



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

WATERSTREET LOFTS COMMUNITY, INC.

File Number: 800794811

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: 03/29/2007

Effective: 03/29/2007



A handwritten signature in black ink that reads "Roger Williams".

Roger Williams  
Secretary of State

*Come visit us on the internet at <http://www.sos.state.tx.us/>*

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Document: 165350360002

CERTIFICATE OF FORMATION

OF

WATERSTREET LOFTS COMMUNITY, INC.

**FILED**  
In the Office of the  
Secretary of State of Texas

MAR 29 2007

Corporations Section

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: Waterstreet Lofts 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 Waterstreet Lofts," which is recorded in the Official Public Records of Travis 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 100 Congress Ave., Suite 1300, Austin, Texas 78701. The name of its initial registered agent at such address is Robert D. Burton.

## ARTICLE VI

### MEMBERSHIP

Membership in the Association shall be determined in accordance with the Declaration.

## ARTICLE VII

### VOTING RIGHTS

Voting rights of the members of the Association shall be determined as set forth in the Declaration and the Bylaws of the Association. 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

100 Congress Avenue, Suite 1300  
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, who must be members of the Association. 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 changed by amendment to 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

Gerald Cobb

P.O. Box 6249  
Austin, TX 78762

Matt Presley

2401 E. 6<sup>th</sup> Street, #3033  
Austin, TX 78702

Elizabeth Moliter

2401 E. 6<sup>th</sup> Street, #3033  
Austin, TX 78702

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 or officer 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.

#### 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 an eighty percent (80%) 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, the Declaration shall control; and in the case of any conflict between this Certificate and the Bylaws of the Association, this Certificate shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 29<sup>th</sup> day of March, 2007.



Robert D. Burton, Incorporator

# EXHIBIT A

*BYLAWS OF*  
*WATERSTREET LOFTS COMMUNITY, INC.*  
(a Texas condominium association)

WATERSTREET LOFTS COMMUNITY, INC.  
BYLAWS  
(a Texas condominium association)

ARTICLE 1  
INTRODUCTION

1.1. Property. These Bylaws of Waterstreet Lofts Community, Inc., provide for the governance of the condominium regime known as the Waterstreet Lofts, established on Lot 1, and the west fifteen feet (15') of Lot 2, the east forty-seven feet (47') of Lot 2, and Lot 3, all in Block "1", in the Subdivision of Outlot No. 35, Division "O", sometimes referred to as Riverside Addition, a subdivision in Travis County, Texas, according to the map or plat recorded in Volume 1, Page 38, and Volume 2, Page 132, Plat Records of Travis County, Texas (the "Property"), as more particularly described in that certain Declaration of Condominium Regime For Waterstreet Lofts, recorded or to be recorded in the Official Public Records of Travis 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 Exhibit "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**

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 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. 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 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.

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 must 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 during the month of November of each year. At annual meetings 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 twenty percent (20%) 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 twenty percent (20%) of the Units in the Property constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of Members constituting 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 twenty percent (20%) 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.

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 Board has the right to establish and amend, from time to time, reasonable rules and regulations for: (i) the administration of the Association and the Documents; (ii) the maintenance, management, 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.

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

5.3. **Notice and Comment.** At least ten (10) days before the effective date, the Board will give written notice to an Owner of each Unit of any amendment, termination, or adoption of a rule, or will publish same in a newsletter or similar publication that is circulated to the Members. The Board may, but is not be required, to give similar notice to residents who are not Members.



5.4. **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 Resident.** 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 alien 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 Non-profit Corporation Act. 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, Exhibit "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 not be amended by the Board without approval by the Members. These Bylaws may be amended by the Members according to the terms of this Article.

11.2. **Proposals.** The Association will provide an Owner of each Unit with a detailed description, if not exact wording, of any proposed amendment. The description will be included in the notice of any annual or special meeting of the Association if the proposed amendment is to be considered at the meeting.

11.3. **Consents.** Subject to the following limitation, an amendment of these Bylaws must be approved by Members representing at least a Majority of the votes present (in person or by proxy) at a properly called meeting of the Association for which a quorum is obtained. In other words, if a quorum is present (in person or by proxy) at a meeting, the Owners of a Majority of the Units represented at the meeting (in person or by proxy), even if less than a Majority of the total Units, may approve an amendment to these Bylaws. However, this Section may not be amended without the approval of Members representing at least a Majority of the total Units in the Property.

11.4. **Mortgagee Protection.** In addition to the notices and consents required by these Bylaws, certain actions and amendments require notice to or approval by Eligible 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 Eligible Mortgagees.

11.5. **Effective.** To be effective, each amendment must be in writing, reference the names of the Property and the Association, be signed by at least two (2) officers acknowledging the requisite approval of Members, and be delivered to an Owner of each Unit at least ten (10) days before the amendment's effective date. 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 Travis County, Texas.

11.6. **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 articles of incorporation of the Association and these Bylaws, the articles control. 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. **Preparer.** These Bylaws were prepared in by Robert D. Burton, Esq., Armbrust & Brown, L.L.P., 100 Congress Ave., Suite 1300, Austin, Texas 78701.



MANAGEMENT CERTIFICATE  
OF  
WATERSTREET LOFTS COMMUNITY, INC.

The undersigned, being an officer of the Waterstreet Lofts Community, Inc., a Texas non-profit corporation, and in accordance with Section 82.116 of the Texas Uniform Condominium Act, does hereby certify as follows:

1. The name of the condominium project is Waterstreet Lofts (the "Condominium").
2. The name of the association is the Waterstreet Lofts Community, Inc., a Texas non-profit corporation (the "Community").
3. The Condominium is located at 1601, 1603 and 1605 E. Cesar Chavez Street, Austin, Texas 78702.
4. The Community is a Texas non-profit corporation established to administer common elements and the affairs of the Waterstreet Lofts, a condominium regime (the "Regime") established pursuant to Chapter 82 of the Texas Uniform Condominium Act and the terms and provisions of that certain Declaration of Condominium Regime for Waterstreet Lofts, recorded as Document No. 2007055913, Official Public Records of Travis County, Texas.
5. The street address of the Association is 100 Congress Avenue, Suite 1300, Austin, Texas 78701.

This Certificate is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

WATERSTREET LOFTS COMMUNITY, INC.,  
a Texas non-profit corporation

By: \_\_\_\_\_  
Gerald Cobb, President

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2007, by Gerald Cobb, President of the Waterstreet Lofts Community, Inc., a Texas non-profit corporation, on behalf of said corporation.

[SEAL]

\_\_\_\_\_  
Notary Public Signature

AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701

## WATERSTREET LOFTS COMMUNITY, INC.

### CONSENT OF DIRECTORS IN LIEU OF

### ORGANIZATIONAL MEETING

The undersigned, being all of the members of the Board of Directors of the Waterstreet Lofts Community, Inc., a Texas non-profit corporation (hereinafter referred to as the "Association"), do hereby consent, pursuant to Section 22.220(a) of the Texas Business Organizations Code, to the adoption of the following resolutions:

#### 1. DIRECTORS

RESOLVED, that each of the undersigned, being all of the directors of the Association, as named in its Articles of Incorporation filed with the Secretary of State of the State of Texas on March 29, 2007 does hereby accept appointment to such office and does hereby agree to serve as a director of the Association until the first annual meeting of the members and until said director's successor or successors have been duly elected and qualified or until his or her earlier death, resignation, retirement, disqualification or removal from office.

#### 2. BYLAWS

RESOLVED, that the form of bylaws submitted to the undersigned directors with this Consent be, and the same hereby is, in all respects, approved and adopted as the Bylaws of the Association, and the Secretary of the Association is instructed to insert the original thereof in the minute book of the Association.

#### 3. OFFICERS

RESOLVED, that the following-named persons be and each hereby is elected as officers of the Association for the office or offices set forth opposite his or her name, and to hold any such office to which elected until the first annual meeting of the Board of Directors of the Association and until his or her successor should be chosen and qualified in his or her stead, or until his or her earlier death, resignation, retirement, disqualification or removal from office:

Gerald Cobb	-	President
Matt Presley	-	Vice President
Elizabeth Moliter	-	Secretary/Treasurer

#### 4. REGISTERED OFFICE; REGISTERED AGENT

RESOLVED, that the registered office of the Association be established and maintained at 100 Congress Ave., Suite 1300, Austin, Texas 78701 and that Robert D. Burton is hereby appointed as registered agent of the corporation in said office.

#### 5. BOOKS AND RECORDS

RESOLVED, that the Secretary of the Association be and hereby is authorized and directed to procure all necessary books and records of the Association.

#### 6. ORGANIZATIONAL EXPENSES

RESOLVED, that the President of the Association or other officer be and hereby is authorized and directed to pay all fees, expenses and costs incident to or necessary for the incorporation and organization of the Association and to reimburse any person who may have paid any of such fees, expenses and costs.

#### 7. CORPORATE SEAL

RESOLVED, that a corporate seal is not adopted at this time and that no impression of a corporate seal is required on any Association document.

#### 8. DEPOSITORY RESOLUTIONS

RESOLVED, that an account shall be established in the name of the Association with a financial institution to be determined by the Board (the "Bank"), under the rules and regulations as prescribed by said Bank wherein may be deposited any of the funds of this Association, whether represented by cash, checks, notes or other evidences of debt, and from which deposit withdrawals are hereby authorized in the name of the Association by any one of the following persons:

Gerald Cobb  
Matt Presley  
Elizabeth Moliter

BE IT FURTHER RESOLVED, that the Bank is hereby authorized to honor any and all withdrawal items against the Association's funds, although payable to the officer or agent signing or countersigning the same and whether presented for encashment or for credit to the personal account of such officer or agent or

any other person, and said Bank need make no inquiry concerning such items and/or the disposition of the money, items, or credit given therefor.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of and effective the 30<sup>th</sup> day of March, 2007.

---

Gerald Cobb, Director

---

Matt Presley, Director

---

Elizabeth Moliter, Director

AFTER RECORDING RETURN TO:



ROBERT D. BURTON, ESQ.  
ARMBRUST & BROWN, L.L.P.  
100 CONGRESS AVE., SUITE 1300  
AUSTIN, TEXAS 78701

## DECLARATION OF CONDOMINIUM REGIME FOR WATERSTREET LOFTS

(A Residential and Commercial Condominium in Travis County, Texas)

Declarant: Waterstreet Partners, Ltd., a Texas limited partnership

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## DECLARATION OF CONDOMINIUM REGIME FOR WATERSTREET LOFTS

WATERSTREET PARTNERS, LTD., a Texas limited partnership ("Declarant") is the owner of Lot 1, and the west fifteen feet (15') of Lot 2, the east forty-seven feet (47') of Lot 2, and Lot 3, all in Block "1", in the Subdivision of Outlot No. 35, Division "O", sometimes referred to as Riverside Addition, a subdivision in Travis County, Texas, according to the map or plat recorded in Volume 1, Page 38, and Volume 2, Page 132, Plat Records of Travis County, Texas, together with all improvements thereon and all easements, rights, and appurtenances thereto (the "Land"). The Land is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating the Waterstreet Lofts.

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 Exhibit "A", attached hereto, which will run with the Land and be binding upon all parties having right, title, or interest in or to the Land, 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 "Architectural Reviewer" means the Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

1.3 "Assessment" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or other public law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments as defined in Article 5 of this Declaration.

1.4 "Association" means the Waterstreet Lofts 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, and the Act.

1.5 "Board" means the Board of Directors of the Association.

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

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

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

1.9 "Declarant" means Waterstreet Partners, Ltd., a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of Waterstreet Partners, Ltd., as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Travis County, Texas.

1.10 "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Exhibit "A" of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is recorded for a maximum period not to exceed the earlier of: (i) ten (10) years from date this Declaration is recorded in the Official Public Records of Travis County, Texas; or (ii) one hundred and twenty (120) days after title to seventy-five percent (75%) of the total number of Units that may be created by this Declaration have been conveyed to Owners other than Declarant.

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

1.12 "Development Period" means the ten (10) year period beginning on the date this Declaration is recorded in the Official Public Records of Travis County, Texas, during which Declarant has certain rights as more particularly described on Exhibit "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by the recordation of a notice of termination, executed by Declarant and recorded in the Official Public Records of Travis County, Texas.

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

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

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

1.14 "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 Exhibit "B", attached hereto.

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

1.16 "Limited Common Elements", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", or "Limited Common Elements", or "Limited Common Areas" on Exhibit "B", attached hereto.

1.17 "Majority" means more than half.

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

1.19 "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.

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

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

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

1.23 "Property" means the Land and includes every Unit and Common Element thereon.

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

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

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

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

1.28 "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 Exhibit "B". Where the context indicates or requires, "Unit" includes all improvements thereon. As set forth more fully in *Section 4.1*, there are three (3) types of Units: (i) Residential Units, (ii) Live/Work Units; and (iii) Commercial 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 Exhibit "A", attached hereto, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property.

2.2. Additional Property. Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of Owners representing at least two-thirds of the ownership interests in the Property, or, during the Development Period, by Declarant as permitted in Exhibit "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, in the Official Public Records of Travis County, Texas. The declaration of annexation will also include a description, which complies with the Act, of the Units and Common Elements added to the Regime.

2.3. 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 Exhibit "B", and any shown or referenced on a recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses his Unit and for which the Association does not have express responsibility.

**ARTICLE 3**  
**PROPERTY EASEMENT AND RIGHTS**

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

3.2. **Owner's Maintenance Easement.** Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Owner of the adjoining Unit, or the consent of the Association in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit shall be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Elements 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 Association or the Owner of the damaged Unit.

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

3.4. **Owner's Encroachment Easement.** Each Owner is hereby granted an easement for the existence and continuance of any encroachment of an Improvement located on such Owner's Unit on any 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 an Improvement, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement remains.

3.5. **Association's Access Easement.** The Association is hereby granted an easement of access and entry into each Unit and the Common Elements to perform maintenance, to

enforce restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

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

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

3.7. Security. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS GUESTS, THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND ACCEPTS HIS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR RESIDENT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF

FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

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

3.9. Easement to Inspect and Right To Correct. For a period of ten (10) years from the date of recording this Declaration, 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 is hereby granted throughout the Property to the extent reasonably necessary to exercise this right. Declarant or any party, who exercises the rights granted hereunder, will promptly repair, at its sole expense, any damage resulting from the exercise of the rights reserved hereunder. By way of illustration but not limitation, relocation of a screening wall may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be amended without Declarant's written and acknowledged consent.

3.10. Parking. Declarant reserves the right to designate and assign portions of the General Common Elements as parking for the exclusive use of any Owner of a Unit. Any parking spaces not specifically designated by Declarant for the exclusive use of an Owner of a Unit will be under the exclusive control and administration of the Association at such time as the Declarant no longer owns any Unit within the Regime. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board. Any designation and assignment of General Common Elements as parking will be memorialized by a written "assignment of parking" executed by an authorized representative of Declarant (or the Association if Declarant no longer owns any Units within the



Regime) which shall identify the parking space(s) and the Unit assigned thereto. The assignment shall be made a part of the corporate records of the Association and may not be terminated or modified without the consent of the Declarant (or a majority of the Board if Declarant no longer owns any Units within the Regime) and the owner of the Unit to which such General Common Element parking was assigned. The Declarant or the Board may be required periodically to re-allocate parking to comply with the site plan approved by the City of Austin and applicable to the Property.

#### ARTICLE 4

##### UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

4.1. Initial Submitted Units and Maximum Number of Units. The Regime consists of twenty-nine (29) Units. There are three general types of Units: (i) Units 102 through 104 are designated for "live/work" use as described in *Section 10.12* of this Declaration (the "**Live/Work Units**"); (ii) Units 101 and 105 through 107 are designated for commercial use as described in *Section 10.12* of this Declaration (the "**Commercial Units**"); and (iii) Units 201 through 210 and Units 301 through 312 are designated for residential use as described in *Section 10.12* of this Declaration (the "**Residential Units**"). During the Development Period, Declarant, as permitted in Exhibit "A", has reserved the right to create additional Units on any additional real property made subject to the terms of this Declaration. To add Units to the Regime, Declarant, during the Development Period may, from time to time, file an amendment or notice of annexation to this Declaration creating such additional Units. The twenty-nine (29) initial Units subject to the Regime **MUST BE BUILT**.

##### 4.2. Units.

4.2.1. Unit Boundaries. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached hereto as Exhibit "B" and are the walls, floors, and ceilings of each Unit.

##### 4.2.2. What a Unit Includes.

- (i) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors, or ceilings are hereby designated as a General Common Element;
- (ii) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a Unit, then the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, and the portion serving more than one Unit is hereby designated as a General Common Element;

- (iii) Unless otherwise provided in (ii) above, the spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit; and
- (iv) Shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

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

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

4.5. Common Interest Allocation. The percentage of interest in the Common Elements (the "Common Interest Allocation") allocated to each Unit is set forth on Exhibit "C", 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 in the Official Public Records of Travis County, Texas.

4.6. Common Expense Liabilities. The percentage of liability for common expenses allocated to each Unit and levied pursuant to Article 5 is equivalent to the Common Interest Allocation assigned to such Unit.

