

REMOVE EXECUTED PAGE AND RETAIN IN SELLER'S FILES

CONDOMINIUM INFORMATION STATEMENT PIAZZA ESCONDIDA CONDOMINIUMS

PURCHASER'S AFFIRMATION AND RECEIPT OF CONDOMINIUM DOCUMENTS

I/WE, THE UNDERSIGNED PURCHASER(S), HEREBY ACKNOWLEDGE AND
AGREE AS FOLLOWS:

- (A) THAT ON THE DATE SHOWN BELOW I RECEIVED THE FOLLOWING INFORMATION FOR PIAZZA ESCONDIDA CONDOMINIUMS:
- A. CONDOMINIUM INFORMATION STATEMENT;
 - B. DECLARATION OF CONDOMINIUM REGIME
 - C. CERTIFICATE OF FORMATION – PIAZZA ESCONDIDA CONDOMINIUM COMMUNITY, INC.;
 - D. COMMUNITY MANUAL;
 - E. PROPOSED BUDGET; AND
 - F. LIMITED WARRANTY.
- (B) I/WE (1) RECEIVED A CONDOMINIUM INFORMATION STATEMENT FROM THE SELLER/DECLARANT BEFORE I/WE SIGNED THE PURCHASE CONTRACT AND/OR (2) SIGNED A PURCHASE CONTRACT THAT CONTAINED AN UNDERLINED OR BOLD-PRINT PROVISION ACKNOWLEDGING MY RECEIPT OF THE CONDOMINIUM INFORMATION STATEMENT AND RECOMMENDING THAT I/WE READ THE CONDOMINIUM INFORMATION STATEMENT BEFORE EXECUTING THE PURCHASE CONTRACT AND/OR (3) HAVE RECEIVED THE CONDOMINIUM INFORMATION STATEMENT ON THE DATE INDICATED BELOW.
- (C) HAVING RECEIVED THE CONDOMINIUM INFORMATION STATEMENT PRIOR TO EXECUTING THE PURCHASE CONTRACT, I/WE DO NOT HAVE THE RIGHT OF RESCISSION AFFORDED PURSUANT TO SECTION 82.156(B) OF THE TEXAS UNIFORM CONDOMINIUM ACT.
- (D) EVEN THOUGH I/WE MAY HAVE SEEN OR BEEN SHOWN A RENDERING OF MODEL AND/OR FURNISHED UNIT, I/WE HAVE RECEIVED NO PROMISE OR REPRESENTATION FROM THE SELLER OR ANY OF ITS REPRESENTATIVES

THAT I/WE WILL RECEIVE AS PART OF MY PURCHASE ANY SUCH DECORATIONS OR FURNISHINGS DEPICTED IN SUCH RENDERINGS.

(E) I/WE HAVE RECEIVED THE CONDOMINIUM INFORMATION STATEMENT IN (CHECK ONE):

PAPER FORM; OR IN CD FORM.

(F) IF WE ELECT TO RECEIVE AND HAVE RECEIVED THE CONDOMINIUM INFORMATION STATEMENT IN CD FORM, I/WE: (I) WERE PRESENTED A PAPER COPY OF THE CONDOMINIUM INFORMATION STATEMENT AND GIVEN THE OPPORTUNITY TO READ THE CONDOMINIUM INFORMATION STATEMENT BEFORE EXECUTING THE PURCHASE CONTRACT AND THIS AFFIRMATION; (II) HAVE ACCESS TO (A) ADOBE ACROBAT READER 5.0 OR COMPATIBLE VERSION, (B) ADOBE ACROBAT COMPATIBLE PRINTER AND (C) A CPU SUFFICIENT TO HANDLE THE FOREGOING SOFTWARE; (III) UNDERSTAND HOW TO ACCESS AND READ THE DOCUMENTS DELIVERED IN CD FORM; AND (IV) WILL BE ABLE TO ACCESS THE DOCUMENTS PROVIDED BY CD FORM.

PURCHASER 1:

Date I received the items set forth in subparagraph (A) above: _____, 20__

Signed: _____

Printed Name: _____

Date Signed: _____

PURCHASER 2:

Date I received the items set forth in subparagraph (A) above: _____, 20__

Signed: _____

Printed Name: _____

Date Signed: _____

**CONDOMINIUM
INFORMATION
STATEMENT**

PIAZZA ESCONDIDA CONDOMINIUMS

ISSUED NOVEMBER 21, 2013

**PURCHASER'S CERTIFICATE LOCATED ON
PREVIOUS PAGE. ONCE EXECUTED BY
PURCHASER, CERTIFICATE MUST BE REMOVED
AND RETAINED IN SELLER'S FILES**

PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT

PURCHASER(S), READ THIS DOCUMENT FOR YOUR OWN PROTECTION.
IT CONTAINS INFORMATION REQUIRED BY STATUTE FOR CONDOMINIUM REGIMES
CREATED IN TEXAS AFTER JANUARY 1, 1994.

NAME OF CONDOMINIUM: Piazza Escondida Condominiums

LOCATION OF CONDOMINIUM: 6350 Escondido, El Paso, Texas 79912

PROPERTY SUBMITTED: An approximately 1.5725 acre tract of land out of a portion of Lot 2, Block 15A, Chaparral Park Unit Seven, an addition to the City of El Paso, El Paso County, Texas, as more particularly described by metes and bounds on Exhibit A to the Declaration (the "**Property**").

NAME OF DECLARANT: **TONE VENTURES, LLC**, a Texas limited liability company

ADDRESS OF DECLARANT: 6300 Escondido Drive, El Paso, TX 79912

EFFECTIVE DATE OF CONDOMINIUM INFORMATION STATEMENT: November 21, 2013

This Condominium Information Statement presents certain information regarding the condominium development and the units being offered for sale by Tone Ventures, LLC. It consists of two parts, a narrative portion and an attachments portion. The attachments include legal documents that are required for the creation and operation of the condominium. The attachments will control any inconsistency between the attachments and the narrative.

The Condominium Information Statement is not intended to be all-inclusive or to address every significant feature of the condominium. Because purchasing real property is an important decision, the purchaser is encouraged to review this Condominium Information Statement with an attorney and to consult other sources for information not covered by this Condominium Information Statement.

Under limited circumstances, a purchaser has a six-day period after receiving the Condominium Information Statement during which the purchaser may cancel the contract of sale and obtain full refund of any money deposited in connection with the contract. This right to cancel does not apply if the purchaser received the Condominium Information Statement before signing the contract or if the contract contains an underlined or bold-print provision acknowledging the purchaser's receipt of the Condominium Information Statement and recommending that the purchaser read the Condominium Information Statement before signing the contract. If the purchaser elects to cancel, notice of cancellation must be given pursuant to Section 82.156 of the Texas Uniform Condominium Act.

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PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT

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a. DECLARANT:

(1) NAME: **TONE VENTURES, LLC**, a Texas limited liability company

(2) PRINCIPAL ADDRESS:

6300 Escondido Drive
El Paso, TX 79912

b. CONDOMINIUM PROJECT:

(1) NAME: Piazza Escondida Condominiums

(2) PRINCIPAL ADDRESS:

(a) Physical location address:

6350 Escondido, El Paso, Texas 79912

(b) Mailing and Manager's address:

Scott Winton
6300 Escondido Drive, El Paso, TX 79912

II. NARRATIVE PORTION

1. DECLARANT

The developer or "Declarant" of Piazza Escondida Condominiums is **TONE VENTURES, LLC**, a Texas limited liability company. Declarant's principal address is 6300 Escondido Drive, El Paso, Texas 79912.

2. CONDOMINIUM OWNERSHIP

Piazza Escondida Condominiums utilizes the condominium form of ownership. All of the land, driveways and any private streets, are common elements of the condominium and are owned collectively (in undivided interests) by all the owners and maintained by the condominium association as a common expense. In addition, the outside shell and the structural components of the Attached Units are owned collectively (in undivided interests) by all the owners and maintained by the condominium association.

The portion of the project collectively owned by unit owners are "common elements." Common elements include general common elements and limited common elements. Limited common elements are portions of the project, excluding the units, that have been assigned for the exclusive use of at least one but less than all the unit owners.

Piazza Escondida Condominiums will include two (2) types of Units: "**Attached Units**" and "**Detached Units**", as more particularly described in the Declaration. An Attached Unit is a Unit located within a building which contains more than two Units. A Detached Unit is a Unit located within the Regime which does not share a common wall with another Unit within the Regime.

3. PROPERTY/UNITS

The property submitted to the terms of the Declaration is an approximately 1.5725 acre tract of land out of a portion of Lot 2, Block 15A, Chaparral Park Unit Seven, an addition to the City of El Paso, El Paso County, Texas, as more particularly described on Exhibit "A" to the Declaration.

The condominium established by the Declaration includes ten (10) Attached Units. The maximum number of units which may be created by the Declaration is thirty-seven (37) Attached or Detached Units.

4. THE OWNERS ASSOCIATION

Piazza Escondida Condominium Community, Inc., or the Association, is the Texas nonprofit corporation that will administer Piazza Escondida Condominiums. During the "Declarant Control Period", as defined in the Declaration, Declarant will retain certain rights regarding operation and administration of the Association, namely the right to appoint and remove all directors and officers of the Association. The Declaration and the Texas Uniform Condominium Act provide for a two-step transition process to resident control of the Association. The first step occurs within 120 days after 50% of the units that may be created under the Declaration have been conveyed by Declarant. Within this 120 day period, the current Board of the Association will call a meeting of all unit owners. At this meeting the owners, excluding the Declarant, will elect one Board member out of a three person Board. Declarant will retain the right to appoint and remove two Board members. The second step occurs within 120 days after 75% of the units that may be created under the Declaration have been conveyed by Declarant. Within this 120

day period, the current Board of the Association will call a meeting of all unit owners. At this meeting the owners, including Declarant, will elect the entire Board. The Declarant Control Period is described in Appendix A of the Declaration attached to this Condominium Information Statement.

5. FLOOR PLANS; SQUARE FOOTAGE OF UNITS

All references to square footage sizes of floorplans or units in this Condominium Information Statement, on the website, in the marketing literature, and elsewhere are based on an architect's pre-construction drawings and estimates based on measurements to outside of the building exterior for a prototype unit. The size numbers are used to identify which plans are larger and which ones are smaller, and are not intended to be accurate statements of actual sizes of constructed units.

BOUNDARIES OF UNIT

The legal boundaries of each Unit are established by the Declarant and the plats and plans attached as "Attachment 1" to the Declaration. However, each Owner acknowledges that the Unit may be measured and depicted in a manner which differs from the legal boundaries of a Unit. For example, the Unit may be measured or depicted differently for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Unit's legal boundaries. The Unit's partition wall cavities and/or its perimeter wall cavities may or may not be included. The Unit's porch and/or balcony space may or may not be included.

6. ASSESSMENTS; WORKING CAPITAL CONTRIBUTION; RESERVE FUND CONTRIBUTION

Owners of Units will pay monthly Regular Assessments to the Association. Regular Assessments are collected to discharge estimated costs and expenses to be incurred by the Association to maintain certain common elements and the operate and administer the Association and the Regime. The estimated monthly Regular Assessment for a Unit for the first fiscal year of the Association is reflected on the Budget attached as Attachment 4 to this Condominium Information Statement.

The Declaration requires each purchaser of each unit to contribute one (1) month of monthly regular assessments to the Association's working capital fund, and two (2) month of monthly regular assessments to the Association's reserve fund. An estimate of the initial monthly regular assessment by Unit type is included on Attachment 4 to this Condominium Information Statement. Contributions to the working capital fund and the reserve fund are not advance payments of regular assessments and are not refundable. Declarant will not use working capital funds or reserve funds to cover the Association's operational expenses during the Declarant Control Period.

7. EASEMENTS, RESTRICTIONS, LIENS, LEASES OR ENCUMBRANCES

Title to each unit and all common elements is subject to all easements, restrictions, liens, leases and encumbrances recorded against the property. A description of such recorded easements, restrictions, liens, leases and encumbrances is attached to the Declaration as "Attachment 2". These instruments should also be listed in Schedule B of the title commitment that you may receive in connection with your purchase. You may ask the title company handling your unit closing to provide you with copies of all the

recorded instruments affecting title to your unit and appurtenant common elements. You are encouraged to review the title instruments before closing.

In addition to the easements, restrictions, liens, leases and encumbrances recorded against the Property, in accordance with the terms and provisions of the Declaration, title to each Unit and the common elements of the Regime will be subject to the following easements:

- easement, reserved for the benefit of the owners, for access, ingress, egress, use and enjoyment of the Common Elements of the Regime pursuant to *Section 3.2* of the Declaration;
- easement, reserved for the benefit of the Unit owners, to the extent reasonably necessary to maintain or reconstruct the Units pursuant to *Section 3.3* of the Declaration, and for cooperative support pursuant to *Section 3.6* of the Declaration;
- easements of access and entry, reserved to the Association, pursuant to *Section 3.7* of the Declaration;
- right reserved by the Declarant to grant permits, licenses and easements for utilities and other purposes reasonably necessary for the proper operation of the Regime pursuant to *Section 3.8* of the Declaration;
- parking easement, reserved for the benefit of the owners, as described in *Section 3.9* of the Declaration;
- easement, reserved by the Declarant, to inspect, monitor, test, redesign, correct and relocate structures, improvements or conditions on the Property pursuant to *Section 3.14* of the Declaration;
- easement, reserved by the Declarant, to inspect, correct, and adjust the Association financial records and accounts; and
- easement, reserved by the Declarant for the placement of signs and other marketing materials, to hold marketing events and promotional activities, and to conduct certain other marketing activities pursuant to *Appendix A* of the Declaration.

The Declaration also establishes a lien in favor of the Association to secure the payment of assessments payable to the Association in accordance with the Declaration.

8. WARRANTY

The Owner's Limited Warranty for a Unit within Piazza Escondida Condominiums is attached as Attachment 5.

9. NO JUDGMENTS OR SUITS

Declarant has no actual knowledge of any unsatisfied judgments against Piazza Escondida Condominiums, nor of any pending suits to which the Association is a party, or which are material to the land title and construction of Piazza Escondida Condominiums.

10. **FEES OR CHARGES FOR USE OF COMMON ELEMENTS**

The Association may, from time to time, charge residents and owners for the use of certain common elements within the Regime.

11. **INSURANCE**

Declarant, for the benefit of the Association, will obtain a master insurance policy from an insurance carrier chosen by Declarant. The effective date of the coverage will be on or before the date Declarant first conveys a unit to a third party. The following information was provided by Declarant.

a. **PROPERTY EXPOSURE TO LOSS:** In addition to insuring the Common Elements against casualty loss, the Association will maintain property insurance on the Attached Units as originally constructed. The Association will NOT procure property insurance on Detached Units. The Association may insure betterments and improvements installed by current or previous Owners, but the Association does not presently intend to insure improvements and betterments **and each Owner is advised to procure insurance on all improvements or betterments installed by the Owner within the Owner's Unit.** In insuring Units, the Association may be guided by types of policies customarily available for similar types of properties.

b. **LIABILITY EXPOSURE TO LOSS:**

(1) Commercial General Liability.

(a) Bodily Injury and Property Damage Liability - \$1,000,000.00 combined single limit per occurrence.

(b) Personal Injury Liability & Advertising Injury Liability - \$1,000,000.00.

(c) Fire Damage Legal Liability - \$100,000.00 limit per any one fire.

(d) Medical Payment - \$5,000.00 limit per person.

This policy contains an aggregate limit of liability of \$2,000,000.00 bodily injury and property damage combined, covering the common property.

THE ASSOCIATION WILL NOT PROVIDE LIABILITY COVERAGE FOR ACCIDENTS OR OCCURRENCES THAT OCCUR WITHIN THAT PORTION OF THE PREMISES WHICH IS RESERVED FOR AN OWNER'S EXCLUSIVE USE AND OCCUPANCY. EACH OWNER IS REQUIRED TO OBTAIN AND MAINTAIN GENERAL LIABILITY INSURANCE ON THEIR UNIT AND ON ANY LIMITED COMMON ELEMENT ASSIGNED EXCLUSIVELY TO THEIR UNIT.

(2) Directors and Officers Liability. \$1,000,000.00.

c. **ADDITIONAL AREAS NOT COVERED:** Because of the exclusions in the master policy, you should consult with your own agent about purchasing a policy to cover the following exposures:

(1) Value of household and personal property.

(2) Additional living expense.

(3) Personal injury.

(4) Loss assessment coverage.

- (5) Value of jewelry, furs, silverware, fine art.
- (6) Business interruptions.
- (7) Value of betterments and improvements made or acquired at the expense of an individual unit owner.

OWNER REQUIRED INSURANCE: Each Owner will be required to obtain an insurance policy, commonly known as an "HO-6" insurance policy, for the Unit. The policy must provide coverage in an amount no less than twenty percent (20%) of the Unit's appraised value.

Should a situation occur where you would like to present a claim under the master policy, or if you have any questions regarding your insurance coverage, please contact the Association or the Agent.

12. BUDGET

- a. Budget. The projected budget for the first fiscal year of the Association following the date of the first conveyance to a purchaser is attached as Attachment 4. A projected full build-out budget for the Association is also included within Attachment 4.
- b. Preparer. The budgets were prepared by the Manager.
- c. Assumptions About Occupancy. The projected budget is based on the assumption that all units are occupied for all or most of the budget year.
- d. Assumptions About Inflation. All budgets are based on a one-hundred percent (100%) net collection rate and the estimates are in current dollars unadjusted for possible inflation
- e. Conditions. The budgets were prepared in accordance with generally accepted accounting principles, taking into consideration the physical condition of the condominium and are based on assumptions that, to the best of the preparer's knowledge, are reasonable.

13. UNIT UTILITIES

- a. ELECTRICITY. Each Unit is individually metered for electricity. Electricity service is provided by a public utility. Each Owner or resident will make payment directly to the utility company. Electricity consumed by common area administered and maintained by the Association is a common expense. In addition to paying for their Unit's consumption of electricity, each Owner will pay a pro rata share of the Association's expenses, including the common area electricity bill through Regular Assessments
- b. WATER. The water used by all the Units and common areas is provided by El Paso Public Water Utilities. Consumption of potable water by a Unit will be individually metered and each Owner or resident will make payment directly to El Paso Public Water Utilities. In addition to paying for their Unit's consumption of water, each Owner will pay a pro rata share of the Association's expenses, including the common area water bill through Regular Assessments
- c. WASTEWATER. Sewer service is provided by El Paso Public Water Utilities. Wastewater is charged based on water consumption and each Owner or resident will

make payment directly to El Paso Public Water Utilities. In addition to paying for their Unit's consumption of water, each Owner will pay a pro rata share of the Association's expenses, including the common area wastewater bill through Regular Assessments .

- d. TRASH/RECYCLING. Trash and Recycling services are provided by the Association (or its contractor). Each Owner will pay a pro rata share of the Association's expenses for Trash and Recycling through Regular Assessments.
- e. GAS. Gas services, if provided, will be provided by Texas Gas Company. Each Owner or resident will make payment directly to Texas Gas Company for such services.
- f. PHONE/CABLE/INTERNET. Are provided by Time Warner and/or ATT. Each Owner or resident will make payment directly to their chosen vender for such services.

14. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Declarant has reserved certain development rights as more particularly described in the Declaration and "Appendix A" attached to the Declaration. Many of these rights expire upon expiration of the Development Period. The "**Development Period**", as specifically defined in the Declaration, means the ten (10) year period beginning on the date the Declaration is recorded in the Official Public Records of El Paso County, Texas, unless such period is earlier terminated by Declarant' recordation of a notice of termination in the Official Public Records of El Paso County, Texas. Certain additional rights expire upon expiration of the Declarant Control Period. The Declarant Control Period expires within one hundred and twenty (120) days after seventy-five percent (75%) of all Units which may be created by Declarant have been conveyed to Owners other than Declarant.

The following list includes a summary of the rights reserved by Declarant until expiration of the Development Period or the Declarant Control Period, as applicable. Please refer to "Appendix A" to the Declaration for a complete description of such rights.

- a. Annexation. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to the Declaration and the jurisdiction of the Association.
- b. Creation of Units. The Property presently contains ten (10) Attached Units; however, Declarant reserves the right to create up to and including thirty-seven (37) Attached or Detached Units upon full buildout of all phases of the project, which may include land added by Declarant in accordance with Section 2.2 of the Declaration.
- c. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of Units and Common Elements.
- d. Architectural Control. During the Development Period, Declarant has the absolute right to review and approve all improvements constructed within the Regime.
- e. Transfer Fees. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.

- f. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.
- g. Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.
- h. Statutory Development Rights. As permitted by the Texas Uniform Condominium Act, Declarant has reserved the right: (i) to add real property to the Regime; (ii) to create Units, General Common Elements, and Limited Common Elements within the Regime; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Regime any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.
- i. Amendment. During the Development Period, Declarant may amend the Declaration, without consent of other Owners or any mortgagee, for the following limited purposes: (i) to meet the requirements, standards, or recommended guidelines to enable an institutional or governmental lender to make or purchase mortgage loans on the Units; (ii) to correct any defects in the execution of this Declaration or the other Documents; (iii) to add real property to the Regime; (iv) to create Units, General Common Elements, and Limited Common Elements within the Regime; (v) to subdivide, combine, or reconfigure Units or convert Units into Common Elements; (vi) to withdraw from the Regime any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights"; (vii) to resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents; (viii) to change the name or entity of Declarant; and (ix) for any other purpose, provided the amendment has no material adverse effect on any right of any owner.
- j. Additional Rights. As permitted by the Texas Uniform Condominium Act, Declarant has reserved the following rights: (i) the right to complete or make improvements indicated on the Plat and Plans; (ii) the right to exercise any Development Right permitted by the Act and the Declaration; (iii) the right to make the Regime part of a larger condominium or planned community; (iv) the right to use Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Regime; (v) for purposes of promoting, identifying, and marketing the Regime, Declarant has reserved an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Regime, including items and locations that are prohibited to other Owners and residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property.
- k. Easement Rights. Declarant has reserved an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Regime, and for discharging Declarant's obligations under the Texas Uniform Condominium Act and the Declaration.

- l. Appointment of Association Directors and Officers. During the Declarant Control Period, the right to appoint or remove any Declarant-appointed officer or director of the Condominium Association.
- m. Additional Easements and Rights. Declarant has reserved the following easements and rights, exercisable at Declarant' sole discretion, for the duration of the Development Period: (i) an easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Regime; (ii) the right to sell or lease any Unit owned by Declarant; (iii) the right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements; (iv) an easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein; and (v) an easement over the entire Property, including the Units, to inspect the Common Elements and all improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element improvements.

15. ATTACHMENTS

The attachments include documents that will be recorded or filed. Because this Condominium Information Statement is issued before those documents have completed the recording process, executed or file-marked copies of those documents may be included as attachments. At any time after recording, Declarant may but is not obligated to replace executed or file-marked documents with copies of recorded documents. The following attachments are included with this Condominium Information Statement and are incorporated by reference:

- ATTACHMENT 1** Declaration of Condominium Regime for Piazza Escondida Condominiums, recorded in the Official Public Records of El Paso County, Texas.
- ATTACHMENT 2** Certificate of Formation of Piazza Escondida Condominium Community, Inc.
- ATTACHMENT 3** Community Manual of Piazza Escondida Condominiums recorded in the Official Public Records of El Paso County, Texas
- ATTACHMENT 4** Proposed Budget for Piazza Escondida Condominium Community, Inc.
- ATTACHMENT 5** Limited Warranty

16. TO BE SIGNED AT CLOSING

Except for the items listed below, at closing Declarant does not require purchasers to sign documents other than loan-related documents if the purchase is financed.

- Limited Warranty (Attachment 5)
- Acknowledgement of Receipt of CIS, if not previously signed.

17. GENERAL INFORMATION

The attachments which follow this narrative portion provide a more detailed description of the condominium and the rights and obligations of the unit owner. The purchaser should carefully consider

the attachments, as well as this narrative portion of the Condominium Information Statement. If the purchaser does not understand any aspect of this Condominium Information Statement, the sales contract, and any other materials provided in connection with the sale of units, the purchaser should consult with competent legal counsel.

Declarant reserves the right to amend, in writing, the terms of this Condominium Information Statement. If the change may adversely affect a purchaser under contract who has received a Condominium Information Statement but who has not yet closed, Declarant shall furnish a copy of the amendment to that purchaser before closing. This Condominium Information Statement may not be changed or modified orally.

By signing below, Declarant certifies that it is the preparer of the narrative portion of this Condominium Information Statement within the meaning of Section 82.152 of the Texas Uniform Condominium Act. Declarant has no actual knowledge of any false or misleading statement or any omission of material fact in any portion of this Condominium Information Statement, including the attachments hereto.

[SIGNATURE PAGE TO FOLLOW]

Dated: _____, 2013.

TONE VENTURES, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

**PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT**

ATTACHMENT "1"

DECLARATION OF CONDOMINIUM REGIME

GREAT WESTERN ABSTRACT & TITLE CO.

Pd. Accom.



AFTER RECORDING RETURN TO:

ROBERT D. BURTON, ESQ.
WINSTEAD, PC
401 CONGRESS AVE., SUITE 2100
AUSTIN, TEXAS 78701
e-mail: rburton@winstead.com

DECLARATION OF CONDOMINIUM REGIME FOR PIAZZA ESCONDIDA CONDOMINIUMS

(A Condominium Project located in El Paso County, Texas)

Declarant: TONE VENTURES, L.L.C., a Texas limited liability company

Copyright © 2013. Winstead, PC. All rights reserved. This declaration may be used only in connection with the condominium regime known as Piazza Escondida Condominiums in El Paso County, Texas and the operation of Piazza Escondida Condominium Community, Inc.

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**DECLARATION OF CONDOMINIUM REGIME FOR
PIAZZA ESCONDIDA CONDOMINIUMS**

TONE VENTURES L.L.C., a Texas limited liability company ("**Declarant**"), is the owner of an approximately 1.5725 acre tract of land out of a portion of Lot 2, Block 15A, Chaparral Park "Unit Seven" an addition to the City of El Paso in El Paso County, Texas as more particularly described by metes and bounds in Exhibit "A" attached hereto and incorporated herein, together with all improvements thereon and all easements, rights, and appurtenances thereto (collectively, the "**Land**"). The Land, together with all Improvements thereon and all easements, rights, and appurtenances thereto, is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Piazza Escondida Condominiums.

NOW, THEREFORE, it is hereby declared that the Land will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Land, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1
DEFINITIONS**

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

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

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

1.3 "**Area of Common Responsibility**" means those portions of Units and Limited Common Elements which would otherwise be maintained, repaired and replaced by a Unit Owner, but that are designated, from time to time, by the Association to be maintained, repaired, and replaced by the Association. Attachment A shows portions of the Units are initially included within the Area of Common Responsibility. The estimated maintenance, repair and replacement costs incurred by the Association to maintain portions of the Units and/or Limited Common

Elements included within the Area of Common Responsibility will be discharged through Individual Assessments.

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

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

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

1.7 “**Attached Unit**” means any Unit within the Regime located within a Building which contains more than two (2) Units.

1.8 “**Board**” means the Board of Directors of the Association.

1.9 “**Building**” means the building(s) described on the Plats and Plans, now existing or hereafter placed on the Property.

1.10 “**Building LCE**” means the Structure of a Building and other facilities within the Building which serve more than one (1) Unit within the Building. As set forth in *Section 4.5*, Building LCE will be allocated to all Units within a Building to permit the Association to separately allocate and charge Owners of Units within a particular Building for the costs of: (i) maintaining, repairing, and replacing, as necessary the Building LCE; (ii) utilities billed to the Association and attributable to a particular Building; (iii) services billed to the Association and serving Units within a particular Building; (iv) insurance premiums and deductibles attributable to a particular Building; and (v) contributions to the reserve funds attributable to a particular Building. The expenses incurred by the Association in connection with administration, maintenance and repair of Building LCE within a particular Building will be defrayed through the levy of Building LCE Assessments against all Units within the Building.

Upon initial recordation, only one (1) Building has been submitted to the terms and provisions of this Declaration; however, it is anticipated that additional Units and Buildings will be added to this Declaration in accordance with *Section 4.1* below. Until such time as another Building has been added to the terms and provisions of this Declaration, the Regime will not include Building LCE. Instead, the components defined as Building LCE pursuant to this *Section 1.8* will be considered General Common Elements. On the date an amendment to this Declaration is Recorded which adds an additional Building to the terms and provisions of this Declaration, the components of each Building defined in this *Section 1.8* will be considered Building LCE.

