 2.1.2). In addition, the Declaration may also be amended in other ways as provided in Section 82.067(b) of the Act.

### ***Enforcement.***

The Board of Directors (either on its own behalf or through the Manager) or any Owner shall have the right to enforce, by any proceedings at law or in equity, all terms and provisions of this Declaration, the Bylaws and the Regulations. Failure by the Board of Directors (or the Manager on behalf of the Board of Directors) or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

***Partial Invalidity.***

In the event any provision of this Declaration, the Bylaws or the Regulations shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall in no way impair or affect the validity or enforceability of the remainder of such instruments.

***Conflicts.***

In the event any of the provisions of this Declaration, the Bylaws or the Regulations shall be in conflict with the provisions of the Act or the Texas Non-Profit Corporation Act, the provisions of such statutes shall control. In the event that a conflict exists between the provisions of this Declaration, the Bylaws or the Regulations, the provisions of this Declaration shall control over the Bylaws and the Regulations and the provisions of the Bylaws shall control over the provisions of the Regulations.

***Captions and Exhibits.***

Captions used in the various articles and sections of this Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits are incorporated in and made a part of this Declaration.

***Usury.***

It is expressly stipulated that the terms of this Declaration, the Bylaws and the Regulations shall at all times comply with the usury laws of the State of Texas. If such laws are ever revised, repealed, or judicially interpreted so as to render usurious any amount called for hereunder or under the Bylaws or the Regulations or contracted for, charged or received in connection with any amounts due hereunder or under the Bylaws or the Regulations, or if the Association's exercise of any provisions hereof or of the Bylaws or the Regulations results in any party having paid any interest in excess of that permitted by applicable law, then it is the Association's and/or Declarant's express intent that all excess amounts theretofore collected by the Association be credited on the principal balance of any indebtedness (or, if the indebtedness has been paid in full, refunded to the payor), and the provisions of this Declaration, the Bylaws and the Regulations immediately be deemed reformed and the amounts thereafter collected be reduced, without the necessity of execution of any now document, so as to comply with then applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

***Use of Number and Gender.***

Whenever used herein, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders.

***Non-Liability of Association, Manager and Declarant for Security.***

Without limitation of any other provision of this Declaration, each Owner and their Tenants, family, guests and invitees, covenant and agree with respect to any and all security services, systems and facilities provided directly or indirectly by Declarant, the Association or the Manager as follows:

Security is the sole responsibility of local law enforcement agencies and individual Owners,

their Tenants, and their respective guests and invitees. It is acknowledged that the Association has no obligation whatsoever to provide security. Security services, systems and facilities shall be provided at the sole discretion of the Board of Directors. The provision of any security services, systems and facilities at any time shall in no way prevent the Board of Directors thereafter electing to discontinue or temporarily or permanently remove such security services, systems and facilities or any part thereof.

Any third party providers of security services (including those providing maintenance and repair of security systems and facilities) shall be independent contractors, the acts or omissions of which shall not be imputed to the Association or its officers, directors, committee members, Manager, agents or employees.

Providing of any security services, systems and facilities shall never be construed as an undertaking by the Association to provide personal security or as a guarantee or warranty that the presence of any security service, systems or facilities will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause.

EACH OWNER, BY HIS ACCEPTANCE OF A DEED TO A UNIT, SHALL BE DEEMED TO HAVE WAIVED, ON BEHALF OF SUCH OWNER AND SUCH OWNER'S OCCUPANTS, AND THEIR RESPECTIVE FAMILY MEMBERS, GUESTS, TENANTS AND INVITEES, ANY AND ALL CLAIMS, NOW OR HEREAFTER ARISING AGAINST DECLARANT, THE ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, MANAGER, AGENTS AND EMPLOYEES ARISING OUT OF OR RELATING TO ANY INJURIES, LOSS OR DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY INJURY OR DAMAGES CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, VANDALISM OR ANY OTHER CRIME, TO ANY PERSON OR PROPERTY ARISING, DIRECTLY OR INDIRECTLY, FROM THE PROVIDING OR FAILURE TO PROVIDE ANY SECURITY SERVICES, SYSTEMS AND FACILITIES, OR THE DISCONTINUATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT OR USE OF ANY SECURITY SERVICES, SYSTEMS AND FACILITIES, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, MANAGER, AGENTS, CONTRACTORS OR EMPLOYEES.