4.7. Votes. The number of votes allocated to each Unit is set forth on Exhibit "C".

ARTICLE 5  
COVENANT FOR ASSESSMENTS

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

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

5.3. Control for Special Assessment Increases. This Section of the Declaration may not be amended without the approval of Owners representing at least seventy-five percent (75%) of the votes in the Association. At least thirty (30) days prior to the effective date of a special assessment levied pursuant to Section 5.6, the Board will notify the Owner of each Unit to which the Assessment will be levied of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless at least sixty-seven percent (67%) of the votes in the Association held by the Owners against which the Assessment will be levied disapprove the Special Assessment by petition or at a meeting of the Association. In such event, the last budget approved by the Association will continue in effect until a revised budget is approved by the Board. Notwithstanding the foregoing provision, the Board will have the authority to levy a special assessment despite any Owner disapproval if the assessment is necessary to pay any expenses required to be paid in accordance with this Declaration and/or the Act.

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

5.5. Regular Assessments.

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

- (i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, and improvements, equipment, signage, and property owned by the Association.
- (ii) Utilities billed to the Association.
- (iii) Services billed to the Association and serving all Units.
- (iv) Taxes on property owned by the Association and the Association's income taxes.
- (v) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (vi) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (vii) Insurance premiums and deductibles.
- (viii) Contributions to the reserve funds.
- (ix) Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

5.5.2. Annual Budget-Regular. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association pursuant to Section 5.5.1 above, for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to the Owner of each Unit although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

5.5.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget prepared in accordance with Section 5.5.2, minus estimated income from sources other than Regular Assessments. Each Unit will be liable for its allocated share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, the Owners will continue to pay the Regular Assessment as last determined.

5.5.4. Supplemental Increases. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

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

5.6. Special Assessments. In addition to Regular Assessments, and subject to Section 5.3 above, the Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds.

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

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

5.9. Due Date. Regular Assessments are due on the first calendar day of each month or on such other date as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, or Deficiency Assessment is given.

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

5.10.1. Operations Reserves. The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or

maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.

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

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

5.12. Transfer Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to fees for resale certificates, estoppel certificates, copies of the Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer related fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments. Transfer related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Transfer related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the managing agent to levy transfer related fees.

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

**ARTICLE 6**  
**ASSESSMENT LIEN**

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

6.2. **Superiority of Assessment Lien.** The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and Assessments levied by governmental and taxing authorities; (ii) a deed of trust or vendor's lien recorded before this Declaration; or (iii) 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. Unless otherwise provided herein, the Assessment lien is superior to a lien for construction of improvements to the Unit, regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

6.3. **Effect of Mortgagee's Foreclosure.** Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

6.4. **Notice and Release of Notice.** The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Official Public Records of Travis County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

<p>If you fail to pay Assessments to the Association, you may lose title to your Unit if the Association forecloses its assessment lien against the Unit.</p>
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6.5. **Power of Sale.** By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf

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

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

## ARTICLE 7 **EFFECT OF NONPAYMENT OF ASSESSMENTS**

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

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

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

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

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

7.5. **Suspension of Use and Vote.** If an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right of the Owner and the Residents of the Owner's Unit to use common services during the period of delinquency. Services include



master-metered or sub-metered utilities serving the Unit. The Association may not suspend an Owner or Resident's right of access to the Unit. The Association may also suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension of rights under this Section 7.5 does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

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

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

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

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

## ARTICLE 8 MAINTENANCE AND REPAIR OBLIGATIONS

8.1. Overview. Generally, the Association maintains the General Common Elements, and the Owner maintains his Unit and the Limited Common Elements assigned exclusively thereto. If an Owner fails to maintain his Unit, the Association may perform the work at the Owner's expense. This Declaration permits Owners of Units to delegate some of their responsibilities to the Association. For example, during one twenty (20) year period, the Owners of a Unit may want the Association to provide housekeeping services to all Units, which otherwise is the responsibility of each Unit Owner. During the following twenty (20) years, the Owners may prefer to handle housekeeping services on an individual basis. The Owners have the option to delegate maintenance responsibility to the Association under the concept of "areas of common responsibility," as described below.

8.2. Association Maintains.

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

- (i) The General Common Elements.
- (ii) The Areas of Common Responsibility, if any.
- (iii) Any real and personal property owned by the Association but which is not a Common Element, such as a Unit owned by the Association.
- (iv) Any area, item, easement, or service, the maintenance of which is assigned to the Association by this Declaration or by the Plat and Plans.

Before acquiring an ownership interest in a Unit, each prospective purchaser is strongly encouraged to contact the Association to obtain and review the most recent designation of Areas of Common Responsibility, which is subject to change from time to time.

8.2.2. Additional Obligations. In addition to, and not in limitation of, any other responsibilities and obligations imposed upon the Association pursuant to this *Section 8.2* or elsewhere in this Declaration, the Association will also have the additional responsibilities and obligations set forth below. The obligations set forth below should not be construed as a limitation of the Association's obligations to maintain and repair General Common Elements.

- (i) The Association will periodically document regular maintenance performed in accordance with this *Section 8.2.2*.
- (ii) The Association will inspect and perform periodic maintenance on the roof drainage system, including gutters, downspouts, crickets, flashings and roof penetrations.
- (iii) The Association will periodically inspect the roof for standing water.
- (iv) The Association will periodically inspect all buildings for damage caused by termites or other wood destroying insects and will institute a program of maintenance to prevent such damage.
- (v) The Association will periodically inspect exterior doors and window flashings for water penetration and perform any required maintenance associated therewith.

8.3. Area of Common Responsibility for Units. The Association, acting through its Members only, has the right but not the duty to designate, from time to time, portions of Units as Areas of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. If a feature is designated as an Area of Common Responsibility, the designation will apply to each Unit which has the designated feature. The cost of maintaining components of Units which have been designated as Areas of Common Responsibility will be added to the annual budget and assessed uniformly against each Unit as a Regular Assessment, unless Owners of at least a majority of the Units decide to assess the costs as Individual Assessments. The Association may, from time to time, change or eliminate the designation of components of Units as Areas of Common Responsibility. Because the designation is subject to change, the Association will maintain at all times a current list of the components of Units which are maintained as Areas of Common Responsibility for distribution to Owners and prospective purchasers. Additions, deletions, or changes in designation must be: (i) approved by Owners of at least a majority of the Units; (ii) published and distributed to an Owner of each Unit; and (iii) reflected in the Association's annual budget and reserve funds.

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

8.4.1. Units. The following provisions apply to Owners of Units:

- (i) Unit Maintenance. Each Owner, at the Owner's expense, must maintain his Unit and the Limited Common Elements assigned exclusively to such Owner's Unit, except any area designated as an Area of Common Responsibility. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Unit in good order, condition, and repair at all times.
- (ii) Owner's Right to Alter Interior of Unit. Each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of his Unit, provided that such action does not affect any other Unit or Common Element. Notwithstanding the foregoing, for any balcony, patio or other portion of a Unit which is visible from other Units or the outside generally, the Architectural Reviewer has the right but not the duty to evaluate and approve or disapprove every aspect of any modification, alteration, repair, decoration, redecoration or improvement thereon that may adversely affect the general value or appearance of the Property.

8.4.2. Avoid Damage. An Owner may not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

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

8.4.4. Additional Obligations. In addition to, and not in limitation of, any other responsibilities and obligations imposed upon each Owner pursuant to this *Section 8.4* or elsewhere in this Declaration, each Owner will also have the additional responsibilities and obligations set forth below. The obligations set forth below should not be construed as a limitation of a Unit Owner's obligation to maintain and repair their Unit and any Limited Common Elements exclusively assigned thereto.

- (i) To inspect and perform routine and required maintenance on the HVAC system serving such Owner's Unit, including but not limited to, inspecting and cleaning condensate pan and drain, inspecting and regular replacement of air filter.
- (ii) To inspect, maintain, and repair waterproof barriers in the wet areas of such Owner's Unit, including but not limited to, bathroom floor, wall, and shower tile.
- (iii) To inspect and repair **immediately** any water leaks caused by, but not limited to, any of the following which serve such Owner's Unit: water heater, clothes washer, sinks, toilets, bathtubs, refrigerators, dishwasher, and air conditioning condensate drainage system.
- (iv) To inform the Association **immediately** of any water leaks occurring within such Owner's Unit which may effect any other Unit.
- (v) To inspect and perform routine maintenance on door and window flashings that allow water to penetrate into interior of such Owner's Unit.

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

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

## ARTICLE 9

### ARCHITECTURAL COVENANTS AND CONTROL

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

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

9.2.1. Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

9.2.2. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to: (i) the Board; (ii) an architectural control committee appointed by the Board; or (iii) a committee comprised of architects, engineers, or other persons

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

9.3. Architectural Control by Association. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the Board will assume jurisdiction over architectural control.

9.3.1. Limits on Liability. The Board has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the Board have no liability for the Board's decisions made in good faith, and which are not arbitrary or capricious. The Board is not 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.

9.4. Prohibition of Construction, Alteration, and Improvement. Unless otherwise permitted by Section 8.4.1(ii) (redecorating of the interior of a Unit), no Unit or any Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Architectural Reviewer. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

NO IMPROVEMENT OR UNIT MAY BE CONSTRUCTED, ALTERED, OR MODIFIED WITHOUT THE ADVANCE WRITTEN APPROVAL OF THE ARCHITECTURAL REVIEWER.

9.5. Architectural Approval. To request architectural 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 Unit and/or Improvements. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. Verbal approval by an Architectural Reviewer, the Declarant, an

Association director or officer, a member of any committee established by the Board, or the Association's manager does not constitute approval by the appropriate Architectural Reviewer, which must be in writing.

9.5.1. Deemed Approval. If an Owner has not received the Architectural Reviewer's written approval or denial within one hundred and twenty (120) days after delivering his complete application to the Architectural Reviewer, the Owner may presume that his request has been approved by the Architectural Reviewer. The Owner may then proceed with the Improvement, provided he adheres to the plans and specifications which accompanied his application, the Improvement is in compliance with any applicable ordinances and codes of governmental entities, and provided he initiates and completes the Improvement in a timely manner.

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

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

9.6. Architectural Guidelines. Declarant during the Development Period (and the Association thereafter) may publish architectural restrictions, guidelines, and standards, which may be revised from time to time to reflect changes in technology, style, and taste.

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

## ARTICLE 10 CONSTRUCTION & USE RESTRICTIONS

10.1. Variance. The use of the Property is subject to the restrictions contained in this Article, and subject to Rules and Regulations adopted pursuant to this Article. The Board or the

Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or Rule on a case by case basis, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances.

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

10.3. Rules and Regulations. The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules and Regulations, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. 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 Regulations, 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 exteriors of Units and Improvements.
- (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 Owners and Residents.

10.4. Hazardous Activities. No activities will be conducted on the Regime and no Improvements constructed on the Regime, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon the Regime, no open fires may be lighted or permitted except within



safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

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

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

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

10.8. 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 usual and common household pet may be kept, maintained, or cared for on the Property. For Commercial Units (as hereinafter defined), no Owner may keep any animal within such Owner's Commercial Unit. For Live/Work Units and Residential Units (each as hereinafter defined), no Owner may keep on such Owner's Unit more than three (3) cats and dogs, in the aggregate, not more than two (2) of which may be dogs. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Unit of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal will be allowed to run at large. Owners are responsible for the removal of pet's wastes from the Property.

10.9. Antennas. Except as expressly provided below, no exterior radio or television antenna or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained, or placed on a Unit without the prior written approval of the Architectural Reviewer

10.9.1. Dishes Over One Meter Prohibited. A satellite dish antenna which is over one meter in diameter is prohibited within the Regime.

10.9.2. Notification. An Owner or Resident who wishes to install a satellite 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 Resident's installation plans for the satellite dish.

10.9.3. One Dish Limitation. Only one satellite dish 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 antenna if a single satellite is not sufficient for the reception of an acceptable quality signal and the use of an additional antenna results in the reception of an acceptable quality signal.

10.9.4. Permitted Installation Locations. An Owner or Resident may erect a satellite dish antenna (after written notification has been provided to the Board or its designee as provided in Section 10.9.1 above) if the Owner or Resident 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 Resident may enter and use to the exclusion of all other Owners and Residents. 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. **NO OWNER MAY INSTALL OR ERECT A SATELLITE DISH ON THE ROOF OR EXTERIOR WALL OF ANY UNIT.**

The Board may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

10.10. Signs. No sign of any kind shall be displayed to the public view on any Unit or Common Element without the prior written approval of the Declarant during the Development Period and then the Board upon expiration or termination of the Development Period, except for:

- (i) signs which are part of Declarant's overall marketing or construction plans or activities for the Regime;
- (ii) permits as may be required by legal proceedings; and
- (iii) permits as may be required by any governmental entity.

10.11. Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board shall be permitted within the Regime. Parking of any vehicles on Common Elements, and parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages is prohibited; provided, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit. The Board will have the authority to promulgate additional rules regarding the parking of vehicles within the Regime.

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

#### 10.12. Permitted Uses; Prohibited Uses.

10.12.1. Live/Work Units and Commercial Units. The Live/Work Units must be used solely for private single family residential purposes and/or professional, business, or commercial activity that conforms to all zoning requirements applicable to the Property. The Commercial Units must 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 Live/Work Unit or Commercial 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.

10.12.2. Residential Units. The Residential Units must be used solely for private single family residential purposes. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Residential Unit, except an Owner or occupant of a Unit may conduct business activities within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of Residents within the Property; (iv) the business does not, in the reasonable opinion of Declarant during the Development Period, and then the Board upon expiration or termination of the Development Period, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten

the security or safety of other Residents of the Property as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

10.13. Weight and Sound Restriction. In addition to and without limiting the provisions set forth in *Article 9* 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 Board; and (ii) must insure a sound control underlayment system is used, which system must be approved in writing by the Board 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 in a multi-story building is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. This Declaration does not make any 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 any such warranty and claim for loss or damages resulting from sound transmission.

10.14. No Piercing of Walls. In addition to and without limiting the provisions set forth in *Article 9* of this Declaration, an Owner or other Person authorized by such Owner shall not pierce any of the Unit walls with any type of nail, screw, drill bit or other similar item in excess of ¾ inch in length without first obtaining the consent of the Architectural Reviewer as set forth in *Article 9*.

10.15. No Further Subdivision/Timesharing. No Owner other than the Declarant may further subdivide a Unit without the prior written approval of the Board; *provided, however*, that nothing in this *Section 10.15* shall be deemed to prevent an Owner from, or require the approval of the Board for (i) selling a Unit; or (ii) transferring or selling any Unit to more than one Person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property; or (iii) the leasing or renting by any Owner of all of such Owner's Unit in accordance with the provisions of the Documents. The Declarant hereby expressly reserves the right to subdivide any Unit or Units owned by the Declarant. No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among owners or members of the program on a fixed or floating time schedule over a period of time.

10.16. Smoking. Smoking shall not be permitted in any of the interior Common Elements including, but not limited to, the lobby, elevators, corridors, storage units and parking areas, unless such area is designated as a "smoking area" by the Board. Smoking shall be permitted upon the exterior Common Elements unless such exterior area is designated as a "non-smoking area" by the Board, but any Person smoking thereon shall pick up all waste generated thereby and dispose of the same in an appropriate manner.

10.17. Terraces. No articles other than Board-approved patio-type furniture and suitable plants shall be placed on any terraces or outside balconies. No linens, cloths, clothing, towels, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, or other articles, shall be stored, shaken or hung from or on any of the windows, doors, terraces or balconies or other portions of the Regime.

10.18. 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. To facilitate entry in the event of such an emergency, each Owner, if required by the Board, shall deposit a key to such Owner's Unit with the Board.

10.19. Parking and Vehicular Restrictions. With the exception of the Declarant and Persons authorized by the Declarant, no Owner shall park, store or keep within the Regime any: (i) large commercial-type vehicle (including, but not limited to, vehicles with commercial writing, any dump truck, cement mixer truck, oil or gas truck or delivery truck); (ii) recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); bus, trailer, trailer coach, camp trailer, boat or other type of watercraft of any kind, aircraft or mobile home; or (iii) inoperable or unlicensed vehicle or any other similar vehicle. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for daily transportation and subject to approval by the Board. In addition, no Owner shall park, store, or keep anywhere within the Regime any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. In addition, there shall be no operating of any unlicensed vehicles including, but not limited to, mopeds, scooters or similar motorized products within the Regime. All vehicles kept within the parking areas shall be in good condition and shall be kept clean and reasonably free of dust. The Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas of the Regime, including, without limitation, designating "parking," "private parking," "valet parking," "guest parking" and "no parking" areas thereon; and shall have the power to enforce all parking and vehicle use restrictions applicable to the Regime, including the power to remove violating vehicles from any of the parking areas of the Regime to the extent permitted by applicable law. In those parking areas of the Regime left unassigned, the Board may allow, on an individually approved basis, for temporary short term parking for an Owner's guest in such areas. Any vehicle or other item(s) which is parked or stored so as to block an

Owner's access to such Owner's designated parking space(s) or which is parked or stored in any drive or fire lane shall be subject to immediate towing without notification to the owner of such vehicle or item and such towing shall be at the sole cost of the owner of such vehicle or other item. The Declarant during the Development Period, and the Board after expiration or termination of the Development Period, may, in its sole discretion, designate and re-designate handicap, valet, guest and Unit designated parking spaces. THERE SHALL BE NO PARKING FOR RECREATIONAL VEHICLES AVAILABLE ANYWHERE WITHIN THE REGIME.