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

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

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

1.14 **"Community Manual"** means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion. The Community Manual may be amended, from time to time, by a Majority of the Board; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

1.15 **"Declarant"** means **TONE VENTURES L.L.C.**, a Texas limited liability company. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Declaration.

1.16 **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration. The duration of Declarant Control Period expires one hundred and twenty (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant.

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

1.18 **"Detached Unit"** means any Unit within the Regime which does not share a common wall with another Unit within the Regime.

1.19 **"Development Period"** means the ten (10) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

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

1.20 "**Documents**" mean, singly or collectively as the case may be, this Declaration, the Plat and Plans, attached hereto as Attachment 1, the Certificate, Bylaws, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.

The Documents are subject to amendment or modification from time to time. By acquiring a Unit in Piazza Escondida Condominiums, you agree to comply with the terms and provisions of the Documents, as amended or modified.

1.21 "**General Common Elements**" mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment 1, attached hereto.

1.22 "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, within the Property.

1.23 "**Live-Work Unit**" means a Unit designated by Declarant in a written Recorded instrument as a Live-Work Unit.

1.24 "**Limited Common Elements**", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", "Limited Common Elements", or "Limited Common Areas" on Attachment 1, attached hereto and/or as provided in *Section 5.6* and *Section 5.7* of this Declaration.

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

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

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

1.28 "**Occupant**" means any Person, including any Owner, tenant or otherwise having a right to occupy or use all or any portion of a Unit for any period of time.

1.29 **"Office Unit"** means a Unit designated by Declarant in a written Recorded instrument as an Office Unit.

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

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

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

1.33 **"Property"** means the approximately 1.5725 acre tract of land out of a portion of Lot 2, Block 15A, Chaparral Park "Unit Seven" an addition to the City of El Paso in El Paso County, Texas as more particularly described by metes and bounds in Exhibit "A" attached hereto, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.34 **"Recorded, Recordation and Recording"** means filing the referenced instrument or document in the Official Public Records of El Paso County, Texas.

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

1.36 **"Residential Unit"** means every Unit other than Units designated by Declarant as a Live-Work Unit, Office Units, or Retail Units.

1.37 **"Retail Unit"** means a Unit designated by Declarant in a written Recorded instrument as a Retail Unit.

1.38 **"Rules"** means rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules may be adopted by Declarant (as part of the Community Manual, or otherwise) for the benefit of the Association.

1.39 **"Structure"** means all foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of a Building, whether or not shown on the Plats and Plans.

1.40 **"Underwriting Lender"** means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA) Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), the Veterans Administration, or Government National Mortgage Association (Ginnie Mae), singularly or collectively. Use of the term "Underwriting Lender" in this Declaration, and the specific instructions listed in this definition, may not be

construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any specific institution.

1.41 "Unit" means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans attached hereto as Attachment 1, as further described in *Section 5.2* of this Declaration. The term Unit includes Attached Units and Detached Units.

ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

2.1. **Subject To Documents.** The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Appendix "A", attached hereto, which run with the Property, bind all Persons having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Adjacent Land Use.** Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

2.3. **Additional Property.** Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association with the approval of Owners holding at least sixty-seven percent (67%) of the total votes in the Association, or, during the Development Period, unilaterally by Declarant as permitted in Appendix "A". Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime.

2.4. **Recorded Easements and Licenses.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of record, including those described in the attached Attachment 2, and as shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses the Owner's Unit and for which the Association does not have express responsibility.

ARTICLE 3 PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

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

3.2. **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the General Common Elements and use of Improvements therein, subject to other limitations, rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Occupants of his Unit, and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit. The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Documents or nonpayment of Assessments.

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

Prior to commencing any work upon a Unit which requires access to, over or through the Common Elements or other Units, the Person performing such work must deliver to the Board, in form satisfactory to the Board:

- (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to

persons or property, including, but not limited to, Common Elements or other Units;

- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

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

3.5. **Owner's Encroachment Easement.** Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands. The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the Architectural Reviewer.

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

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

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

- (ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.
- (iii) To enforce the Documents.
- (iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.
- (v) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (vi) To respond to emergencies.
- (vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

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

3.9. **Parking Easement.** Owners are hereby advised that a portion of the parking for the Regime is parking provided for pursuant to that certain Parking Easement Agreement entered into by Declarant and the owner of the adjacent property (the "**Parking Easement**"). The Parking Easement may be administered by a third party unrelated to the Declarant or the Association, and Owners will not be entitled to utilize the Parking Easement to the exclusion of non-Owners and members of the public. Each Owner's use of the Parking Easement will be subject to rules and regulations adopted from time to time by the owner of the adjacent property.

NOTICE

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

3.10. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Occupant acknowledges and accepts that it is the sole responsibility of the Owner or Occupant to provide security for their own person and property, and each Owner and Occupant assumes all risks for loss or damage to same. Each Owner and Occupant further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Occupant relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. **Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.**

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

3.12. **Easement to Inspect and Right To Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual

nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising the easement reserved hereunder, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a utility panel may be warranted by a change of circumstance, imprecise siting, or desire to comply more fully with Applicable Law. This Section may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant, and the Declarant's architect, engineer, other design professionals, builder, and general contractor an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Unit for the purposes contained in this Section.

3.13. **Parking and Storage.** Declarant reserves the right to designate and assign portions of the General Common Elements or Building LCE which is designated on the Plats and Plans as parking as parking spaces and/or storage for the exclusive use of any Owner. The assignment of parking or storage spaces within the General Common Elements not specifically designated by the Declarant for the exclusive use of an Owner will be under the exclusive control and administration of the Declarant until the expiration or termination of the Development Period. The Association may thereafter assign parking and storage spaces to any Owner or may use such parking and storage spaces in a manner determined by the Board, including, but not limited to, adopting rules or charging fees for use of any parking or storage spaces, but subject to any assignment previously made by the Declarant. Any rules adopted by the Board related to the use of parking and storage spaces, including charging fees for use of parking and storage spaces, must be approved by the Declarant during the Development Period. Any designation and assignment of General Common Elements as parking or storage will be memorialized by a written "assignment of parking" or "assignment of storage" executed by an authorized representative of the Declarant (or the Association upon expiration or termination of the Development Period) which shall identify the parking space(s) or storage space(s) and the Unit assigned thereto. Any designation and assignment of General Common Elements as parking or storage shall be made a part of the corporate records of the Association, will be considered an agreement between the Association and such Owner with regard to use of the parking spaces or storage spaces so assigned, and may not be terminated or modified without the consent of the Declarant (or a Majority of the Board if the Development Period has expired or been terminated) and the Owner of the Unit to which the parking space or storage was assigned.

Notwithstanding anything to the contrary stated herein, with respect to any handicap parking spaces, such handicap parking spaces shall be assigned subject to the rights of the Declarant, during the Development Period, or the Association thereafter, to require the Owner to whose Unit such handicap parking space has been assigned (hereinafter, the "**Original Assignee**") to grant a license to use such handicap parking space to another Owner (hereinafter, the "**Disabled Owner**"), provided that: (i) the Disabled Owner (or Occupant) qualifies under Applicable Law to

use a handicap parking space in public facilities; (ii) the Disabled Owner provides the Original Assignee with a license to use the Disabled Owner's parking space; and (iii) at such time as the Disabled Owner (or Occupant) no longer qualifies as provided in subsection (i) hereof, the license shall automatically expire and the Original Assignee and the Disabled Owner shall each use their respective, original, assigned parking spaces. Declarant and the Association hereby disclaim any representation or warranty regarding use of the handicap parking spaces in a manner that is contrary to, or in violation of, any applicable law, governmental ordinance, or permit applicable to the project.

ARTICLE 4 **DISCLOSURES**

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

4.1. **Service Contracts.** In connection with construction of the Unit, the Unit may have been wired or fitted for one or more services to be provided by vendors to the Owner on a contract basis, such as intrusion monitoring and cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owner for a period of service to the Owner's Unit. In that event, whether or not an Owner chooses to use the service, the Owner may be required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments, Building LCE Assessments (if applicable) or Individual Assessments. **However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.**

4.2. **Fire Sprinklers.** Buildings containing Attached Units may be constructed with a fire sprinkler system for the Attached Units. This means that water lines and sprinkler heads may be in the ceilings above rooms in the Attached Unit. Damage to, or a malfunction of, a water line or sprinkler head may harm or destroy real and personal property. Notwithstanding any provision in this Declaration to the contrary, the fire sprinkler system serving the Attached Units will be maintained by the Association with the costs of maintenance, operation and repair levied as a Building LCE Assessment against all Units within the Building served by the sprinkler system in relation to the common expense liability allocation assigned to each Attached Unit. However, each Owner is solely responsible for: (i) preserving the integrity and functionality of the building's fire sprinkler system located in the Owner's Unit; (ii) instructing the Occupants, invitees, and contractors and other Persons working in and on the Owner's Unit about the care and protection of the sprinkler system, including any applicable Rules; and (iii) any damage to the Owner's Unit, an adjoining Unit, a Common Element, or any personal property (such as furnishings and clothing) caused by the Owner, or the Owner's Occupants,

invitees, and contractors and other Person's, abuse or negligent acts which cause a malfunction of any component of the sprinkler system. Additionally, each Owner is hereby advised that the local municipal or fire authorities may periodically access the Unit for the purpose of conducting inspections of the fire sprinkler system. Inspection may include drainage and recharge of the lines. Any such inspection will be coordinated through the Association, who will contact the Owners to ensure orderly access to the Units. Any expenses incurred in connection with the inspection will be a common expense of the Association.

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

4.4. **Zoning.** No representations are made regarding the zoning of adjacent property. The zoning and use of adjacent property may change in the future.

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

4.6. **Concrete.**

- (i) **Cracks.** Minor cracks in poured concrete, including foundations, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and movement of a Building.
- (ii) **Exposed Floors.** This Section applies to Units with exposed concrete floors. This notice is given because some Owners are inexperienced with concrete flooring. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, an Owner is hereby made aware that any specification for polished concrete does not mean an Owner will be able to actually see his reflection in the floor.

4.7. **Construction Activities.** Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time to time, produce certain conditions on the Regime, including, without limitation: (a) noise or sound that is objectionable because of its

volume, duration, frequency or shrillness; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

4.8. **Moisture.** The Unit may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold. **Mold and/or mildew can grow in any portion of the Property that is exposed to elevated levels of moisture.** (See Section 9.9 for certain duties of an Owner with respect to mold).

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

4.10. **Budgets.** Any budget prepared by or on behalf of the Association is based on estimated expenses only without consideration for the effects of inflation. The estimated expenses reflected on a budget may increase or decrease significantly when the actual expenses become known.

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

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

4.13. **Sounds.** No representations are made that the Unit is or will be soundproof or that sound and/or vibrations may not be transmitted from one Unit to another or from the Common Elements (including, but not limited to, any amenity areas) to a Unit. Sound transmission and/or vibrations between Units and Common Elements is inherent in multi-family construction and is not a construction defect. The plumbing and concrete, tile, and hardwood surfaces and other uncovered surfaces within a Unit may transmit noise from one Unit to another.

4.14. **Urban Environment.** The Property is located in an urban environment. Land adjacent or near the Property may contain or may be developed to contain residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living.

4.15. **Open Space.** The Regime includes gardens, parks and other open space areas that will be accessible and used by non-residents under certain circumstances.

4.16. **Unit Plans and Dimensions.** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Unit to be constructed or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Room dimensions, Unit size and elevations may vary due to the nature of the construction process and site conditions. If the Owner is concerned about any representations regarding room dimensions, Unit size and elevations, the Owner should conduct its own investigation of such matters prior to contracting for the purchase of a Unit.

4.17. **Water Runoff.** The Property may be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. In addition, water may pond on various portions of the Property having impervious surfaces, such as the parking area, terraces, and balconies, as applicable.

4.18. **Unit Systems.** No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer. In addition, the performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room or Unit in relation to the sun.

4.19. **Upgrades.** The cost of upgrades may not necessarily result in a commensurate increase in the value of the Unit.

4.20. **Dryer Vents.** Certain Units in the Building may require long vents for the dryer. Each Owner is responsible for determining whether such a vent is required for any dryer to be located in the Owner's Unit. The failure to utilize the appropriate dryer vent may create a fire hazard for which the Owner shall be responsible.

4.21. **Location of Utilities.** Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

4.22. **Wood.** Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination. Wood floors may require more maintenance than some man-made materials. Owners of Units with wood floors should educate themselves about wood floor care.

4.23. **Stone.** Veins and colors of any marble, slate or other stone in the Unit, if any, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, granite, slate and other stone and it is the Owner's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

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

4.25. **Paint.** Due to the large quantity of paint used in the Building and Units, Owner should be aware that slight variations in paint shade may exist. Due to the properties within today's paints, Owner should expect paint to yellow or fade with time. This is a normal occurrence and is neither a construction defect nor a warrantable item. Avoid washing or

scrubbing painted walls. Lightly soiled areas may be cleaned using a sponge with water and lightly wiping over the soiled areas.

4.26. **Fixtures.** Certain materials used for fixtures in the Unit (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are subject to discoloration and/or corrosion over time. This is a normal occurrence and this is neither a construction defect nor a warrantable item.

4.27. **Marketing.** Declarant's use of a sales center and/or model Units or reference to other construction by Declarant is intended only to demonstrate the quality of possible finish details, the basic floor plans, and styles of Units available for purchase. The Unit may not conform to any model Unit in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model Unit is intended only to demonstrate the size and basic architectural features of the project. The project or an individual Unit, may not conform to the models displayed by Declarant. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and scale models of Units or the project (collectively "**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the project or a Unit. Declarant retains the right to obtain and use photography of the Property (including any Unit) for publication and advertising purposes.

4.28. **Parking Rules and Regulations.** The parking area and driveways located within the Regime will be operated and maintained by the Association. By acquiring a Unit in the Regime, each Owner acknowledges and agrees that use of the parking areas or driveways will be subject to all applicable Rules. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules for use of driveways and parking areas, including but not limited to:

- (i) Identification of vehicles used by Owners and Occupants and their guests.
- (ii) Designation of no-parking areas and loading/unloading zones.
- (iii) Limitations or prohibitions on driveway parking.
- (iv) Removal or prohibition of vehicles that violate applicable Rules.
- (v) Fines for violations of applicable Rules.

Location, alignment and striping of parking spaces assigned to the Unit may vary from the depiction on any parking plan shown to a prospective purchaser. Any parking plan prepared by the Declarant or the Association is approximate and may not precisely conform to as-built conditions. Trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles may not fit into parking spaces. Declarant makes no

representations or warranties that any trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles will actually fit into any parking spaces, including any parking space(s) to be assigned to a Unit.

4.29. **Elevators.** The Board may shut down any elevators located within the regime as needed to maintain the same. Any elevators located within the project may not be operational during periods of maintenance. Any elevators located within the project are not guaranteed to perform in accordance with any manufacturing specifications.

ARTICLE 5 UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. **Initial Submitted Units and Maximum Number of Units.** The Regime will consist of ten (10) Attached Units. Four (4) of the Units are designated as "Office Units" as shown on the Plat and Plans. During the Development Period, Declarant, as permitted in Appendix "A", has reserved the right to create a maximum thirty-seven (37) Units on the Property and additional property added to the Regime. To add Units to the Regime, Declarant during the Development Period may, from time to time, file an amendment to this Declaration creating such additional Units. To add additional Units to the Regime established by the Declaration, Declarant shall prepare, execute, and record an amendment to this Declaration and the Plat and Plans which amendment will: (i) assign an identifying number to each new Unit; (ii) reallocate the Common Interest Allocation among all Units then existing within the Regime; (iii) describe any Limited Common Elements; if any, created or designated to each new Unit; and (iv) with respect to new Units, include the information required by Section 82.055 and Section 82.059(b) of the Texas Uniform Condominium Act. To add additional property to the Regime, Declarant will record a declaration of annexation in the Official Public Records of El Paso County, Texas, which will include a description of the additional real property. The declaration of annexation may also include a description of the Units added to the Regime if the Declarant elects to create Units upon recordation of the declaration of annexation OR Declarant may elect to create additional Units or Common Elements on the additional property subsequent to the recordation of the declaration of annexation. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Units.

5.2. **Unit Boundaries.** The boundaries and identifying number of each Unit are shown on the Plat and Plans attached as Attachment 1. The boundaries are further described as follows:

5.2.1. **Attached Units.**

- (i) **Horizontal (Upper and Lower) Boundaries.** The upper horizontal boundary of each Attached Unit is the horizontal plane formed by outside facing surface of the material which comprises the permanent ceiling in the Attached Unit. The lower horizontal boundary of each Attached Unit is the horizontal plane formed by the uppermost surface of

the unfinished concrete (in the case of ground floor Attached Units) or the uppermost surface of the material which comprises the permanent floor (in the case Attached Units not on the ground floor). The actual concrete slab foundation is a General Common Element. Anything on or affixed to the top of unfinished concrete or the material which comprises the permanent floor in the case of Attached Units not on the ground floor is part of the Attached Unit. If a Unit comprises multiple floors, the horizontal boundary of each portion of the Unit is defined pursuant to this Section 5.2.1 independently of the portion of the same Unit located on a different floor.

(ii) Vertical (Perimeter) Boundaries. The vertical or perimeter boundaries of each Attached Unit are as follows:

- 1) For portions of the Attached Unit which adjoin an exterior wall, the lateral boundaries are the planes which extend from the lower horizontal boundary of the Attached Unit to the upper horizontal boundary of the Attached Unit defined exterior-facing surfaces of each stud wall forming the exterior wall and by the outside-facing surfaces of the outermost component of doors and windows in the perimeter walls. For example, if the outermost material is brick veneer, the Attached Unit extends to the exterior-facing surface of the brick stud wall forming the exterior wall, and includes the entire wall cavity. All doors, windows, garages, and garage doors, if applicable, servicing a single Attached Unit are part of that Attached Unit.
- 2) For portions of the Attached Unit which adjoin a wall separating the Attached Unit from another Attached Unit, the vertical plane created by the centerline of such wall, extending from the lower horizontal boundary of the Attached Unit to the upper horizontal boundary of the Attached Unit.

(iii) Balconies and Patios. Any balcony or patio that is attached to the living area of an Attached Unit and which is accessed via the Attached Unit's living area is part of the Attached Unit. The boundaries of the balcony or patio portion of an Attached Unit are the outermost construction materials of the walls, floors, railings, and ceilings (if any) of the balcony or patio area, including, for example, metal railings.

5.3. No Relation to Living Areas. The space contained within the Unit's vertical and horizontal boundaries is not related to the size of the Unit's living areas. Similarly, the Units are initially marketed on the basis of representational floorplans, each of which is marked with an

estimated size taken from architectural drawings. Those marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries.

5.4. **Units Generally.** If the foregoing description of Unit boundaries is inconsistent with the Plat and Plans, then *Section 5.2* hereof will control. It is the express intent of the Declarant that the property described as being part of a Unit shall for all purposes herein be treated as and constitutes a lawfully described "Unit" as that term is defined in the Act. In the event that there is a final judicial determination by a court of competent jurisdiction that the boundaries of a Unit or any portion thereof are so indefinite and vague so as to not create a legally constituted "Unit" within the meaning of the Act, then that portion of the Unit that has not been adequately described shall be severed from the property deemed a part of the Unit (if the remainder of the Unit, excluding the severed portion thereof, constitutes a properly described "Unit" under the Act) and shall thereafter be deemed a Limited Common Elements reserved to the exclusive use of said Unit, subject to the rights and obligations of other Owners with respect to said property.

5.5. **What the Unit Includes.** Each Unit includes the spaces and Improvements within the above-described vertical and horizontal boundaries, including without limitation, window screens and frames, door hardware, or garage doors (if applicable). Each Unit also includes improvements, fixtures, and equipment serving the Unit exclusively, whether located inside or outside the Unit, whether or not attached to or contiguous with the Unit, including but not limited to, the following (if any): water heaters, solar systems, air conditioners, utility meters, fuse boxes, electrical switches, wiring, pipes, ducts, conduits, smoke detectors, security systems, television antennas, lighting fixtures, telephone and electrical receptacles, and skylights. Except as specifically included above, each Unit excludes the spaces and improvements lying outside of the vertical and horizontal boundaries. Each Unit also excludes any chute, pipe, flue, duct, wire, or conduit running through a Unit for the purpose of furnishing utility and similar services to other Units and/or Common Elements.

SIZE OF UNIT

The size of a Unit may be measured different ways for different purposes, such as for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Unit's legal boundaries. The Unit's partition wall cavities and/or its perimeter wall cavities may or may not be included.

5.6. **Designation of Building LCE.** The Building LCE is hereby allocated as Limited Common Element to all Units within the Building to which the Building LCE relates to permit the Association to separately allocate and charge Owners of Units within the Building for the costs of: (i) maintaining, repairing, and replacing, as necessary the Building LCE; (ii) utilities billed to the Association and attributable to a particular Building; (iii) services billed to the Association and serving Units within a particular Building; (iv) insurance premiums and

deductibles attributable to a particular Building; and (v) contributions to the reserve funds attributable to a particular Building. The expenses incurred by the Association in connection with administration, maintenance and repair of Building LCE within a particular Building will be defrayed through the levy of Building LCE Assessments against all Units within the Building.

Upon initial recordation, only one (1) Building has been submitted to the terms and provisions of this Declaration; however, it is anticipated that additional Units and Buildings will be added to this Declaration. Until such time as another Building has been added to the terms and provisions of this Declaration, the Regime will not include Building LCE. Instead, the components defined as Building LCE pursuant to this Section 5.6 will be considered General Common Elements. On the date an amendment to this Declaration is Recorded which adds an additional Building to the terms and provisions of this Declaration, the components of each Building defined in this Section 5.6 will be considered Building LCE.

5.7. **Initial Designations Of Limited Common Elements.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as Attachment 1, by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.

5.8. **Subsequent Allocation Of Limited Common Elements.** A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration. Declarant has reserved the right as set forth in Appendix "A" of this Declaration, to create and assign Limited Common Elements within the Property.

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

5.10. **Building LCE Allocation.** The percentage of liability for Building LCE Assessments ("**Building LCE Allocation**") is set forth on Attachment 3. The Building LCE Allocation attributable to a Unit will not change if additional units are added to the Regime. In the event Units in a Building are combined into a single unit or units with a configuration which differs from the original combined Units, the Building LCE Allocation originally assigned to such Units will be reallocated among the combined or re-configured Units pro-rata based on square footage.

5.11. **Common Expense Liabilities.** The percentage of liability for Common Expenses assigned to each Unit and levied pursuant to *Article 6* is equal to the Common Interest Allocation assigned to each Unit in accordance with *Section 5.9*.

5.12. **Votes.** One (1) vote is allocated to each Attached Unit and each Detached Unit.

ARTICLE 6

COVENANT FOR ASSESSMENTS

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

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

6.3. **Types of Assessments.** There are six (6) types of Assessments: Regular, Special, Utility, Building LCE, Individual, and Deficiency Assessments.

6.4. **Regular Assessments.**

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

- (i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, Limited Common Elements serving more than one (1) Unit, and Improvements, equipment, signage, and property owned by the Association not otherwise assessed as a Building LCE Assessment.
- (ii) Maintenance examination and report, as described in *Section 9.4*.
- (iii) Utilities billed to the Association.

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

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

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

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

6.6. **Special Assessments.** The Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.7. **Utility Assessments.** This Section applies to utilities serving the Units and consumed by the Owner and/or Occupants that are billed to the Association by the utility provider, and which may or may not be sub-metered by or through the Association. The Board may levy a Utility Assessment against each Unit. The Board may allocate the Association's utility charges among the Units by any conventional and reasonable method. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub-metering services. The Board may, from time to time, change the method of utility allocation, provided the method of allocation is reasonable.

6.8. **Building LCE Assessments.**

6.8.1. **Purpose of Building LCE Assessments.** Building LCE Assessments are used for expenses related to the recurring, periodic, and anticipated responsibilities of the Association with respect to administration, maintenance and repair of the Building LCE, including but not limited to the costs of:

- (i) Maintaining, repairing, and replacing, as necessary the Building LCE.
- (ii) Services billed to the Association and serving Units within a particular Building.
- (iii) Insurance premiums and deductibles attributable to a particular Building.
- (iv) Contributions to the reserve funds attributable to a particular Building.

6.8.2. **Annual Budget-Building LCE Assessments.** The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association pursuant to Section 6.8.1 above. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Building LCE Assessments.

6.8.3. **Basis of Building LCE Assessments.** Building LCE Assessments will be based on the annual budget for a particular Building. Each Unit will be liable for Building LCE Assessments based on such Unit's Building LCE Allocation and established pursuant to Section 5.10. If the Board does not approve an annual budget or

fails to determine new Building LCE Assessments for any year, or delays in doing so, Owners will continue to pay the applicable Building LCE Assessments as last determined.

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

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

6.10. **Deficiency Assessments.** The Board may levy a Deficiency Assessment against all Units for the purpose of defraying, in whole or in part, the cost of maintenance, repair, and replacement, as necessary, performed by the Association or its permittees if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.11. **Working Capital Fund.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Unit to a subsequent Owner of the Unit), a working capital fee in an amount equal to one (1) month of Regular Assessments will be paid from the transferee of the Unit to the Association for the Association's working capital fund. Each working capital contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will

or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay the operational expenses of the Association until the Declarant Control Period terminates. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital fund contribution attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.12. **Reserve Fund Contribution.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Unit to a subsequent Owner of the Unit), a reserve fund contribution in an amount equal to two (2) months of Regular Assessments will be paid from the transferee of the Unit to the Association for the Association's replacement reserve funds. Each reserve fund contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the reserve fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use the reserve fund contribution collected hereunder to pay the operational expenses of the Association until the Declarant Control Period terminates. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any reserve fund contribution attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

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

6.14. **Reserve Funds.** The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair.

- (i) **Operations Reserves.** The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including

deductibles on insurance policies maintained by the Association. Reserves for operations may be funded from Regular Assessments or Special Assessments.

- (ii) Replacement & Repair Reserves – Common Elements (Excluding Building LCE). The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Elements, excluding Building LCE. Reserves for the replacement and repair of Common Elements, excluding Building LCE, may be funded from Regular Assessments or Special Assessments.
- (iii) Replacement & Repair Reserves – Building LCE and Area of Common Responsibility. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Building LCE and Area of Common Responsibility. A separate reserve account will be established for each Building. Reserves will be funded from Building LCE Assessments.

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

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

6.17. **Limitations of Interest**. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to Applicable Law. Notwithstanding anything to the

contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of applicable Assessments, or reimbursed to the Owner if those Assessments are paid in full.

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

ARTICLE 7 **ASSESSMENT LIEN**

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

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

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

**IF YOU FAIL TO PAY ASSESSMENTS TO THE ASSOCIATION, YOU MAY
LOSE TITLE TO YOUR UNIT IF THE ASSOCIATION FORECLOSES ITS
ASSESSMENT LIEN AGAINST YOUR UNIT.**

REGIME
MINIUMS

7.4. **Notice and Release of Notice.** The lien established hereby for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, in the exercise of its lien rights, the Association may, at its option, cause a notice of the lien to be Recorded. Each lien filed by the Association must be prepared and filed by an attorney licensed to practice law in the State of Texas. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

7.5. **Power of Sale.** By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of non-judicial sale in connection with its Assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. Any such appointment must be in writing and may be in the form of a resolution duly adopted by the Board.

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

ARTICLE 8 EFFECT OF NONPAYMENT OF ASSESSMENTS

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

8.2. **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of

eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

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

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

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

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

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

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

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

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

ARTICLE 9

MAINTENANCE AND REPAIR OBLIGATIONS

9.1. **Overview.** Generally, the Association maintains the Common Elements, and the Owner maintains the Owner's Unit. If any Owner fails to maintain its Unit, the Association may perform the work at the Owner's expense. The respective maintenance obligations of the Association and each Owner are set forth in this *Article 9* and are summarized on Attachment 4; however, to the extent of any conflict between the provisions of this *Article 9* and the summary set forth on Attachment 4, the provisions of this *Article 9* will control.