To the extent the release in this Section 10.9 is not deemed effective as to any Owner, his Tenant or any family member, guest or invitee of an Owner or a Tenant of a Unit, the Owner of each Unit hereby indemnifies and agrees to defend and hold harmless Declarant and the Association, and their respective officers, directors, committee members, Manager, agents and employees from and against any and all claims, actions, suits, judgments, damages, costs and expenses (including attorney fees and court costs) arising from bodily injury (including, without limitation, mental anguish, emotional distress and death) and/or loss or damage to property suffered or incurred by any such Owner or Tenant of a Unit, or any family member, guest or invitee of the Owner or Tenant of a Unit, as a result of criminal activity within or in the vicinity of the Condominium, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, MANAGER, AGENTS, CONTRACTORS OR EMPLOYEES.

Any obligation or liability of the Association which is borne by the Association because of an Owner not abiding by such waiver, release and indemnity obligations under this Section shall be assessed by the Association against the Unit of the Owner who failed to perform such obligation giving rise to such liability, as an assessment against such Unit and its Owner. Nothing herein shall make any Owner of a Unit liable to the Association or any other Unit Owner for bodily injury (defined above) and/or loss or damage to property of any other

Owner or Tenant of a Unit, or their respective family members, guests or invitees.

***DISCLAIMERS OF WARRANTIES AND LIMITATION OF LIABILITY.***

EXCEPT AS SPECIFICALLY PROVIDED IN ANY PURCHASE DOCUMENT BETWEEN DECLARANT AND AN OWNER EXECUTED IN CONNECTION WITH THE SALE OF A UNIT BY DECLARANT TO SUCH OWNER, EACH UNIT CONVEYED BY DECLARANT IS BEING CONVEYED IN ITS "AS IS" AND "WHERE IS" CONDITION, WITH ALL EXISTING DEFECTS (PATENT AND LATENT), AND WITHOUT WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) OR REPRESENTATION MADE BY DECLARANT OR ANY AGENT, EMPLOYEE, MEMBER, OFFICER, PARTNER OR PRINCIPAL OF DECLARANT OR ANY OTHER PARTY AS TO (a) THE PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION OF THE CONDOMINIUM AND THE UNITS, INCLUDING WITHOUT LIMITATION ANY IMPROVEMENTS TO ANY UNIT OR THE COMMON ELEMENTS OR THE CONDITION OF ANY APPLIANCES, WINDOWS, EXTERIOR OR INTERIOR WALLS, FLOORS, ROOF, PUMPS, FIRE AND OTHER BUILDING EMERGENCY SYSTEMS, ELECTRICAL LINES AND SYSTEMS, WATER LINES, HOT WATER HEATERS AND OTHER HVAC AND PLUMBING SYSTEMS, (b) THE PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION OF THE AREAS SURROUNDING OR ADJACENT TO THE CONDOMINIUM, OR (c) ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE COMPLIANCE OF THE CONDOMINIUM WITH FEDERAL, STATE OR LOCAL LAWS, OR AS TO ANY OTHER MATTER IN CONNECTION THEREWITH. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OWNER BY ITS ACCEPTANCE OF A DEED OR OCCUPANCY OF A UNIT AGREES THAT IN NO EVENT SHALL DECLARANT OR ANY AGENT, EMPLOYEE, MEMBER, OFFICER OR PRINCIPAL OF DECLARANT BE RESPONSIBLE OR LIABLE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHER THEORY OF LAW OR EQUITY, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM THE CREATION OF THE CONDOMINIUM OR THE SALE OF A UNIT, AND EACH OWNER BY ITS ACCEPTANCE OF A DEED TO OR OCCUPANCY OF A UNIT EXPRESSLY WAIVES THE RIGHT TO CLAIM, SEEK OR COLLECT ANY SUCH DAMAGES TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

***Governing Law.***

THIS DECLARATION AND THE ARTICLES, BYLAWS AND REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN TRAVIS COUNTY, TEXAS.

Section 1071 governing same.