10.20. 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 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 any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Regime.

10.21. Leasing. No portion of a Unit (other than the entire Unit) may be rented. All leases shall be in writing, approved in advance by the Board and provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Documents. The Board may deny permission to lease any Unit on any reasonable grounds the Board may find. The Board shall have the right to require all tenants of a Unit to deposit in escrow with the Association (in addition to any other deposits which may be required by the Owner so long as such additional deposit is not prohibited by law) an amount not to exceed one month's rental fee paid for the Unit. Said deposit may be used by the Association to repair any damage to the Regime resulting from acts or omission by the tenants (as determined in the sole discretion of the Board). Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Unit to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant of such Unit or for the acts or omissions of the tenant(s) of such Unit which constitute a violation of, or non-compliance with, the provisions of the Documents. All leases shall comply with and be subject to the provisions of the Documents and the provisions of same shall be deemed expressly incorporated into any lease of a Unit. This Section 10.21 shall also apply to assignments and renewals of leases. No lease approved by the Board shall be amended or modified without the Board's approval. The Board may charge a reasonable lease

approval fee (not to exceed \$500.00) to be determined by the Board, however, no fee shall be charged for the approval of an amendment, modification or extension of a previously approved lease. In making its determination as to whether to approve a lease of a Unit, the Board shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; *provided, however*, nothing herein shall be construed to require the Association to furnish an alternate lessee to the Owner in the event the Board disapproves a lease or lessee. Upon entering into an agreement for the lease of a Unit, an Owner other than the Declarant shall provide written notice to the Board, or its designee, of the lease agreement and furnish the names of the prospective lessee and both parties' real estate brokers' and/or agents, including the brokers' and/or agents' telephone numbers. Within ten (10) days of receipt of a prospective lessee's name and address, the Board, or its designee, shall either deliver in person or forward, by certified, registered mail to the prospective lessee, a copy of the Documents, a receipt for the Documents (in a form to be determined by the Board), and a return envelope, postage pre-paid, for return of the receipt. Furthermore, a non-Declarant Owner shall inform, and shall cause the lessee to inform, the Board when the parties have executed the lease of the Unit. The Board shall have the right to charge a non-Declarant Owner a reasonable fee (not to exceed \$250.00) as determined by the Board for the processing of leases of Units, including, but not limited to, the costs associated with the copying and delivery of the Documents to a prospective lessee.

10.22. Appearance. The interior of a Unit and all Limited Common Elements exclusively assigned thereto must be maintained in a manner so as not to be unsightly, as determined by the Board, when viewed from the Common Elements or any other Unit.

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

10.24. Declarant Privileges. In connection with the development and marketing of the Property, Declarant has reserved certain rights and privileges to use the Property in ways that are not available to other Owners and Residents, which rights and privileges are described on Exhibit "A", attached hereto. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

## ARTICLE 11 ASSOCIATION OPERATIONS

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

11.2. The Association. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association

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

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

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

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

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

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

11.7.1. Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information



required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address, phone number, and driver's license number, if any; (iii) any Mortgagee's name, address, and loan number; (iv) the name and phone number of any Resident other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

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

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

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

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

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

## ARTICLE 12 ENFORCING THE DOCUMENTS

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

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

12.1.2. Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision

of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

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

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

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

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

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

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

### ARTICLE 13 INSURANCE

13.1. General Provisions. All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverages maintained by the Association is an expense of the Association. Insurance policies obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

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

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

The Association does NOT insure individual Units.

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

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

13.4. **Directors And Officers Liability.** To the extent it is reasonably available, the Association will maintain directors and officers' liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

13.5. **Fidelity Coverage.** The Association may obtain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered by its own fidelity insurance policy with the same coverages.

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

13.7. **Owner's Responsibility For Insurance.** Each Owner will obtain and maintain fire and extended coverage on the Owner's Unit, and on all Limited Common Elements exclusively assigned to such Owner's Unit in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Unit and on Limited Common Element assigned thereto. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated

for the cost as an individual assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and Resident is solely responsible for insuring his personal property, including furnishings, vehicles, and stored items. **THE ASSOCIATION DOES NOT INSURE UNITS OR LIMITED COMMON ELEMENT ASSIGNED TO A UNIT.**

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

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

#### ARTICLE 14 RECONSTRUCTION OR REPAIR AFTER LOSS

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

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

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

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

14.2.3. Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will

be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

#### 14.3. Costs And Plans.

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

14.3.2. Plans and Specifications. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Owners will cause their Units to be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either Common Elements or Units must be approved by Owners representing at least two-thirds of the votes in the Association.

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

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

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

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

14.5. 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 15  
TERMINATION AND CONDEMNATION

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

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

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

ARTICLE 16  
MORTGAGEE PROTECTION

16.1. Introduction. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. Some sections of this Article apply to "Mortgagees," as defined in Article 1. Other sections apply to "Eligible Mortgagees," as defined below.

16.1.1. Known Mortgagees. An Owner who mortgages his Unit will notify the Association, giving the complete name and address of his mortgagee and the loan number. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of mortgages on Units. The Association may rely on the information provided by Owners and mortgagees.

16.1.2. Eligible Mortgagees. "Eligible Mortgagee" means the holder, insurer, or guarantor of a first purchase money mortgage secured by a recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the

mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Units subject to mortgages held by Eligible Mortgagees. For example, "fifty-one percent (51%) of Eligible Mortgagees" means Eligible Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Eligible Mortgagees.

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

16.3. Implied Approval. The approval of an Eligible Mortgagee is implied when the Eligible 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.

16.4. Other Mortgagee Rights.

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

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

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

16.4.4. Right of First Refusal. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

16.4.5. 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.

## ARTICLE 17 AMENDMENTS

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

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

17.3. Effective. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration or Exhibit "A"; and (iii) recorded in the Official Public Records of Travis County, Texas.

17.4. Declarant Provisions. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Because Exhibit "A" of this Declaration is destined to become obsolete, beginning 15 years after the date this Declaration is first recorded, the Board may restate, re-record, or publish this Declaration without Exhibit "A", provided the other exhibits are not re-lettered. The automatic expiration and subsequent deletion of Exhibit "A" does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

## ARTICLE 18 DISPUTE RESOLUTION

18.1. Owner Claims for Alleged Defects, Personal Injury, Survival, Wrongful Death, or Damage to Goods – Arbitration. Disputes may arise concerning the existence of defects within a Unit. It is Declarant's intent that all such disputes and claims pertaining to construction defects be resolved amicably, and without the necessity of time-consuming and costly litigation. Declarant hereby reserves the right and easement for itself and any successor

or assign to inspect, repair, and/or replace defects in any General Common Elements, Limited Common Elements, Unit, or any Improvement.

18.1.1. Binding Arbitration. In the event an Owner asserts or alleges a claim for damages for any alleged defect in the construction or design of the General Common Elements, Limited Common Elements, Unit, or any Improvement, or any personal injury, survival, wrongful death, or damage to goods that was caused by any defect associated with construction or design of the General Common Elements, Limited Common Elements, Unit, or any Improvement (collectively, an "Owner Dispute"), then such Owner shall be obligated to arbitrate such Owner Dispute unless Declarant specifically waives arbitration in writing. Declarant may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Owner Dispute not referred to arbitration as required by this Section 18.1.

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

18.1.3. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 18.1 shall limit the right of Declarant or any Owner, and Declarant and such Owner shall have the right during any Owner Dispute, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in an Owner Dispute, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the plaintiff, to submit the Owner Dispute to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

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

18.1.5. Arbitrators. Unless the parties to the arbitration agree in writing to the contrary, all arbitration proceedings shall be arbitrated by a panel of three arbitrators,

which shall be appointed by the American Arbitration Association in accordance with its procedures.

18.1.6. Scope of Award; Modification or Vacation of Award. The arbitrators shall resolve all Owner Disputes in accordance with the applicable substantive law. The arbitrators may grant any remedy or relief that the arbitrators deem just and equitable and within the scope of this Section 18.1; provided, however, that in no event shall the arbitrator's award damages which exceed the damages for construction defects the Owner or Declarant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrators may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the arbitrators shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Owner Dispute within fifteen (15) days from the date the award is rendered. The arbitrators' findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

18.1.7. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Owner Dispute for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Austin, Texas. Arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. To the extent permitted by Chapter 27 of the Texas Property Code, the arbitrators shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrators' fees) to the prevailing party. Each party agrees to keep all Owner Disputes and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding an Owner Dispute or issue any press release regarding any Owner Dispute without the written consent of the other parties to the Owner Dispute.

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

18.2.1. In the event that the Association claims, contends, or alleges that any portion of the General Common Elements, Limited Common Elements, Unit, or any other Improvement is defective or claims, contends, or alleges that Declarant or a Builder, its agents, consultants, contractors, or subcontractors (collectively, "Agents")

were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction, or other development of all or any portion of the General Common Elements, Limited Common Elements, Unit, or any other Improvement (collectively, an "**Alleged Defect**"), Declarant hereby reserves the right and easement for itself and any successor or assign to inspect, repair, and/or replace the Alleged Defect as proved in this Section 18.2. Notwithstanding any provision herein to the contrary, (i) in the event that the Association brings a claim arising out of or in connection with an Alleged Defect, in addition to the terms and provisions of this Section 18.2, the Association, Declarant and its Agents (as applicable) will comply with all applicable provisions of Chapter 27 of the Texas Property Code (or its successor), as the same may be amended from time to time; and (ii) all time periods described in this Section 18.2 with respect to notice and opportunity to cure any Alleged Defect shall apply in lieu of the time periods described in Chapter 27 of the Texas Property Code. Furthermore, the rights, remedies and obligations provided pursuant to this Section 18.2 shall be in addition to, and not in lieu of, any rights, remedies and obligations which may be provided pursuant to Title 16 of the Texas Property Code (or its successor), as the same may be amended from time to time.

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

- (i) A preliminary list of Alleged Defects (the "**Preliminary List of Alleged Defects**");
- (ii) A summary of the results of a survey or questionnaire distributed to the Members to determine the nature and extent of the Alleged Defects, if such a survey has been conducted or questionnaire has been distributed; and
- (iii) Either a summary of the results of testing conducted to determine the nature and extent of the Alleged Defects or the actual test results, if such testing has been conducted.

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

18.2.4. Except as provided in this Section 18.2, the Notice of Alleged Defect shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of one hundred and fifty (150) days or a longer period agreed to in writing by the Association and Declarant;

provided, however, at any time, Declarant may give written notice (the "Cancellation Notice") to cancel the tolling of the statute of limitations provided in this subsection. Upon delivery of a Cancellation Notice, the Association and Declarant shall be relieved of any further obligation to satisfy the requirements of this Section 18.2 except that the Association shall not be relieved of the obligations under Sections 18.2.9(ii) and 18.2.10 below. The tolling of all applicable statutes of limitations shall cease sixty (60) days after a Cancellation Notice is delivered to the Association.

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

- (i) the nature and extent of the Alleged Defects;
- (ii) proposed methods of correction, to the extent there is sufficient information; and
- (iii) proposals for submitting the dispute to arbitration; and
- (iv) requests from Declarant to inspect the portion of the General Common Elements, Limited Common Elements, Unit, or any other Improvement on which the defect exists.

18.2.6. If the Association has conducted any inspection or testing of the alleged defect prior to the date the Association sent the Notice of Alleged Defect to Declarant, the Association shall, at the earliest practicable date after the Initial Meeting and no later than five (5) days after the Initial Meeting, make available to Declarant for inspection and testing at least those areas inspected or tested by the Association. Declarant shall further have the right to enter onto or into, as applicable, any General Common Elements, Limited Common Elements, Unit, or any other Improvement for the purpose

of conducting inspections and tests necessary or required by Declarant, and at Declarant's sole cost and expense, to evaluate the Alleged Defect, and each Owner and the Association shall cooperate with such efforts. The results of any inspection or testing conducted by Declarant shall not be inadmissible in evidence in any action for arbitration solely because the inspection and testing was conducted pursuant to this Section 18.2.

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

- (i) a request to meet with the Board to discuss a written settlement offer; and
- (ii) a written settlement offer (the "Settlement Offer") and a concise explanation of the specific reasons for the terms of the offer.

If Declarant does not timely submit the items required by this Section 18.2.7, the Board shall be relieved of any obligations to meet and confer with Declarant about the Settlement Offer; otherwise, the Board shall meet and confer with Declarant about the Settlement Offer no less than ten (10) days after Declarant submits the items described in this Section 18.2.6.

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

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

- (i) If the Board rejects the Settlement Offer, then the Board shall hold a meeting (the "Member Meeting") open to every member of the Association no less than fifteen (15) days before the Association submits a claim to arbitration pursuant to Section 18.3. No less than fifteen (15) days before the Member Meeting is held, a written notice shall be sent to each Member specifying all of the following:
  - 1) that a meeting will take place to discuss alleged problems that may lead to the submission of a claim to binding arbitration, and the time and place of this meeting;
  - 2) the options that are available to address the Alleged Defects, including the submission of the claim to binding arbitration, and a

statement of the various alternatives that are reasonably foreseeable by the Association to pay for those options and whether those payments are expected to be made from the use of the Association's reserve funds or the imposition of special assessments;

- 3) the complete text of any Settlement Offer and a concise explanation of the specific reasons for the terms of the Settlement Offer received from Declarant;
- 4) the Preliminary List of Alleged Defects provided by the Association to the Declarant and a list of any other documents provided by the Association to the Declarant pursuant to this Section, and information about where and when Members may inspect those documents;
- 5) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect;
- 6) the estimated cost to repair such Alleged Defect;
- 7) the name and professional background of the attorney retained by the Association to submit the claim to binding arbitration and a description of the relationship (if any) between such attorney and any members of the Board;
- 8) a description of the fee arrangement between such attorney and the Association;
- 9) the estimated attorneys' fees and expert fees and costs necessary to submit and pursue the arbitration and the source of the funds that will be used to pay such fees and expenses; and
- 10) the estimated time necessary to conclude the arbitration.

The discussions at the Member Meeting and the contents of the notice of Member Meeting and the items required to be specified in such notice are privileged communications and are not admissible in evidence in any civil action or arbitration, unless the Association consents to their admission. In the event Declarant participates in any discussion at a Member Meeting, any statements made by the Declarant are not admissible in evidence in any civil action or arbitration, unless the Declarant consents to their admission

- (ii) If the Association is relieved of its obligation to satisfy the requirements of this Section 18.2 other than this Section 18.2.9(ii) and Section 18.2.10 below, then the Association may submit the claim to binding arbitration only if the Association sends a written notice to each Member at least thirty (30) days prior to commencing such action, which notice shall include all of the following:
- 1) the Preliminary List of Alleged Defects provided by the Association to Declarant and a list of any other documents provided by the Association to Declarant pursuant to this Section 18.2, and information about where and when Members may inspect those documents;
  - 2) the options, including the submission of the claim to binding arbitration, that are available to address the alleged problems;
  - 3) a statement informing the Members of the procedures required by the Bylaws of the Association for the Members to call a special meeting of the Members and that if the Members meet such procedures, a special meeting of the Members shall be called;
  - 4) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect;
  - 5) the estimated cost to repair such Alleged Defect;
  - 6) the name and professional background of the attorney retained by the Association to submit the claim to binding arbitration and a description of the relationship (if any) between such attorney and any members of the Board;
  - 7) a description of the fee arrangement between such attorney and the Association;
  - 8) the estimated attorneys' fees and expert fees and costs necessary to submit and pursue the arbitration and the source of the funds which will be used to pay such fees and expenses; and
  - 9) the estimated time necessary to conclude the arbitration.

18.2.10. Any judgment or award in connection with any arbitration alleging damages: (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect shall



first be used to correct and or repair such Alleged Defect or to reimburse the Association for any costs actually incurred by the Association in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Declarant (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund unless at least eighty percent (80%) of the votes in the Association elect to allocate or distribute the remaining funds otherwise.

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

- (i) A general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced;
- (ii) A good faith estimate, as of the date of the disclosure, of when the Association believes that the defects identified in Section 18.2.11(i) above, will be corrected or replaced. The Association may state that the estimate may be modified; and
- (iii) The status of the claims for defects that were not identified in Section 18.2.11(i) above, whether expressed in a Preliminary List of Alleged Defects sent to each Member or otherwise claimed and disclosed to the Members.

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

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

18.3.1. **Binding Arbitration.** In the event a claim is asserted by the Association against the Declarant for damages caused by a defect in the design or construction of any General Common Elements, Limited Common Elements, Unit, or any other Improvement, or for any personal injury, survival, wrongful death, or damage to goods that was caused by such defect (collectively, the "Group Dispute"), then after the Association has complied with the provisions of Section 18.2, or Declarant has provided a Cancellation Notice to the Association in accordance with Section 18.2.4, the Association and the Declarant shall be obligated to arbitrate such Group Dispute unless

Declarant specifically waives arbitration in writing. Declarant may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Group Dispute not referred to arbitration as required by this Section 18.3.