9.2. **Association Maintains.** Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Units or Common Elements:

- (i) the General Common Elements and Limited Common Elements serving more than one Unit;
- (ii) Area of Common Responsibility
- (iii) glass in all windows and doors within a Building, including those which are part of a Unit; provided, however, that expenses associated with maintenance, repair and replacement of glass surfaces of windows or doors which are part of a Unit are the responsibility of the Unit's Owner, which shall be due and payable as an Individual Assessment to the Association upon demand;
- (iv) any real and personal property owned by the Association but which is not a Common Element; and

- (v) any area, item, easement or service the maintenance of which is assigned to the Association by this Declaration or by the plat.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is assumed by an Owner and such assumption is approved by the Board; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with any such assumption as provided in (ii) or (iii), the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant and the Owner and Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. If the Association assigns any portion of its maintenance responsibilities to an Owner as permitted by the Documents, the Association will perform any such assigned obligations if not timely performed by the Owner.

The Association shall not be liable for injury or damage to Person or property caused by the elements or by the Owner or Occupant of any Unit 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, except for injuries or damages arising after the Owner or Occupant of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner or Occupant of any Unit for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Elements or any Unit. The Association shall not be liable to any Owner or Occupant, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

9.3. **Area of Common Responsibility.** The Board has the right but not the duty to designate, from time to time, portions of Units as an Area of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. A designation applies to every Unit having the designated feature. The cost of maintaining components of Units as Area of Common Responsibility is assessed against a particular Unit as an Individual Assessment. Unless otherwise designated as an Area of Common Responsibility, Owners of Detached Units are responsible for maintaining their Unit.

9.3.1. **Easement.** The Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designee to maintain, repair and/or replace those portions of a Unit which have been designated as Area of Common Responsibility. Unless otherwise agreed to by the Owner of the Unit to be accessed, access to the Units is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual maintenance activities. If the Association damages any Improvements located within a Unit in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

9.3.2. **Change in Designation.** The Board may, from time to time, include additional components of Units within the Area of Common Responsibility; however, in no event may the Board at any time remove from the Area of Common Responsibility components of Units previously designated as an Area of Common Responsibility under this Declaration unless approved in advance and in writing by the Declarant during the Development Period, or, after termination or expiration of the Development Period, two-thirds of the Units represented at a meeting of the Association called for the purpose of removing components from the Area of Common Responsibility. Until expiration or termination of the Development Period, any addition to the Area of Common Responsibility must be approved in advance and in writing by the Declarant. Although the Area of Common Responsibility Chart is attached to this Declaration as Attachment 4, it may be amended, restated, and published as a separate instrument. Any amended or restated Area of Common Responsibility Chart must be: (1) published and distributed to an Owner of each Unit; (2) reflected in the Association's annual budget and reserve funds; and (3) Recorded.

9.3.3. **Initial Designation.** On the date of this Declaration, the initial designation of components of Units included within the Area of Common Responsibility is shown on Attachment 4 of this Declaration.

9.4. **Inspection Obligations.**

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

9.4.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements is attached to this Declaration as Attachment 5. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

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

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

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

- (i) To maintain, repair, and replace the Owner's Unit and any and all Limited Common Elements exclusively serving the Owner's Unit, except for components expressly assigned to the Association as an Area of Common Responsibility or otherwise assigned to the Association by this Declaration.
- (ii) The routine cleaning of any balcony and/or patio of the Owner's Unit, if any, keeping same in a neat, clean, odorless, orderly, and attractive condition.

- (iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.
- (iv) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.
- (v) To be responsible for such Owner's own willful or negligent acts and those of the Owner or Occupant's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

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

9.7. **Mold.** In the era in which this Declaration is written, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. This Section addresses that environment. For more information about mold and mold prevention, an Owner should consult a reliable source, such as the U.S. Environmental Protection Agency.

9.7.1. **Owner's Duties.** To reduce the risks associated with concentrations of mold, Owners should be proactive in preventing circumstances conducive to mold, identifying mold, and eliminating mold. Towards that end, each Owner is responsible for:

- (i) regularly inspecting the Unit for evidence of water leaks or penetrations or other conditions which may lead to mold growth;
- (ii) repairing promptly any water leaks, breaks, or malfunctions of any kind in the Unit that may cause damage to another Unit or Common Element;
- (iii) regularly inspecting the entire Unit for visible surface mold and promptly removing same using appropriate procedures; and

- (iv) reporting promptly to the Association any water leak, penetration, break, or malfunction in any portion of the Unit or any adjacent Common Elements for which the Association may have maintenance responsibility.

9.7.2. **Insurance.** Many insurance policies do not cover damages related to mold. An Owner who wants insurance coverage with respect to mold and mold-related damages is advised to separately purchase such insurance coverage.

9.8. **Balconies and Patios - Attached Units.** Except for routine cleaning, which is the Owner's responsibility pursuant to *Section 9.5*, the Association is responsible for the maintenance, repair, and replacement of balconies and patios (if any) which are part of an Attached Unit. If the outside components of the Attached Unit are most easily accessed through the Unit, the Owner will cooperate in providing access to the outside components for the Association's agents and contractors. If requested by the Association, the Owner will remove all personal property from the outside components of his Unit to facilitate the required maintenance, repair, or replacement. The Owner is liable to the Association for any additional expense incurred by the Association due to an Owner's failure or refusal to cooperate with reasonable requests for access or removal. This section may not be construed to prevent an Owner at the Owner's sole expense, without right of reimbursement from the Association, from maintaining, repairing, and replacing components of the Unit's balcony or patio (if any), subject to compliance with *Article 10* below.

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

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

ARTICLE 10
ARCHITECTURAL COVENANTS AND CONTROL

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

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

10.3. **Architectural Control by Declarant.**

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

10.3.2. **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property do not impair Declarant's ability to market Units in the Regime. Accordingly, each Owner agrees that during the Development Period, no Improvements will be started or progressed without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

10.3.3. **Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its rights as Architectural Reviewer to the Board or a committee appointed by the Board comprised

of Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral right of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

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

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

10.6. **Prohibition of Construction, Alteration and Improvement.** Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property. Notwithstanding the forgoing, non-structural modifications to Unit interiors such as paint do not require approval of the Architectural Reviewer.

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

10.7. **No Deemed or Verbal Approval.** Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by the Declarant, Declarant's representative or designee or the Association, an Association director or officer, a member or chair of the Declarant or Board-appointed architectural control committee, the Association's manager, or any other representative of the Association. To be valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead

issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Architectural Reviewer’s actual receipt of the Owner’s application, **the application is deemed denied. Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed.** If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded, with the cost of Recordation borne by the Owner. Architectural Reviewer approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer’s approval or, if no commencement date is stated, within ninety (90) days after the date of Architectural Reviewer approval.

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

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

- (i) The Owner complies with *Section 3.3.*
- (ii) The Owner must adhere strictly to the plans and specifications which accompanied his application.
- (iii) The Owner must initiate and complete the Improvement in a timely manner.
- (iv) If the approved application is for work that requires a building permit from the city, the Owner must obtain the appropriate permit. The Architectural Reviewer’s approval of plans and specifications does not

mean that they comply with the city's requirements. Alternatively, approval by the city does not ensure Architectural Reviewer approval.

ARTICLE 11
USE RESTRICTIONS

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

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

11.3. **Association's Right to Promulgate Rules and Amend Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through a Majority of the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

**EVERY OCCUPANT IS EXPECTED TO COMPLY WITH RULES ADOPTED BY THE
BOARD OF DIRECTORS.**

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

- (i) Use of Common Elements.
- (ii) Hazardous, illegal, or annoying materials or activities on the Property.
- (iii) The use of Property-wide services provided through the Association.

- (iv) The consumption of utilities billed to the Association.
- (v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.
- (vi) The occupancy and leasing of Units.
- (vii) Animals.
- (viii) Vehicles.
- (ix) Disposition of trash and control of vermin, termites, and pests.
- (x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

11.5. **Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for anywhere on the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals on the Property. If the Rules fail to establish animal occupancy quotas, an Owner or Occupant shall be allowed no more than two cats, or two dogs, or one cat and one dog. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules. Notwithstanding the foregoing, prior to the installation of a fish tank exceeding forty (40) gallons in an Attached Unit, an Attached Unit Owner must deliver plans for such tank to the Architectural Reviewer for its written approval. The Architectural Reviewer may require a review by a structural engineer at the sole expense of the Attached Unit Owner prior to the approval or disapproval of such plans.

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

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

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

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

11.10. **Garages.** Garages may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein, without the Board's written authorization.

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

11.12. **Fire Safety.** No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property, including the sprinkler heads and water lines in and above the ceilings of the Unit, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

11.13. **Landscaping.** No person may perform landscaping, planting, or gardening anywhere upon the Property without the Board's prior written authorization.

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

11.15. **Weight and Sound Restriction.** In addition to and without limiting the provisions set forth in *Article 10* of this Declaration, an Owner or other Person authorized by such Owner: (i) shall not install any hard and/or heavy surface floor coverings including, without limitation, tile, marble, stone, wood and the like unless approved by the Architectural Reviewer; and (ii) in Attached Units, must insure a sound control underlayment system is used, which system must be approved in writing by the Architectural Reviewer prior to installation. Installation of such sound control underlayment system shall include provisions for a perimeter insulation material which will ensure that impact noises are not transmitted into a space below, either directly through the floor or by flanking through the surrounding walls. Each Owner

hereby acknowledges and agrees that sound transmission is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. **The Declarant makes no representation or warranty as to the level of sound transmission between and among Units in the other portions of the Regime, and each Owner hereby waives and expressly releases Declarant from any such warranty and claim for loss or damages resulting from sound transmission.**

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

11.17. **Permitted Uses; Prohibited Uses.**

11.17.1. **Office Units.** The Office Units may be used solely for professional, business, or commercial activity that conforms to all zoning requirements applicable to the Property. No ATM machines or public banks will be allowed. No Office Unit may be used for: (i) a business that specializes in bankruptcy or liquidation sales or the selling of fire damaged items, (ii) an auction house, flea market, pawn shop, thrift store or other store which sells used or "second-hand" merchandise; (iii) a kennel or other business involving the boarding or care of animals; (iv) an establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles; (v) a night club, bar, lounge, or tavern; (vi) a dance hall (except a professional dance instruction studio), ballroom, discotheque or game parlor; (vii) an adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation, magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (viii) a sexually oriented massage parlor; (ix) a gambling establishment or betting parlor; (x) a mortuary, crematorium or funeral home; (xi) a dry cleaning plant, central laundry or laundromat; (xii) a storage or mini warehouse facility; (xiii) any use which is illegal or which, in the reasonable opinion of Declarant during the Development Period, and then the Board upon expiration or termination of the Development Period, is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or hazardous by reason of excess danger of fire or explosion; or (xiv) any use which, in the reasonable opinion of Declarant during the Development Period, and then the Board upon expiration or termination of the Development Period, is obnoxious to or incompatible with the

overall character of the Regime. All deliveries made to Office Units must occur on weekdays between the hours of 8:00 am and 8:00 pm

11.17.2. Live-Work Units – First Floor. The first floor of the Live-Work Units may be used for professional, business, or commercial activity that conforms to all zoning requirements applicable to the Property and/or for private single family residential purpose. No ATM machines or public banks will be allowed. The first floor of the Live-Work Units may not be used for: (i) a business that specializes in bankruptcy or liquidation sales or the selling of fire damaged items, (ii) an auction house, flea market, pawn shop, thrift store or other store which sells used or "second-hand" merchandise; (iii) a kennel or other business involving the boarding or care of animals; (iv) an establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles; (v) a night club, bar, lounge, or tavern; (vi) a dance hall (except a professional dance instruction studio), ballroom, discotheque or game parlor; (vii) an adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation, magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (viii) a sexually oriented massage parlor; (ix) a gambling establishment or betting parlor; (x) a mortuary, crematorium or funeral home; (xi) a dry cleaning plant, central laundry or laundromat; (xii) a storage or mini warehouse facility; (xiii) any use which is illegal or which, in the reasonable opinion of Declarant during the Development Period, and then the Board upon expiration or termination of the Development Period, is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or hazardous by reason of excess danger of fire or explosion; or (xiv) any use which, in the reasonable opinion of Declarant during the Development Period, and then the Board upon expiration or termination of the Development Period, is obnoxious to or incompatible with the overall character of the Regime. All deliveries made to Office Units must occur on weekdays between the hours of 8:00 am and 8:00 pm

11.17.3. Residential and Live-Work Units – Second Floor. Residential Units and the second floor of Live-Work Units must be used solely for private single family residential purpose. This residential restriction does not, however, prohibit an Occupant from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a residential dwelling; (ii) the uses conform to Applicable Law; (iii) there is no external evidence of the use; (iv) the use does not entail visits to the Unit by employees or the public; and (v) the uses do not interfere with the use and enjoyment of other Units. Other than the air conditioned part of a Unit, no thing or structure on the Property may be occupied as residence at any time by any Person.

11.17.4. Retail Units. Retail Units may be used for professional, business, or commercial uses. Retail Units may be used for following professional, business, or commercial uses without the advance approve of Declarant or the Board: (i) professional offices, (ii) art gallery; (iii) art workshop; (iv) the following personal services: beauty or barber shops, seamstress or tailor services, shoe repair shops, and dry cleaning pick-up station services, photography studios, health or fitness studios, dance studios, and hobby instructions, professional massage services, chiropractor services, acupuncture; (v) indoor retail sales of apparel and accessories, shoes, dry goods, food, flowers and plants, garden supplies, gifts and novelties, art and art supplies, jewelry, newspapers and magazines, music and records, household supplies, stationary, books, toys, office supplies, fabric, photo supplies and similar convenience goods; (vi) personal or small item repair services such as watches, jewelry, minor household appliances, and locksmith, but specifically excluding the repair of heavy machinery or equipment, e.g., automobiles, motorcycles, engines; and (vii) retail sale of food and household products for home consumption and other food sales such as coffee shops, takeout food stand, juice bar, wine bar or other alcohol sales in accordance with all applicable rules, regulations and laws. Any use that requires installation of a cooking exhaust or other food service preparation item will require approval of the Declarant and must be in compliance with all applicable rules, regulations and laws. No grease traps are allowed without the advance written approval of the Declarant.

Retail Units may in no event be used for: (i) a business that specializes in bankruptcy or liquidation sales or the selling of fire damaged items, (ii) an auction house, flea market, pawn shop, or other store which sells used or "second-hand" merchandise (with the exception of clothing on consignment, used books, antiques, works of art, collections in illustration of the progress of the arts, works in bronze, marble, terra cotta, parian, pottery or porcelain, artistic antiquities and objects of ornamental character or educational value); (iii) a kennel or other business involving the boarding or care of animals; (iv) an establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles; (v) a night club, bar, lounge, or tavern; (vi) a dance hall (except a professional dance instruction studio), ballroom, discotheque or game parlor; (vii) an adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation, magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (viii) a sexually oriented massage parlor; (ix) a gambling establishment or betting parlor; (x) a mortuary, crematorium or funeral home; (xi) a dry cleaning plant, central laundry or laundromat; (xii) a storage or mini warehouse facility; (xiii) a tattoo and/or piercing parlor; (xiv) an establishment for the sale or display of non-traditional pets such as pot-bellied pigs, miniature horses, snakes or lizards, ferrets, monkeys or other exotic animal; or (xv) any use which is illegal or which, in the

reasonable opinion of Declarant during the Development Period, and thereafter the Board, is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or hazardous by reason of excess danger of fire or explosion.

The professional, business, or commercial use within the Retail Units may only be open for business between the hours of 6:00 am and 10:00 pm. All deliveries made to the Retail Units must occur on weekdays between the hours of 8:00 am and 8:00 pm.

11.18. **Signs.** No sign of any kind, including signs advertising Units for sale, for rent or for lease, may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Units unless approved in advance by the Architectural Reviewer. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Architectural Reviewer may, but is not required to, authorize a sign, and such authorization may specify the location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway which the Architectural Reviewer or Board deems to be unsightly or inappropriate. The Association may cause the immediate removal of any sign or object that violates this Section or which the Architectural Reviewer or Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal. As provided in Appendix A, Declarant has reserved the right to maintain signs and other items on the Property for the purpose of promoting, identifying and marketing the Property and off-site developments of Declarant or its assigns.

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

11.19. **Energy Efficient Roofing.** The roof components of each Building located in the Regime are Common Elements and the Owner of a Unit is not authorized to cause to be constructed or replaced any Improvements (including roofing) on Common Elements without the advance written consent of the Architectural Reviewer.

11.20. **Rainwater Harvesting Systems.** No rain barrel may be installed on any portion of the Common Elements without the advance written approval of the Architectural Reviewer.

11.21. **Flag Display and Flagpole Installation.** No flag or flagpole may be installed on any portion of the Common Elements without the advance written approval of the Architectural Reviewer.

11.22. **Structural Integrity.** No person may directly or indirectly impair the structural soundness or integrity of a Building or other Unit, nor do any work or modification that will impair an easement or real property right.

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

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

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

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

11.23.4. **Permitted Installation Locations.** An Owner or Occupant may erect a Permitted Antenna (after written notification has been provided to the Board or its designee) if the Owner or Occupant has an exclusive use area in which to install the antenna. An “exclusive use area” of a Unit is an area in which only the Owner or Occupant may enter and use to the exclusion of all other Owners and Occupants. Unless otherwise approved by the Board or its designee, the Permitted Antenna must be entirely within the exclusive use area of the Owner’s Unit. For example, if a Permitted Antenna is erected on a balcony, the Permitted Antenna may not protrude or extend outside of a balcony. **UNLESS EXPRESSLY APPROVED IN ADVANCE AND IN WRITING BY THE BOARD, NO OWNER MAY INSTALL OR ERECT A SATELLITE DISH ON THE EXTERIOR WALL OF ANY UNIT OR THE BUILDING.**

A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Occupants of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or occupant of the Unit. The Association does not

insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Board of Directors may determine what constitutes a nuisance to the Association. The Board may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

11.23.5. **Cable Conduit.** The Property is designed with a conduit for use with cable television lines. Each Owner may use the conduit for its intended purpose and for no other purpose. The draping of cable wires on the exteriors of buildings, or the installation of additional conduits are prohibited without the Board's prior written consent.

11.23.6. **Prohibited Act.** Other than the proper use of the cable conduit, any other installation pertaining to an Antenna/Dish is prohibited without the prior written consent of the Board.

11.24. **Window Treatments.** The color and condition of all window panes, window screens, and window treatments must conform to the Building standard as established from time to time by the Board. All window treatments within the Unit that are visible from the street or another Unit must maintained in good condition and must not detract from the appearance of the Property. The Board may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the Board determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The Board may prohibit the use of certain colors or materials for window treatments.

11.25. **Door Locks.** Owners must allow representatives of the Association and other emergency personnel access to their Units in case of emergencies. In the case of any emergency originating in, or threatening, any Unit, regardless of whether the Owner is present at the time of such emergency, the Board, the manager or any other person authorized by the Board or Manager shall have the right to enter into such Unit for the purpose of remedying or abating the cause of such emergency and such right of entry shall be immediate.

11.26. **No Piercing of Walls.** In addition to and without limiting the provisions set forth in *Article 10* of this Declaration, an Owner or other Person authorized by such Owner shall not pierce any of the Attached Unit walls with any type of nail, screw, drill bit or other similar item in excess of $\frac{3}{4}$ inch in length without first obtaining the consent of the Architectural Reviewer as set forth in *Article 10*.

11.27. **Balconies and Patios.** No linens, cloths, clothing, towels, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, bicycles or other articles, shall be

stored, shaken or hung from or on any of the windows, doors, decks or balconies, or other portions of the Regime. Certain types of furniture, lamps, and container gardens are allowed on balconies and patios if approved in advance by the Board, such approval to be made in the Board's sole and absolute discretion. The Board will have the authority to require an Owner or Occupant to remove any article from a window, door, balcony, or patio, if in the sole and exclusive discretion of the Board, the article is unsightly, offensive, or constitutes an annoyance.

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

ARTICLE 12 **UNIT LEASING**

12.1. **Lease Conditions.** The leasing of Units is subject to the following conditions: (i) unless otherwise approved in advance by the Board, no Unit may be rented for transient or hotel purposes or for a period less than one hundred and eighty (180) days, but in no event may a Unit be leased for less than thirty (30) days; (ii) unless otherwise permitted by the Rules, not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Documents; (iv) an Owner is responsible for providing the Owner's tenant with copies of the Documents and notifying the tenant of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

12.2. **Provisions Incorporated By Reference Into Lease.** Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the

lease by existence of this covenant, and the tenant, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

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

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

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

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

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

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

ARTICLE 13 ASSOCIATION OPERATIONS

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

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

13.3. Name. A name is not the defining feature of the Association. Although the initial name of the Association is Piazza Escondida Condominium Community, Inc., the Association may operate under any name that is approved by the Board and: (i) filed with the El Paso County Clerk as an assumed name, or (ii) filed with the Secretary of State of Texas as the name of the filing entity. The Association may also change its name by amending the Documents, except in the event the corporate charter has been revoked and the name, "Piazza Escondida Condominium Community, Inc.", is no longer available. In such event, the Board will cause a notice to be Recorded stating the current name of the Association. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration. The name "Piazza Escondida Condominiums" is not a trade name.

13.4. Duration. The Association was formed on as of the date the Certificate was filed with the Secretary of State of Texas. The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

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

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

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

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

13.9. **Books and Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of Chapter 22 of the Texas Business Organizations Code and the Act. The Association, upon the request of a prospective purchaser of a Unit, will provide the prospective purchaser with a copy of the Documents and the most recent audited financial statements of the Association. The Association will be permitted to charge a reasonable fee for copies of such Documents and statements in accordance with *Section 13.12.3*.

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

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

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

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

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

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

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

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

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

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

13.12.3. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

13.12.4. Exclusions. The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's Assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (iii) transfer to, from, or by the Association; or (iv) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (v) a disposition by a government or governmental agency. The requirements of this Section do not apply to the initial conveyance of a Unit from the Declarant to a third-party.

ARTICLE 14
ENFORCING THE DOCUMENTS

14.1. **Notice And Hearing.** Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine – unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another Person or by a written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with the requirements of Applicable Law.

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

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

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

14.2.3. **Suspension.** The Association may suspend the right of Owners and Occupants to use General Common Elements (provided that the rights of ingress and egress and utility services are not impaired) for any period during which the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate the Documents for a period not to exceed sixty (60), unless such rights are suspended for failure to pay Assessments, in which case such rights may be suspended

until the Assessments are fully paid. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

14.2.4. **Self-Help.** The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Unit without judicial proceedings.

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

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

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

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

ARTICLE 15
INSURANCE

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

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

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

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

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

15.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Eligible Mortgagees at least ten (10) days prior notice of cancellation, termination, expiration, or material modification.

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

15.2. Property Insurance. The Association will obtain and maintain at all times, property insurance as required by Section 82.111(a) of the Act. In accordance with Section 82.111 of the Act, in the event a Building contains Units with horizontal boundaries, e.g., Attached Units, the Association will maintain an insurance policy providing property insurance on the Units as originally constructed. This insurance must be in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Such coverage will include the Units and the fixtures initially installed by the Declarant and replacements thereof up to the value of those initially installed by the Declarant but will not include any Improvements or betterments (including wall coverings and fixtures) made by or on behalf of any Owner other than those made by the Declarant, and will also exclude furnishings and other personal property within a Unit. The cost and expenses incurred to procure and maintain property insurance by the Association on Units with shared horizontal boundaries will be levied as a Building LCE Assessments against the Owners of all Units within a Building. The Association will NOT procure property insurance on Detached Units.

15.2.1. Common Property Insured. The Association will insure: (i) General Common Elements; (ii) Limited Common Elements; and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

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

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

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

15.5. **Fidelity Coverage.** The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, in the Association’s custody while the policy is in force; or (ii) an amount equal to 3 months of Regular Assessments on all Units. A management agent that handles Association funds should be covered by a separate fidelity insurance policy with the same coverages. If the Property has more than twenty (20) Units, the Association must maintain fidelity coverage to the extent reasonably available.

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

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

15.8. **Owner’s Responsibility for Insurance.**

15.8.1. **Insurance by Owners.** The Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.

15.8.2. **HO-6 Policy.** Notwithstanding any provision in this Declaration to the

contrary, if required by any Underwriting Lender, the Owner of a Unit will be required to procure insurance covering the interior of the Unit, including replacement of interior improvements and betterment coverage to insure improvements the Owner may make to the Unit, commonly referred to as HO-6 insurance.

15.8.3. Property Insurance – Detached Units. Owners of Detached Units will be required to obtain an insurance policy providing property insurance on the Detached Units. This insurance must be in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard.

15.8.4. Owners' Responsibilities. The Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to his Unit, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Unit for purposes of insurance appraisal. Each Owner, at such Owner's expense, will maintain any insurance coverages required by the Association pursuant to this Article.

15.8.5. Association Does Not Insure. The Association does not insure an Owner or Occupant's personal property. **THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND OCCUPANT PURCHASE AND MAINTAIN INSURANCE ON PERSONAL BELONGINGS.**

ARTICLE 16 RECONSTRUCTION OR REPAIR AFTER LOSS

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

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

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

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

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

16.3. Costs And Plans.

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

16.3.2. Plans and Specifications. Unless otherwise approved by the Board, Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Unless otherwise approved by the Board, Units will be repaired and restored substantially in accordance with original construction plans and specifications, unless the Association insures betterments and Improvements made by Owners, in which case the Units will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either Common Elements or Units must be approved by the Board and by certain Mortgagees if so required by the Mortgage Protection article of this Declaration.

16.4. Owner's Duty to Repair.

16.4.1. Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Unit not covered by the Association's blanket insurance policy, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.

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

the Association to supervise, approve, or disapprove the repair or restoration during the course thereof.

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

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

ARTICLE 17

TERMINATION AND CONDEMNATION

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

17.2. Termination. Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and *Section 18.4* below.

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

ARTICLE 18
MORTGAGEE PROTECTION

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

18.2. **Notice of Mortgagee.** As provided in this *Article 18*, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in *Section 18.8*, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in *Section 18.9* or the termination of this Declaration as described in *Section 18.4*. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this *Section 18.2* after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

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

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

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

18.6. **Other Mortgagee Rights.**

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

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

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

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

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

18.6.6. **Audit.** A majority of Eligible Mortgagees shall be entitled to demand an audit of the Association's financial records

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

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

- (i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit and any eminent domain proceeding affecting the General Common Elements which would result in a loss of more than ten percent (10%) of the estimated operational and reserve expenses as reflected on the then-current annual budget of the Association.

- (ii) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the mortgaged Unit.
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.
- (v) Any proposed amendment of a material nature, as provided in this Article.
- (vi) Any proposed termination of the condominium status of the property or dissolution of the Association at least thirty (30) days prior to the proposed termination or dissolution, as applicable.

18.9. **Amendments of a Material Nature.** A Document amendment of a material nature must be approved by owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS FILED BY THE DECLARANT AS PERMITTED IN APPENDIX "A" ATTACHED HERETO.** A change to any of the provisions governing the following would be considered material:

- (i) Voting rights.
- (ii) Assessment liens or the priority of assessment liens.
- (iii) Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- (iv) Responsibility for maintenance and repairs.
- (v) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A", by agreement between Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).
- (vi) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Mortgagees holding mortgages against the Unit or Units need approve the action.

- (vii) Convertibility of Units into Common Elements or Common Elements into Units.
- (viii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.
- (ix) Property or fidelity insurance requirements.
- (x) Imposition of any restrictions on the leasing of Units.
- (xi) Imposition of any restrictions on Owners' right to sell or transfer their Units.

ARTICLE 19
AMENDMENTS

19.1. **Consents Required.** As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant acting alone, or by certain owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association. Notice of any amendment to the Declaration which must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association shall be delivered to each Member in accordance with the Bylaws. All amendments made to the Declaration, Bylaws or Certificate during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to Recording, except for amendments adding additional Units to the Regime pursuant to *Section 5.1* of the Declaration.