THIS DECLARATION AND THE ARTICLES, BYLAWS AND REGULATIONS GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR SUITS BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN DALLAS COUNTY, TEXAS.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on this 24th day of October, 2006, at Dallas, Texas.

**DECLARANT:**

**CSGM CANYON RIDGE, LP,  
a Texas limited partnership**

**By: CSGM Canyon Ridge GP, LLC,  
a Texas limited liability company,  
its general partner**

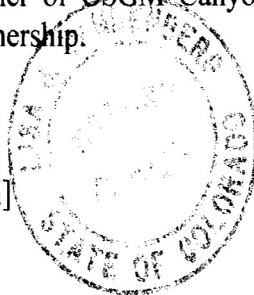
By: \_\_\_\_\_

**James H. Coleman, Jr.  
Manager**

THE STATE OF ~~TEXAS~~ §  
*Colorado* §  
COUNTY OF ~~TRAVIS~~ §  
*LaPlata*

This instrument was acknowledged on October *24*, 2006, by James H. Coleman, Jr., Manager of CSGM Canyon Ridge GP, LLC, a Texas limited liability company, in its capacity as the general partner of CSGM Canyon Ridge, LP, a Texas limited partnership, on behalf of said partnership.

[seal]



Notary Public, State of Texas

*exp: 7-10-2010*

**ATTACHED EXHIBITS:**

Exhibit A – Legal Description of the Land

Exhibit B – Map

Exhibit C – Allocation of Ownership Interests and Liabilities

foregoing Condominium Declaration (the "Declaration"), and agrees that the  
and shall at all times continue to be, subject, inferior, and subordinate in  
Declaration.

Dated: October 14<sup>th</sup>, 2006

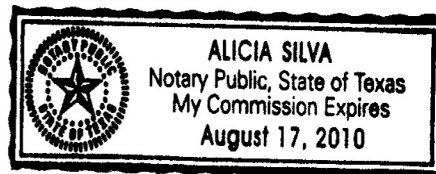
**FRANKLIN BANK, S.S.B.,**  
a state savings bank

By: Sherry K. Day  
Name: Sherry K. Day  
Title: Senior Vice President

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged on October 14<sup>th</sup>, 2006, by Sherry K  
Sr Vice President of **FRANKLIN BANK, S.S.B.**, a state savings bank  
bank.

[seal]



Alicia Silva  
Notary Public, State of Texas

"Declaration"), and agrees that the Deeds of Trust is, and shall at all times continue inferior and subordinate in all respects to the Declaration.

Dated: October 24, 2006

CANYON RIDGE HOLDINGS, LTD.,  
a Texas limited partnership

By: CSGM Canyon Ridge GP, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

James H. Coleman, Jr., Manager

THE STATE OF ~~TEXAS~~ §

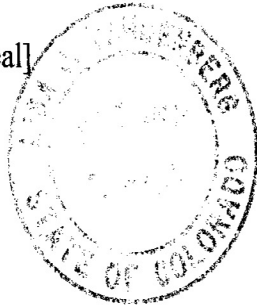
Colorado §

COUNTY OF ~~TRAVIS~~ §

La Plata

This instrument was acknowledged on October 24, 2006, by James H. Coleman, Manager of CSGM Canyon Ridge GP, LLC, a Texas limited liability company, on behalf of the said limited liability company.

[seal]



\_\_\_\_\_  
Notary Public, State of ~~Texas~~

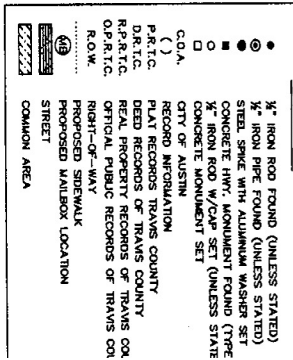
Exp: 7-10-2011

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF LAND**

Lot 6, Canyon Ridge Phase B, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 93, Page 6 of the Plat Records of Travis County, Texas.