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

18.3.3. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 18.3 shall limit the right of Declarant or the Association, and Declarant and the Association shall have the right during any Group Dispute, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, which is involved in a Group Dispute, including, without limitation, rights and remedies relating to (i) exercising self-help remedies (including set-off rights) or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the plaintiff, to submit the Group Dispute to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

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

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

18.3.6. Scope of Award; Modification or Vacation of Award. The arbitrators shall resolve each Group Dispute in accordance with the applicable substantive law; provided, however, that in no event shall the arbitrator's award damages which exceed the damages for construction defects the Association or Declarant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrators may grant any remedy or relief that the arbitrators deem just and equitable unless otherwise limited by this subsection. Also, unless otherwise limited by this subsection, the arbitrators may also grant such ancillary relief as is necessary to make effective the award. In all arbitration

proceedings in which the amount in controversy exceeds \$100,000.00, in the aggregate, the arbitrators shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$100,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Group Dispute within fifteen (15) days from the date the award is rendered. The arbitrators' findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

18.3.7. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Group Dispute for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Austin, Texas. Unless otherwise limited by Section 18.3.7 the arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. To the extent permitted by Chapter 27 of the Texas Property Code, the arbitrators shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrators' fees) to the prevailing party. Each party agrees to keep all Group Disputes and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Group Dispute or issue any press release regarding any Group Dispute without the written consent of the other parties to the Group Dispute.

## ARTICLE 19 DISPUTE RESOLUTION

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

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

19.1.1. Declarant and the Association and its officers, directors, and committee members, all Persons subject to this Declaration (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Regime without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (defined below), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to

resolve such Claim. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to the interpretation, application, or enforcement of the Declaration, any architectural guidelines, the Certificate, Bylaws, and Rules and Regulations.

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

- (i) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of the Documents;
- (iii) any suit that does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Documents;
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by Section 19.2.1, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

19.2. Dispute Resolution Procedures.

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

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

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

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

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

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

- (ii) initiated to enforce the provisions of the Documents, including collection of Assessments and foreclosure of liens;
- (iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

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

## ARTICLE 20

### GENERAL PROVISIONS

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

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

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

20.4. Injury to Person or Property. Each Owner acknowledge that the Declarant and the Association shall have no duty or obligation to any Owner or their guests: (i) to supervise minor children or any other person; (ii) to fence or otherwise enclose any Limited Common Element, General Common Element or other Improvement; or (iii) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Unit, each Owner agrees that the limitations set forth in this Section 20.4 are reasonable and constitute the exercise of ordinary care by the Association and Declarant.

20.5. Declarant as Attorney in Fact and Proxy. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Exhibit "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 Exhibit "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 Exhibit "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 Exhibit "A" or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in the Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Non-profit Corporation Act the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing the Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by the Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing the

Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant pursuant to Exhibit "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.

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

- A Declarant Representations and Reservations
- B Plats and Plans
- C Schedule of Allocated Interests

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

*[SIGNATURE PAGE FOLLOWS]*



EXECUTED on this 20 day of March, 2007.

**DECLARANT:**

WATERSTREET PARTNERS, LTD., a Texas limited partnership

By: Waterstreet Lofts, LLC, a Texas limited liability company, its General Partner

By: [Signature]

Printed Name: Gerald B. Cobb, JR

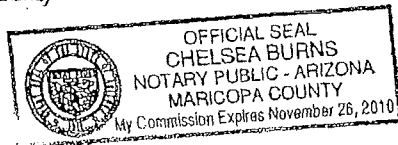
Title: President, Waterstreet Lofts LLC

Date: 3-20-07

~~Travis County, Texas~~ Maricopa County, Arizona

This instrument was acknowledged before me on this 20 day of March, 2007 by Gerald B. Cobb, JR President of Waterstreet Lofts, LLC, a Texas limited liability company, General Partner of Waterstreet Partners, Ltd., a Texas limited partnership, on behalf of said company and limited partnership.

(seal)



[Signature]

Notary Public Signature

CONSENT OF MORTGAGEE

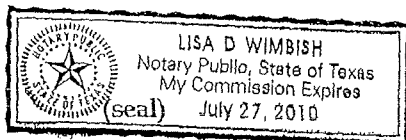
The undersigned, being the sole owner and holder of a deed of trust lien recorded as Document Nos. 2006014104 and 2006157164, Official Public Records of Travis County, Texas, securing a note of even date therewith, executes this Declaration solely for the purpose of evidencing its consent to recordation of this Declaration and makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

AMERICAN BANK, N.A.:

By: *Stanley D. Tucker*  
Printed Name: STANLEY D. TUCKER  
Title: SENIOR LENDING OFFICER

THE STATE OF TEXAS     §  
COUNTY OF Travis     §

This instrument was acknowledged before me on this 26<sup>th</sup> day of March, 2007  
by Stanley D. Tucker, Senior Lending Officer of American Bank, N.A.



*Lisa D. Wimbish*  
Notary Public, State of Texas

## EXHIBIT "A"

### DECLARANT RESERVATIONS AND REPRESENTATIONS

#### 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 the Declarant-related provisions in this Exhibit.

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

A.1.3. Purpose of Development and Declarant Control Periods. This Exhibit gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build-out and sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "Development Period", as specifically defined in the Declaration, means the ten (10) year period beginning on the date this Declaration is recorded in the Official Public Records of Travis County, Texas, unless such period is earlier terminated by Declarant's recordation of a notice of termination in the Official Public Records of Travis County, Texas. The Declarant Control Period is defined in Section A.2 below. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days' written notice.

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

A.2.1. Duration. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of:

(i) ten (10) years after the date of recording this Declaration; (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; or (iii) when, in the sole opinion of Declarant, the Association is viable, self-supporting, and operational.

A.2.2. Officers and Directors. During the Declarant Control Period, the Board may consist of three (3) persons. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation: within one hundred and twenty (120) days after fifty percent (50%) percent of the total number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third of the Board must be elected by Owners other than Declarant.

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

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

- (i) For each Unit owned by Declarant, Declarant is liable for Assessments in the same manner as any Owner; or
- (ii) Declarant will assume responsibility for the difference (the "red ink") between the Association's common expenses and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the option period, Declarant must begin paying Assessments on each Declarant owned Unit according to the Unit's allocated interest for Assessments.

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

A.2.6. Budget Control. During the Declarant Control Period, the right of Owners to veto Special Assessments or increases in Regular Assessments is not effective and may not be exercised.

A.2.7. Management Contract. If Declarant enters into a professional management contract on behalf of the Association during the Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at least thirty (30) days written notice to the manager, at any time after a Board elected by the Owners other than the Declarant takes office.

A.2.8. 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; Representations & Reservations. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

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

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

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

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

termination of Declarant Control, or earlier if Declarant permits, the Board may appoint or serve as a "modifications committee" to respond exclusively to modifications of completed Units that are owned by persons other than Declarant. A modifications committee may not involve itself with the approval of new Units or Common Elements.

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

A.3.6. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Property; (ii) to create Units, General Common Elements, and Limited Common Elements within the Property, including the reallocation of portions of the Property currently designated a General Common Element to be a Limited Common Element storage area for the exclusive use and benefit of one or more Owners; (iii) to subdivide or combine Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A.3.7. Development Rights Reserved. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

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 limited purposes:

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (ii) To correct any defects in the execution of this Declaration or the other Documents.
- (iii) To add real property to the Property, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights, including the reallocation of portions of the Property currently

designated a General Common Element to be a Limited Common Element storage area for the exclusive use and benefit of one or more Owners.

- (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.

**A.4. Special Declarant Rights.** As permitted by the Act, Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Property during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds a Development Right to create additional Units or Common Elements or Declarant owns a Unit, whichever ceases last. Earlier termination of certain rights may occur by statute.

- (i) The right to complete or make improvements indicated on the Plat and Plans.
- (ii) The right to exercise any Development Right permitted by the Act and this Declaration.
- (iii) The right to 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.
- (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 Residents. Declarant reserves an easement and right to

maintain, relocate, replace, or remove the same from time to time within the Property.

- (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 the Declarant Control Period consistent with the Act.

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

- (i) An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
- (ii) The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.
- (iii) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done within one hundred and twenty (120) days after termination of the Development Period.
- (iv) The right to provide a reasonable means of access for the home-buying public through the gated entrance in connection with the active marketing of Units by Declarant, including the right to require that the gates be kept open during certain hours or on certain days.

**A.6. Working Capital Fund.** Declarant may establish a working capital fund for the Association. If Declarant establishes this fund, each Unit's contribution will be collected when the sale of the Unit closes to an Owner other than Declarant or an affiliate of Declarant. Contributions to the fund are not advance payments of regular Assessments and are not



refundable. Not later than termination of the Declarant Control Period, the working capital fund will be transferred to the Association for deposit to a segregated fund. During the Declarant Control Period, the fund may not be used to pay the Association's operational expenses. Declarant may not use the fund to defray Declarant's expenses, reserve contributions, or construction costs, or to cover the Association's budget deficits during the Declarant Control Period. Declarant is not required to make contributions for any Unit owned or retained by Declarant, or for any Unit for which the contribution was not collected at closing.

A.7. Successor Declarant. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Official Public Records of Travis County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

EXHIBIT "B"

[CONDOMINIUM PLATS AND PLANS]

The plats and plans, attached hereto as Exhibit "B" contain the information required by Sections 82.052 and 82.059 of the Texas Uniform Condominium Act, as applicable.

Printed Name: \_\_\_\_\_

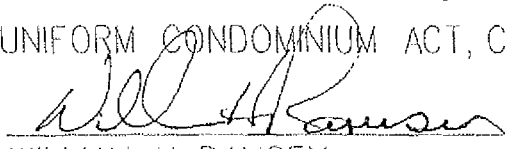
RPLS or License No. \_\_\_\_\_

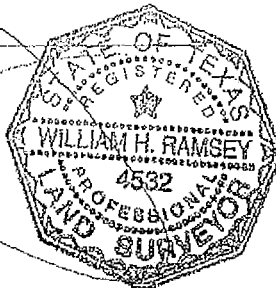
*SEE NEXT PAGE FOR ORIGINAL CERTIFICATION*

WATERSTREET LOFTS  
1601 E. CESAR CHAVEZ STREET  
AUSTIN, TEXAS 78702

KNOW ALL MEN BY THESE PRESENTS:

THAT I, WILLIAM H. RAMSEY, DO HEREBY CERTIFY THAT  
THIS SURVEY CONTAINS ALL THE INFORMATION REQUIRED  
OF PLATS AND PLANS UNDER SECTION 82.059 OF THE TEXAS  
UNIFORM CONDOMINIUM ACT, CHAPTER 82, TEXAS PROPERTY CODE.

  
WILLIAM H. RAMSEY  
R.P.L.S. #4532



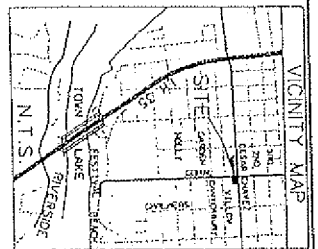
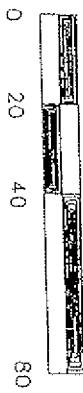
1-4-07  
DATE

PREPARED BY: RAMSEY LAND SURVEYING, L.L.C.

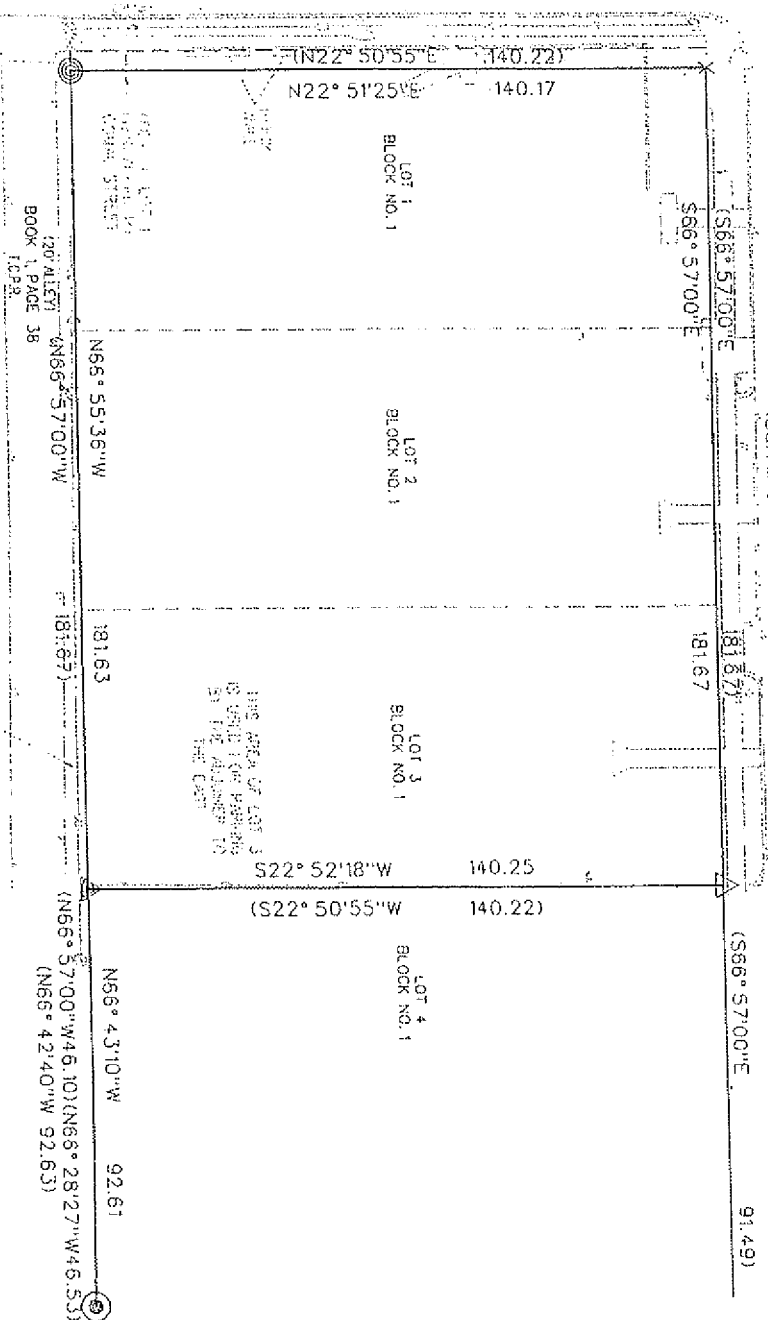
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@fiosh.net

COMAL STREET  
(60' RIGHT-OF-WAY)

EAST CESAR CHAVEZ STREET  
(60' RIGHT-OF-WAY)  
(BEARING BASIS)



- LEGEND**
- 5/8" IRON ROD WITH PLASTIC CAP
  - MARKED "DEAN WOOLEY RPLS" - 5086" FOUND
  - △ 5/8" IRON PIPE FOUND
  - △ COTTON GIN SPINDLE FOUND
  - △ PUNCH IN CONCRETE FOUND
  - X "X" IN CONCRETE FOUND



RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
r1survey@flash.net

WATERSTREET LOFTS  
LOTS 1, 2, & 3, BLOCK 1  
SUBDIVISION OF OUTLOT 35, DIVISION O  
BOOK 1, PG. 38  
TCPR

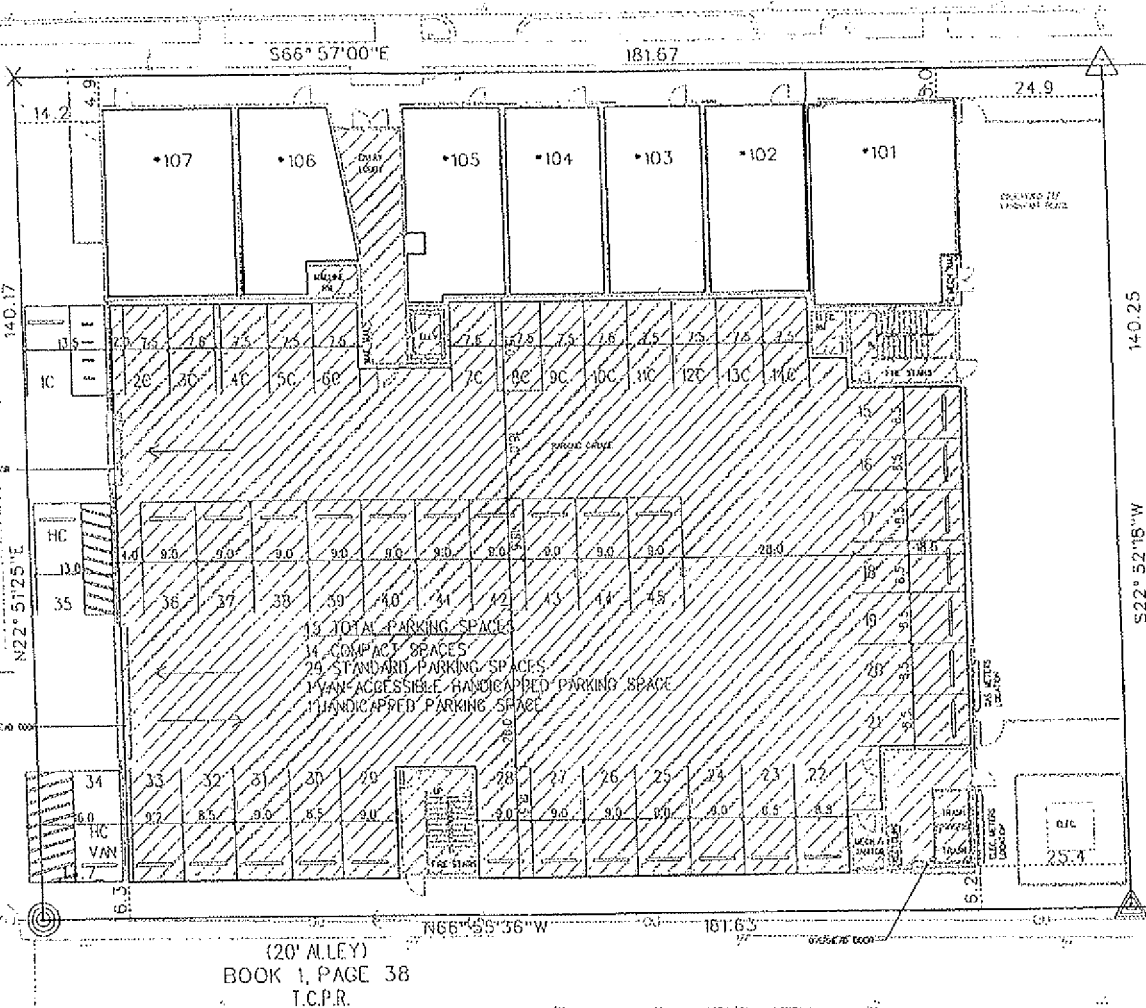
"THE DELINEATION OF PARKING SPACES AS SHOWN HEREON IS FOR INFORMATIONAL PURPOSES ONLY AND THE NUMBER AND LOCATION OF PARKING SPACES WITHIN THE REGIME IS SUBJECT TO CHANGE AT ANY TIME AND FROM TIME TO TIME. AS PROVIDED IN THE DECLARATION OF CONDOMINIUM REGIME FOR WATERSTREET LOFTS, DECLARANT HAS RESERVED THE RIGHT TO DESIGNATE AND ASSIGN PORTIONS OF THE GENERAL COMMON ELEMENTS AS PARKING FOR THE EXCLUSIVE USE OF ANY OWNER OF A UNIT WITHIN THE REGIME."

EAST CESAR CHAVEZ STREET  
(WATER STREET)  
(60' RIGHT-OF-WAY)



COMAL STREET  
(60' RIGHT-OF-WAY)

N22°51'25"E  
140.17



# LEGEND

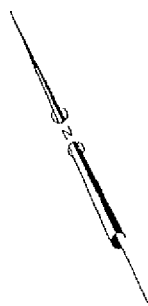
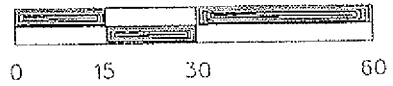
- ⊙ - 5/8" IRON ROD WITH PLASTIC CAP  
MARKED "DEAN WOODLEY RPLS \* 5086" FOUND
- ▲ = COTTON GIN SPINDLE FOUND
- △ = PUNCH IN CONCRETE FOUND
- X = "X" IN CONCRETE FOUND
- ⊗ = GENERAL COMMON ELEMENT

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
r1survey@flash.net

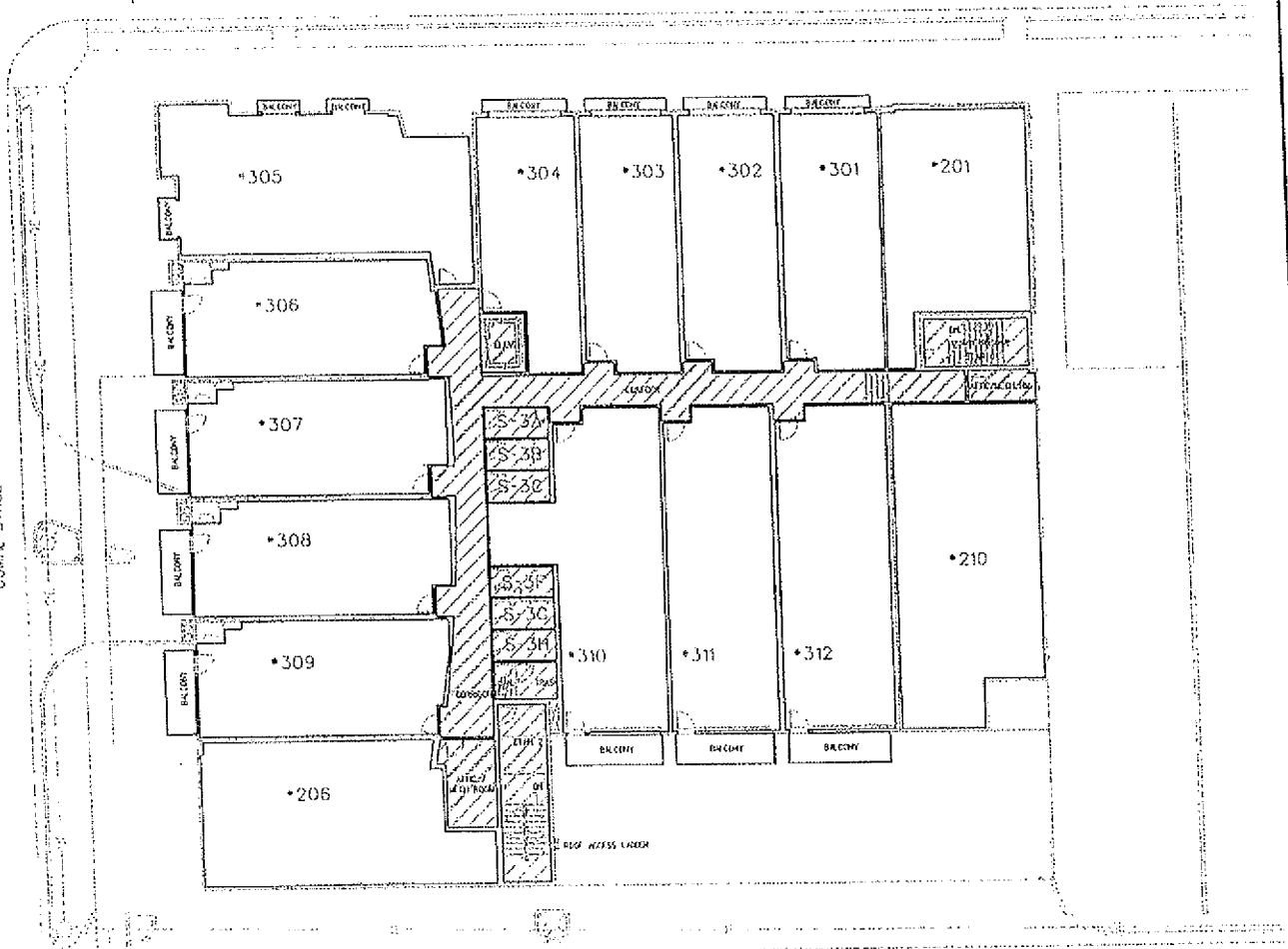
WATERSTREET LOFTS  
LEVEL ONE





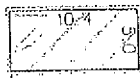
EAST CESAR CHAVEZ STREET (WATER STREET)

CONAL STREET



ALLEY 20' ROW

N.T.S.



DIMENSIONS TYPICAL FOR STORAGE UNITS  
S-3A THRU S-3H

LEGEND

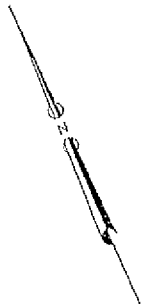
..... = GENERAL COMMON ELEMENT

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS  
LEVEL THREE

11/24/05 10:21:33 AM JCS  
 11/24/05 10:21:33 AM JCS  
 11/24/05 10:21:33 AM JCS



0 15 30 60

EAST CESAR CHAVEZ STREET (WATER STREET)

COMAL STREET

•305

•304

•303

•302

•301

•306

•307

•308

•309

•310

•311

•312

ALLEY 20' ROW

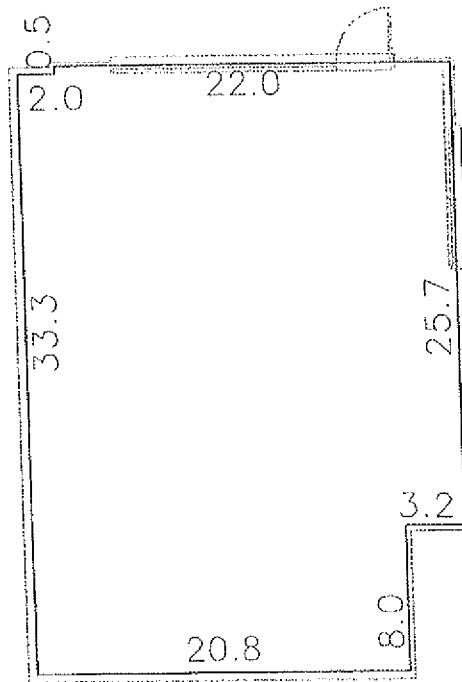
RAMSEY LAND SURVEYING, L.L.C. 8-24-09 REV. 1-23-06 MCD

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
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AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS  
LEVEL THREE MEZZANINE





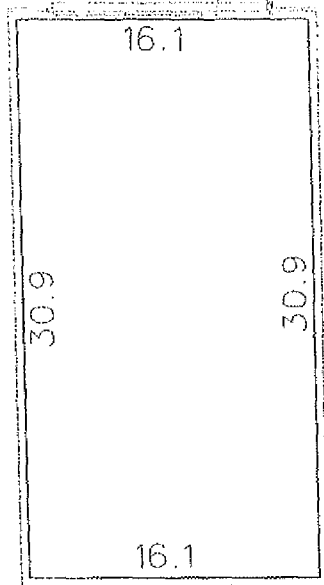
LEVEL ONE

1" = 10 FEET

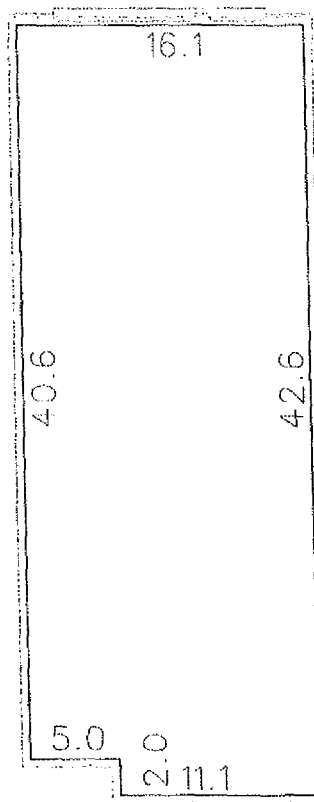
RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS  
UNIT # 101



LEVEL ONE



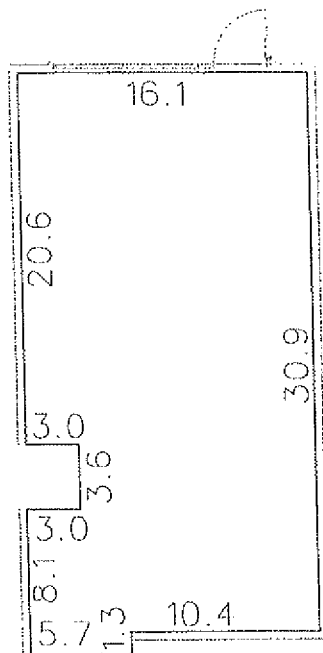
LEVEL TWO

1" = 10 FEET

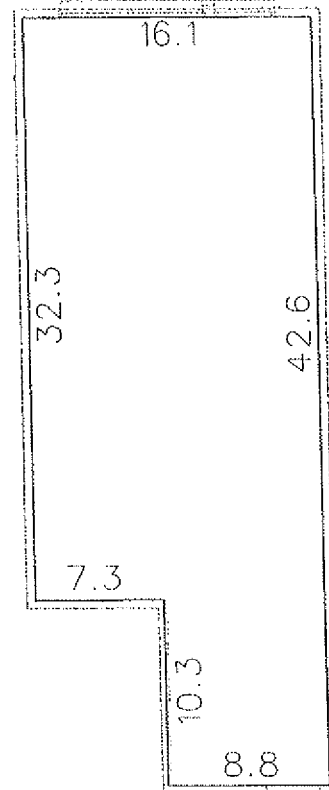
RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS  
UNITS # 102, 103 & 104



LEVEL ONE



LEVEL TWO

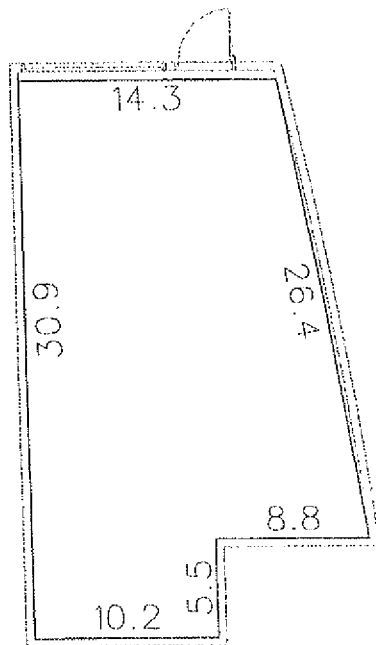
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

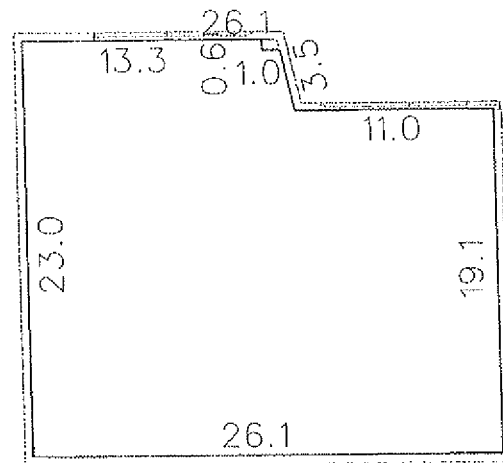
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@fiosh.net

WATERSTREET LOFTS

UNIT # 105



LEVEL ONE



LEVEL TWO

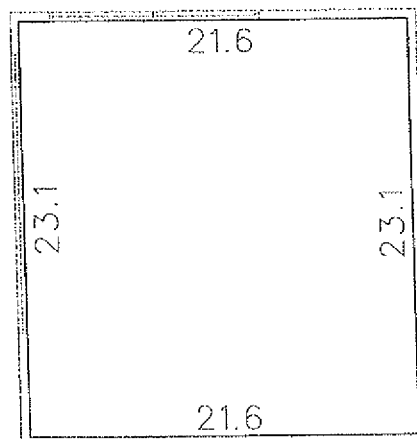
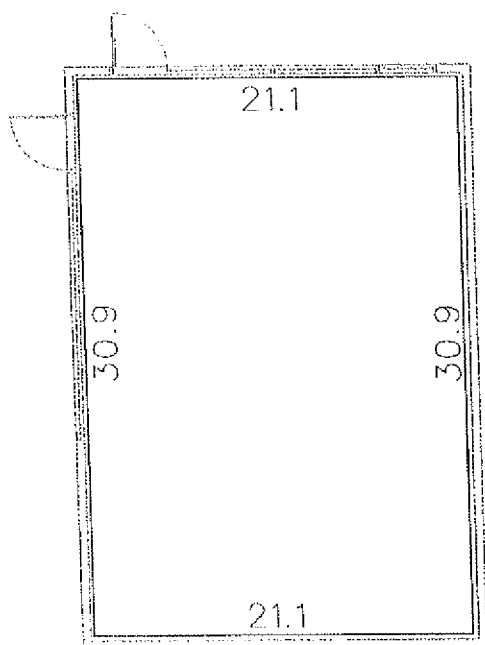
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
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AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 106