In addition, a change to any provision in the Declaration governing the following items must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association:

- (i) Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of Improvements on Units.
- (ii) The addition of land to the Declaration if the addition would increase the overall land area then subject to the Declaration by more than ten percent (10%).
- (iii) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements with the exception of: (i) granting easements over and across the Common Elements otherwise permitted by this Declaration or the Act; (ii) dedicating all or any portion of a Common Element to the extent

- required by any governing authority or regulatory authority; (iii) adjustments to the boundary line of Common Elements if made in accordance with the provisions of this Declaration; or (iv) transferring Common Element pursuant to a merger or consolidation with another entity.
- (iv) Any capital expenditure, other than for the maintenance, operation, repair or replacement of any then existing Improvement, if the capital expenditure exceeds more than twenty percent (20%) of the annual operating budget during any period of twelve (12) consecutive months.

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

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

19.4. **Declarant Provisions.** An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because Appendix "A" of this Declaration is destined to become obsolete, beginning ten (10) years after the date this Declaration is first Recorded, the Board may restate, rerecord, or publish this Declaration without Appendix "A". The automatic expiration and subsequent deletion of Appendix "A" does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent. Notwithstanding anything to the contrary contained herein, all amendments made to the Declaration, Bylaws or Certificate during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to Recording, except for amendments adding additional Units to the Regime pursuant to *Section 5.1* of the Declaration.

ARTICLE 20
DISPUTE RESOLUTION

20.1. **Introduction And Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the “**Parties**”) agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

20.1.1. “**Claim**” means:

- (i) Claims relating to the rights and/or duties of Declarant, or its permitted assigns, under the Documents or the Act.
- (ii) Claims relating to the acts or omissions of the Declarant during its control and administration of the Association, any claim asserted against the Architectural Reviewer if the claim relates to any act or omission of the Architectural Reviewer while controlled by the Declarant, and any claims asserted against a Person appointed by the Declarant to serve as a Board member or officer of the Association, or to discharge any of the rights of the Architectural Reviewer.
- (iii) Claims relating to the design or construction of the Property, Units, or any Improvement made by or on behalf of the Declarant, or its permitted assigns.

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

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

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

20.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 20.4* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property

Code, the Claimant and Respondent are advised, in addition to compliance with *Section 20.4*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 20.4* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 20.5* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 20.5* is required without regard to the monetary amount of the Claim.

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

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

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

20.7. **Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 20.7*. This section may not be amended

without the prior written approval of the Declarant and Owners holding a Majority of the votes in the Association.

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

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

20.7.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 20.7* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before,

during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

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

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

20.7.5. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in El Paso County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

20.8. Allocation Of Costs. Except as otherwise provided in this Article, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice,

Negotiation, Mediation, and Arbitration sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

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

20.10. **Period of Limitation.**

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

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

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

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

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

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

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

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

ARTICLE 21 GENERAL PROVISIONS

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

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

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

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

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

21.6. **Declarant as Attorney in Fact and Proxy.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Appendix "A" and elsewhere in this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit within the Regime, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit in the Regime, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to Appendix "A" or elsewhere in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage against a Unit in the Regime, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit in the Regime, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to Appendix "A" or elsewhere in this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to Appendix "A" or elsewhere in this Declaration and to execute and record amendments on their

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

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

Exhibit "A"	Property Description
Attachment 1	Plats and Plans
Attachment 2	Encumbrances
Attachment 3	Schedule of Allocated Interests/Schedule of Building LCE Allocated Interests
Attachment 4	Area of Common Responsibility Chart
Attachment 5	Guide to Association's Examination of Common Elements
Attachment 6	Guide to Association's Major Management and Governance Functions
Appendix "A"	Declarant Representations and Reservations

[SIGNATURE PAGE FOLLOWS]

EXECUTED on this 9 day of NOVEMBER, 2013.

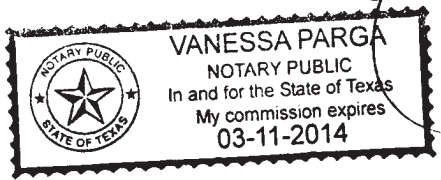
DECLARANT:

TONE VENTURES, LLC,
a Texas limited liability company

By: [Signature]
Name: Herchel Stringfield
Title: MANAGER

STATE OF Texas §
 §
COUNTY OF El Paso §

This instrument was acknowledged before me on this 4 day of NOV.,
2013 by Herchel Stringfield as Manager of Tone Ventures, LLC,
a Texas limited liability company, on behalf of said company.



[Signature]
Notary Public

CONSENT OF MORTGAGEE

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

CITY BANK OF TEXAS

[Handwritten signature]

By: Robert D. Kotarski, Branch President

Name Printed: _____

Title: BRANCH PRESIDENT

THE STATE OF Texas §

COUNTY OF EL PASO §

This instrument was acknowledged before me on October 29, 2013,
by Robert D Kotarski, Branch President of
City Bank, on behalf of said bank.

(seal)

[Handwritten signature]

Notary Public Signature



Exhibit A

A parcel of land containing 1.5725 acres more or less, being a portion of Lot 2, Block 15-A, CHAPARRAL PARK "UNIT SEVEN", an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof recorded in Book 30, Page 27, Plat Records of El Paso County, Texas, and being more particularly described by Metes and Bounds as follows:

COMMENCING for reference at the intersection of the centerlines of Los Robles Drive and Pino Real Drive found marked by a city monument, from which the city monument found at the intersection of the centerlines of Escondido Drive and Los Robles Drive bears South 39°00'00" East (Bearing Base) a Distance of 559.22 feet; Thence, South 39°00'00" East with the centerline of Los Robles Drive for a distance of 129.22 feet to a point; Thence, South 51°00'00" West a distance of 30.00 feet to a chiseled cross found on the southwesterly right-of-way line of Los Robles Drive for the common corner of said Lot 2, Block 15-A and Lot 13, Block 15, Chaparral Park Unit Four (Bk. 27, Pg. 10, Plat Records.); Thence, South 46°43'20" West with the line common to said Lot 2, Block 15-A and Lots 12-13, Block 15, for a distance of 224.29 feet to a ½" rebar with cap "RPLS 4680" set for the **POINT OF BEGINNING** of this description;

THENCE, South 39°03'58" East along the rock wall for a distance of 186.10 feet to a chiseled cross set for the point of curvature;

THENCE, for a distance of 12.45 feet with the arc of the curve to the left, which has an interior angle of 57°04'56", a radius of 12.50 feet and a chord which bears South 67°36'26" East a distance of 11.94 feet to the point of reverse curve;

THENCE, for a distance of 15.46 feet with the arc of the curve to the right, which has an interior angle of 57°09'20", a radius of 15.50 feet and a chord which bears South 67°37'14" East a distance of 14.83 feet to the point of tangency;

THENCE, South 38°59'35" East along the rock wall for a distance of 108.96 feet to a chiseled cross set on the curve of the northwesterly right-of-way of the City of El Paso Drainage Channel;

THENCE, for a distance of 337.98 feet with the arc of the curve to the right, which has an interior angle of 24°51'52", a radius of 778.81 feet and a chord which bears South 77°36'04" West a distance of 335.33 feet to a chiseled cross set;

THENCE, North 89°57'57" West with said right-of-way line for a distance of 0.57 feet to a chiseled cross set for a corner of this parcel;

THENCE, North 29°36'07" West with the westerly boundary line of said Lot 2 for a distance of 137.30 feet to a ½" rebar with cap set on line common to Chaparral Park Unit Four and Chaparral Park Unit Seven for a corner of this parcel;

THENCE, North 43°02'13" East with said common line for a distance of 198.49 feet to a ½" rebar found for a corner of said common boundary and a corner of this parcel;

THENCE, North 46°43'20" East with said common boundary for a distance of 68.46 feet to the **POINT OF BEGINNING**, said parcel contains 68,500 square feet or 1.5725 acres, more or less.

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

ATTACHMENT 1

[CONDOMINIUM PLATS AND PLANS]

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

Printed Name: _____

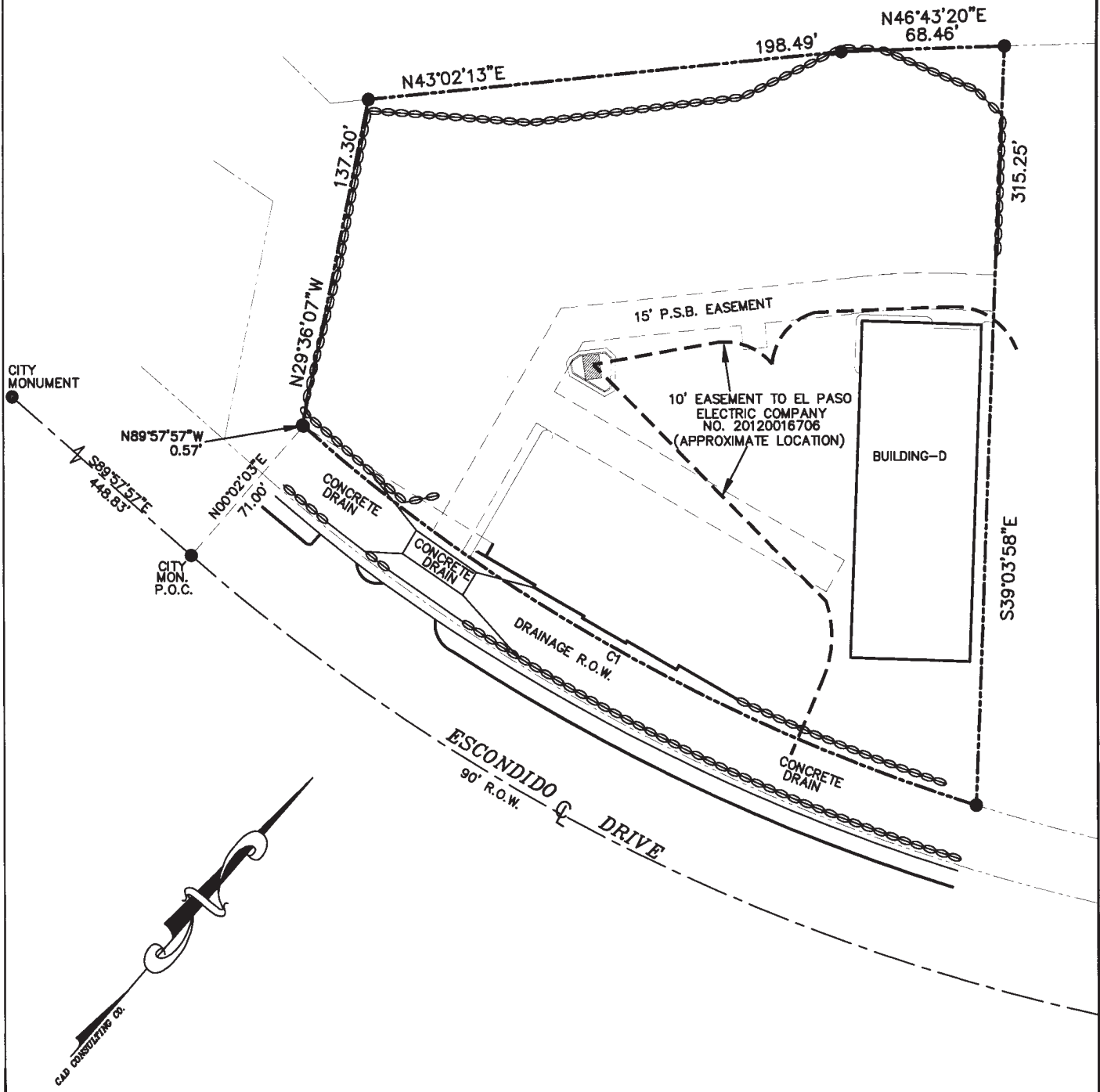
RPLS or License No. _____

BOUNDARIES OF UNIT

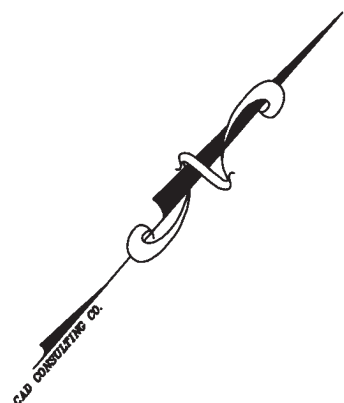
The legal boundaries of each Unit are established by the Declarant and the plats and plans attached hereto. However, each Owner acknowledges that the Unit may be measured and depicted in a manner which differs from the legal boundaries of a Unit. For example, the Unit may be measured or depicted differently for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Unit's legal boundaries. The Unit's partition wall cavities and/or its perimeter wall cavities may or may not be included.

SEE NEXT PAGE FOR ORIGINAL CERTIFICATION

PIAZZA ESCONDIDA CONDOMINIUMS



SCALE 1"=60'



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JOB # 12-2968 DATE: 07-09-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

RECORDED IN VOL: 1 PAGE 36, PLAT RECORDS, EL PASO COUNTY, TX

PAGE: 1 OF 10

CONSULTING COMPANY
 1790 LEE TREVINO DRIVE SUITE 503
 EL PASO, TEXAS 79936
 (915) 633-6422

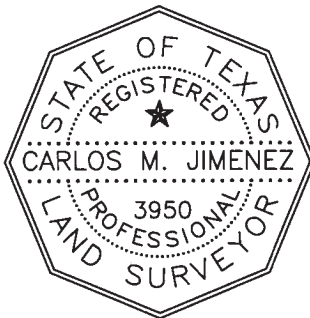
6350 ESCONDIDO DRIVE
 A PORTION OF LOT 2, BLOCK 15A
 CHAPARRAL PARK UNIT SEVEN
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS

EXHIBIT "A" PIAZZA ESCONDIDA CONDOMINIUMS

[PLATS AND PLAN]
[CERTIFICATION OF SURVEYOR]

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



CARLOS M. JIMENEZ
R.P.L.S. No. 3950

DATED 07-09-13

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JOB # 12-2968 DATE: 07-09-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

RECORDED IN VOL: 1 PAGE 36 , PLAT RECORDS, EL PASO COUNTY, TX

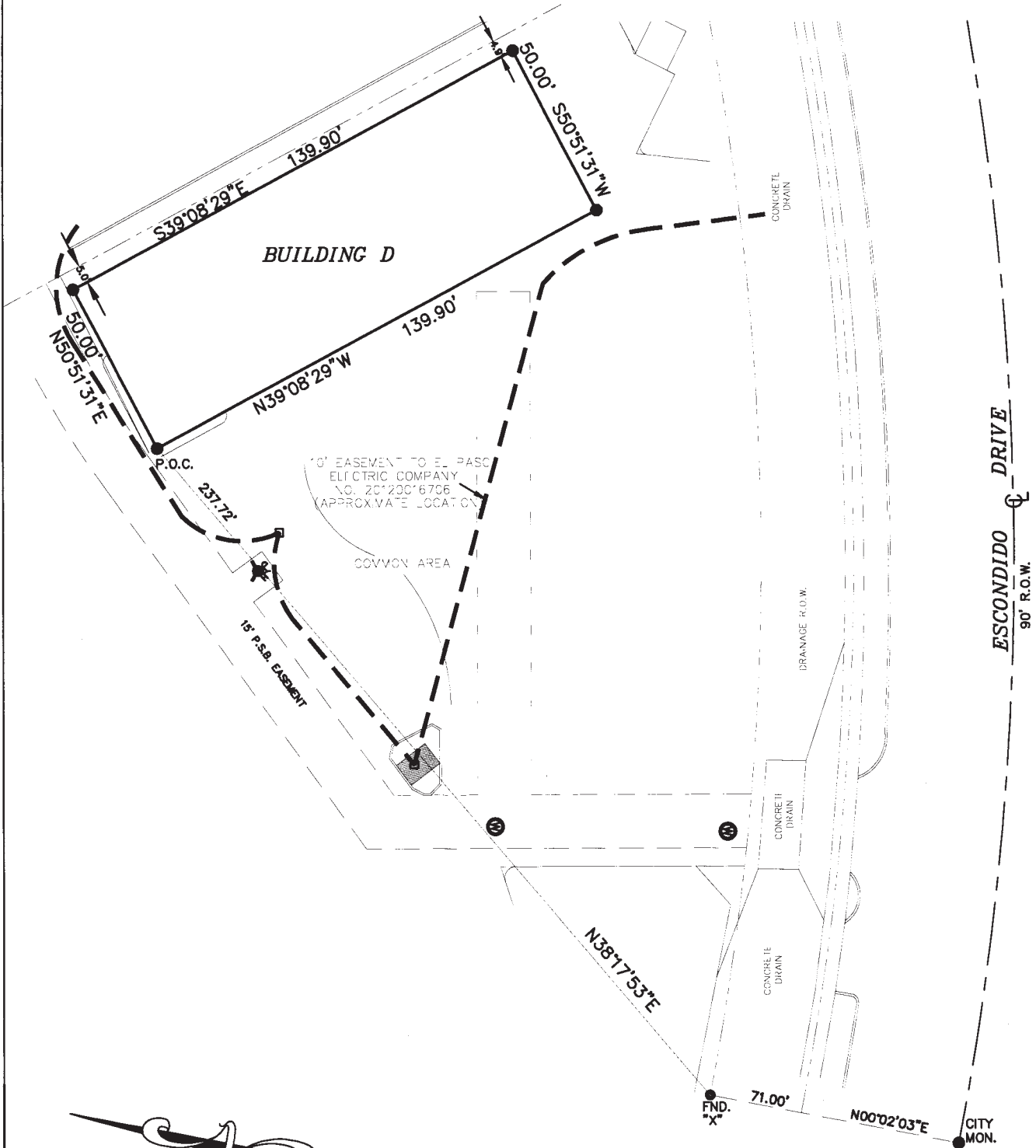
PAGE: 2 OF 10



CONSULTING COMPANY
1790 LEE TREVINO DRIVE SUITE 503
EL PASO, TEXAS 79936
(915) 633-6422

6350 ESCONDIDO DRIVE
A PORTION OF LOT 2, BLOCK 15A
CHAPARRAL PARK UNIT SEVEN
CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS



SCALE 1"=40'

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

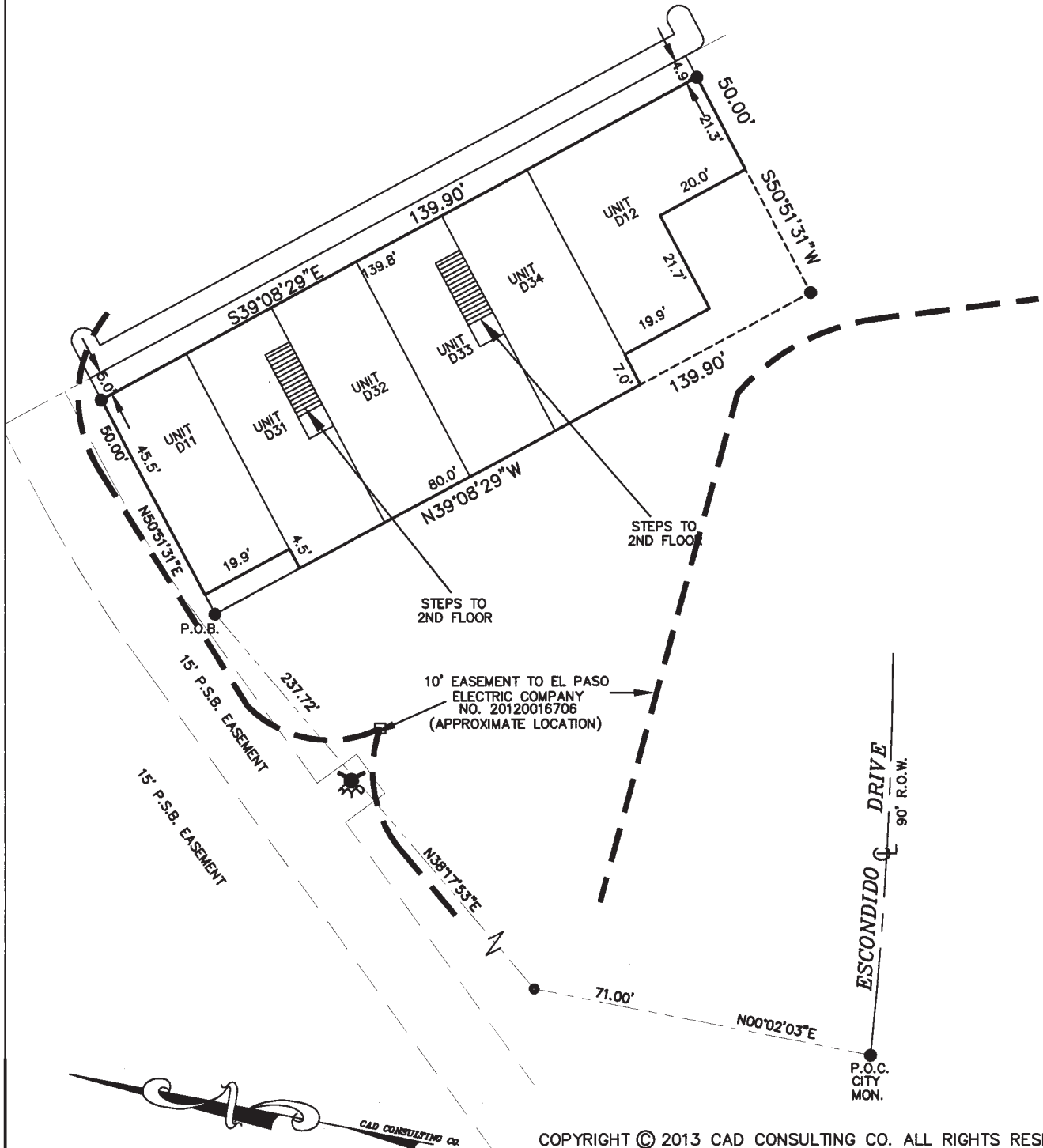
RECORDED IN VOL: 1 PAGE 36, PLAT RECORDS, EL PASO COUNTY, TX

PAGE: 3 OF 10

CAD CONSULTING COMPANY
 1790 LEE TREVINO DRIVE SUITE 503
 EL PASO, TEXAS 79936
 (915) 633-6422

6350 ESCONDIDO DRIVE— BUILDING D
 A PORTION OF LOT 2, BLOCK 15A (SEE EXHIBIT "A")
 CHAPARRAL PARK UNIT SEVEN
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS 3RD FLOOR



SCALE 1"=30'

PAGE: 4 OF 10

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

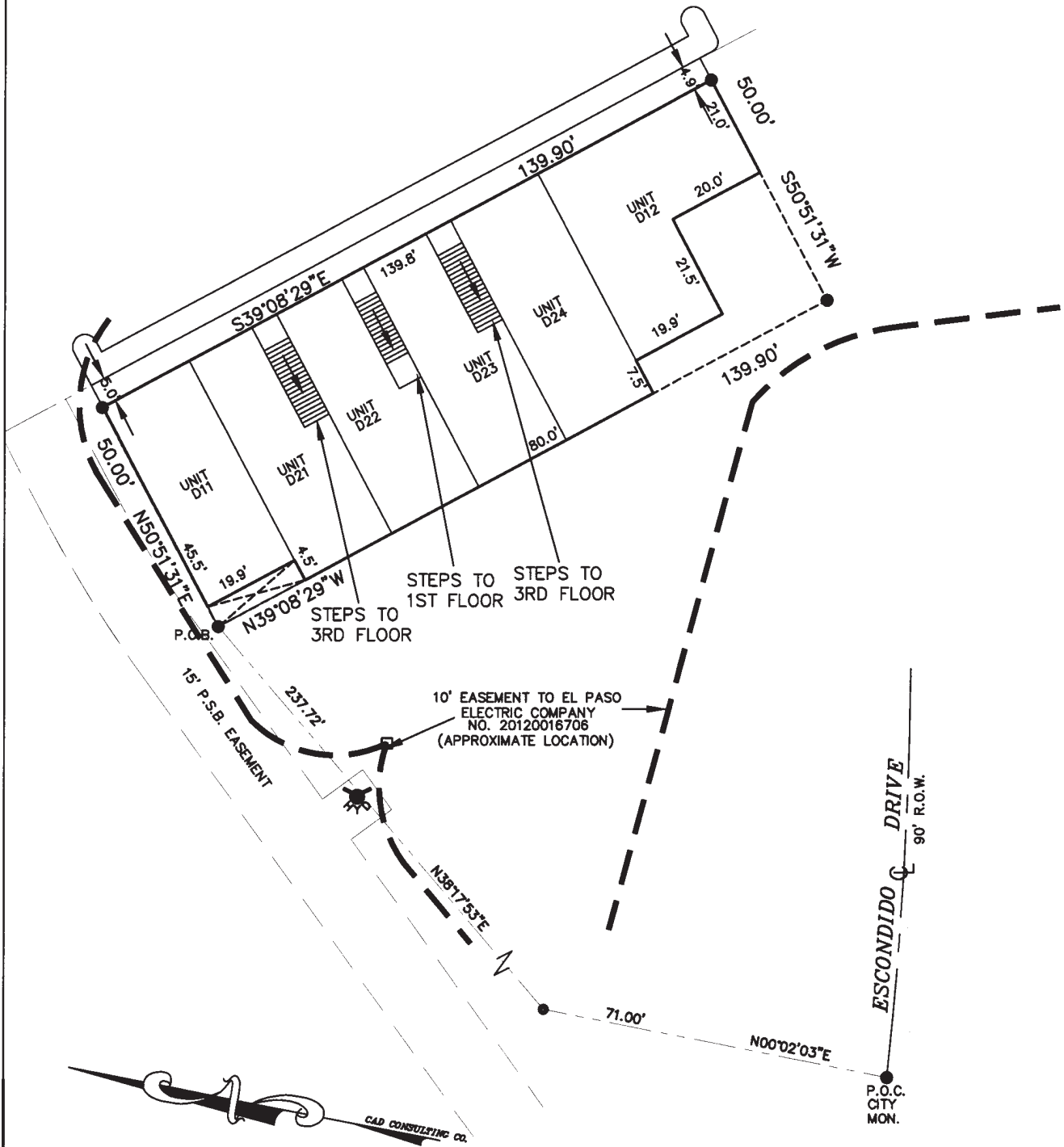
LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

RECORDED IN VOL: 1 PAGE 36 , PLAT RECORDS, EL PASO COUNTY, TX

CAD CONSULTING COMPANY
 1790 LEE TREVINO DRIVE SUITE 503
 EL PASO, TEXAS 79936
 (915) 633-6422

6350 ESCONDIDO DRIVE- BUILDING D
 A PORTION OF LOT 2, BLOCK 15A (SEE EXHIBIT "A")
 CHAPARRAL PARK UNIT SEVEN
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS 2ND FLOOR



SCALE 1"=30'

CAD CONSULTING CO.