DATE \_\_\_\_\_  
 FREDDIE E. DIPPEL, JR.,  
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 2988  
 CUNNINGHAM-ALLEN, INC.  
 3103 BEE CAVE ROAD, SUITE. 202  
 AUSTIN, TEXAS 78746  
 (PHONE) 512-327-2946 (FAX) 512-327-2973

DATE 10-22-08

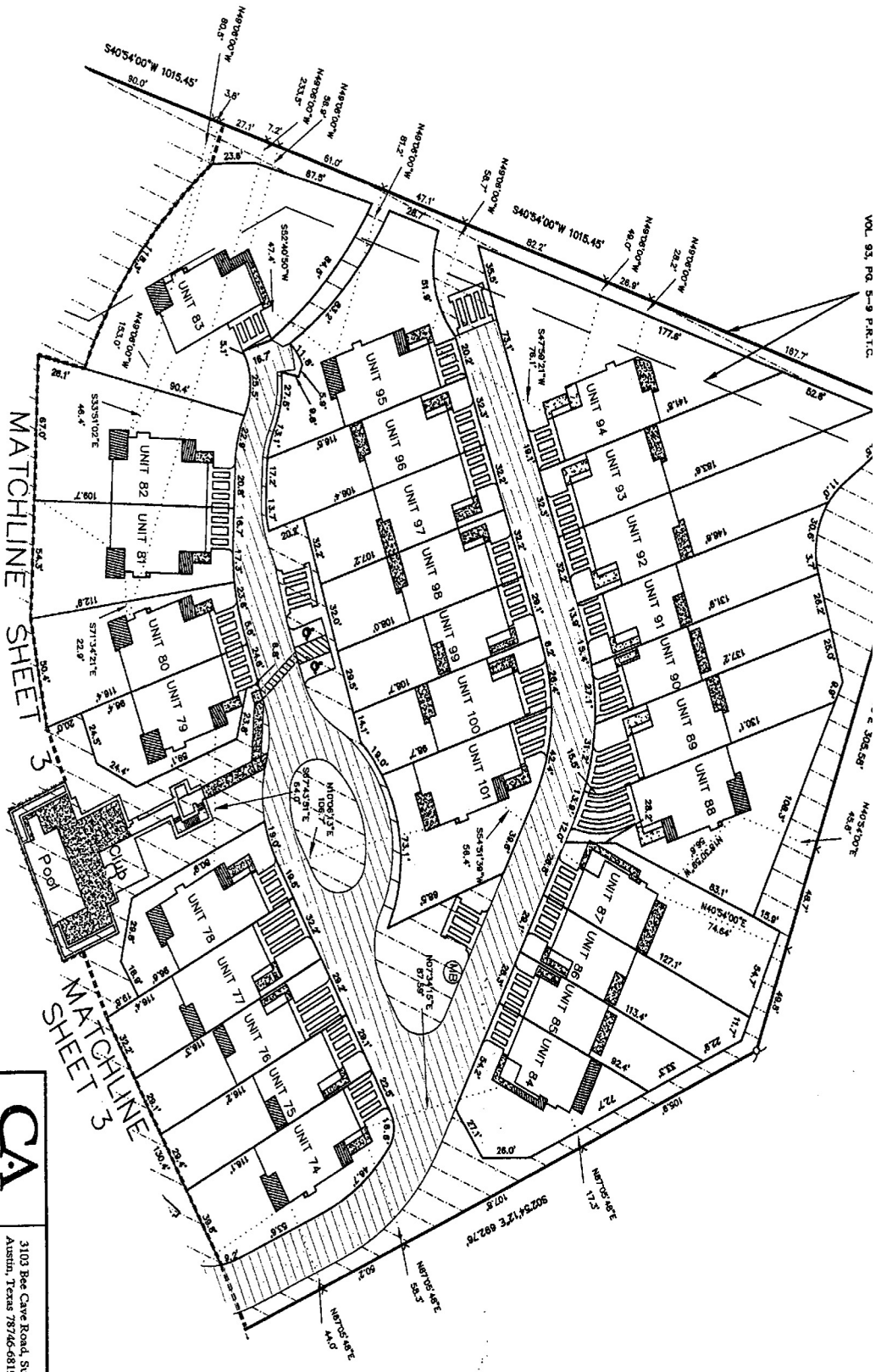



		3103 Bee Cave Road, Suite 202 Austin, Texas 78746-6819		TR E
DATE: 3-24-08		PROJECT		
DESIGN BY: BEN		SHEET		

## **EXHIBIT B**

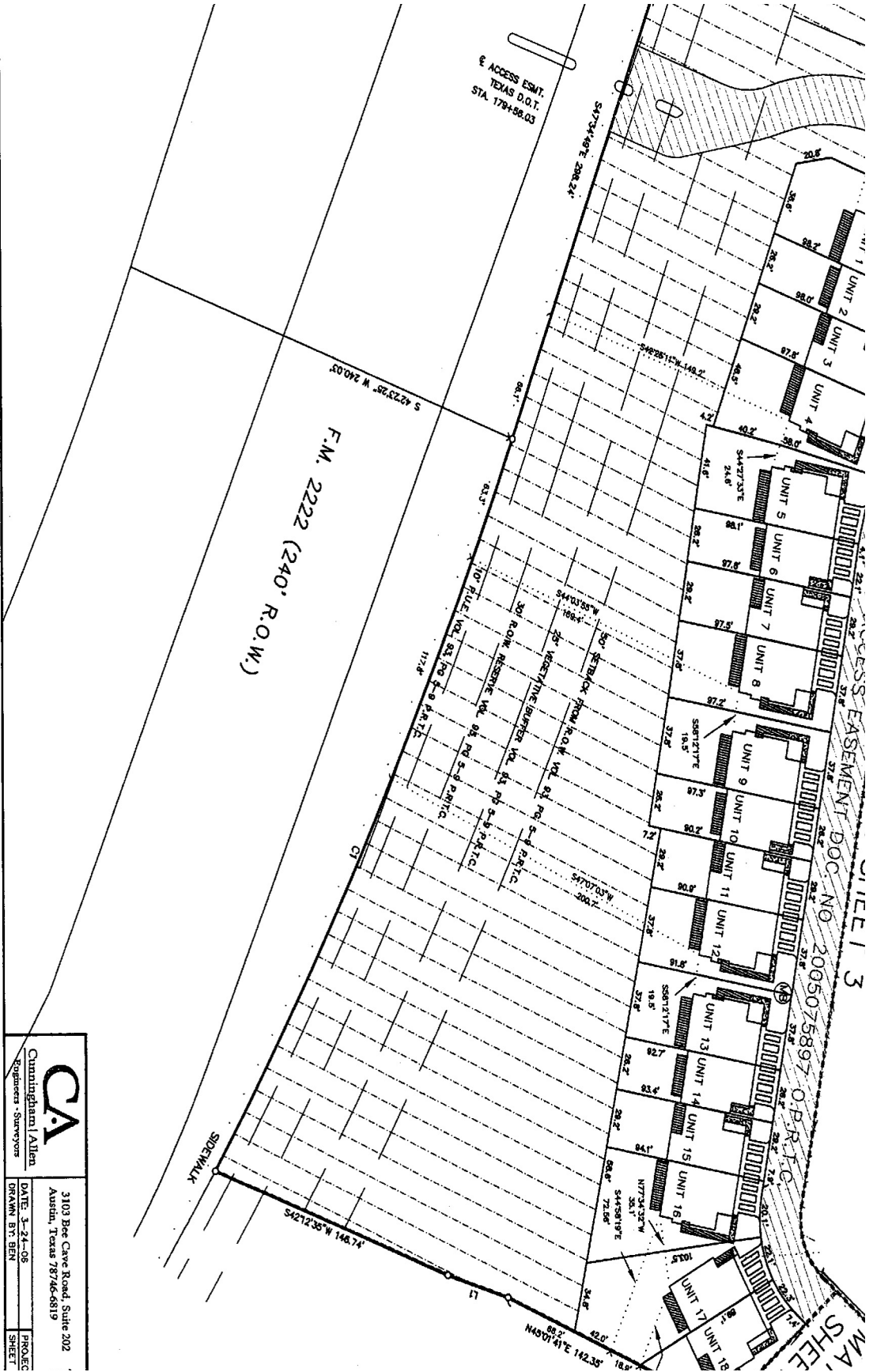
### **MAP**


[attached]

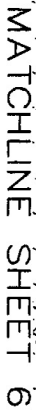


	<b>Cunningham/Allen</b> Engineers - Surveyors	
	3103 Red Cave Road, Suite 202 Austin, Texas 78746-6819	DATE: 3-24-08 DRAWN BY: BEN PROJECT SHEET





 <b>Cunningham Allen</b> Engineers - Surveyors	3103 Bee Cave Road, Suite 202
	Austin, Texas 78746-6819
	DATE: 3-24-05
	DRAWN BY: BEN
PROJECT SHEET	



LOT 6  
21.5558 ACRES  
VOL 93, PG. 2  
P.R.T.C.