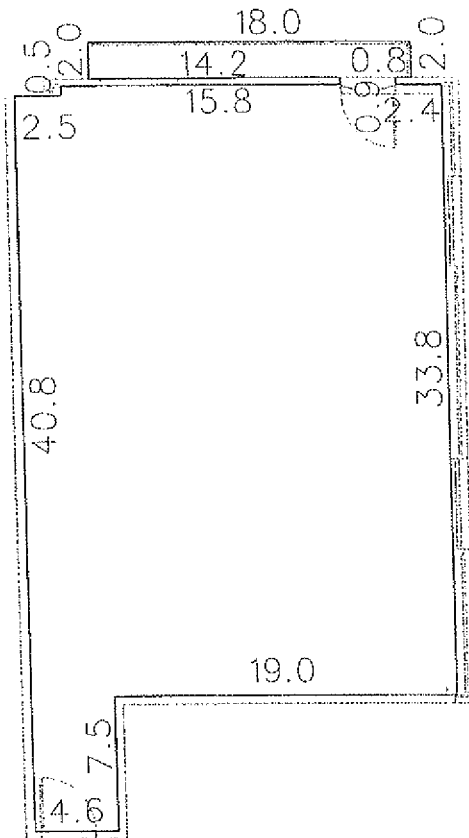
LEVEL ONE

1" = 10 FEET

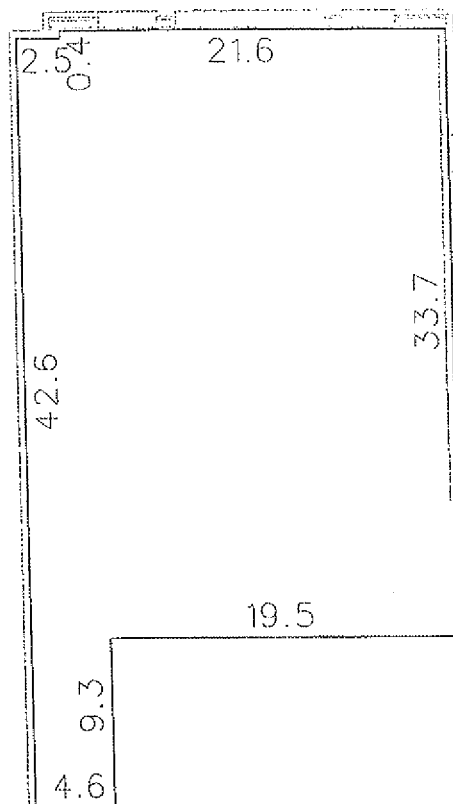
RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9388  
FAX (512) 301-9385  
rlsurvey@fiosh.net

WATERSTREET LOFTS  
UNIT # 107



LEVEL ONE



LEVEL TWO

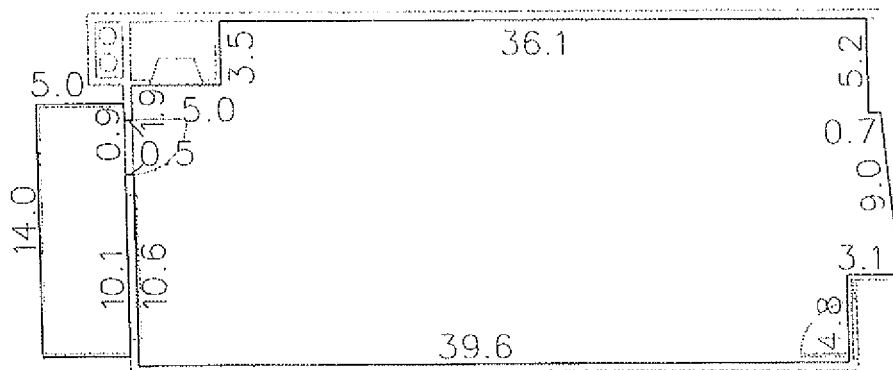
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
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PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 201



LEVEL ONE

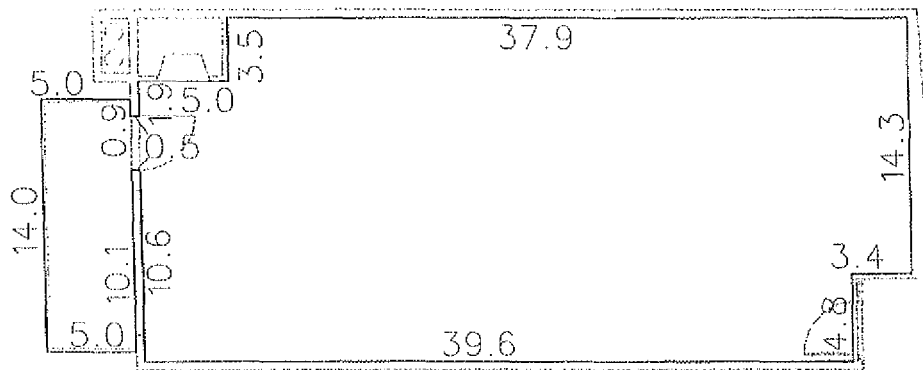
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@fiosh.net

WATERSTREET LOFTS

UNIT # 202



LEVEL ONE

1" = 10 FEET

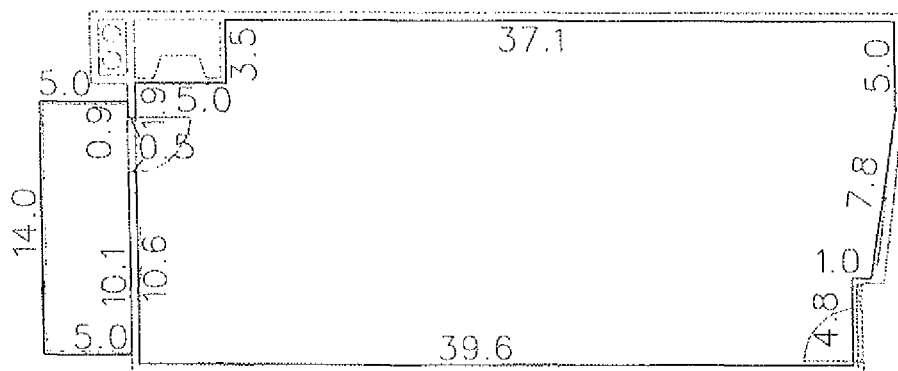
RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNITS # 203 & 204





LEVEL ONE

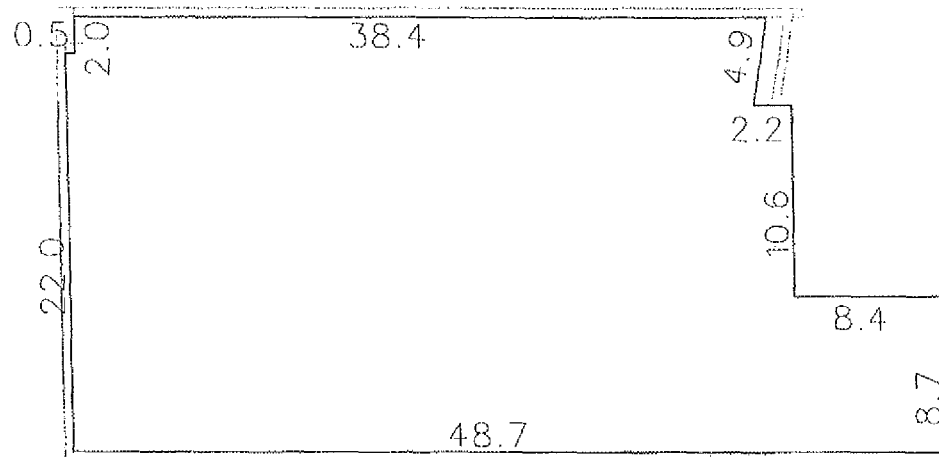
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

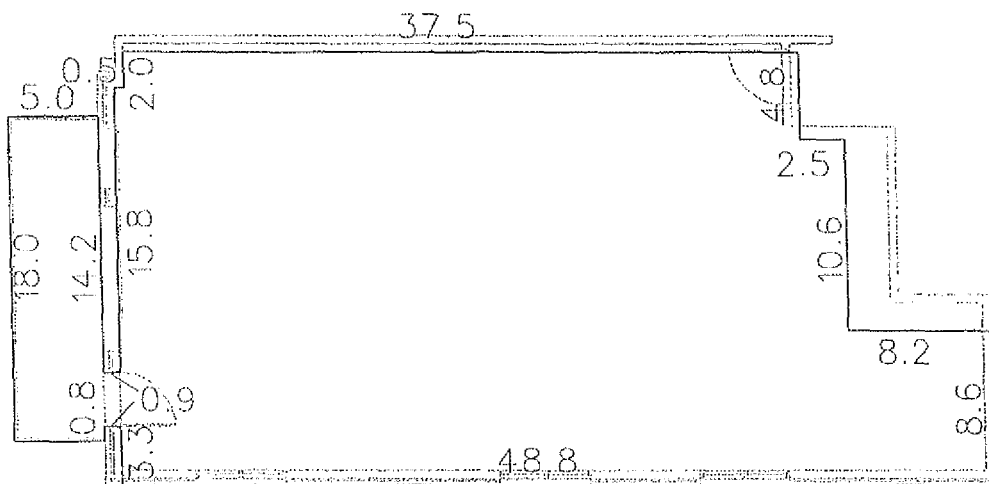
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@fiosh.net

WATERSTREET LOFTS

UNIT # 205



LEVEL TWO



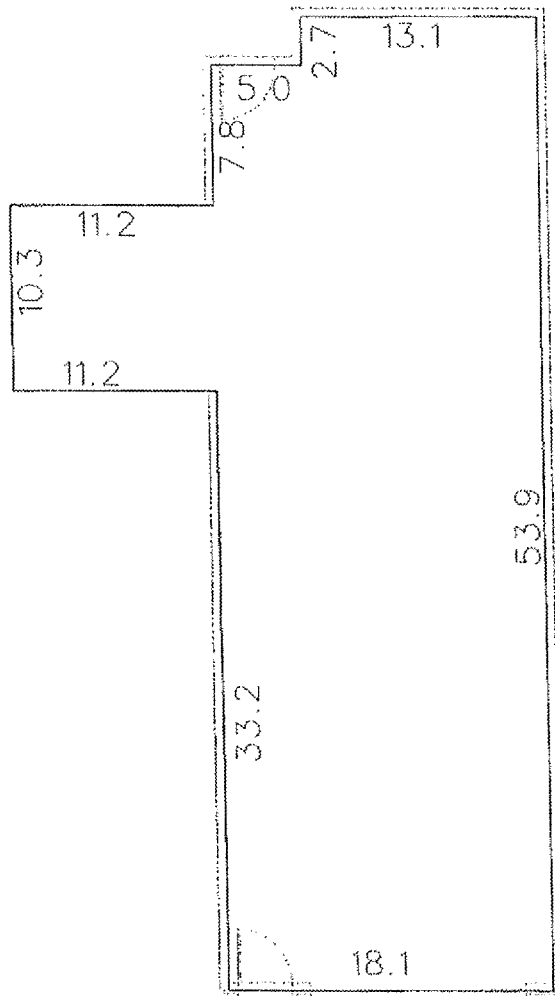
LEVEL ONE

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 206



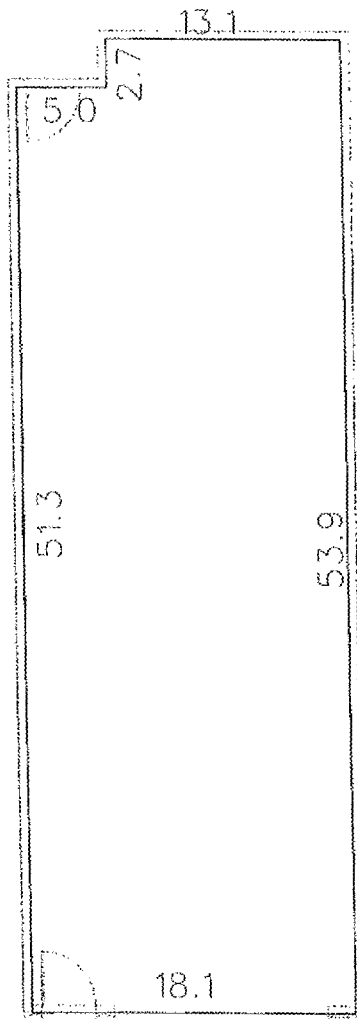
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 207



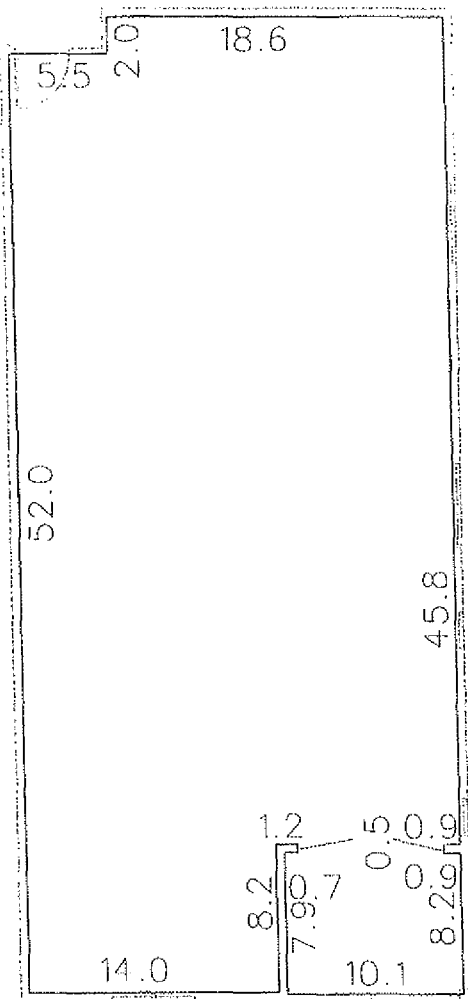
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

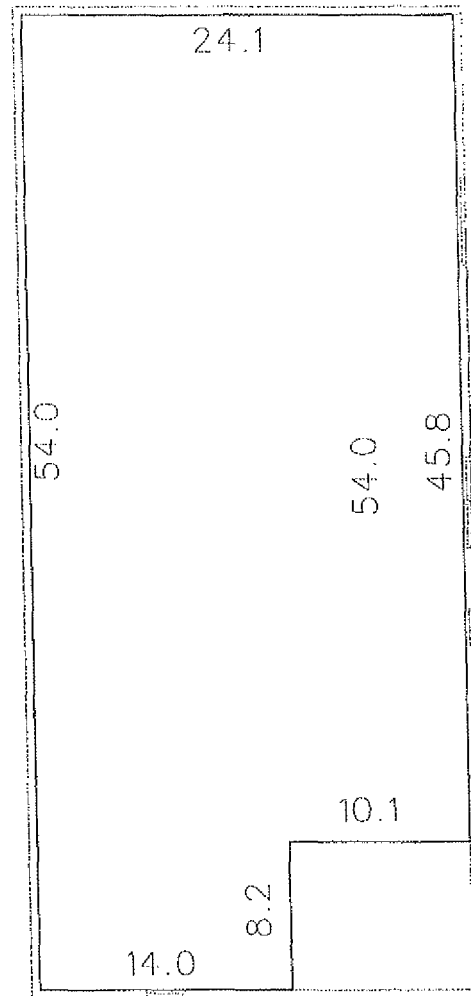
8718 SOUTHWEST PARKWAY  
P.O. BOX 9276B  
AUSTIN, TEXAS 78769-276B  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rfsurvey@fiosh.net

WATERSTREET LOFTS

UNITS # 208 & 209



LEVEL ONE



LEVEL TWO

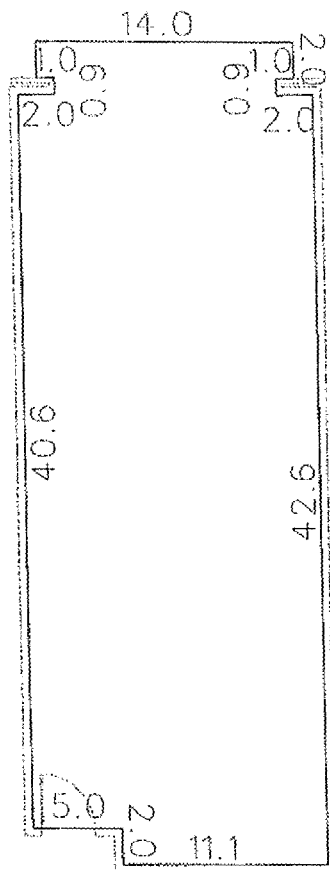
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

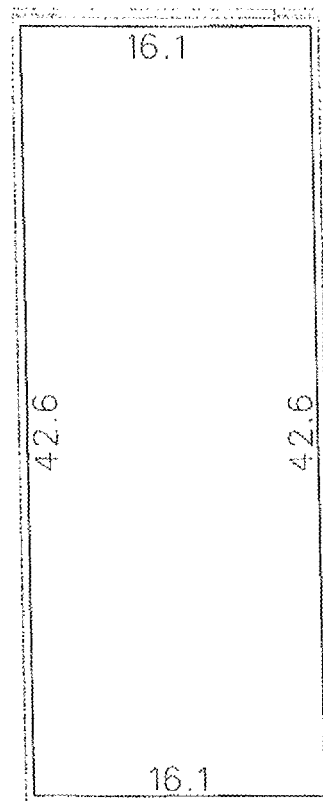
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 210