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

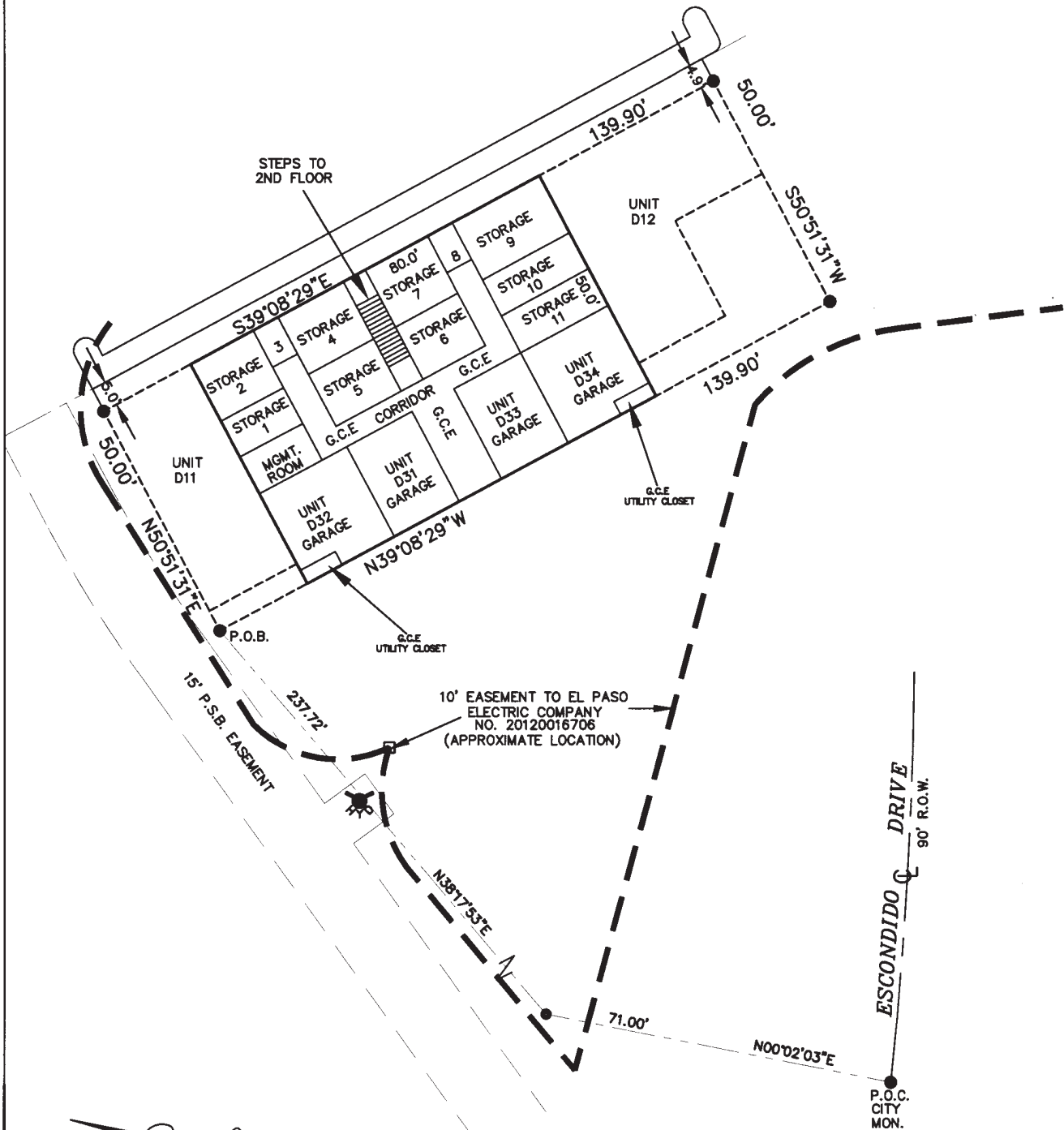
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PAGE: 5 OF 10

CAD CONSULTING COMPANY
1790 LEE TREVINO DRIVE SUITE 503
EL PASO, TEXAS 79936
(915) 633-6422

6350 ESCONDIDO DRIVE- BUILDING D
A PORTION OF LOT 2, BLOCK 15A (SEE EXHIBIT "A")
CHAPARRAL PARK UNIT SEVEN
CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS 1ST FLOOR



SCALE 1"=30'

PAGE: 6 OF 10

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

RECORDED IN VOL: 1 PAGE 36, PLAT RECORDS, EL PASO COUNTY, TX

CAD CONSULTING COMPANY
 1790 LEE TREVINO DRIVE SUITE 503
 EL PASO, TEXAS 79936
 (915) 633-6422

6350 ESCONDIDO DRIVE- BUILDING D
 A PORTION OF LOT 2, BLOCK 15A (SEE EXHIBIT "A")
 CHAPARRAL PARK UNIT SEVEN
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS



GARAGE UNIT D32 GARAGE UNIT D31 1ST FLOOR GARAGE UNIT D33 GARAGE UNIT D34

BUILDING D
WEST ELEVATION



BUILDING D
EAST ELEVATION

SCALE 1"=20'

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

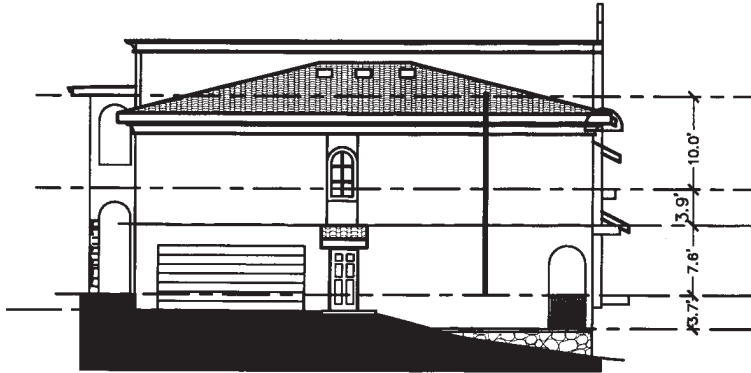
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PAGE: 7 OF 10

CONSULTING COMPANY
1790 LEE TREVINO DRIVE SUITE 503
EL PASO, TEXAS 79936
(915) 633-6422

6350 ESCONDIDO DRIVE- BUILDING D
A PORTION OF LOT 2, BLOCK 15A (SEE EXHIBIT "A")
CHAPARRAL PARK UNIT SEVEN
CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS



BUILDING D
NORTH ELEVATION



BUILDING D
SOUTH ELEVATION

SCALE 1"=20'

PAGE: 8 OF 10

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

RECORDED IN VOL: 1 PAGE 36 , PLAT RECORDS, EL PASO COUNTY, TX



CONSULTING COMPANY
1790 LEE TREVINO DRIVE SUITE 503
EL PASO, TEXAS 79936
(915) 633-6422

6350 ESCONDIDO DRIVE- BUILDING D
A PORTION OF LOT 2, BLOCK 15A (SEE EXHIBIT "A")
CHAPARRAL PARK UNIT SEVEN
CITY OF EL PASO, EL PASO COUNTY, TEXAS

PIAZZA ESCONDIDA CONDOMINIUMS

GENERAL NOTES _

1) THE CONFIGURATION REPRESENTED IN THE DRAWINGS OF THE FLOOR PLANS AND BUILDING ELEVATIONS IS BASED UPON THE CONSTRUCTION DOCUMENTS PREPARED BY WRIGHT & DALBIN. AND ARE NOT BASED UPON ACTUAL ON-SITE OBSERVATIONS AND MEASUREMENTS.

2.) ALL IMPROVEMENTS AND LAND REFLECTED ON THE PLAT ARE DESIGNATED AS GENERAL COMMON ELEMENTS, SAVE AND EXCEPT PORTIONS OF THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS OR "LC.E." OR UNITS: (i) IN THE DECLARATION OF CONDOMINIUM REGIME FOR PIAZZA ESCONDIDA CONDOMINIUMS (THE "DECLARATION") OR (ii) ON THE PLATS AND PLANS OF THE REGIME.



3.) OWNERSHIP AND USE OF CONDOMINIUM UNITS IS SUBJECT TO THE RIGHTS AND RESTRICTIONS CONTAINED IN THE DECLARATION OF CONDOMINIUM REGIME FOR PIAZZA ESCONDIDA.

4.) THE PROPERTY IS SUBJECT TO SPECIAL RIGHTS RESERVED BY THE DECLARANT AS PROVIDED IN APPENDIX "A" OF THE DECLARATION PURSUANT

TO SUCH PROVISIONS, AMONG OTHER THINGS, DECLARANT HAS RESERVED THE RIGHT TO: (i) COMPLETE OR MAKE IMPROVEMENTS INDICATED ON THE PLAT AND PLANS, (ii) EXERCISE ANY DEVELOPMENT RIGHT PERMITTED BY THE TEXAS UNIFORM CONDOMINIUM ACT AND THE DECLARATION, INCLUDING THE ADDITION OF REAL PROPERTY TO THE REGIME WHICH PROPERTY LIMITED COMMON ELEMENTS, (iii) MAKE THE PROPERTY PART OF A LARGER CONDOMINIUM OR PLANNED COMMUNITY, (iv) USE UNITS OWNED OR LEASED BY DECLARANT AS MODELS, STORAGE AREAS, AND OFFICES FOR THE MARKETING, MANAGEMENT, MAINTENANCE, CUSTOMER SERVICE, CONSTRUCTION, AND LEASING OF THE PROPERTY, AND (v) APPOINT OR REMOVE ANY DECLARANT -APPOINTED OFFICER OR DIRECTOR OF THE ASSOCIATION DURING THE DECLARANT CONTROL PERIOD (AS DEFINED IN THE DECLARATION) CONSISTENT WITH THE TEXAS UNIFORM CONDOMINIUM ACT, FOR PURPOSES OF PROMOTING, IDENTIFYING, AND MARKETING THE PROPERTY, DECLARANT RESERVED AN EASEMENT AND RIGHT TO PLACE OR INSTALL SIGNS, BANNERS, FLAGS, DISPLAY LIGHTING, POTTED PLANTS, EXTERIOR DECORATIVE ITEMS, SEASONAL DECORATIONS, TEMPORARY WINDOW TREATMENTS, AND SEASONAL LANDSCAPING ON THE PROPERTY, INCLUDING ITEMS AND LOCATIONS THAT ARE PROHIBITED TO OTHER OWNERS. DECLARANT HAS ALSO RESERVED AN EASEMENT AND RIGHT TO MAINTAIN, RELOCATE, REPLACE, OR REMOVE THE SAME FROM TIME TO TIME WITHIN THE PROPERTY. DECLARANT HAS RESERVED AN EASEMENT AND RIGHT OF INGRESS AND EGRESS IN AND THROUGH THE COMMON ELEMENTS (AS DEFINED IN THE DECLARATION) AND UNITS OWNED OR LEASED BY DECLARANT FOR PURPOSES OF CONSTRUCTING, MAINTAINING, MANAGING, AND MARKETING THE PROPERTY, AND FOR DISCHARGING DECLARANT'S OBLIGATIONS UNDER THE TEXAS UNIFORM CONDOMINIUM ACT AND THE DECLARATION.

PIAZZA ESCONDIDA CONDOMINIUMS

LEGEND

□	= ELECTRIC BOX
G.C.E.	= GENERAL COMMON ELEMENT
	= FIRE HYDRANT
—	= CONCRETE
	= ROCKWALL

CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	324.89	778.81	164.84	322.54	N78°04'57"E	23°54'06"

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JOB # 12-2968 DATE: 05-21-13 FIELD: JM OFFICE: SM

LOCATED IN ZONE C PANEL # 480214-0039-B DATED 10-15-82

RECORDED IN VOL: 1 PAGE 36 , PLAT RECORDS, EL PASO COUNTY, TX

PAGE: 10 OF 10



CONSULTING COMPANY
1790 LEE TREVINO DRIVE SUITE 503
EL PASO, TEXAS 79936
(915) 633-6422

6350 ESCONDIDO DRIVE
A PORTION OF LOT 2, BLOCK 15A
CHAPARRAL PARK UNIT SEVEN
CITY OF EL PASO, EL PASO COUNTY, TEXAS

TAX CERTIFICATE

DAVID CHILDS, PH.D.
CITY TAX ASSESSOR-COLLECTOR
221 N. KANSAS, STE. 300
EL PASO, TX 79901

PHONE NO.: (915) 541-4054
FAX NO.: (915) 541-4603
www.elpasotexas.gov



VICTOR A. FLORES
COUNTY TAX ASSESSOR-COLLECTOR

EL PASO CONSOLIDATED TAX OFFICE

Issued To:

TONE VENTURES LLC
6300 ESCONDIDO DR
EL PASO, TX 79912-2937

Legal Description:

15-A CHAPARRAL PARK #7 ELY1/2
OF2EXC30X115FTINNEC(IRREG ON
NWLY-335.00 FTONNELLY-IRREGON
SELY-321.84FTONSWLY)

Parcel Address: 6300 ESCONDIDO DR

Legal Acres: 1.5072

Print Date: 11/04/2013

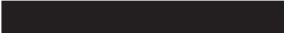
Paid Date: 11/04/2013

Issue Date: 11/04/2013

Operator ID: OLAYA

>--

Account Number:



Certificate No: 220525675

Certificate Fee: \$10.00

<--

TAX CERTIFICATES ARE ISSUED WITH THE MOST CURRENT INFORMATION AVAILABLE. ALL ACCOUNTS ARE SUBJECT TO CHANGE PER SECTION 26.15 OF THE TEXAS PROPERTY TAX CODE. THIS IS TO CERTIFY THAT ALL TAXES DUE ON THE ABOVE DESCRIBED PROPERTY HAVE BEEN EXAMINED, UP TO AND INCLUDING THE YEAR 2013. ALL TAXES ARE PAID IN FULL

Exemptions:

Certified Owner:

TONE VENTURES LLC
6300 ESCONDIDO DR
EL PASO, TX 79912-2937

Certified Tax Unit(s):

- 1 CITY OF EL PASO
- 3 EL PASO ISD
- 6 COUNTY OF EL PASO
- 7 EL PASO COMMUNITY COLLEGE
- 8 UNIVERSITY MEDICAL CENTER OF E

2013 Value:	1,308,706
2013 Levy:	\$35,142.08
2013 Levy Balance:	\$0.00
Prior Year Levy Balance:	\$0.00
Total Levy Due:	\$0.00
P&I + Attorney Fee:	\$0.00
Total Amount Due:	\$0.00

Reference (GF) No: N/A

Issued By: *Olaya Garcia*
DAVID CHILDS, PH.D.

CITY OF EL PASO TAX ASSESSOR-COLLECTOR
915 541-4054

ATTACHMENT 2

[ENCUMBRANCES]

1. Restrictive Covenant recorded in Book 978, Page 18; Instrument No. 20080024777 and Instrument No. 20080024779, Real Property Records of El Paso County, Texas.
2. Easements for overhang of service wires for pole type utilities and buried service wires, conduits and pipes for underground utilities, ingress and egress for service or construction of same, as shown on Map recorded in Book 30, Page 27, Plat Records of El Paso County, Texas.
3. Easements, or claims of Easements, not filed for record in the Real Property Records of El Paso County, Texas.
4. Prescriptive rights for roads, ditches and/or utility lines not of record in the Real Property Records of El Paso County, Texas, but visible from an inspection of the proposed insured land(s).
5. Terms, conditions, provisions, covenants and restrictions set forth in that certain Construction Agreement dated February 28, 1979, recorded in Book 978, Page 18, Real Property Records of El Paso County, Texas, by and between Desert American Agency, Inc. and the City of El Paso.
6. All terms, conditions, provisions, covenants and restrictions, as set forth in that certain Ordinance No. 016863, dated March 25, 2008, executed by the City of El Paso, recorded under Instrument No. 20080024777, Real Property Records of El Paso County, Texas.
7. All terms, conditions, provisions, covenants and restrictions, as set forth in that certain Construction and Use Agreement dated March 25, 2008, between Jack & Hersch Properties, LLC and The City of El Paso, recorded under Instrument No. 20080024779, Real Property Records of El Paso County, Texas.
8. Easement to El Paso Electric Company, recorded under Instrument No. 20120016706, Real Property Records of El Paso County, Texas.
9. Terms, conditions and provisions as set forth in that certain Grant of Easement, dated December 13, 2012, executed by Tone Ventures, LLC, recorded under Instrument No. 20120091794, Real Property Records of El Paso County, Texas.
10. Any claim or allegation that the land was conveyed in violation of V.A.T.C. Local Government Code, Sections 212.004, ET SEQ, or 232.001, ET SEQ, or in violation of any county or municipal ordinance affecting subdivisions, or any loss of the use of the land by reason thereof.
11. Any portion of the subject property lying within the boundaries and/or limits of that certain platted City of El Paso Drainage Right-of-way, the location of which is depicted on the map of

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

CHAPARRAL PARK "UNIT SEVEN", an Addition to the City of El Paso, El Paso County, Texas,
according to the map thereof on File in Book 30, Page 27, Plat Records of El Paso County, Texas.

ATTACHMENT 3

SCHEDULE OF ALLOCATED INTERESTS

COMMON INTEREST ALLOCATION AND COMMON EXPENSE LIABILITY

<u>Units</u>	<u>Common Interest Allocation and Common Expense Liability</u>
Unit D11, Building D	14.158%
Unit D12, Building D	17.885%
Unit D21, Building D	6.875%
Unit D22, Building D	6.783%
Unit D23, Building D	6.491%
Unit D24, Building D	7.219%
Unit D31, Building D	10.089%
Unit D32, Building D	10.388%
Unit D33, Building D	9.417%
Unit D34, Building D	10.695%

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

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

BUILDING LCE ALLOCATION

Upon initial recordation, only one (1) Building has been submitted to the terms and provisions of this Declaration; however, it is anticipated that additional Units and Buildings will be added to the Declaration. Until such time as another Building has been added to the terms and provisions of this Declaration, the Regime will not include Building LCE. On the date an amendment to this Declaration is Recorded which adds an additional Building to the terms and provisions of this Declaration, the components of each Building will be considered Building LCE.

THE BUILDING LCE ALLOCATION ASSIGNED TO A PARTICULAR UNIT WILL NOT CHANGE IF ADDITIONAL UNITS ARE CREATED AND ADDED TO THE REGIME BY THE DECLARANT.

ATTACHMENT 4

AREA OF COMMON RESPONSIBILITY CHART

“All aspects” includes maintenance, repair, and replacement, as needed.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Windows and doors (Attached Units only)	All aspects; provided however, that the cost associated with the repair and replacement of a window servicing a Unit exclusively will be charged to the Unit Owner as an Individual Assessment.	None.
Garage Doors, if applicable (Attached Units only)	All aspects excluding any electronic garage door or garage door opening system; provided however, that the cost associated with the repair and replacement of a garage door servicing a Unit exclusively will be charged to the Unit Owner as an Individual Assessment.	Any electronic garage door or garage door opening system

ATTACHMENT 5

GUIDE TO THE ASSOCIATION'S EXAMINATION OF AREA OF COMMON RESPONSIBILITY AND COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Area of Common Responsibility and General Common Elements maintained by the Association. The examination is required by *Section 9.4* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 6.15* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration or current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Area of Common Responsibility or the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

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

- Identification and analysis of each major component of both the Area of Common Responsibility and Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

- Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or
- Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

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

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc), a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 9.4* of the Declaration, the Board must reevaluate its funding level each year based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to, roofing, electrical systems, plumbing, information technology equipment, floor coverings, air conditioning systems, heating and hot water equipment, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

ATTACHMENT 6

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

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

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

DECLARATION OF CONDOMINIUM REGIME
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<p align="center">MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS</p>	<p align="center">PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS</p>	<p align="center">DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT</p>
<p>Association.</p>		
<p><u>PHYSICAL MANAGEMENT</u></p> <p>Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility.</p> <p>Contract for services, as needed to operate or maintain the property.</p> <p>Prepare specifications and call for bids for major projects.</p> <p>Coordinate and supervise work on the property, as warranted.</p>		
<p><u>ADMINISTRATIVE MANAGEMENT</u></p> <p>Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the Association.</p> <p>Conduct hearings with owners to resolve disputes or to enforce the governing documents.</p> <p>Obtain and supervise personnel and/or contracts needed to fulfill Association's functions.</p> <p>Schedule Association meetings and give owners timely notice of same.</p> <p>Schedule board meetings and give directors timely notice of same.</p> <p>Enforce the governing documents.</p>		

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

<p align="center">MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS</p>	<p align="center">PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS</p>	<p align="center">DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT</p>
<p>Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area.</p> <p>Maintain Association books, records, and files.</p> <p>Maintain Association's corporate charter and registered agent & address.</p>		
<p><u>OVERALL FUNCTIONS</u></p> <p>Promote harmonious relationships within the community.</p> <p>Protect and enhance property values in the community.</p> <p>Encourage compliance with governing documents and Applicable Law and ordinances.</p> <p>Act as liaison between the community of owners and governmental, taxing, or regulatory bodies.</p> <p>Protect the Association and the property from loss and damage by lawsuit or otherwise.</p>		

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

APPENDIX "A"

DECLARANT RESERVATIONS

A.1. General Provisions.

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

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

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "**Development Period**", as specifically defined in the *Section 1.17* of the Declaration, means the ten (10) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination. Declarant Control Period is defined in *Section 1.15* of the Declaration.

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

A.2.1. Appointment of Board and Officers. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or Owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitations: (i) within one hundred and twenty (120) days after fifty percent (50%) of the total number of Units that may be created have been conveyed to

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

Owners other than Declarant, at least one-third of the Board must be elected by the Owners other than Declarant; and (ii) within one hundred and twenty (120) days after seventy-five percent (75%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, all Board members must be elected by all Owners, including the Declarant.

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

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

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

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

A.3.1. Annexation. The Property is subject to expansion by phasing for up to ten (10) years from the date this Declaration is recorded. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by recording an amendment or supplement of this Declaration, executed by Declarant, in the Official Public Records of El Paso County, Texas.

A.3.2. Creation of Units. When created, the Property contains ten (10) Attached Units, including four (4) Office Units and six (6) Residential Units; however, Declarant

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

reserves the right to create up to and including thirty-seven (37) Units upon full buildout of all phases of the project which may include land added by the Declarant in accordance with *Section 2.2* of the Declaration. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit in the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests.

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

A.3.4. Architectural Control. Declarant has the absolute right of architectural control.

A.3.5. Transfer Fees; Fines and Penalties. Declarant will not pay transfer-related and resale certificate fees. Declarant will not pay to the Association any late fees, fines, administrative charges, or any other charge that may be considered a penalty.

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

A.3.7. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Regime; (ii) to create Units, General Common Elements, Limited Common Elements, and Building LCE within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.8. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any mortgagee, for the following purposes:

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (ii) To correct any defects in the execution of this Declaration or the other Documents.
- (iii) To add real property to the Property, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, Limited Common Elements, and Building LCE.0 within the Property, in the exercise of statutory Development Rights.
- (v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.
- (vi) To withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights" in the exercise of statutory Development Rights.
- (vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (viii) To change the name or entity of Declarant.
- (ix) For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

Notwithstanding anything to the contrary contained herein, all amendments made to the Declaration, Bylaws or Certificate during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to Recording pursuant to *Section 19.1* and *Section 19.4* of the Declaration, except for amendments adding additional Units to the Regime pursuant to *Section 5.1* of the Declaration.

A.4. Special Declarant Rights. Declarant reserves the following rights during the Development Period:

- (i) The right to complete or make Improvements indicated on the Plat and Plans.
- (ii) The right to exercise any Development Right permitted by the Act and this Declaration.

DECLARATION OF CONDOMINIUM REGIME
PIAZZA ESCONDIDA CONDOMINIUMS

- (iii) The right to make the Property part of a larger condominium or planned community.
- (iv) The right to use Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and off-site developments of Declarant or its assignee. Declarant may use up to four (4) Units as models and up to two (2) Units for sales and marketing offices.
- (v) For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Occupants. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and broker parties – at the Property to promote the sale of Units.
- (vi) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- (vii) The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

Doc# 20130084291
#Pages 112 #NFPages 1
11/13/2013 9:42:09 AM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$460.00

113
A

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



Delia Briones

EL PASO COUNTY, TEXAS

**PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT**

**ATTACHMENT "2"
CERTIFICATE OF FORMATION**



Office of the Secretary of State

CERTIFICATE OF FILING OF

Piazza Escondida Condominium Community, Inc.
File Number: 801875339

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 10/30/2013

Effective: 10/30/2013



A handwritten signature in black ink, appearing to read "John Steen".

John Steen
Secretary of State

FILED
In the Office of the
Secretary of State of Texas

OCT 30 2013

CERTIFICATE OF FORMATION

OF

Corporations Section

PIAZZA ESCONDIDA CONDOMINIUM COMMUNITY, INC.

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

ARTICLE I

NAME

The name of the corporation is: Piazza Escondida Condominium Community, Inc. (hereinafter called the "Association").

ARTICLE II

NONPROFIT CORPORATION

The Association is a nonprofit corporation.

ARTICLE III

DURATION

The Association shall exist perpetually.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the purpose of exercising all of the powers and privileges, and performing all of the duties, obligations, and purposes of the Association as set forth in that certain "Declaration of Condominium Regime for Piazza Escondida Condominiums", which is recorded in the Official Public Records of El Paso County, Texas, as the same may be amended from time to time (the "Declaration").

ARTICLE V

REGISTERED OFFICE; REGISTERED AGENT

The street address of the initial registered office of the Association is 6300 Escondido, El Paso, Texas 77912. The name of its initial registered agent at such address is Scott Winton.

ARTICLE VI

MEMBERSHIP

Membership in the Association shall be determined by the Declaration.

ARTICLE VII

VOTING RIGHTS

Voting rights of the members of the Association shall be determined as set forth in the Declaration. Notwithstanding the foregoing, cumulative voting is not permitted.

ARTICLE VIII

INCORPORATOR

The name and street address of the incorporator is:

NAME

ADDRESS

Robert D. Burton

401 Congress Avenue, Suite 2100
Austin, Texas 78701

ARTICLE IX

BOARD OF DIRECTORS

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors for nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be increased in accordance with the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

NAME

ADDRESS

Scott Winton

6300 Escondido
El Paso, Texas 79912

Herschell Stringfield

6300 Escondido
El Paso, Texas 79912

Alex Solot

6300 Escondido
El Paso, Texas 79912

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until the first annual meeting of the Association.

ARTICLE X

LIMITATION OF DIRECTOR LIABILITY

A director of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.

ARTICLE XI

INDEMNIFICATION

Each person who acts as a director, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association.

ARTICLE XII

DISSOLUTION

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes substantially similar to those for which this Association was created. In the event that

such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such substantially similar purposes.

ARTICLE XIII

ACTION WITHOUT MEETING

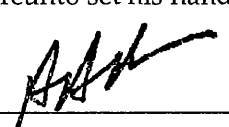
Any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Certificate of Formation.

ARTICLE XIV

AMENDMENT

This Certificate of Formation may be amended by proposal submitted to the membership of the Association. Any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a two-thirds (2/3) majority of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 29 day of October, 2013.



Robert D. Burton, Incorporator

**PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT**

**ATTACHMENT "3"
COMMUNITY MANUAL**

GREAT WESTERN ABSTRACT & TITLE CO.

Pa. Accom.



AFTER RECORDING RETURN TO:

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

**PIAZZA ESCONDIDA
CONDOMINIUMS
COMMUNITY MANUAL**

Consisting of:

Certificate of Formation

Bylaws

Initial Rules & Regulations

Assessment Collection Policy

Fine Policy

Mold Policy

Certification and Acknowledgment

PROPERTY

Piazza Escondido Condominiums are located at 6350 Escondido, El Paso, Texas, 79912 and are subject to the Declaration of Condominium Regime for Piazza Escondida Condominiums, recorded or to be recorded in the Official Public Records of El Paso County, Texas.

**PIAZZA ESCONDIDA CONDOMINIUMS
COMMUNITY MANUAL**

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ATTACHMENT 1

PIAZZA ESCONDIDA CONDOMINIUMS
COMMUNITY MANUAL

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55378-1 10/29/2013



Office of the Secretary of State

CERTIFICATE OF FILING OF

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The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 10/30/2013

Effective: 10/30/2013



A handwritten signature in black ink, appearing to read "John Steen".

John Steen
Secretary of State

FILED
In the Office of the
Secretary of State of Texas

OCT 30 2013

CERTIFICATE OF FORMATION

OF

Corporations Section

PIAZZA ESCONDIDA CONDOMINIUM COMMUNITY, INC.

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The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the purpose of exercising all of the powers and privileges, and performing all of the duties, obligations, and purposes of the Association as set forth in that certain "Declaration of Condominium Regime for Piazza Escondida Condominiums", which is recorded in the Official Public Records of El Paso County, Texas, as the same may be amended from time to time (the "Declaration").

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ARTICLE VII

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The name and street address of the incorporator is:

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El Paso, Texas 79912

Alex Solot

6300 Escondido
El Paso, Texas 79912

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until the first annual meeting of the Association.

ARTICLE X

LIMITATION OF DIRECTOR LIABILITY

A director of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.

ARTICLE XI

INDEMNIFICATION

Each person who acts as a director, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association.

ARTICLE XII

DISSOLUTION

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes substantially similar to those for which this Association was created. In the event that

such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such substantially similar purposes.

ARTICLE XIII

ACTION WITHOUT MEETING

Any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Certificate of Formation.

ARTICLE XIV

AMENDMENT

This Certificate of Formation may be amended by proposal submitted to the membership of the Association. Any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a two-thirds (2/3) majority of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 29 day of October, 2013.



Robert D. Burton, Incorporator

ATTACHMENT 2

PIAZZA ESCONDIDA CONDOMINIUM COMMUNITY, INC.

BYLAWS

(a Texas condominium association)

ARTICLE 1

INTRODUCTION

1.1. **Property.** These Bylaws of Piazza Escondida Condominium Community, Inc., provide for the governance of the condominium regime known as Piazza Escondida Condominiums, established on certain real property in El Paso County, Texas (the "**Property**"), as more particularly described in that certain Declaration of Condominium Regime for Piazza Escondida Condominiums, recorded or to be recorded in the Official Public Records of El Paso County, Texas (the "**Declaration**").