S28°26'27"W 460.39'

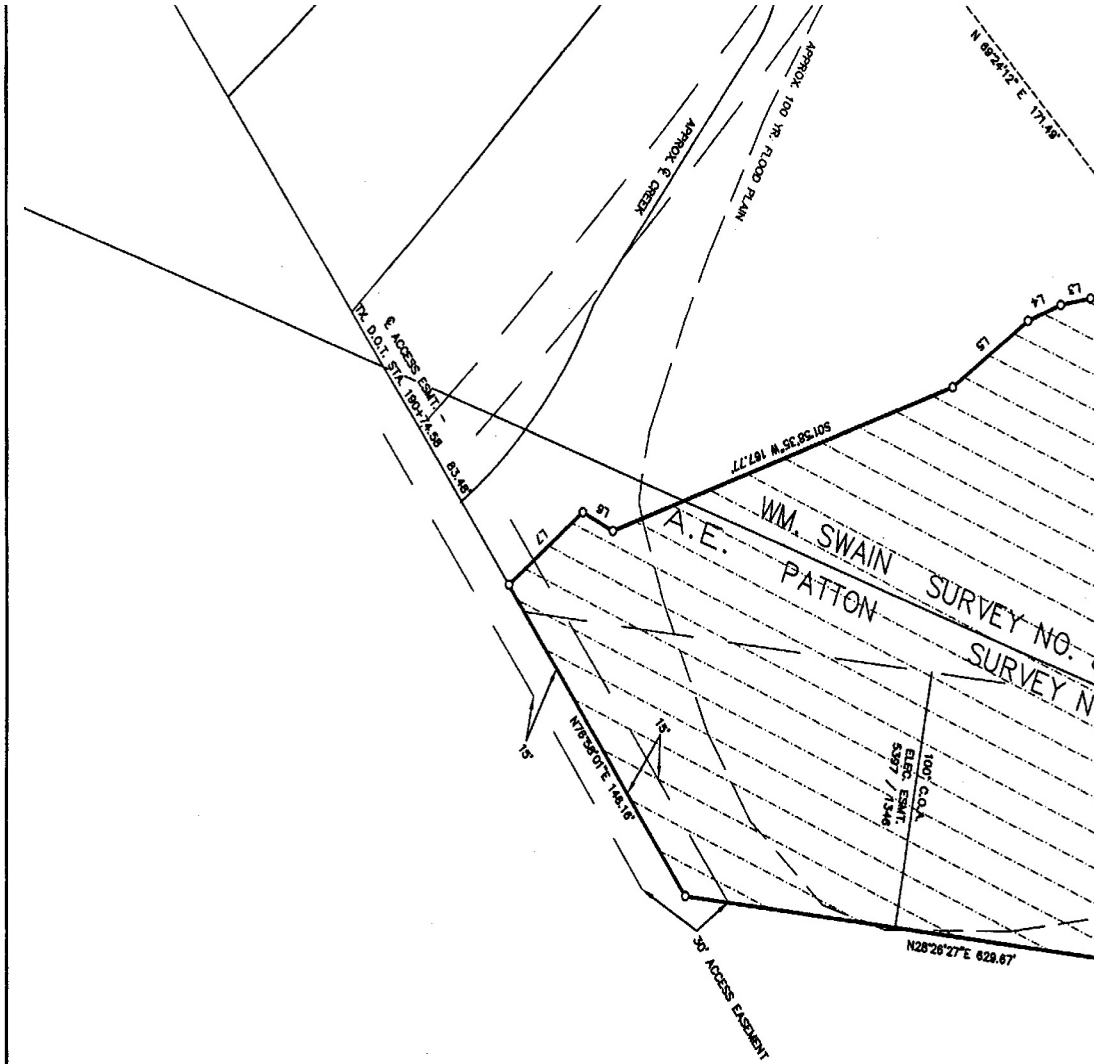
WM. SWAIN

PATTON

S. 52A95

SURVEY NO. 810  
SURVEY NO. 541

**CA**  
Cunningham | Allen  
Engineers • Surveyors



( IN FEET )  
1 inch = 40 ft.