LEVEL ONE



LEVEL TWO

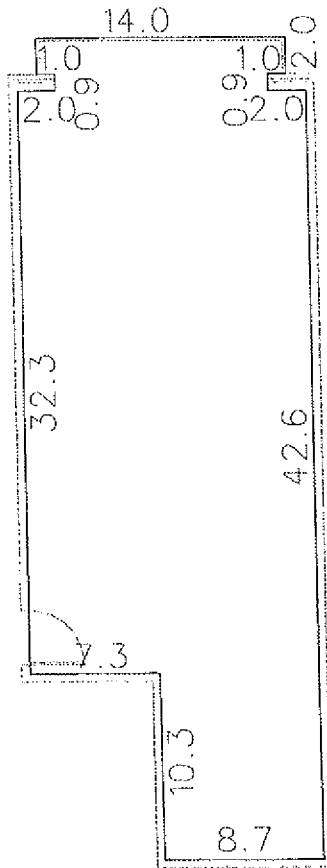
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

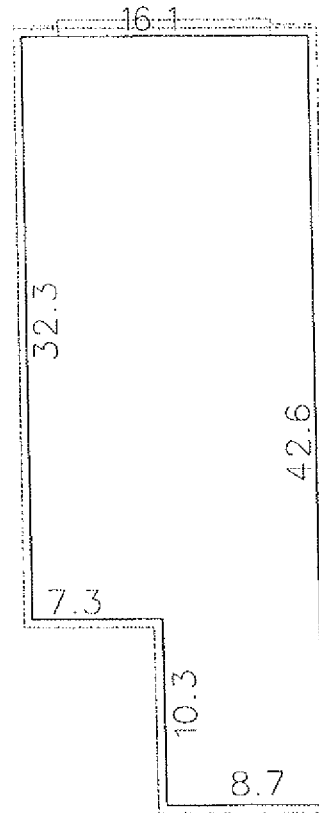
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNITS # 301, 302 & 303



LEVEL ONE



LEVEL TWO

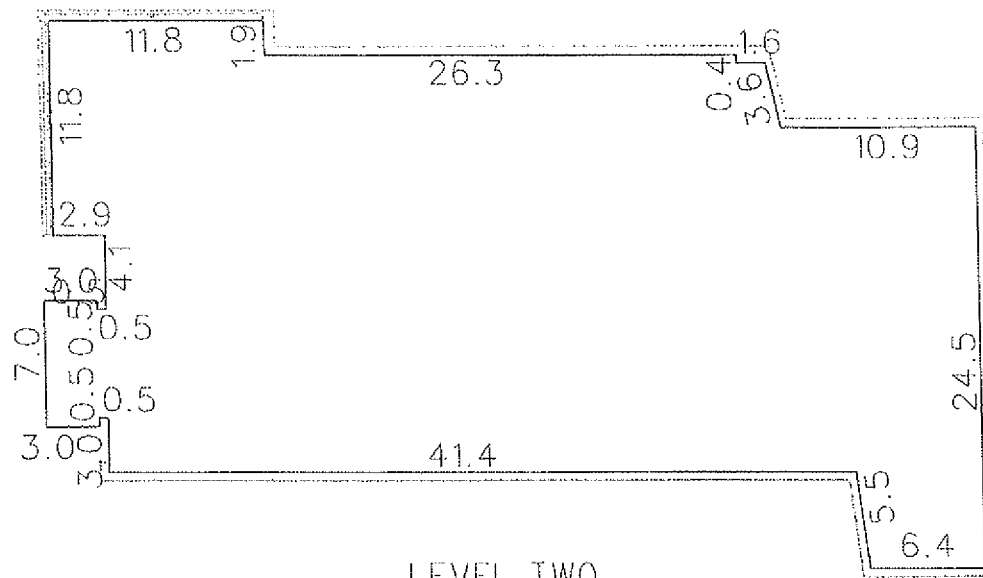
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

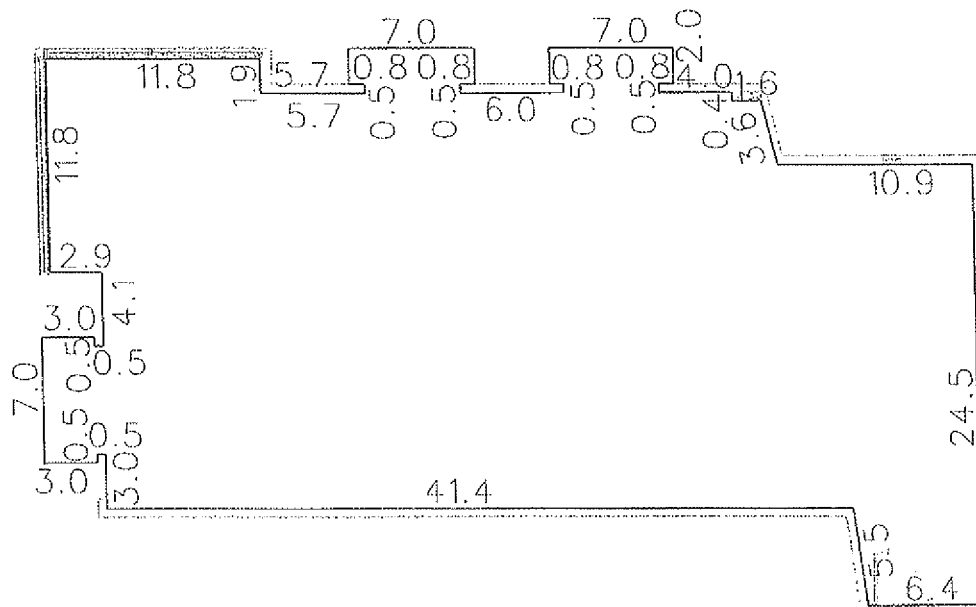
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 304



LEVEL TWO



LEVEL ONE

1" = 10 FEET

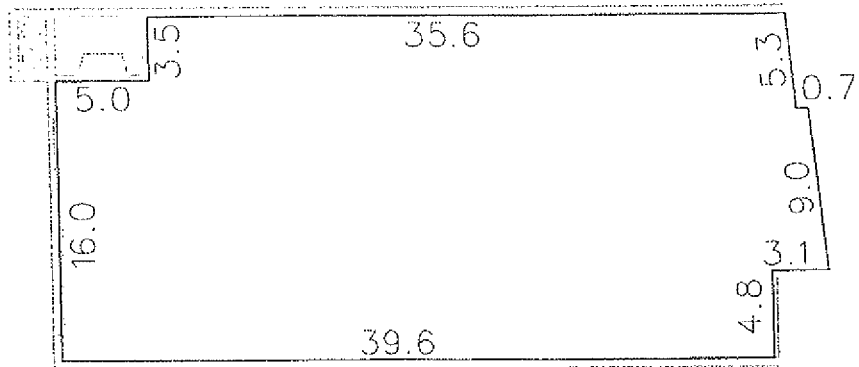
RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

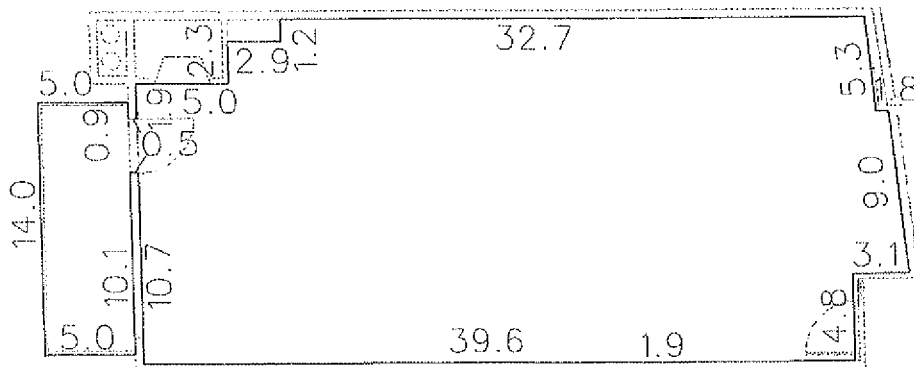
# WATERSTREET LOFTS

UNIT # 305





LEVEL TWO



LEVEL ONE

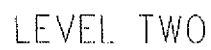
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

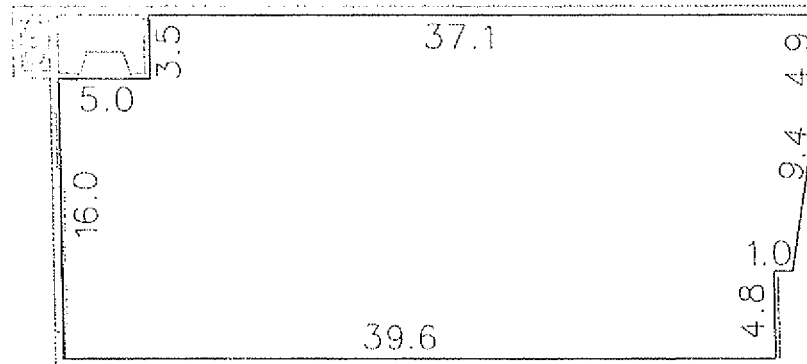
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@fiosh.net

WATERSTREET LOFTS

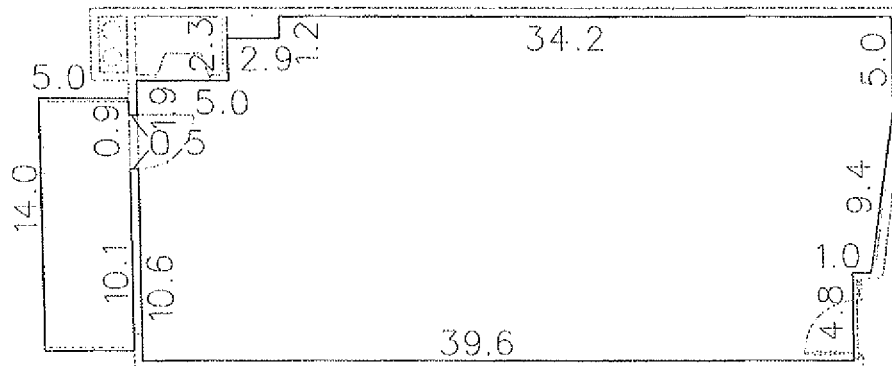
UNIT # 306



UNITS # 307 & 308



LEVEL TWO



LEVEL ONE

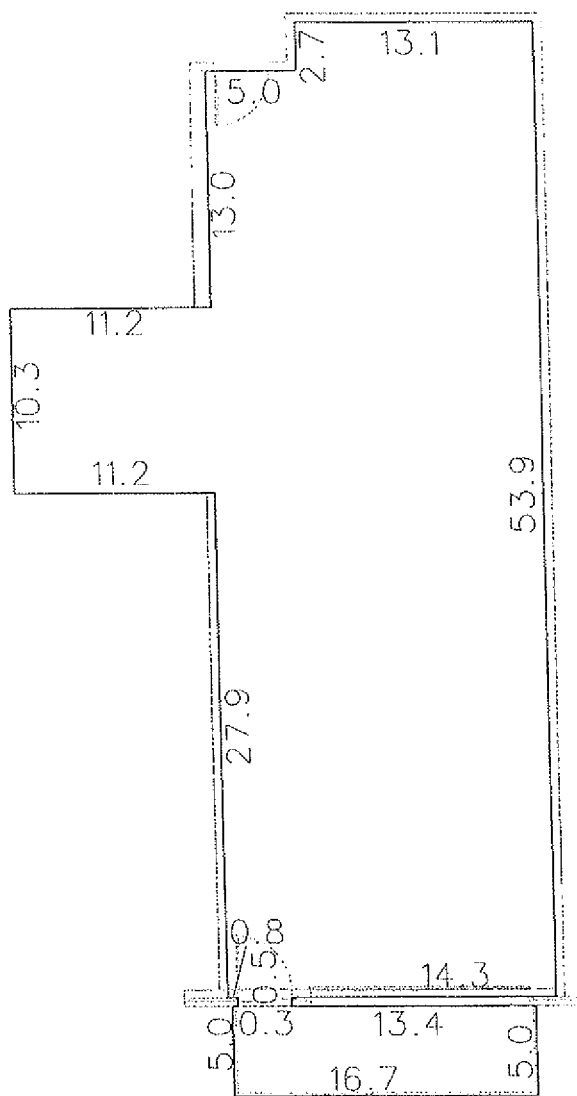
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

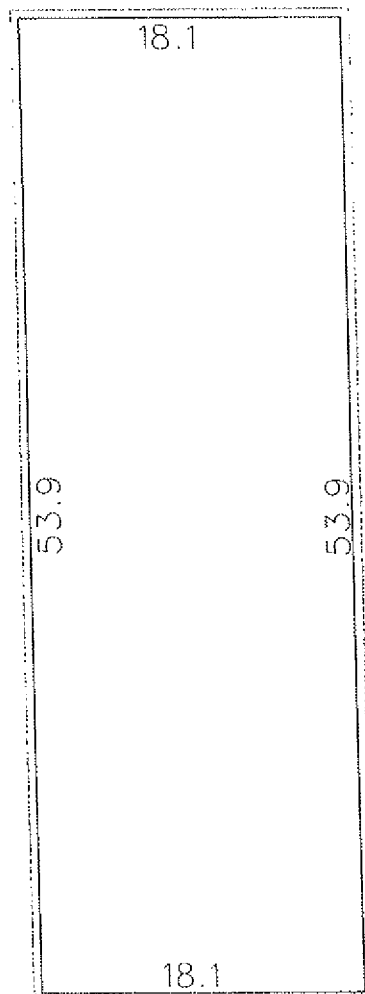
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 309



LEVEL ONE



LEVEL TWO

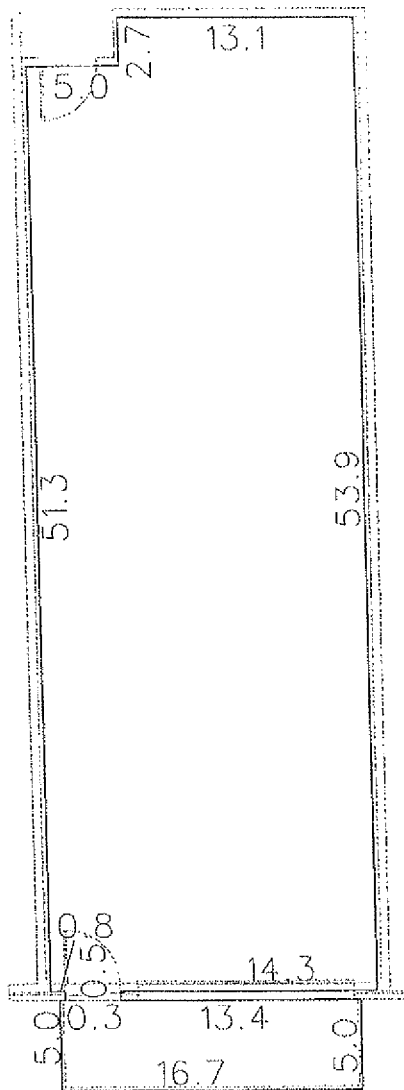
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

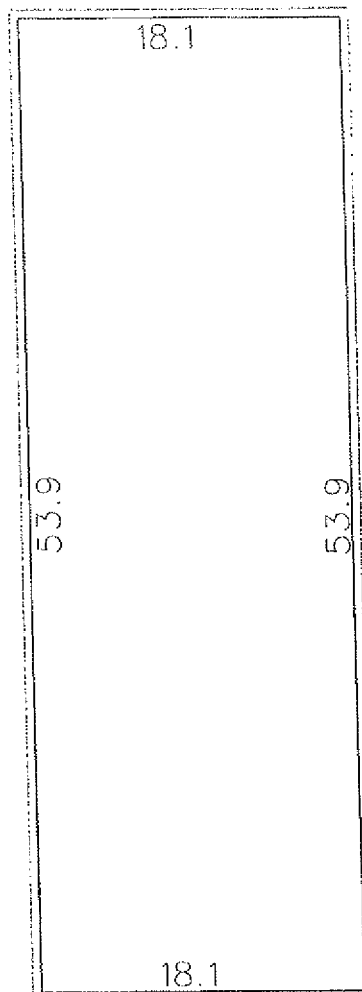
8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

UNIT # 310



LEVEL ONE



LEVEL TWO

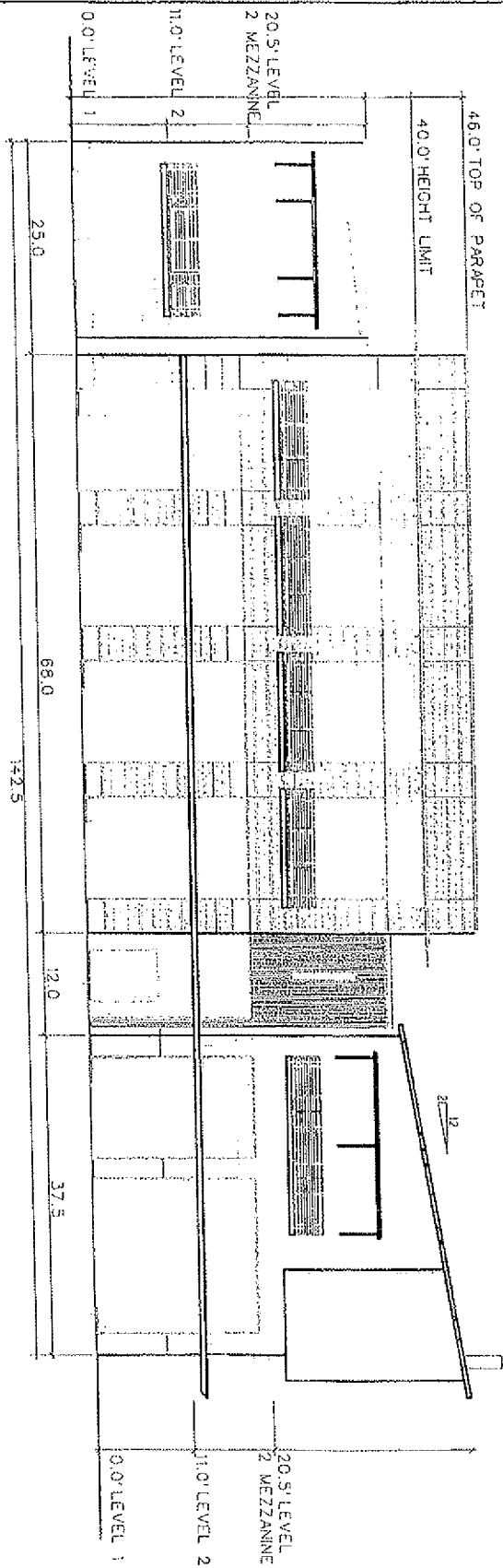
1" = 10 FEET

RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
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AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS

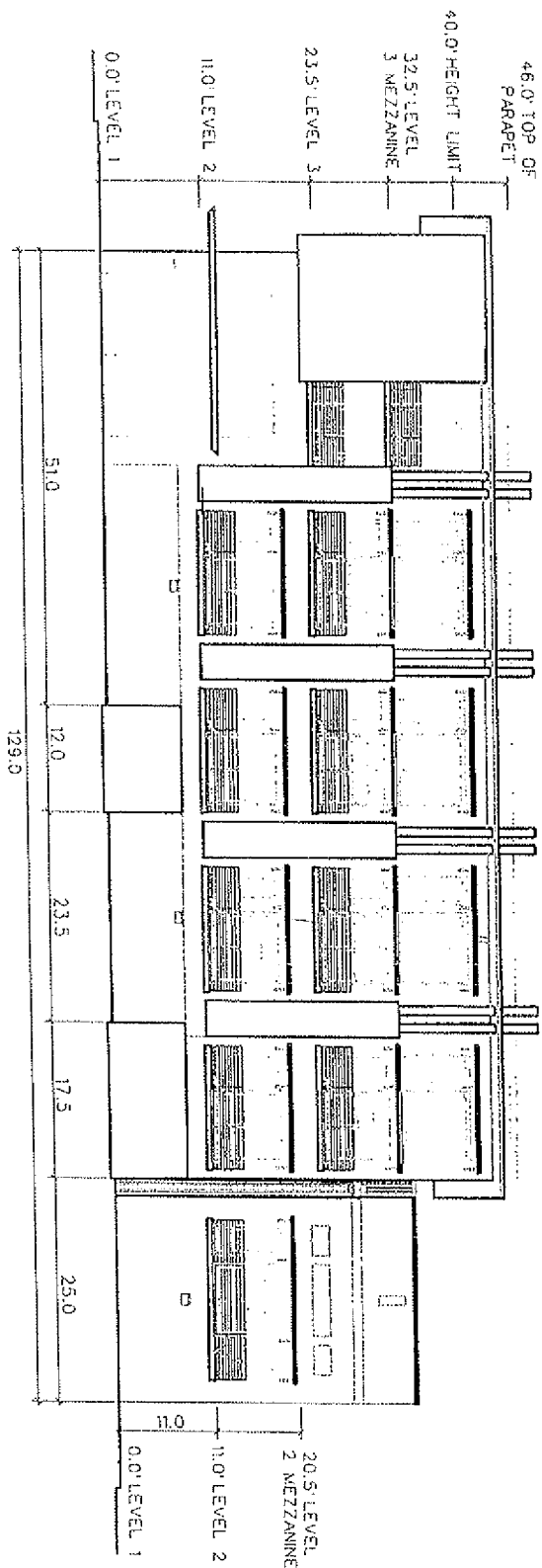
UNITS # 311 & 312



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AUSTIN, TEXAS 78709-2768  
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FAX (512) 301-9395  
rlsurvey@flash.net

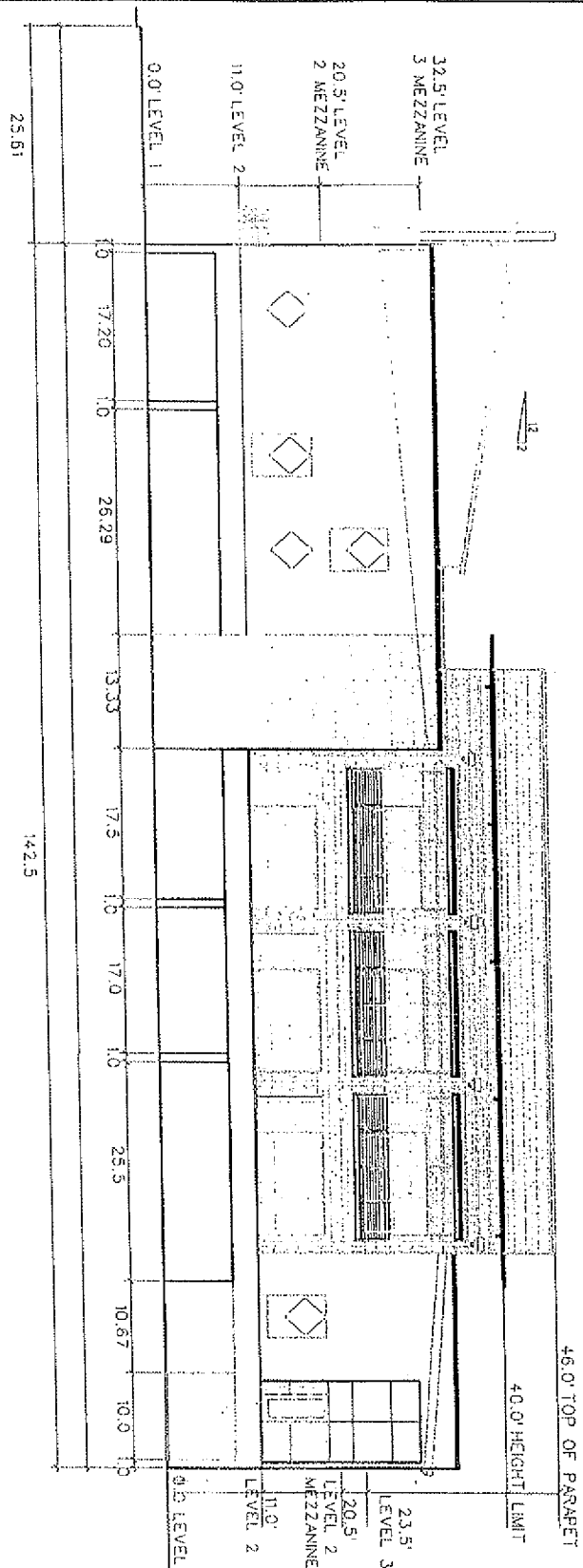
WATERSTREET LOFTS  
NORTH ELEVATION



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AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS  
WEST ELEVATION

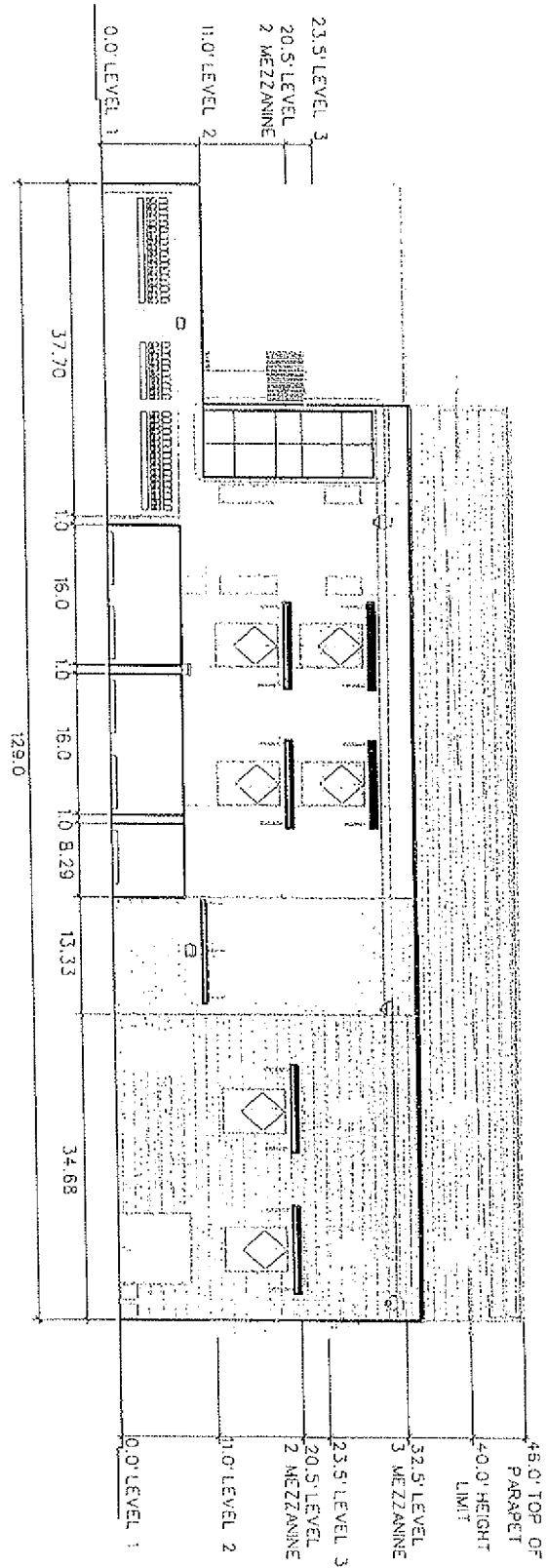


RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92768  
AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

WATERSTREET LOFTS  
SOUTH ELEVATION





1" = 20 FEET

# RAMSEY LAND SURVEYING, L.L.C.

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AUSTIN, TEXAS 78709-2768  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

## WATERSTREET LOFTS EAST ELEVATION

## GENERAL NOTES

- 1) All improvements and land reflected on the plat are designated as general common elements, save and except portions of the regime designated as limited common elements or units: (i) in the Declaration of Condominium Regime for Waterstreet Lofts (the "Declaration") or (ii) on the plats and plans of the regime.
- 2) The configuration represented in the drawings of the floor plans and building elevations is based upon the construction documents and are not based upon actual on-site observations and measurements.
- 3) Ownership and use of condominium units is subject to the rights and restrictions contained in the Declaration.
- 4) Each unit, building, limited common element and general common element is subject to special rights reserved by the Declarant as provided provision A.4. of Exhibit "A" to the Declaration. Pursuant to such provisions, among other things, Declarant has reserved the right to (i) complete or make improvements indicated on the plat and plans, as provided in Provision A.4(i) of Exhibit "A" to the Declaration; (ii) exercise any development right permitted by the Texas Uniform Condominium Act (the "Act") and the Declaration, including the addition of all or any portion of the Additional Property to the regime described on this plat as "Additional Property Which May Be Added to the Regime," which property may be added as units, general common elements and/or limited common elements, as provided in Section 2.2 of the Declaration and Provision A.4(ii) of Exhibit "A" to the Declaration; (iii) make the property part of a larger condominium or planned community, as provided in Provision A.4(iii) of Exhibit "A" to the Declaration; (iv) use units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the property, as provided in Provision A.4(iv) of Exhibit "A" to the Declaration; and (v) appoint or remove any Declarant-appointed officer or director of the Association during the Declarant control period (as defined in the Declaration) consistent with the Act, as provided in Provision A.4(vii) of Exhibit "A" to the Declaration. As provided in Provision A.4(v) of Exhibit "A" to the Declaration, for purposes of promoting, identifying, and marketing the property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the property, including items and locations that are prohibited to other owners. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the property. As provided in Provision A.4(vi) of Exhibit "A" to the Declaration, Declarant has an easement and right of ingress and egress in and through the common elements (as defined in the Declaration) and units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the property, and for discharging Declarant's obligations under the Act and the Declaration.

### RAMSEY LAND SURVEYING, L.L.C.

8718 SOUTHWEST PARKWAY  
P.O. BOX 92758  
AUSTIN, TEXAS 78709-2758  
PHONE (512) 301-9398  
FAX (512) 301-9395  
rlsurvey@flash.net

### WATERSTREET LOFTS GENERAL NOTES

EXHIBIT "B"

[ENCUMBRANCES]

1. Restrictive covenant recorded under Document No. 2005216646, Official Public Records of Travis County, Texas.
2. Electric utility easement granted to the City of Austin recorded under Document No. 2005209988, Official Public Records of Travis County, Texas.
3. Electric transmission easement granted to the City of Austin recorded under Document No. 2005209989, Official Public Records of Travis County, Texas.
4. Terms, conditions and stipulation of that one certain Restrictive Covenant Regarding Unified Development and Maintenance of Drainage Facilities recorded under Document No. 2005216646, Official Public Records of Travis County, Texas.
5. Terms, conditions and stipulation of that one certain Right of Way Encroachment License Agreement No. 136-0509 recorded under Document Nos. 2005235683 and 2005236549, Official Public Records of Travis County, Texas.
6. Easement, terms, conditions and stipulations of that one certain Easement and Memorandum of Agreement recorded under Document No. 2006200586, Official Public Records of Travis County, Texas.

# EXHIBIT "C"

## COMMON INTEREST ALLOCATION

Unit	Percentage of Common Element Ownership	Share of Common Expenses	Votes
101	2.7193%	2.7193%	3
102	4.0351%	4.0351%	4
103	4.0351%	4.0531%	4
104	4.0351%	4.0531%	4
105	3.8207%	3.8207%	4
106	3.2326%	3.2326%	3
107	2.4107%	2.4107%	2
201	3.5250%	3.5250%	4
202	2.9922%	2.9922%	3
203	2.8428%	2.8428%	3
204	2.8395%	2.8395%	3
205	2.7648%	2.7648%	3
206	4.4444%	4.4444%	5
207	3.3431%	3.3431%	3
208	3.3431%	3.3431%	3
209	3.3431%	3.3431%	3
210	5.0357%	5.0357%	5
301	2.9597%	2.9597%	3
302	2.9597%	2.9597%	3
303	2.9597%	2.9597%	3
304	2.6576%	2.6576%	3
305	4.8863%	4.8863%	5
306	3.2294%	3.2294%	3
307	3.3073%	3.3073%	3
308	3.3041%	3.3041%	3
309	3.2294%	3.2294%	3
310	3.9149%	3.9149%	4
311	3.9149%	3.9149%	4
312	3.9149%	3.9149%	4

Any obligations or rights, including assessment charges or credits calculated or determined based on the Common Interest Allocation which are not allocable to a particular Unit due to a rounding error will be equally apportioned among all Units within the Regime.

THE COMMON INTEREST ALLOCATION ASSIGNED TO A PARTICULAR UNIT MAY DECREASE IF ADDITIONAL PROPERTY IS ADDED TO THE REGIME AND ADDITIONAL UNITS ARE CREATED.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2007 Mar 29 11:52 AM

2007055913

BENAVIDESV \$432.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS



OTHER 2008080274  
2 PGS

### RESOLUTION OF THE BOARD OF DIRECTORS

I, Gerald Cobb, Director of Waterstreet Lofts Community Association, Inc., a nonprofit corporation duly organized and existing under the laws of the State of Texas, (the "Association") do hereby certify that I am keeper of the records and minutes of the proceedings of the Board of Directors of said Corporation, and that on the 14 day of February, 2008 there was duly and legally held a meeting of said Board of Directors at which a quorum of the Directors was present and acting throughout, and at said meeting the following resolutions were unanimously adopted:

All restrictions of the declaration and bylaws are by reference incorporated into the rules. In addition to the declaration and bylaws, the Board adopts the following rules:

**Standard Violation Process:**

1<sup>st</sup> Violation – Friendly Reminder

2<sup>nd</sup> Violation with Warning of Fine if Not Cured in 30 days - \$25.00

3<sup>rd</sup> Violation with Warning of Fine if Not Cured in 30 days - \$50.00

4<sup>th</sup> Violation with Warning of Fine if Not Cured in 30 days - \$100.00

Continuous Violations thereafter - \$100.00 per time frame decided by the Board and/or Legal Action

FURTHER RESOLVED, That this policy shall be effective the first day of January 2008

Director

### ACKNOWLEDGEMENT

THE STATE OF TEXAS Arizona  
COUNTY OF MARICOPA

This instrument was acknowledged before me on FEB 14 2008 2008, by

, in the capacity stated above.

Notary Public for the State of ~~Texas~~ Arizona

Printed Name of Notary ANDREW STRAIGHT

My Commission Expires 08/10/2010

After recording, return to:  
Alliance Association Management  
115 Wild Basin Road, Suite 308  
Austin, Texas 78746