1.2. **Parties to Bylaws.** All present or future Owners of Units and all other persons who use or occupy the Property in any manner are subject to these Bylaws, the Declaration, and the other Documents as defined in the Declaration. The mere acquisition or occupancy of a Unit will signify that these Bylaws are accepted, ratified, and will be strictly followed.

1.3. **Definitions.** Words and phrases defined in the Declaration have the same meanings when used in these Bylaws. Article 1 of the Declaration is incorporated herein by reference.

1.4. **Nonprofit Purpose.** The Association is organized to be a nonprofit corporation.

1.5. **Declarant Control.** Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in Appendix "A" of the Declaration during the Declarant Control Period and the Development Period, as defined in the Declaration, including the number, qualification, appointment, removal, and replacement of directors.

1.6. **General Powers and Duties.** The Association, acting through the Board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property as may be required or permitted by the Documents and Texas law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Documents.

ARTICLE 2
BOARD OF DIRECTORS

During the Declarant Control Period, Appendix "A" of the Declaration governs the number, qualification, and appointment of directors. During the Declarant Control Period, Directors appointed by the Declarant need not be Owners. Directors appointed by the Declarant may not be removed by the Owners and need not comply with the qualifications set forth in Section 2.2 below. Directors appointed by the Declarant may be removed by Declarant only and are not subject to removal pursuant to Section 2.5 below. During the Development Control Period, Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

2.1. **Number and Term of Office.** The Board will consist of three (3) persons. One director will be elected for a three (3) year term, one director will be elected for a two (2) year term, and one director will be elected for a one (1) year term. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The number of directors may be changed by amendment of these Bylaws, but may not be less than three (3).

2.2. **Qualification.** The following qualifications apply to the election or appointment of persons to the Board.

2.2.1. **Owners.** At least a Majority of the directors must be Members of the Association or spouses of Members.

2.2.2. **Entity Member.** If a Unit is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity Member is eligible to serve as a director and is deemed to be a Member for the purposes of this Section. If the relationship between the entity Member and the director representing it terminates, that directorship will be deemed vacant.

2.2.3. **Delinquency.** No person may be elected or appointed as a director if any assessment or fine against the person or his Unit is delinquent at the time of election or appointment, provided he has been given notice of the delinquency and a reasonable opportunity to cure the delinquency.

2.2.4. **Litigation.** No person may be elected or appointed as a director if the person is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party.

2.3. **Election.** Directors will be elected by the Members of the Association. The election of directors will be conducted at the annual meeting of the Association, at any special

meeting called for that purpose, or by mail, facsimile transmission, electronic mail, or a combination of any of these.

2.4. **Vacancies.** Vacancies on the Board caused by any reason, except the removal of a director by a vote of the Association, are filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each director so elected serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder of the term.

2.5. **Removal of Directors.**

2.5.1. **Removal by Members.** At any annual meeting or special meeting of the Association, any one or more of the directors may be removed with or without cause by Members representing at least two-thirds of the votes present in person or by proxy at the meeting, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members must be given an opportunity to be heard at the meeting.

2.5.2. **Removal by Directors.** A director may not be removed by the officers or by the remaining directors, except for the following limited reasons for which a director may be removed by at least a Majority of the other directors at a meeting of the Board called for that purpose:

i. The director is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party; provided the Association did not file suit to effect removal of the director.

ii. The director's account with the Association has been delinquent for at least ninety (90) days or has been delinquent at least three (3) times during the preceding twelve (12) months; provided he was given notice of the default and a reasonable opportunity to cure.

iii. The director has refused or failed to attend three (3) or more meetings of the Board during the preceding twelve (12) months; provided he was given proper notice of the meetings.

iv. The director has refused or failed to cure a violation of the Documents for which he has been given notice, a reasonable opportunity to cure, and an opportunity to request a hearing before the Board.

2.6. **Meetings of the Board.**

2.6.1. **Organizational Meeting of the Board.** Within ten (10) days after the annual meeting, the directors will convene an organizational meeting for the purpose of

electing officers. The time and place of the meeting will be fixed by the Board and announced to the directors.

2.6.2. Regular Meetings of the Board. Regular meetings of the Board may be held at a time and place that the Board determines, from time to time, but at least one (1) such meeting must be held annually. Notice of regular meetings of the Board will be given to each director, personally or by telephone, written, or electronic communication, at least three (3) days prior to the date of the meeting.

2.6.3. Special Meetings of the Board. Special meetings of the Board may be called by the president or, if he is absent or refuses to act, by the secretary, or by any two (2) directors. At least three (3) days notice will be given to each director, personally or by telephone, written, or electronic communication, which notice must state the place, time, and purpose of the meeting.

2.6.4. Emergency Meetings. In case of an emergency, the Board may convene a meeting after making a diligent attempt to notify each director by any practical method.

2.6.5. Conduct of Meetings. The president presides over meetings of the Board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the Board and a record of transactions and proceedings occurring at meetings. When not in conflict with law or the Documents, the then current edition of Robert's Rules of Order governs the conduct of the meetings of the Board.

2.6.6. Quorum. At meetings of the Board, a Majority of directors constitutes a quorum for the transaction of business, and the acts of the Majority of the directors present at a meeting at which a quorum is present are the acts of the Board. If less than a quorum is present at a meeting of the Board, the Majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business that may have been transacted at the meeting as originally called may be transacted without further notice. Directors may not participate by proxy at meetings of the Board.

2.6.7. Open Meetings. Regular and special meetings of the Board are open to Members of the Association, subject to the following provisions to the extent permitted or required by the Act:

- i. No audio or video recording of the meeting may be made, except by the Board or with the Board's prior express consent.
- ii. Members who are not directors may not participate in Board deliberations under any circumstances, and may not participate in Board discussions unless the Board expressly so authorizes at the meeting.

iii. The Board may adjourn any meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or sensitive nature. The nature of business to be considered in executive session will first be announced in open session.

iv. The Board may prohibit attendance by non-Members, including representatives, proxies, agents, and attorneys of Members.

v. The Board may prohibit attendance by any Member who disrupts meetings or interferes with the conduct of Board business.

vi. The Board may but is not required to publish to Members the time, date, and place of Board meetings, but will provide the information if requested in writing by a Member on a meeting by meeting basis.

2.6.8. Telephone Meetings. Members of the Board or any committee of the Association may participate in and hold meetings of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

2.6.9. Action without a Meeting. Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting, if all directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent has the same force and effect as a unanimous vote. This Section does not apply to actions that require meetings under the Act.

2.7. Liabilities and Standard of Care. In performing their duties, the directors are required to exercise certain standards of care and are subject to certain liabilities, including but not limited to the following provisions of State law: Section 82.103(a) and (f) of the Act, and Sections 3.102, 3.105, 22.221, 22.223, 22.224, 22.225, 22.226, 22.227 and 22.230 of the Texas Business Organizations Code.

2.8. Powers and Duties. The Board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Property. The Board may do all acts and things except those which, by law or the Documents, are reserved to the Members and may not be delegated to the Board. Without prejudice to the general and specific powers and duties set forth in laws or the Documents, or powers and duties as may hereafter be imposed on the Board by resolution of the Association, the powers and duties of the Board include, but are not limited to, the following:

2.8.1. Appointment of Committees. The Board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the Board with its responsibilities. The resolution may establish the purposes and powers of the committee created, provide for the appointment of a chair and committee Members, and may provide for reports, termination, and other administrative matters deemed appropriate by the Board. Members of committees will be appointed from among the Owners and residents.

2.8.2. Manager. The Board may employ a manager or managing agent for the Association, at a compensation established by the Board, to perform duties and services authorized by the Board.

2.9. Fidelity Bonds. Any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds. The premiums on the bonds may be a common expense of the Association.

ARTICLE 3 **OFFICERS**

3.1. Designation. The principal officers of the Association are the president, the secretary, and the treasurer. The Board may appoint one (1) or more vice-presidents and other officers and assistant officers as it deems necessary. The president and secretary must be directors. Other officers may, but need not, be Members or directors. Any two (2) offices may be held by the same person, except the offices of president and secretary. If an officer is absent or unable to act, the Board may appoint a director to perform the duties of that officer and to act in place of that officer, on an interim basis.

3.2. Election of Officers. The officers are elected no less than annually by the directors at the organizational meeting of the Board and hold office at the pleasure of the Board. Except for resignation or removal, officers hold office until their respective successors have been designated by the Board.

3.3. Removal and Resignation of Officers. A Majority of directors may remove any officer, with or without cause, at any regular meeting of the Board or at any special meeting of the Board called for that purpose. A successor may be elected at any regular or special meeting of the Board called for that purpose. An officer may resign at any time by giving written notice to the Board. Unless the notice of resignation states otherwise, it is effective when received by the Board and does not require acceptance by the Board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the Board.

3.4. Standard of Care. In performing their duties, the officers are required to exercise the standards of care provided by Section 82.103(a) and (f) of the Act and by Section 3.105 of the Texas Business Organizations Code.

3.5. Description of Principal Offices.

3.5.1. President. As the chief executive officer of the Association, the president: (i) presides at all meetings of the Association and of the Board; (ii) has all the general powers and duties which are usually vested in the office of president of a corporation organized under the laws of the State of Texas; (iii) has general supervision, direction, and control of the business of the Association, subject to the control of the Board; and (iv) sees that all orders and resolutions of the Board are carried into effect.

3.5.2. Secretary. The secretary: (i) keeps the minutes of all meetings of the Board and of the Association; (ii) has charge of such books, papers, and records as the Board may direct; (iii) maintains a record of the names and addresses of the Members for the mailing of notices; and (iv) in general, performs all duties incident to the office of secretary.

3.5.3. Treasurer. The treasurer: (i) is responsible for Association funds; (ii) keeps full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepares all required financial data and tax returns; (iv) deposits all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the Board; (v) prepares the annual and supplemental budgets of the Association; (vi) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (vii) performs all the duties incident to the office of treasurer.

3.6. Authorized Agents. Except when the Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association. In the absence of Board designation, the president and the secretary are the only persons authorized to execute instruments on behalf of the Association.

ARTICLE 4 **MEETINGS OF THE ASSOCIATION**

4.1. Annual Meeting. An annual meeting of the Association will be held once during each 12 month period on a date and at a time determined by the Board. At each annual meeting the Members will elect directors in accordance with these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

4.2. Special Meetings. It is the duty of the president to call a special meeting of the Association if directed to do so by a Majority of the Board or by a petition signed by Owners of at least thirty percent (30%) of the Units. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

4.3. **Place of Meetings.** Meetings of the Association may be held at the Property or at a suitable place convenient to the Members, as determined by the Board.

4.4. **Notice of Meetings.** At the direction of the Board, written notice of meetings of the Association will be given to an Owner of each Unit at least ten (10) days but not more than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the Board.

4.5. **Ineligibility.** The Board may determine that no Member may vote at meetings of the Association if the Member's financial account with the Association is in arrears forty-five (45) days before the date of a meeting of the Association at which Members will vote, provided each ineligible Member is given notice of the arrearage and an opportunity to become eligible. The Board may specify the manner, place, and time for payment for purposes of restoring eligibility. A determination of Members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than forty-five (45) days after the original meeting.

4.6. **Voting Members List.** The Board will prepare and make available a list of the Association's voting Members in accordance with Section 22.158(b) of the Texas Business Organizations Code.

4.7. **Quorum.** At any meeting of the Association, the presence in person or by proxy of Members representing at least thirty percent (30%) of the Units in the Property constitutes a quorum.

4.8. **Lack of Quorum.** If a quorum is not present at any meeting of the Association for which proper notice was given, Members representing at least a Majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than twenty-four (24) hours in order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same purposes within fifteen (15) to thirty (30) days may be given to an Owner of each Unit, at which meeting the Members present in person or by proxy (even if representing less than thirty percent (30%) of the Units) will be sufficient to constitute a quorum for the purposes of that meeting.

4.9. **Votes.** The vote of Members representing at least a Majority of the votes cast at any meeting at which a quorum is present binds all Members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by law. Cumulative voting is prohibited.

4.9.1. **Co-Owned Units.** If a Unit is owned by more than one Member, the vote appurtenant to that Unit is cast in accordance with Section 82.110(a) of Act, which is

summarized as follows. If only one of the multiple Owners of a Unit is present at a meeting of the Association, that person may cast the vote allocated to that Unit. If more than one of the multiple Owners is present, the vote allocated to that Unit may be cast only in accordance with the Owners' unanimous agreement. Multiple Owners are in unanimous agreement if one of the multiple Owners casts the vote allocated to a Unit and none of the other Owners makes prompt protest to the person presiding over the meeting.

4.9.2. Corporation-Owned Units. If a Unit is owned by a corporation, the vote appurtenant to that Unit may be cast by any officer of the corporation in the absence of the corporation's written appointment of a specific person to exercise its vote. The vote of a partnership may be cast by any general partner in the absence of the partners' written appointment of a specific person. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote.

4.9.3. Association-Owned Units. Votes allocated to a Unit owned by the Association may be counted towards a quorum and for all ballots and votes except the election or removal of directors. The vote appurtenant to a Unit owned by the Association is exercised by the Board.

4.10. Proxies. Votes may be cast in person or by written proxy. To be valid, each proxy must: (i) be signed and dated by a Member or his attorney-in-fact; (ii) identify the Unit to which the vote is appurtenant; (iii) name the person or title (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (iv) identify the meeting for which the proxy is given; (v) not purport to be revocable without notice; and (vi) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the Board. Unless the proxy specifies a shorter or longer time, it terminates eleven (11) months after the date of its execution. Perpetual or self-renewing proxies are permitted, provided they are revocable. To revoke a proxy, the granting Member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy may be delivered by fax. However, a proxy received by fax may not be counted to make or break a tie-vote unless: (a) the proxy has been acknowledged or sworn to by the Member, before and certified by an officer authorized to take acknowledgments and oaths; or (b) the Association also receives the original proxy within five (5) days after the vote.

4.11. Conduct of Meetings. The president, or any person designated by the Board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person

presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order governs the conduct of meetings of the Association when not in conflict with the Documents. Votes should be tallied by Members appointed by the person presiding over the meeting.

4.12. **Order Of Business.** Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the Association is as follows:

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Approval of minutes of preceding meeting
- Reports of Officers (if any)
- Election of directors (when required)
- Unfinished or old business
- New business

4.13. **Adjournment of Meeting.** At any meeting of the Association, a Majority of the Members present at that meeting, either in person or by proxy, may adjourn the meeting to another time and place.

4.14. **Action without Meeting.** Subject to Board approval, any action which may be taken by a vote of the Members at a meeting of the Association may also be taken without a meeting by written consents. The Board may permit Members to vote by any method allowed by Section 22.160(b)(c) and (d) of the Texas Business Organizations Code, which may include hand delivery, mail, fax, email, or any combination of these. Written consents by Members representing at least a Majority of votes in the Association, or such higher percentage as may be required by the Documents, constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting and does not apply to the election of directors.

4.15. **Telephone Meetings.** Members of the Association may participate in and hold meetings of the Association by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE 5

RULES

5.1. **Rules.** The Declarant has adopted initial rules and regulations for: (i) the administration of the Association and the Documents; (ii) the maintenance, management,

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operation, use, conservation, and beautification of the Property; and (iii) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with law or the Documents. The Board will, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the Members. The Board has the right to amend, from time to time, the rules and regulations; provided, however, that until the expiration or termination of the Development Period, all amendments to the rules and regulations must be approved in advance and in writing by Declarant.

5.2. **Adoption and Amendment.** Any rule may be adopted, amended, or terminated by the Board, provided that the rule and the requisite Board (and Declarant, if applicable) approval are properly recorded as a resolution in the minutes of the meeting of the Board.

5.3. **Distribution.** On request from any Member or resident, the Board will provide a current and complete copy of rules. Additionally, the Board will, from time to time, distribute copies of the current and complete rules to Owners and, if the Board so chooses, to non-Member residents.

ARTICLE 6 **ENFORCEMENT**

6.1. **Remedies.** The violation of any provision of the Documents gives the Board the following rights, in addition to any other rights set forth in the Documents:

6.1.1. **Fines.** To impose reasonable fines, if notice and an opportunity to be heard are given.

6.1.2. **Self-Help.** After notice and an opportunity to be heard are given, except in case of an emergency, to enter the Unit or Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is contrary to the intent and meaning of the provisions of the Documents. The Board may not be deemed liable for any manner of trespass by this action.

6.1.3. **Courts.** To enjoin, abate, or remedy, by appropriate legal proceedings, the continuance of any breach.

6.2. **Notice and Hearing.** Before imposing a fine or exercising self-help abatement, the Board must give the Owner a written violation notice and an opportunity to be heard.

6.2.1. **Notice of Violation.** The Board's written violation notice will contain the following: (i) the date the violation notice is prepared or mailed; (ii) a description of the violation; (iii) a reference to the rule or provision of the Documents that is being violated; (iv) a description of the action required to cure the violation; (v) the amount of

the fine to be levied and/or the abatement action to be taken; (vi) the date the fine begins accruing or abatement action becomes possible; and (vi) a statement that not later than the 30th day after the date of the violation notice, the Owner may request a hearing before the Board to contest the fine or the abatement action.

6.2.2. Notice to Occupant. In addition to giving the written violation notice to the Owner, the Board may also give a copy of the notice to the non-Owner resident, if the Board deems it appropriate.

6.2.3. Request for Hearing. To request a hearing before the Board, an Owner must submit a written request to the Board within thirty (30) days after the date of the violation notice. Within ten (10) days after receiving the Owner's request for a hearing, the Board will give the Owner notice of the date, time, and place of the hearing. The hearing will be scheduled for a date within forty-five (45) days from the date the Board receives the Owner's request, and should be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend.

6.2.4. Pending Hearing. Pending the hearing, the Board may continue to exercise the Association's other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of the fine or the abatement action described in the notice.

6.2.5. Hearing. The hearing will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication. No audio or video recording of the hearing may be made.

6.2.6. Minutes of Hearing. The minutes of the hearing must contain a statement of the results of the hearing and the amount of fine, if any, imposed, or abatement action, if any, authorized. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the hearing, the notice requirement will be deemed satisfied.

6.3. Imposition of Fine. Within thirty (30) days after levying the fine or authorizing the abatement, the Board must give the Owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the Owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

6.3.1. Amount. The Board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the

violation. If the Board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

6.3.2. Type of Fine. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

6.3.3. Other Fine-Related. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Board may adopt a collection policy that applies Owners' payments to unpaid fines before retiring other types of assessments.

6.4. Additional Enforcement Rights. Notwithstanding the notice and hearing requirement, the Board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Documents which, in the Board's opinion, are: (i) self-evident, such as vehicles parked illegally or in violation of posted signs; (ii) threatening to life or property; or (iii) repeat violations of the same provision by the same Owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Documents for certain violations, such as nonpayment of assessments.

ARTICLE 7

OBLIGATIONS OF THE OWNERS

7.1. Notice of Sale. Any Owner intending to sell or convey his Unit or any interest therein must give written notice to the Board of his intention, together with: (i) the address or legal description of the Unit being conveyed; (ii) the name and address of the intended purchaser; (iii) the name, address, and phone number of the title company or attorney designated to close the transaction; (iv) names and phone numbers of real estate agents, if any, representing seller and purchaser; and (v) scheduled date of closing. An Owner will furnish this information to the Board at least ten (10) business days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the Owner's request to the Association for a resale certificate.

7.2. Proof of Ownership. On request by the Association from time to time, any person who purports to be an Owner or the agent of an Owner must furnish to the Board evidence of ownership of the Unit. A copy of the recorded deed is the customary evidence. This requirement may be satisfied by receipt of a Board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the Unit or any interest

therein. The Association may refuse to recognize a person as a Member unless the requested documentation is provided.

7.3. **Owners' Information.** Within thirty (30) days after acquiring an ownership interest in a Unit, the Owner must provide the Association with the Owner's mailing address, telephone number, and driver's license number, if any; the name and telephone number of any resident other than the Owner; and the name, address, and telephone number of any person managing the Unit as agent of the Unit Owner. An Owner must notify the Association within thirty (30) days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time.

7.4. **Mailing Address.** The Owner or the several co-Owners of a Unit must register and maintain one mailing address to be used by the Association for mailing of notices, demands, and all other communications. If an Owner fails to maintain a current mailing address with the Association, the address of the Owner's Unit is deemed to be his mailing address.

7.5. **Registration of Mortgagees.** Within thirty (30) days after granting a lien against his Unit, the Owner must provide the Association with the name and address of the holder of the lien and the loan number. The Owner must notify the Association within thirty (30) days after he has notice of a change in the information required by this Section. Also, the Owner will provide the information on request by the Association from time to time.

7.6. **Assessments.** All Owners are obligated to pay assessments imposed by the Association to meet the common expenses as defined in the Declaration. A Member is deemed to be in good standing and entitled to vote at any meeting of the Association if he is current in the assessments made or levied against him and his Unit.

7.7. **Compliance with Documents.** Each Owner will comply with the provisions and terms of the Documents, and any amendments thereto. Further, each Owner will always endeavor to observe and promote the cooperative purposes for which the Property was established.

ARTICLE 8

ASSOCIATION RECORDS

8.1. **Records.** The Association will use its best efforts to keep the records required by Section 82.114(a) of the Act, including the following:

- i. Minutes or a similar record of the proceedings of meetings of the Association.
- ii. Minutes or a similar record of the proceedings of meetings of the Board.

iii. Names and mailing addresses of the Members, the currency and accuracy of the information being the responsibility of the Members.

iv. Names and mailing addresses of the mortgagees, the currency and accuracy of the information being the responsibility of the Members and their mortgagees.

v. Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles.

vi. Copies of income tax returns prepared for the Internal Revenue Service.

vii. Copies of the Documents and all amendments to any of these.

viii. A record of all votes or written consents by which amendments to the Documents were approved, for at least four (4) years after the approval.

8.2. **Inspection of Books and Records.** Books and records of the Association will be made available for inspection and copying pursuant to Section 82.114(b) of the Act and Sections 3.151, 3.153 and 22.351 of the Texas Business Organizations Code.

8.2.1. **Proper Purpose.** The Board may require a Member to submit a written demand for inspection, stating the purpose for which the Member will inspect the books and records. The Board has the following rights: (i) to determine whether the Member's purpose for inspection is proper; (ii) to deny the request if the Board determines that the Member's purpose is not proper; (iii) if granting the request, to identify which books and records are relevant to the Member's stated purpose for inspection.

8.2.2. **Copies.** A Member, at Member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the Member, and to charge the Member a reasonable fee for copying.

8.2.3. **Member's Agent.** A Member's inspection of the books and records may be assisted or performed by the Member's agent, accountant, or attorney.

8.2.4. **Records of Attorneys and Accountants.** The files and records of an attorney or accountant who performs services for the Association are not records of the Association, are not subject to inspection by Members, and are not subject to production in a legal proceeding.

8.3. **Resale Certificates.** Any officer may prepare or cause to be prepared, certify, and execute resale certificates in accordance with Section 82.157 of the Act. The Association may charge a reasonable fee for preparing resale certificates. The Association may refuse to furnish

resale certificates until the fee is paid. Any unpaid fees may be assessed against the Unit for which the certificate is furnished.

ARTICLE 9 **NOTICES**

9.1. **Co-Owners.** If a Unit is owned by more than one person, notice to one co-Owner is deemed notice to all co-Owners.

9.2. **Delivery of Notices.** Any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, or by any other method permitted by the Texas Business Organizations Code. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the Member at the address shown on the Association's records. If transmitted by fax, the notice is deemed delivered on successful transmission of the facsimile.

9.3. **Waiver of Notice.** Whenever a notice is required to be given to an Owner, Member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a Member or director at any meeting of the Association or Board, respectively, constitutes a waiver of notice by the Member or director of the time, place, and purpose of the meeting. If all Members or directors are present at any meeting of the Association or Board, respectively, no notice is required and any business may be transacted at the meeting.

ARTICLE 10 **DECLARANT PROVISIONS**

10.1. **Conflict.** The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws.

10.2. **Board of Directors.** During the Declarant Control Period, Appendix "A" of the Declaration governs the number, qualification, and appointment of directors. The initial directors will be appointed by Declarant and need not be Owners or residents. Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

10.3. **Organizational Meeting.** Within sixty (60) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call an organizational meeting of the Members for the purpose of electing directors, by ballot of Members. Notice of the organizational meeting will be given as if it were notice of an annual meeting.

ARTICLE 11
AMENDMENTS TO BYLAWS

11.1. **Authority.** These Bylaws may be amended by a majority vote of the Board of Directors. Additionally, these Bylaws may also be amended by Members representing a majority of the voting interests entitled to be cast present in person or by proxy at a duly called meeting to adopt same.

11.2. **Mortgagee Protection.** In addition to the notices and consents required by these Bylaws, certain actions and amendments require notice to or approval by Mortgagees, pursuant to the Mortgagee Protection article of the Declaration. If applicable, the Association must give the required notices to and obtain the required approvals from Mortgagees.

11.3. **Effective.** To be effective, each amendment must be in writing, reference the names of the Property and the Association, and be executed by a majority of the Board of Directors. Further, if these Bylaws are publicly recorded, the amendment must recite the recording data for the Bylaws, and be recorded in the Official Public Records of El Paso County, Texas.

11.4. **Declarant Protection.** During the Development Period, no amendment of these Bylaws may affect the Declarant's rights herein without the Declarant's written and acknowledged consent. Specifically, this Section and the article titled "Declarant Provisions" may not be amended without the prior written approval of the Declarant. The Declarant's written consent must be part of the amendment instrument.

ARTICLE 12
GENERAL PROVISIONS

12.1. **Compensation.** A director, officer, Member, or resident may not receive any pecuniary profit from the operation of the Association, and no funds or assets of the Association may be paid as a salary or as compensation to, or be distributed to, or inure to the benefit of a director, officer, Member, or resident. Nevertheless,

i. Reasonable compensation may be paid to a director, officer, Member, or resident for services rendered to the Association in other capacities.

ii. A director, officer, Member, or resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the Board.

iii. The Board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities.

iv. This provision does not apply to distributions to Unit Owners permitted or required by the Declaration or the Act.

12.2. **Conflicting Provisions.** If any provision of these Bylaws conflicts with any provision of the laws of the State of Texas, the conflicting Bylaws provision is null and void, but all other provisions of these Bylaws remain in full force and effect. In the case of any conflict between the certificate of formation of the Association and these Bylaws, the certificate of formation controls. In the case of any conflict between the Declaration and these Bylaws, the Declaration controls.

12.3. **Severability.** Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidation of any provision of these Bylaws, by judgment or court order, does not affect any other provision which remains in full force and effect.

12.4. **Construction.** The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and may not be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

12.5. **Fiscal Year.** The fiscal year of the Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year.

12.6. **Waiver.** No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

12.7. **Indemnification.** To the fullest extent permitted by applicable law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

12.8. **Preparer.** These Bylaws were prepared in by Robert D. Burton, Esq., Winstead, PC, 401 Congress Ave., Suite 2100, Austin, Texas 78701.

ATTACHMENT 3

INITIAL RULES & REGULATIONS

These Initial Rules & Regulations are established by TONE VENTURES, L.L.C., a Texas limited liability company, for the benefit of Piazza Escondida Condominium Community, Inc., a Texas non-profit corporation (the "Association"). These Community Rules are the "Rules" defined in Article 1 of the Declaration of Condominium Regime for Piazza Escondida Condominiums, recorded or to be recorded in the Official Public Records of El Paso County, Texas (the "Declaration").

These Rules are in addition to the provisions of the Declaration and Bylaws. By owning or occupying a Unit, each Owner and Occupant agrees to abide by these Rules and to comply with the obligations of Owners and Occupants under the Declaration and Bylaws of the Association.

Words and phrases defined in the Declaration have the same meaning when used in these Rules. In the event of a conflict between Documents, the hierarchy of authority is as follows: Declaration (highest), Bylaws, and these Rules (lowest). The Association's board of directors is empowered to interpret, enforce, amend, and repeal these Rules.

A. COMPLIANCE

- A-1. Compliance. Each Owner will comply with the provisions of these Rules, the other Documents, and policies adopted by the Board to supplement these Rules, as any of these may be revised from time to time. Each Owner, additionally, is responsible for compliance with the Documents by the Occupants of his Unit, and his or their respective relatives, invitees, tenants, agents, employees, or contractors. If a Rule requires or prohibits conduct by an "Owner" or "Occupant," each of those terms are deemed to include the other, and applies to all persons for whom an Owner or Occupant is responsible. Again, the Owner is ultimately responsible for compliance by all persons using or related to his Unit. An Owner should contact the Association if he has a question about these Rules. The Association has the right to enforce these Rules against any person on the Property.
- A-2. Additional Rules. Each Occupant must comply with any rules and signs posted from time to time on the Property by the Association. Posted rules are incorporated in these Rules by reference. Each Occupant must comply with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of the Property. Temporary rules are incorporated in these Rules by reference.
- A-3. Waiver. Circumstances may warrant waiver or variance of these Rules. To obtain a waiver, an Owner must make written application to the Board. The Board's approval of a variance must be in writing, and may be conditioned.

- A-4. Limits. These Rules represent standards of conduct and maintenance in a high density community. It is understood that individuals may have different interpretations of and tolerances for these Rules. On lifestyle-related rules, such as the "Community Etiquette" rules below, the Association may refrain from acting on a perceived violation unless the Board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one Occupant to enforce these Rules against another Occupant. Occupants are expected to deal directly and peaceably with each other about their differences.
- A-5. Filing Complaints. Because the Association is not staffed to monitor the Property for Rules violations, the Association relies on Occupants to identify and report violations of these Rules and the Documents, and to monitor compliance with these Rules by violators. The Association also relies on Occupants to help keep each other informed about the Rules. Recognizing that an Occupant may be reluctant to confront another Occupant about a violation, the Association will work with Occupants to enforce the Rules. Generally, a complaint must be in writing and must be signed by an Occupant or Owner who is willing to be identified as the complainant. The Association may refuse to enforce a violation (1) that cannot be easily and independently verified, (2) for which it did not receive a signed written complaint, (3) for which the complainant will not cooperate with monitoring the violation and compliance, and (4) which the Board does not consider to be significant or community-wide.

B. OBLIGATIONS OF OWNERS AND RESIDENTS

- B-1. Damage. An Owner is responsible for any loss or damage he causes to his Unit, other Units, the personal property of other Occupants or their guests, or to the Common Elements.
- B-2. Association Does Not Insure. A person assumes full risk and sole responsibility for placing his personal property in or on the Property. Each Occupant is solely responsible for insuring his personal property in the Unit and on the Property, including his furnishings and vehicles. THE ASSOCIATION STRONGLY RECOMMENDS THAT ALL OWNERS AND RESIDENTS PURCHASE AND MAINTAIN INSURANCE ON THEIR PERSONAL BELONGINGS.
- B-3. Risk Management. An Owner may not permit anything to be done or kept in his Unit or the Common Elements that is illegal or that may result in the cancellation of insurance on the Property.
- B-4. Reimbursement for Enforcement. An Owner must promptly reimburse the Association for any expense incurred by the Association to enforce the Documents against the Owner, his Unit, or persons for whom the Owner is responsible.

- B-5. Reimbursement for Damage. An Owner must promptly reimburse the Association for the cost of damage to the Property caused by the negligent or willful conduct of the Owner or persons for whom the Owner is responsible.
- B-6. No Estate Sales. Without the Board's prior written permission, no person may conduct at the Property a sale or activity that is advertised or attractive to the public, such as garage sales, car sales, or estate sales. This section does not apply to marketing the sale or rental of a Unit, unless combined with a prohibited activity.
- B-7. Supervision of Minors. For their own well-being and protection, persons who are legally incompetent or younger than 18 years must be under the general control and supervision of their parents or guardians at all times while on the Property.

C. OCCUPANCY STANDARDS

- C-1. Numbers. The maximum number of persons who may occupy a Unit is one more than the number of bedrooms in the Unit. Two persons per bedroom, however, may occupy a Unit if the occupants qualify for familial status protection under the Fair Housing Act. Occupancy of a Unit, for purposes of these Rules, means occupancy in excess of 30 continuous days or 60 days in any 12-month period.
- C-2. Leases. Each lease must be in writing. At the Association's request, an Owner must give the Board a copy of each lease and lease renewal. A Unit may not be leased for hotel or transient purposes. Less than the entire Unit may not be leased.
- C-3. Danger. As permitted by the federal Fair Housing Act Rules, no Unit may be occupied by a person who constitutes a direct threat to the health or safety of other persons, or whose occupancy would result in substantial physical damage to the property of others.

D. FIRE AND SAFETY

- D-1. Safety. Each Occupant is solely responsible for his own safety and for the safety, well-being, and supervision of his guests and any person on the Property to whom the Occupant has a duty of care, control, or custody.
- D-2. Fires. Except for barbecue fires as permitted by these Rules, there may not be any exterior fires on the Property.
- D-3. Barbecue. Occupants may keep and use barbecue grills that comply with all applicable regulatory requirements, subject to the limitations contained in this Section. The Board reserves the right to prohibit or restrict the existence and/or use of all or certain outdoor cooking grills if, in the Board's discretion, a grill constitutes a fire hazard or is unattractive or oversized for the area in which it is kept. On permitted grills, (a) open fires must be supervised at all times; (b) gas tanks must be properly used and

maintained; (c) no flames may be higher than the cooking surface; and (d) a grill may not be used near combustible materials.

- D-4. Intrusion Monitoring. Although the Unit may be wired for intrusion monitoring service, the Association is not the service provider to the Unit, and has no responsibility or liability for the availability for quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service. As stated in the Declaration, the Association may serve as a conduit for the service fees and payments from the Owner to the provider.
- D-5. Safety Equipment. No person may use, tamper with, or modify the fire and safety equipment, if any, in the Common Elements of the Property, such as alarms, extinguishers, monitors, and self-closing gates or doors. This Section may not be construed to require the installation or use of such equipment.
- D-6. Security. The Association may, but is not be obligated to, maintain or support certain activities within the Property designed to make the Property less attractive to intruders than it otherwise might be. The Association, its directors, committees, Members, agents, and employees will not in any way be considered an insurer or guarantor of security within the Property, and may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner, Occupant, guest, and invitee on the Property assumes all risk for loss or damage to his person, to his Unit, to the contents of his Unit, and to any other of his property on the Property. The Association expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment, or measures recommended, installed, or undertaken within the Property.

E. GENERAL USE AND MAINTENANCE OF UNIT

- E-1. Annoyance. An Occupant may not use his Unit in a way that: (a) annoys Occupants of neighboring units; (b) reduces the desirability of the Property as a residential community; (c) endangers the health or safety of other Occupants; or (d) violates any law or any provision of the Documents.
- E-2. Maintenance. An Owner, at his expense, will maintain his Unit and keep it in good repair.
- E-3. Porch and Balcony Maintenance. An Occupant will maintain the porch and balcony of his Unit (if any) in a clean manner. An Occupant will take care that the cleaning of his porch and balcony does not annoy or inconvenience other Occupants. A porch or balcony may not be enclosed or used for storage purposes. If the Board determines that a porch or balcony is unsightly, the Board may give the Owner notice of the problem and a

reasonable time period in which to correct it, after which the Board may take corrective action at the Owner's expense.

- E-4. Glass. The Association is responsible for the repair and replacement of any broken or cracked glass in an Attached Unit's windows and doors, which serve an Attached Unit exclusively, regardless of the source of the damage; provided, however, that expenses associated with maintenance, repair and replacement of glass surfaces of windows or doors serving an Attached Unit exclusively are the responsibility of the Unit Owner, which shall be due and payable as an Individual Assessment to the Association upon demand. Owners of Detached Units, at such Owner's expense, will repair and replace broken or cracked glass in Detached Units.
- E-5. Utility Equipment. Each Owner, at his expense, will maintain, repair, and replace the water heating and air heating and cooling equipment/system serving his Unit.
- E-6. Combustibles. An Occupant may not store or maintain, anywhere on the Property – including within a Unit – explosives or materials capable of spontaneous combustion.
- E-7. Report Malfunctions. An Occupant will immediately report to the Board his discovery of any leak, break, or malfunction in any portion of the Property which the Association has a duty to maintain. An Occupant who fails to promptly report a problem may be deemed negligent, in which case the Owner may be liable for any additional damage caused by the delay.
- E-8. Emergencies. In case of continuous water overflow, an Occupant should immediately turn off water and TURN OFF THE SHUT-OFF VALVES AT THE PEX MANIFOLD.
- E-9. Cable. An Occupant who subscribes directly to cable service is solely responsible for maintaining that subscription and the appurtenant equipment. No additional exterior cable lines may be connected to the Unit except in the cable conduit maintained by the Association. No holes or protrusions may be made in any exterior surface of the Property. Wires may not be draped, hung, or strung on the building or the grounds, the Owner of the Unit to which cable service is provided is responsible to the Association for any damage to the Property caused by the cable installer or servicer.
- E-10. Utilities. An Occupant will try to conserve the use of utilities furnished through the Association, including water consumption within his Unit.
- E-11. Frozen Water Pipes. Some units are constructed with water lines in exterior walls. It is the duty of every Owner and Occupant of such a Unit to protect the water lines from freezing during winter months. Between November 1 and March 25 of any year, no Unit with water lines in exterior walls may be left unheated. During periods of anticipated below freezing temperatures, water lines in exterior walls should be allowed to drip continuously, and cabinets enclosing plumbing lines should be left ajar. Dishwashers on

exterior walls should not be used during and immediately after periods of extreme cold. Failure by an Owner or Occupant to monitor the local weather and take appropriate precautions may be deemed negligence.

F. GENERAL USE & MAINTENANCE OF COMMON ELEMENTS

- F-1. **Intended Use.** Every area and facility in the Property may be used only for its intended and obvious use.
- F-2. **Personal Property.** The sidewalks, entrances, passages, driveways, parking areas and similar portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Regime and the Units. No carts, bicycles, carriages, chairs, tables or other similar objects or personal property shall be stored in, on or upon the Common Elements, except in areas, if any, designated for such purposes. All personal property must be stored within an Owner's Unit.
- F-3. **Grounds.** Unless the Board designates otherwise, Occupants may not use or abuse the landscaped areas, lawns, beds, and plant materials on the Common Elements.
- F-4. **Abandoned Items.** No item or object of any type may be stored, placed, or maintained anywhere on the General Common Elements, except by the Board or with the Board's prior written consent. Items of personal property found on the General Common Elements are deemed abandoned and may be disposed of by the Board.

G. COMMUNITY ETIQUETTE

- G-1. **Courtesy.** Each Occupant will endeavor to use his Unit and the Common Elements in a manner calculated to respect the rights and privileges of other Occupants.
- G-2. **Annoyance.** An Occupant will avoid doing or permitting anything to be done that will annoy, harass, embarrass, or inconvenience other Occupants or their guests, or the Association's employees and agents.
- G-3. **Noise and Odors.** Each Occupant must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb Occupants of other units. The following are expressly prohibited: (1) installing speakers, subwoofers, or other noise or vibration emitting equipment in or on a party wall (a wall between 2 units); (2) creating any protrusion in a party wall (a wall between 2 units), through which sound may more easily transfer; (3) mounting a speaker in a ceiling at a point that is less than 5 feet from a party wall; and (4) loud vocalizations and boisterous conduct on Common Elements.

NOT SOUNDPROOFED

The units are not soundproofed, and some noise transmission between adjoining units will occur. Reasonable people may disagree about "customary" noise levels and what constitutes a "disturbance." Persons who are hypersensitive to noise may be required to tolerate a degree of noise transmission.

- G-4. Parties. In planning private social functions at the Property, an Occupant should be aware of the potential consequences on the Property's parking resources and on the sensibilities of other Occupants. An Occupant intending to use his Unit for a party or other activity that may be expected to produce a higher-than-customary level or duration of noise or other disturbance will make a diligent effort to give Occupants of adjoining units timely prior notice of the event, as a courtesy. If the event is expected to attract 20 or more guests to the Property, the Occupant will also give the Board timely prior written notice of the event.
- G-5. Reception Interference. Each Occupant will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, or electronic reception on the Property.

H. ARCHITECTURAL CONTROL; WORK UPON UNITS AND COMMON ELEMENTS

- H-1. Exteriors. Without the written approval of the Architectural Reviewer, an Owner or Occupant may NOT change, remodel, decorate, destroy, or improve any exterior surface or component of the Property, nor do anything to change the outside appearance of the Property, including without limitation the entry door, front porch, windows, and driveway appurtenant to the Unit.
- H-2. Protrusions. An Owner or Occupant may not cause anything to protrude or project through the boundaries of the Unit, such as the foundation, roof, party wall between units, or an exterior wall of a Unit. Examples of installations that may entail protruding wires or conduits include, without limitation, exterior horns, lights, speakers, or aerials.
- H-3. Balconies, Decks, and Porches. Because balconies, decks, and porches are distinctive architectural features of the Property, an Owner or Occupant may not change the appearance or condition of the balcony or porch portion of his Unit in any manner, without the prior authorization of the Architectural Reviewer. While certain types of furniture, lamps, and container gardens are allowed on balconies, patios, and yard areas, such items must be in good condition, of a first class nature, and compatible with the design and quality of the community, as determined by the Board its sole and absolute discretion. Prohibited activities include the following:
- a. Painting or staining any part of the balcony or porch.
 - b. Installing a cover of any kind over the open slat top of the balcony.
 - c. Enclosing or covering of the balcony or porch in any manner.

- d. Hanging items from the trellis, arbor, walls, roof, or railing, or failing to remove hanging items that the Architectural Reviewer has determined to be unattractive, such as windchimes, windsocks, birdfeeders, rope lights, and hanging baskets.
- e. Maintaining anything on the balcony or porch that the Architectural Reviewer determines to be unattractive, such as umbrellas, items of storage, bicycles, and oversize or inappropriate furniture.
- f. Container gardens are allowed, and some Units were initially provided with flower pot rings with artificial flowers. Owners may replace the artificial flowers in the flower pot rings with live plants and/or flowers. In the event Owners replace the artificial flowers and flower pots, Owners should deliver such artificial flowers and flower pots to the Association. Owners will be required to maintain such gardens in good condition and of a first class nature. The Association may restore artificial flowers to the flower pot rings in the event an Owner fails to maintain live planting and/or flowers in the flower pot rings in good condition and repair.
- g. Barbeque grills may not be visible - even temporarily - on balconies or porches.

H-4. Hot Tubs. A hot tub, spa, jacuzzi, sprinkler or mist system, fountain, or any other plumbed or liquid-based device may not be installed in an Attached Unit or any Common Element. This prohibition does not apply to replacements of customary kitchen and bathroom appliances and fixtures. This prohibition expressly applies to roofs, porches, decks, and balconies.

H-5. Satellite Dishes. An Occupant who desires satellite television service must strictly comply with the applicable requirements set forth in the Declaration. No holes or protrusions may be made in any exterior surface of the Property. Wires may not be draped, hung, or strung on the building or the grounds. The Owner of the Unit to which satellite service is provided is responsible to the Association for any damage to the Property caused by the satellite dish installer or servicer. Contact the Association before shopping for an exterior satellite dish or antenna to determine if such equipment is permitted for a particular Unit and, if so, where it may be located. Owners should get Association's written authorization before any installation.

The Association may, but is not obligated to, install one or more satellite dishes upon the roof of a building, to serve the Units within such building. In lieu of installing a common satellite dish, the Association may, but is not obligated to, permit Owners to install a satellite dish upon the roof of such Owner's building, subject to such additional rules and regulations as the Association may promulgate from time to time concerning the installation of satellite dishes upon the building roofs. Each Owner is advised to contact the Association to determine whether the Association has elected to permit the

Owners and Occupants to install satellite dishes upon the building roofs, and if so, to discuss what additional rules will apply.

In the event that the Association elects to permit Owners and Occupants to install satellite dishes upon the building roofs, installation shall be conducted at the Owner's or Occupant's sole cost and expense by an installer or servicer approved by the Association.

H-6. Work Upon Common Elements and Units. Notwithstanding any provision in the Declaration or these Rules to the contrary, no Owner or Occupant shall perform or permit to be performed any work to any portion of: (i) the Owner's Unit, which work may require access to, over or through the Common Elements or other Units or (ii) the Common Elements, without the prior consent of the Board of Directors except in case of an emergency. All such work may only be performed by a person who shall deliver to the Board of Directors prior to commencement of such work, in form satisfactory to the Board of Directors:

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

H-7. Window Treatments. An Owner MAY install window treatments inside his Unit, provided:

- a. The window treatment, including drapes, blinds, shades, or shutters, must appear to be (1) clear, (2) white, (3) near-white light neutral, or (4) light wood tone when viewed from outside the Unit.
- b. The use of bed sheets, tablecloths, or other obviously non-drapery fabrics is expressly prohibited, even on a temporary basis.
- c. Aluminum foil, reflective window treatments, window tinting, and window decals or stickers are expressly prohibited.

- d. Window treatments must be maintained in good condition, and must be removed or replaced if they become stained, torn, damaged, or otherwise unsightly in the opinion of the Board.

H-8. Prohibited Acts. In addition to the foregoing, a person may not:

- a. Post signs, notices, or advertisements on the Common Elements or in a Unit if the sign is visible from outside the Unit, other than signs permitted by Section 11.18 of the Declaration.
- b. Place or hang an object in, on, from, or above any window, interior window sill, deck, balcony or patio that, in the sole opinion of the Board, detracts from the appearance of the Property. Prohibited objects include birdfeeders, windsocks, mobiles, windchimes, and other outside accessories.
- c. Hang, shake, or otherwise display linens, clothing, towels, rugs, shoes, mops, bedding, or other similar items from windows, doors, balconies, patios, or passageways.
- d. Have bicycles or similar sporting equipment on balconies or patios which are visible from other Units or the Common Area.
- e. Place decorations on exterior walls, doors, and fences, or on the General Common Elements.
- f. Enclose or cover a balcony, porch, or deck.
- g. Install storm or screen doors and windows, including solar screen.

H-9. Approval. To obtain the Architectural Reviewer's written consent for an alteration or modification, an Owner must comply with the architectural control requirements of the Declaration. An applicant may not rely on verbal assurances of an Association manager, director, or officer. If approval is obtained, the Owner must maintain the approved item in a good and attractive condition. For example, if the Architectural Reviewer approves a potted plant, the pot must be removed if the plant dies or becomes unsightly.

I. VEHICLE RESTRICTIONS

I-1. Permitted Vehicles. To be permitted on the Property, a vehicle must be operable, and must display a current license tag and inspection sticker. For purposes of these Rules, vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. The following are not permitted on the Property without the Board's consent: trailers, boats, recreational vehicles, buses, large commercial trucks, or industrial vehicles may not be operated on the Property except to provide transportation to and from a Unit.

- I-2. Repairs. Washing, repairs, restoration, or maintenance (including oil changes) of vehicles is prohibited on driveways and parking areas, except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility.
- I-3. Proper Placement. No vehicle, including motorcycles, may be driven, parked, or placed anywhere on the Property except in designated areas. Motorcycles may not be chained to buildings, fences, or any other part of the Property, unless designated for that purpose.
- I-4. Nuisances. Each vehicle must be muffled and must be maintained and operated to minimize noise, odor, and oil emissions. The use of car horns on the Property is discouraged. No vehicle may be kept on the Property if the Board deems it to be unsightly, inoperable, inappropriate, or otherwise violative of these Rules.
- I-5. Obstructions. No vehicle may be parked in a manner that impedes or prevents ready access to the Property, driveways, or parking spaces. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard. No vehicle may be parked, even temporarily, in spaces reserved for others, in firelanes, or in any area designated as "No Parking." Vehicles parked in violation of the Documents (including this provision) will be towed at the owner's expense.
- I-6. Garages. Because of the shortage of visitor parking within the Property, it is imperative that each Occupant of a Unit with an appurtenant garage use his garage for the routine parking of at least one operable vehicle. No garage may be enclosed or used for any purpose that prevents the parking of the maximum number of vehicles for which it was constructed. Garage doors must be kept closed at all times, except when entering or exiting.
- I-7. Violations. A vehicle in violation of these Rules may be stickered, wheel-locked, towed, or otherwise removed from the Property by the Board, at the expense of the vehicle's Owner. The Association expressly disclaims any liability for damage to vehicles on which the Association exercises these remedies for Rules violations.

J. TRASH DISPOSAL

- J-1. General Duty. Occupant will endeavor to keep the Property clean and will dispose of all refuse in receptacles designated specifically by the Association or by the applicable municipality for that purpose. Occupants may NOT litter Common Elements.
- J-2. Hazards. Occupants may NOT store trash inside or outside his Unit in a manner that may permit the spread of fire, odors, or seepage, or encouragement of vermin. Before discarding coals, ashes, logs, or other materials used in barbecue grills or fireplaces, Occupant will ensure that the debris is thoroughly cold.

- J-3. Excess Trash. Occupants will place trash entirely within the designated receptacle, and may not place trash outside, next to, or on top of the receptacle. If a receptacle is full, Occupants should locate another receptacle to hold his trash. Boxes and large objects should be crushed or broken down before placed in a receptacle. Receptacles are to be closed at all times when not in use. Occupants must arrange privately for removal of discarded furnishings or any unusually large volume of debris.

K. PETS

- K-1. Permitted Pets. An Occupant may not keep or permit on the Property a pet or animal of any kind, except as permitted by these Rules and the Documents. Subject to these Rules, an Occupant may keep in his Unit customary domesticated housepets, such as domesticated dogs, cats, caged birds, and aquarium fish, provided there are not more than two cats, or two dogs, or one cat and one dog.
- K-2. Prohibited Animals. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for anywhere on the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys, insects, arachnids, or other exotic animals). In addition, no Occupant may keep a dangerous or exotic animal, pit bull terrier, trained attack dog, or any other animal deemed by the Board to be a potential threat to the well-being of people or other animals. In the event that any regulatory authority (i.e. animal control) determines than an animal within the Property is dangerous or hazardous, then the owner of such animal shall be required to immediately remove the animal from the Property. No animal or housepet may be kept, bred, or maintained for any commercial purpose or for food.
- K-3. Indoors/Outdoors. A permitted pet must be maintained inside the Unit, and may not be kept on a porch, balcony, or deck. No pet is allowed on General Common Elements unless carried or leashed. No pet may be leashed to a stationary object on the Common Elements.
- K-4. Disturbance. Pets must be kept in a manner that does not disturb another Occupant's rest or peaceful enjoyment of his Unit or the Common Elements. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time.
- K-5. Damage. Each Occupant is responsible for any property damage, injury, or disturbance his pet may cause or inflict. An Occupant who keeps a pet on the Property is deemed to indemnify and agrees to hold harmless the Board, the Association, and other Owners and Occupants, from any loss, claim, or liability of any kind or character whatever

resulting from any action of his pet or arising by reason of keeping or maintaining the pet on the Property.

- K-6. Pooper Scooper. Each Occupant is responsible for the removal of his pet's wastes from the Common Elements. The Board may levy a fine against a Unit and its Owner each time feces are discovered on the Common Elements and attributed to an animal in the custody of that Unit's Occupant.
- K-7. Removal. If an Occupant or his pet violates these Rules, or if a pet creates a noise, odor, or other disturbance or nuisance, the Occupant or person having control of the animal may be given a written notice by the Board to correct the problem. If the problem is not corrected within the time specified in the notice (not less than 10 days), the Occupant, upon written notice from the Board, may be required to remove the animal. Each Occupant agrees to permanently remove his violating animal from the Property within 10 days after receipt of a removal notice from the Board.

L. MISCELLANEOUS

- L-1. Right to Hearing. An Owner may request in writing a hearing by the Board regarding an alleged breach of these Rules by the Owner or any person for whom the Owner is responsible. The Board will schedule a hearing within 30 days after receiving the Owner's written request. At the hearing, the Board will consider the facts and circumstances surrounding the alleged violation. The Owner may attend the hearing in person, or may be represented by another person or written communication.
- L-2. Automatic Assessment Policy. The Association may adopt an automatic payment program and require owners who do not participate in the automatic payment program to pay an administrative fee to the Association in an amount adopted from time to time by the Association.
- L-3. Mailing Address. An Owner who receives mail at any address other than the address of his Unit must maintain with the Association his current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to Owners by the Documents may be sent to an Owner's most recent address as shown on the records of the Association. If an Owner fails to provide a forwarding address, the address of that Owner's Unit is deemed effective for purposes of delivery.
- L-4. Revision. These Rules are subject to being revised, replaced, or supplemented, and Owners and Occupants are urged to contact the Association to verify the rules currently in effect on any matter of interest. These Rules will remain effective until 10 days after an Owner of each Unit has been given a notice of the amendment or revocation of these Rules.

L-5. Other Rights. These Rules are in addition to and in no way whatsoever detract from the rights of the Association under the other Documents and the laws of the State of Texas.

ATTACHMENT 4

ASSESSMENT COLLECTION POLICY

Piazza Escondida Condominiums is a condominium regime created by and subject to the Declaration of Condominium Regime for Piazza Escondida Condominiums, recorded or to be recorded in the Official Public Records of El Paso County, Texas County, Texas, as it may be amended (the "**Declaration**"). As a condominium regime, Piazza Escondida Condominiums is also subject to State laws, including Chapter 82 of the Texas Property Code -- the Texas Uniform Condominium Act ("**TUCA**"). The operation of Piazza Escondida Condominiums is vested in Piazza Escondida Condominium Community, Inc. (the "**Association**"), acting through its board of directors (the "**Board**"). The Association is empowered to enforce the covenants of the Declaration, including the obligation of owners to pay assessments. In addition to rights and remedies of the Association under the Declaration, TUCA gives the Association, acting through the Board:

1. Authority to adopt and amend rules regulating the collection of delinquent assessments and the application of payments. §82.102(a)(13);
2. Authority to impose interest and late charges for late payments of assessments, and returned check charges. §82.102(a)(12);
3. Authority to adopt and amend rules regulating the termination of utility service to a Unit, the Owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility. §82.102(a)(14);
4. Authority to suspend the voting privileges of or the use of certain general common elements by an Owner delinquent for more than thirty (30) days in the payment of assessments. §82.102(a)(18); and
5. A private power of sale to foreclose the assessment lien nonjudicially, subject to a limited right of redemption by the Unit Owner. §82.113.

To establish equitable policies and procedures for the collection of delinquent assessments, the Declarant hereby adopts this policy for the benefit of the Association, as part of the initial project documentation.

SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST

- 1-A. Due Date. An Owner will timely and fully pay Regular Assessments, Building LCE Assessments and Special, Individual, Utility and Deficiency Assessments. Regular Assessments are due and payable on the first calendar day of each month. Special, Building LCE, Individual, Utility and Deficiency Assessments are due on the date stated

in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, Utility or Deficiency Assessment is given.

- 1-B. Delinquent. Any assessment that is not fully paid when due is delinquent. When the account of a Unit becomes delinquent, it remains delinquent until paid in full – including collection costs and late fees.
- 1-C. Late Fees & Interest. If the Association does not receive full payment of a Regular Assessment by 5:00 p.m. on the fifth (5th) calendar day of the month, the Association may levy a late fee of \$25 per month and/or interest of ten percent (10%) per annum from the first day of delinquency until the delinquency is paid in full. After the initial month of delinquency, a late fee of \$25 may be on the first day of each month the account is delinquent until the account is current.
- Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorney's fees incurred by the Association in collecting the delinquency.
- 1-E. Insufficient Funds. The Association may levy a charge of \$25 for any check returned to the Association marked "not sufficient funds" or the equivalent.
- 1-F. Waiver. Properly levied collection costs, late fees, and interest may not be waived by the Board, unless a majority of the directors determines that extraordinary circumstances warrant an adjustment to the account, in which case the adjustment must be described in detail in the minutes of the Board's meeting. Because of the potential for inadvertently effecting a waiver of the policies contained in this policy, the Board will exercise caution in granting adjustments to an Owner's account.

SECTION 2. INSTALLMENTS & ACCELERATION

If a Special or Deficiency Assessment is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire assessment in default and accelerate the due date on all remaining installments of that assessment. A Special or Deficiency Assessment payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

SECTION 3. PAYMENTS

- 3-A. Application of Payments. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, **any payment received**

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by the Association will be applied in the following order, starting with the oldest charge in each category, until that category is fully paid, regardless of the amount of payment, notations on checks, and the date the obligations arose:

- | | |
|--|---------------------------------------|
| (1) Collection costs and attorney's fees | (10) Delinquent Regular assessments |
| (2) Fines | (11) Current Individual assessments |
| (3) Reimbursable expenses | (12) Current Deficiency assessments |
| (4) Late charges and interest | (13) Current Special assessments |
| (5) Delinquent Individual assessments | (14) Current Utility assessments |
| (6) Delinquent Deficiency assessments | (15) Current Building LCE assessments |
| (7) Delinquent Special assessments | (17) Current Regular assessments |
| (8) Delinquent Utility assessments | |
| (9) Delinquent Building LCE assessments | |

3-B. Form of Payment. The Association may require that payment of delinquent assessments be made only in the form of cash, cashier's check, or certified funds.

3-C. Partial and Conditioned Payment. The Association may refuse to accept partial payment (i.e., less than the full amount due and payable) and payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Unit's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.

3-D. Notice of Payment. If the Association receives full payment of the delinquency after recording a notice of lien, the Association will cause a release of notice of lien to be publicly recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and recording the release.

3-E. Correction of Credit Report. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

SECTION 4. LIABILITY FOR COLLECTION COSTS

The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees, and other reasonable costs and attorney's fees incurred in the collection of the delinquency, which amounts are secured by a lien against the Unit.

SECTION 5. COLLECTION PROCEDURES

- 5-A. Delegation of Collection Procedures. From time to time, the Association may delegate some or all of the collection procedures, as the Board in its sole discretion deems appropriate, to the Association's managing agent, an attorney, or a debt collector.
- 5-B. Delinquency Notices. If the Association has not received full payment of an assessment by the due date, the Association may send one or more written notices of nonpayment to the defaulting Owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.
- 5-C. Collection by Attorney. After giving the Owner notice of the delinquency, the Association may refer the delinquent account to an attorney for collection. In that event, the defaulting Owner will be liable to the Association for its legal fees and expenses.
- 5-D. Verification of Owner Information. The Association may obtain a title report to determine the names of the Owners and the identity of other lienholders, including the mortgage company.
- 5-E. Notification of Mortgage Lender. The Association may notify the mortgage lender of the default obligations.
- 5-F. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.
- 5-G. Notice of Lien. The Association may cause a notice of the Association's assessment lien against the Unit to be publicly recorded. In that event, a copy of the notice will be sent to the defaulting Owner, and may be sent to his mortgage holder.
- 5-H. Foreclosure of Lien -- Nonjudicially. The Board may instruct an attorney, officer, or agent of the Association to notify the defaulting Owner of the Association's intent to foreclose its assessment lien, to post the property for public auction, and to conduct a public auction of the Unit on the steps of the county courthouse in accordance with State law and the Association's documents. The Board may not foreclose a lien consisting solely of fines or securing money for which the Association has obtained a personal money judgment.

- 5-I. Foreclosure of Lien -- Judicially. The Association may file suit against the Owner for judicial foreclosure of the Association's assessment lien. This action may be combined with a claim against the Owner's personal liability, for recovery of a money judgment.
- 5-J. Lawsuit for Owner's Personal Liability. Whether or not the Association forecloses the Association's assessment lien, the Board may file a lawsuit for a personal judgment against the defaulting Owner, and may execute on the judgment.
- 5-K. Possession Following Foreclosure. If the Association purchases the Unit at public auction, the Board may immediately institute actions to recover possession.
- 5-L. Limited Right of Redemption. If the Association buys a Unit at the nonjudicial foreclosure sale of its assessment lien, the Association's ownership is subject to a ninety (90) day right of redemption by the Owner. TUCA's statutory right of redemption does not apply to judicial foreclosures or foreclosures of judgment liens.
- 5-M. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-N. Cancellation of Debt. If the Board deems the debt uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.
- 5-O. Suspension of Voting Rights. The Association may suspend the voting rights of an Owner whose account with the Association is delinquent for at least thirty (30) days.
- 5-P. Suspension of Use of Certain Facilities or Services. The Association may suspend the use of the any Common Element amenities by an Owner, or his tenant, whose account with the Association is delinquent for at least thirty (30) days.
- 5-Q. Utility Shut-Off. The Association may terminate utility service to the Unit for which assessments used to pay the cost of that utility are delinquent, according to the Association's utility shut-off policy.

SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, manager, and attorney of the Association will exercise their independent, collective, and respective judgment in applying this policy.
- 6-B. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect assessments under the Association's Documents and the laws of the State of Texas.

- 6-C. Limitations of Interest. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If, from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full.
- 6-D. Notices. Unless the Documents, Texas law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed delivered to the Owner upon depositing same with the U.S. Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that two (2) or more persons own a Unit, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one Occupant is deemed notice to all Occupants. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent, or attorney.
- 6-E. Definitions. Words and phrases used in this policy have the same meanings given to them by the Declaration.
- 6-F. Amendment of Policy. This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other community-wide publication.

ATTACHMENT 5

FINE POLICY

1. Background. This fine policy is based on the requirements of Sec. 82.102(d) and (e) of TUCA. To establish policies and procedures for fining under TUCA, the Declarant adopts this policy for the benefit of the Association, as part of the initial project documentation.
2. Policy. The Association uses fines to discourage violations of the Documents, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Documents. The Association's use of fines does not interfere with its exercise of other rights and remedies for the same violation. Nor may the Association use fines to the exclusion of other remedies.
3. Owner's Liability. An Owner is liable for fines levied by the Association for violations of the Documents by the Owner, the Residents of the Unit, and the relatives, guests, employees, and agents of the Owner and Residents. Regardless of who performs the violation, the Association will direct its communications to the Owner, although the Association may send copies of its notices to the resident.
4. Violation Notice. Before levying a fine, the Association will give the Owner a written violation notice and an opportunity to be heard. This requirement may not be waived. The Association's written violation notice will contain the following items: (1) the date the violation notice is prepared or mailed; (2) a description of the violation; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation; (5) the amount of the fine; (6) a statement that not later than the 30th day after the date of the violation notice, the Owner may request a hearing before the Board to contest the fine; and (7) the date the fine attaches or begins accruing (the "Start Date"), subject to the following:
 - a. New Violation. If the Owner was not given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months, the notice will state a specific date by which the violation must be cured to avoid the fine, if the violation is ongoing or continuous. If the violation is not ongoing, but is instead sporadic or periodic, the notice must state that any future violation of the same rule may result in the levy of a fine.
 - b. Repeat Violation. In the case of a repeat violation, the notice will state that, because the Owner was given notice and a reasonable opportunity to cure a

similar violation within the preceding twelve (12) months, the fine attaches from the date of the violation notice.

4. Violation Hearing. An Owner may request in writing a hearing by the Board to contest the fine. To request a hearing before the Board, an Owner must submit a written request to the Association's manager within thirty (30) days after the date of the violation notice. Within fifteen (15) days after Owner's request for a hearing, the Association will give the Owner at least fifteen (15) days' notice of the date, time, and place of the hearing. The hearing will be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine. The hearing will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication. No audio or video recording of the hearing may be made. The minutes of the hearing must contain a statement of the results of the hearing and the fine, if any, imposed. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the meeting, the notice requirements will be deemed satisfied.
5. Levy of Fine. Within thirty (30) days after levying the fine, the Board must give the Owner notice of the levied fine. If the fine is levied at the hearing at which the Owner is actually present, the notice requirement will be satisfied if the Board announces its decision to the Owner at the hearing. Otherwise, the notice must be in writing. In addition to the initial levy notice, the Association will give the Owner periodic written notices of an accruing fine or the application of an Owner's payments to reduce the fine. The periodic notices may be in the form of monthly statements or delinquency notices.
6. Amount. The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. If circumstances warrant a variance from the schedule, the Board will document the reasons for the variance in the minutes of its meeting. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Documents. If the Association allows fines to accumulate, it will establish a maximum amount for a particular fine, at which point the total fine will be capped.
7. Type of Levy. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, monthly, or quarterly), beginning on the Start Date. If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

8. Collection of Fines. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Association may not charge interest or late fees for unpaid fines.

9. Amendment of Policy. This policy may be revoked or amended from time to time by the Board. This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other community-wide publication.

ATTACHMENT 6

MOLD POLICY

RECITALS

A. Background. Because of extensive news coverage in recent years relating to mold, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. In a condominium context, the mold issue has numerous facets.

B. Mold Information. In adopting this policy, the Association relies on information about mold obtained from government sources, including the "Indoor Air Mold" website sponsored by the U. S. Environmental Protection Agency at <http://www.epa.gov/mold/index.html>. As stated in the "Frequently Asked Questions" section of the EPA Mold site:

What are the basic mold clean-up steps?

- 1. The key to mold control is moisture control.*
- 2. Scrub mold off hard surfaces with detergent and water, and dry completely.*
- 3. Fix plumbing leaks and other water problems as soon as possible. Dry all items completely.*
- 4. Absorbent or porous materials, such as ceiling tiles and carpet, may have to be thrown away if they become moldy. Mold can grow on or fill in the empty spaces and crevices of porous materials, so the mold may be difficult or impossible to remove completely.*
- 5. Avoid exposing yourself or others to mold (see discussions: What to Wear When Cleaning Moldy Areas (<http://www.epa.gov/mold/whattowear.html>) and Hidden Mold (<http://www.epa.gov/mold/hiddenmold.html>)).*
- 6. Do not paint or caulk moldy surfaces. Clean up the mold and dry the surfaces before painting. Paint applied over moldy surfaces is likely to peel.*
- 7. If you are unsure about how to clean an item, or if the item is expensive or of sentimental value, you may wish to consult a specialist. Specialists in furniture repair, restoration, painting, art restoration and conservation, carpet and rug cleaning, water damage, and fire or water restoration are commonly listed in phone books. Be sure to ask for and check references. Look for specialists who are affiliated with professional organizations.*

C. Owner/Occupant Duty. Because the Association does not have continual access to Units, the Association relies on Owners and Occupants to control the moisture levels in their Units, and to promptly identify and report water leaks and water penetrations in their Units. That a Unit is vacant or occupied by a person other than the Owner does not relieve the Owner from fulfilling his obligations to the Association and to the Owners of other Units.

D. Insurance. On the date of this Mold Policy, property insurance available to the Association does not include coverage of mold at a price that is affordable. An Owner who

wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowners insurance policy.

E. Mold Reminders. Mold spores are a natural component of our environment. Mold spores are everywhere - in the outside air and inside of Units. In addition to air-borne mold, visible surface mold is a common occurrence in wet areas, such as showers. Air quality tests for mold are capable of being unreliable as determinates of a health problem.

RULES

1. Inspect for Surface Mold. Each Owner and Occupant will regularly inspect their entire Unit (including inside closets and cabinets, and behind furniture and appliances) for visible surface mold and will promptly remove same using procedures recommended by an appropriate source, such as the U. S. Environmental Protection Agency (www.epa.gov). Similarly, the Owner and Occupant will be alert to odors associated with mold, and will try to locate the source of such odor when detected.
2. Inspect for Water Leaks. Each Owner and Occupant will regularly inspect their entire Unit (including inside closets and cabinets, and behind furniture and appliances) for leaks, breaks, or malfunctions of any kind that may emanate from or cause damage to the Common Elements or another Unit. When possible, such inspection will be performed after rains when leaks from wind-driven rain are most likely to be evident. Typical indicators of water penetration problems include water leaks around windows, doors, flues, and vents; standing water on a floor; water stains on ceilings and walls.
3. Monitor Water Appliances. Each Owner and Occupant is responsible for the inspection, maintenance, repair, and replacement of all water-using appliances and fixtures in the Unit or serving the Unit exclusively, such as dishwashers, water heaters, washing machines, ice-makers, toilets, air conditioning drip pans, and shower pans. The Owner is solely responsible for any damage to the Owner's Unit, another Unit, or the Common Elements from the appliances and fixtures in the Owner's Unit or serving the Owner's Unit exclusively, regardless of the nature or exact location of the water source.
4. Report. An Owner and Occupant will promptly report to the Association the discovery of any leak, break, or malfunction in any portion of the Owner's Unit or the adjacent Common Elements for which the Association has a maintenance responsibility. The origin of a water leak can be difficult to locate and may require repeated attempts to repair. The failure of the Association or its contractors to effectively stop a water leak on the first repair attempt is not uncommon and must not dissuade an Owner or Occupant from re-reporting the leak on its next occurrence. The failure by an Owner and Occupant to promptly report a water leak or water penetration problem may be deemed negligence, thereby making the Owner and Occupant liable for any additional damage caused by the delay.

5. Mitigate. To mitigate damage from water leaks and penetrations, and to discourage mold, the Owner or Occupant of a Unit that experiences a water leak or penetration must promptly dry, clean, and disinfect the wet area. If the water penetration is inside a wall cavity or above a ceiling, the Owner or Occupant must inform the Association or Manager immediately.
6. Humidity. To discourage mold in his unit, the Owner or Occupant should maintain an inside humidity level under sixty percent (60%). If condensation or moisture collects on windows, walls or pipes, the Owner or Occupant should promptly dry the wet surface and reduce the moisture/water source. Condensation can be a sign of high humidity.
7. Negligence. The failure to promptly and properly repair a water-related problem in a Unit may be deemed negligence by the Owner, who may be liable for any additional damage caused by the failure or the delay.
8. Information. For more information about mold, please consult a reliable source, such as "A Brief Guide to Mold, Moisture, and Your Home" - a brochure published by the U. S. Environmental Protection Agency, which is available on its website at <http://www.epa.gov/mold/hiddenmold.html>.

ATTACHMENT 7

PIAZZA ESCONDIDA CONDOMINIUMS

COMMUNITY MANUAL

CERTIFICATION & ACKNOWLEDGMENT

As the Declarant of Piazza Escondida Condominiums and the initial and sole member of Piazza Escondida Condominium Community, Inc. (the "Association"), I certify that the foregoing Piazza Escondida Condominiums Community Manual was adopted for the benefit of the Association as part of the initial project documentation for Piazza Escondida Condominiums, located in El Paso County, Texas. This Community Manual becomes effective when recorded.

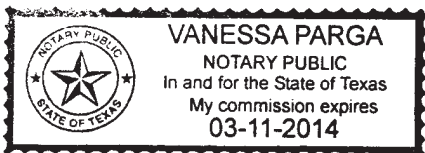
SIGNED on this 4 day of NOV., 2013.

TONE VENTURES, LLC,
a Texas limited liability company

By: _____
Name: Herschel Stringfield
Title: Manager

STATE OF Texas §
COUNTY OF El Paso §

This instrument was acknowledged before me on this 4 day of NOV., 2013 by Herschel Stringfield, Manager of Tone Ventures, LLC, a Texas limited liability company, on behalf of said company.



Vanessa Parga
Notary Public

Doc# 20130084292
#Pages 54 #NFPages 1
11/13/2013 9:42:09 AM
Filed & Recorded in
Official Records of
El Paso County
Della Briones
County Clerk
Fees \$228.00

SS
AV

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



Della Briones

EL PASO COUNTY, TEXAS

**PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT**

**ATTACHMENT "4"
PROPOSED BUDGET**

Unit No.	Use	Conditioned Square Foot	% of total	% of type	Regular Monthly Assessment	LCE Monthly Assessment	Total Monthly Assesment
A11	Live/Work -Restaurant	1151	2.72%	9.61%	\$69.15	\$58.15	\$127.31
A12	Live/Work -Retail	821	1.94%	6.86%	\$49.33	\$41.48	\$90.81
A13	Live/Work -Professional	893	2.11%	7.46%	\$53.65	\$45.12	\$98.77
A14	Live/Work -Professional	941	2.22%	7.86%	\$56.54	\$47.54	\$104.08
A15	Live/Work -Professional	898	2.12%	7.50%	\$53.95	\$45.37	\$99.32
A21	Live/Work Residential	2103	4.96%	17.56%	\$126.35	\$106.25	\$232.60
A22	Live/Work Residential	1200	2.83%	10.02%	\$72.10	\$60.63	\$132.73
A23	Live/Work Residential	1272	3.00%	10.62%	\$76.42	\$64.27	\$140.69
A24	Live/Work Residential	1368	3.23%	11.42%	\$82.19	\$69.12	\$151.31
A25	Live/Work Residential	1328	3.14%	11.09%	\$79.79	\$67.10	\$146.88
B11	Mansion Condo—Res	613	1.45%	6.75%	\$36.83	\$82.66	\$119.49
B12	Mansion Condo—Res	912	2.15%	10.04%	\$54.79	\$122.97	\$177.77
B21	Mansion Condo—Res	1258	2.97%	13.85%	\$75.58	\$169.63	\$245.21
B22	Mansion Condo—Res	1266	2.99%	13.94%	\$76.06	\$170.70	\$246.77
B23	Mansion Condo—Res	1256	2.97%	13.82%	\$75.46	\$169.36	\$244.82
B31	Mansion Condo—Res	1258	2.97%	13.85%	\$75.58	\$169.63	\$245.21
B32	Mansion Condo—Res	1266	2.99%	13.94%	\$76.06	\$170.70	\$246.77
B33	Mansion Condo—Res	1256	2.97%	13.82%	\$75.46	\$169.36	\$244.82
C11	Detached Housing—Res	2828	6.68%	24.32%	\$169.91	\$41.72	\$211.63
C12	Detached Housing—Res	2100	4.96%	18.06%	\$126.17	\$30.98	\$157.15
C13	Detached Housing—Res	2100	4.96%	18.06%	\$126.17	\$30.98	\$157.15
C14	Detached Housing—Res	2498	5.90%	21.49%	\$150.08	\$36.85	\$186.94
C15	Detached Housing—Res	2100	4.96%	18.06%	\$126.17	\$30.98	\$157.15
C21	Upstairs Detached Housing		0.00%	0.00%	\$0.00	\$0.00	\$0.00
C22	Upstairs Detached Housing		0.00%	0.00%	\$0.00	\$0.00	\$0.00
C23	Upstairs Detached Housing		0.00%	0.00%	\$0.00	\$0.00	\$0.00
C25	Upstairs Detached Housing		0.00%	0.00%	\$0.00	\$0.00	\$0.00
Unit No.	Use	Conditioned Square Foot	% of total	% of type	Regular Monthly Assessment	LCE Monthly Assessment	Total Monthly Assesment
D11	Townhome Condo— Res	1438	3.39%	13.29%	\$86.40	\$91.08	\$177.48
D12	Townhome Condo— Res	1766	4.17%	16.32%	\$106.10	\$111.86	\$217.96
D21	Office	919	2.17%	8.49%	\$55.22	\$58.21	\$113.42
D22	Office	950	2.24%	8.78%	\$57.08	\$60.17	\$117.25
D23	Office	898	2.12%	8.30%	\$53.95	\$56.88	\$110.83
D24	Office	1000	2.36%	9.24%	\$60.08	\$63.34	\$123.42
D31	Studio Condo—Res	915	2.16%	8.45%	\$54.97	\$57.96	\$112.93
D32	Studio Condo—Res	1042	2.46%	9.63%	\$62.61	\$66.00	\$128.60
D33	Studio Condo—Res	895	2.11%	8.27%	\$53.77	\$56.69	\$110.46
D34	Studio Condo—Res	1001	2.36%	9.25%	\$60.14	\$63.40	\$123.54
		<u>42,359</u>	<u>100.00%</u>		<u>\$2,614.15</u>	<u>\$2,687.13</u>	<u>\$5,301.28</u>
	Annualized				\$31,369.85	\$32,245.54	\$63,615.39

LIVE/WORK LCE Expenses

Property Insurance	576	576	576	576	576	576	576	576	576	576			5,760
Exterior Maintenance	50	50	50	50	50	50	50	50	50	50	50	50	600
Painting													
Other Live/Work Building Expenses	75	75	75	75	75	75	75	75	75	75	75	75	900
Live/Work Building Capital Expenditures													
Exterior													
Roofing													
Flashing & Gutters													
Total for Expenses for Live/Work Buildings	701	701	701	701	701	701	701	701	701	701	125	125	7,260

Mansion Building LCE

Mansion Building LCE Assessment Income								907	907	907	907	907	
Mansion Building LCE Reserve Contributions													

Mansion Building LCE Expenses

Property/Liability Insurance	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Exterior Maintenance	50	50	50	50	50	50	50	50	50	50	50	50	600
Painting													
Elevator Maintenance	200	200	200	200	200	200	200	200	200	200	200	200	2,400
Utilities - Electricity	250	250	250	250	250	250	250	250	250	250	250	250	3,000
Janitorial	175	175	175	175	175	175	175	175	175	175	175	175	2,100
Flashing and Gutters													
Other Mansion Building Expenses	50	50	50	50	50	50	50	50	50	50	50	50	600
Mansion Building Capital Expenditures													
Exterior													
Roofing													
Flashing & Gutters													
Total for Expenses for Mansion Buildings	1,225	1,225	1,225	1,225	1,225	1,225	1,225	1,225	1,225	1,225	1,225	1,225	14,700

City Home Building LCE

City Home Building LCE Assessment Income	35	35	35	76	106	165	165	165	165	165	165	165	
City Home Building LCE Reserve Contributions													

City Home Building LCE Expenses

Property Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0
Liability Insurance	47	47	47	47	47	47	47	47	47	47	47	47	
Exterior Maintenance	50	50	50	50	50	50	50	50	50	50	50	50	600
Painting													
Flashing and Gutters													
Other City Home Building Expenses	75	75	75	75	75	75	75	75	75	75	75	75	900
City Home Building Capital Expenditures													
Exterior													
Roofing													
Flashing & Gutters													
Total for Expenses for City Home Buildings	172	172	172	172	172	172	172	172	172	172	172	172	2,058

Annex Building LCE

Annex Building LCE Assessment Income	391	432	432	432	432	432	432	432	432	432	432	432	
Annex Building LCE Reserve Contributions													

Annex Building LCE Expenses

Property/Liability Insurance	673	673	673	673	673	673	673	673	673	673		0	6,727
Exterior Maintenance	50	50	50	50	50	50	50	50	50	50	50	50	600
Painting													
Flashing and Gutters													
Other Annex Building Expenses	75	75	75	75	75	75	75	75	75	75	75	75	900
Annex Building Capital Expenditures													
Exterior													
Roofing													
Flashing & Gutters													
Total for Expenses for Annex Buildings	798	798	798	798	798	798	798	798	798	798	125	125	8,227

**PIAZZA ESCONDIDA CONDOMINIUMS
CONDOMINIUM INFORMATION STATEMENT**

**ATTACHMENT "5"
LIMITED WARRANTY**

LIMITED WARRANTY

The terms and conditions for warranty of the home located at:

6350 Escondido Drive El Paso, TX

are specified in the Bonded Builders Home Warranty Association (BBHWA) limited warranty (publication BB-W602), which will be delivered to you within 60 days of closing.

- A. COVERAGE - The provisions of the BBHWA warranty commence on the date of title transfer from the Builder to the Homeowner. The covered unit shall be free of:
1. Material or workmanship defects for a period of one year.
 2. Electrical, plumbing and mechanical system defects for a period of two years.
 3. Major structural defects for a period of ten years.
- B. BUILDER RESPONSIBILITY - For the term of this warranty, the Builder will repair or replace the defective item(s). The choice of repair or replacement of any defective item is solely that of the Builder. Repair or replacement shall not extend the warranty period.
- C. HOMEOWNER RESPONSIBILITY - Submit complaints in writing to both the Builder and BBHWA no later than 30 days after the expiration of the applicable warranty provision. You may submit your service requests by e-mail (warranty@wintonhomes.net), fax (915) 225-0087) or mail to the company address.

In the case of an emergency problem, the Homeowner must notify the Builder immediately to avoid further damage. The Homeowner should take immediate action if circumstances dictate the need.

In addition to the warranty document you will receive a comprehensive maintenance manual within 60 days of closing to provide you with essential information for maintaining your home.

Your Bonded Builders Home Warranty document is the legal and final binding document, which defines your responsibilities and those of your builder and Bonded Builders Home Warranty Association. Should a question arise, please refer to the Bonded Builders Warranty document, which always takes precedence over the contents of this Maintenance Manual.

- D. DISPUTE RESOLUTION: It is the policy of the State of Texas to encourage resolution of disputes through informal procedures. The Seller and the Buyer hereby agree that any construction defects will be resolved by the Seller in accordance with company quality control procedures.

It is agreed and understood that should any dispute arise between the parties relating to this warranty, the parties will attempt in good faith to resolve same by mediation in accordance with the rules of Texas Arbitration Mediation Services, Inc., or in the event the parties agree, some other professional mediation service.

If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the commencement of such procedure (which period may be extended by mutual agreement) the controversy shall be settled by arbitration in accordance with the rules of Texas

Arbitration Mediation service. In this event, there shall be three arbitrators of whom each party will appoint one and the mediation service the third. A judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of the arbitration shall be El Paso County, Texas.

E. EXCLUSIONS - The following are excluded from coverage under the provisions of BB-W602:

1. Appliances, fixtures and equipment are not covered by this warranty. These warranties are provided by the manufacturer. It is the homeowner's responsibility to submit documentation required by the manufacturer for warranty coverage.
2. Non-load bearing structural defect.
3. Defects in outbuildings, including detached carports and detached garages (except those outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems service the home); patios, walkways, driveways; swimming pools and other recreational facilities; fences, boundary walls, retaining walls; bulkheads (except where boundary walls, retaining walls and bulkheads are necessary for the structural stability of the home); landscaping (including sodding, seeding, shrubs, trees and plantings); off-site improvement, or any other improvements made after the effective date of this warranty; or ventilation systems or any other items covered under this warranty; or
4. Contamination caused or created by natural or man-made chemicals, compounds, or substances, or breakdown or adverse effect of compounds, chemicals, or substances used in the construction of the home which does not result in physical damage to the structure. Such contamination is not covered even if the home is rendered uninhabitable unless physical damage is sustained; or
5. Damage to any covered property which is not included in the purchase price; or
6. Any damage that is caused or made worse by:
 - a. Dampness or condensation due to the failure of the Homeowner to maintain adequate ventilation; or
 - b. Changes of grading of the ground by anyone other than the Builder originally building the home or its employees, agents or subcontractors, and, authorized by the Builder; or
 - c. Failure by you, the Homeowner, to give notice to your Builder or BBHWA of any defects within a reasonable time; or
 - d. Negligence in proper maintenance and/or operation by anyone of systems warranted under this Warranty; or
 - e. Changes, alterations or additions made to the covered home by any one other than those performed under obligations of this Warranty; or
 - f. Failure by you or anyone to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures; or
7. Any defect in, or caused by, materials or work supplied by other than the original Builder in

the covered home, its employees or agents or subcontractors; or

8. Normal wear and tear or normal deterioration; or
9. Any loss or damage which you, the Homeowner(s), have not taken timely action to prevent or minimize; or
10. Any damage caused by soil movement, if compensation is provided by state legislation or covered by other insurance or any damage as a result of insufficient (or change in) adequate load-bearing capacity of the soil, sub-soils or surfaces of the soil, sub-soils or surfaces, or sub-surfaces; or
11. Insect damage; or
12. Loss or damage not caused by defect in the construction of the covered home by the original Builder, its employees, agents or subcontractors, but resulting from accidents or riot or civil commotion or Acts of God, including but not limited to fire, explosion, smoke, water escape, windstorm, hail, lightning, falling trees, aircraft, vehicles, floor, mudslide, sinkhole, earthquake, volcanic eruption and changes in the level of the underground water table; or
13. Any loss or damage which may arise while your home is being used primarily for non-residential purposes; or
14. Any condition which does not result in actual physical damage to the covered home; or
15. Failure of your Builder to complete construction and/or "punch out" items agreed to; or
16. Cost of transportation, food, storage, moving, shelter or other incidental expenses related to relocation during repair; or
17. Any claim reported to the Builder and/or BBHWA after an unreasonable delay or later than 30 days after the expiration of the warranty term; or
18. CONSEQUENTIAL DAMAGE: Any surfaces, finishes and coverings, not original with the home, or not damaged by the structural defect which do not require removal and replacement attendant to repair of the structural defect; personal property items, not a part of the structure, which are damaged by the defect or as a result of the defect.

Homeowner

Homeowner

Builder