LINE TABLE	
LINE	BEARING
L1	N39°02'45"E
L2	S02°37'35"W
L3	S10°33'34"W
L4	S00°35'25"E
L5	S15°12'28"E
L6	S48°47'35"W
L7	S17°36'25"E

<b>C.A.</b> Cunningham   Allen Engineers - Surveyors	3103 Bee Cave Road, Suite 202 Austin, Texas 78746-6819	
	DATE: 3-24-08 DRAWN BY: BEN	PROJECT: 1 SHEET: 1

**EXHIBIT C**

**ALLOCATION OF OWNERSHIP INTERESTS  
AND LIABILITIES**



State of Texas     §  
                              §  
County of Travis §

**First Amendment to the Condominium Declaration for The Hillside  
A Condominium Project in Travis County, Texas**

Reference is made to the CONDOMINIUM DECLARATION FOR THE HILLSIDE, A CONDOMINIUM PROJECT IN TRAVIS COUNTY, TEXAS, as recorded under Document No. 2006207830 of the Official Public Records of Travis County, Texas (the “Declaration”), pursuant to which CSGM CANYON RIDGE, LP, as “Declarant,” established the Hillside Condominium as a 101 unit residential condominium project.

Terms used herein which are defined in the Declaration and not otherwise defined herein shall be give the same meanings herein as are ascribed to them in the Declaration.

Declarant has discovered certain typographical errors in the Declaration, and so is filing this First Amendment to correct those errors.

**Legal Description.** The legal description of the Land subject to the Declaration, as set forth in **Exhibit A** to the Declaration, was incorrectly stated as:

Lot 6, Canyon Ridge Phase B, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 93, Page 6 of the Plat Records of Travis County, Texas.

The correct legal description of the Land subject to the Declaration is:

Lot 6, **Block A**, Canyon Ridge Phase B, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 93, Page 6 of the Plat Records of Travis County, Texas.

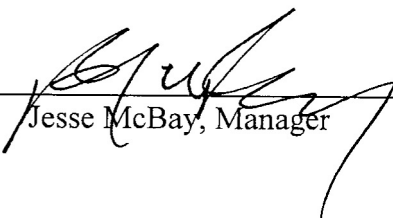
In addition to correcting the legal description of the Land subject to the Declaration as set forth in **Exhibit A** to the Declaration, Declarant hereby corrects the incorrect recitations of the legal description of the Land included in the Map attached as **Exhibit B** to the Declaration.

**Name.** The Map attached as **Exhibit B** to the Declaration also incorrectly refers to the Condominium as the “Canyon Ridge Condominiums.” Declarant hereby corrects that reference to read: “The Hillside, a Condominium Project in Travis County, Texas.”

Executed to be effective as of January 31, 2007.

CANYON RIDGE HOLDINGS, LTD.,  
a Texas limited partnership

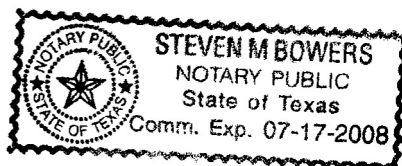
By: CSGM Canyon Ridge GP, LLC,  
a Texas limited liability company

By:   
Jesse McBay, Manager

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged on February 8, 2007, by Jesse McBay, a Manager of CSGM Canyon Ridge GP, LLC, a Texas limited liability company, in its capacity as General Partner of CANYON RIDGE HOLDINGS, LTD., a Texas limited partnership, on behalf of said limited partnership.

[seal]



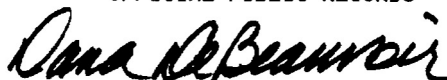
  
Notary Public, State of Texas

Return:

Jesse McBay  
8012 Bee Cave  
Austin, TX 78758

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



2007 Feb 08 03:12 PM 2007022978

FERGUSONLL \$20.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

State of Texas     §  
                              §  
County of Travis §

**Second Amendment to the Condominium Declaration for The Hillside  
A Condominium Project in Travis County, Texas**

Reference is made to the CONDOMINIUM DECLARATION FOR THE HILLSIDE, A CONDOMINIUM PROJECT IN TRAVIS COUNTY, TEXAS, as recorded under Document No. 2006207830 of the Official Public Records of Travis County, Texas (as heretofore amended, the "Declaration"), pursuant to which CSGM CANYON RIDGE, LP, as "Declarant," established the Hillside Condominium as a 101 unit residential condominium project (the "Project").

Declarant has previously amended the Declaration pursuant to a First Amendment to the Condominium Declaration for The Hillside A Condominium Project in Travis County, Texas (the "First Amendment"), executed by Declarant and recorded in the Official Public Records of Travis County, Texas.

Terms used herein which are defined in the Declaration and not otherwise defined herein shall be give the same meanings herein as are ascribed to them in the Declaration.

Declarant is currently the owner of all of the Units of the Project, and so is entitled to amend the Declaration as hereafter provided.

**Section 5.1 Maintenance.** Section 5.1.1 of the Declaration is hereby amended to read in its entirety as follows:

5.1.1 Each Owner, at the Owner's sole cost and expense, shall maintain the interior of the Owner's Unit (including all exterior doors and windows and all Systems that serve only, or that are a part of, the Owner's Unit), in good condition and repair and shall repair and, where appropriate replace, the fixtures and appliances contained therein. Maintenance of the Unit exteriors (including, without limitation, the exterior, the roof, any patios and decks, but exclusive of exterior doors and windows), as well as front and side yard landscaping, shall be the responsibility of the Association, and each Owner acknowledges the availability of the Access Easement to the Association to facilitate lawn and landscape installation and maintenance. Any maintenance and repair work done by or at the instance of an Owner shall be done in a good and workmanlike manner using materials of equal or better quality than the original quality of the materials removed and/or replaced, and shall be done in such a manner as not to impair the structural soundness or integrity or to alter the color or exterior appearance of any Common Element, any Building

or any Unit without the express consent of the Board of Directors. In the event an Owner fails to discharge the Owner's maintenance and repair obligations hereunder, the Association shall be entitled (but not obligated) to cause such work to be done, and the cost and expense thereof (together with interest thereon at the Past Due Rate from the date paid by the Association until the date such sum is repaid to the Association by such Owner) shall be assessed against such Owner and secured by a lien upon such Owner's Unit. Such lien may be enforced in the same method as is provided for the enforcement of Assessment liens pursuant to the provisions of Section 6.4 of this Declaration. Damage to the interior of any Unit resulting from such maintenance, repair or replacement activities by the Association, whether by reason of an emergency or otherwise, shall constitute a Common Expense and be payable by the Association; provided, however, that if such maintenance, repairs or replacements are the result of the misuse or negligence of an Owner, or its guests or invitees, then such Owner shall be responsible and liable for all such damage and the Association shall be entitled to assess the applicable Owner for such amount, and such assessed amount shall thereafter be considered an assessment for purposes of this Declaration.

Ratification. As modified by the First Amendment and this Second Amendment, the Declaration is hereby ratified and confirmed and shall remain in full force and effect.

*End of page – signatures on next page*

Executed to be effective as of March 26, 2007.

**DECLARANT:**

**CSGM CANYON RIDGE, LP,**

a Texas limited partnership

By: CSGM Canyon Ridge GP, LLC,

a Texas limited liability company,  
its general partner

By: \_\_\_\_\_

Jesse McBay, Manager

THE STATE OF TEXAS

§

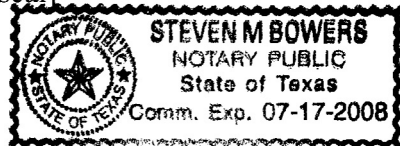
§

COUNTY OF TRAVIS

§

This instrument was acknowledged on March 26, 2007, by Jesse McBay, Mar CSGM Canyon Ridge GP, LLC, a Texas limited liability company, in its cap general partner of CSGM Canyon Ridge, LP, a Texas limited partnership, on b said limited partnership.

[seal]



\_\_\_\_\_  
A. M. Bowers

Notary Public, State of Texas

**FILED AND RECORD**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2007 Mar 27 03:18 PM

CLARKMM \$24.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS