

Prepared in the Office of:

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**DECLARATION OF CONDOMINIUM REGIME FOR THE
3506 TOM GREEN STREET CONDOMINIUMS**

STATE OF TEXAS §
COUNTY OF TRAVIS §

Preamble

This Declaration is made on the **31st** day of **August, 2018**, in Austin, Texas, by **Douglas M. Martin** (the "Declarant"), whose mailing address is **3506 Tom Green Street, Austin, Texas 78705**.

Recitals

1. Declarant is the owner of all of the real property, including the land; all improvements and structures on the property; and all easements, rights, and appurtenances belonging to the property that is located at **3506 Tom Green Street, Austin, Texas 78705 in Travis County** (the "Property"), more particularly described in Exhibit A, which is attached and incorporated by reference.
2. Declarant submits the Property to a condominium regime established by the Texas Uniform Condominium Act (TUCA), which is codified in Chapter 82 of the Texas Property Code.
3. The Property constitutes a condominium project (the "Project") within the meaning of TUCA. The formal name of the Project is "**3506 Tom Green Street Condominiums**."
4. Declarant intends and desires to establish by this Declaration a plan of ownership for the condominium project ("Project"). The plan consists of individual ownership of residential condominium units (the "Units"), and an interest in the real property on which the Units are located. The Project shall be divided into no more than two (2) Units.
5. The Declarant intends to impose on the Project mutually beneficial restrictions for the benefit of all Units and the persons who own those Units (the "Owners"). The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Project by means of an organization of Owners (herein the "Association"), as more particularly set forth herein. The formal name of the Association is the "**3506 Tom Green Street Condominiums Owners' Association**."

6. The Units and other areas of the Project are more particularly described in Exhibit B, which are attached and incorporated by reference. The Owners each have an undivided interest in the remaining property of the Project (referred to as the "Common Elements"), which is also more particularly described in Exhibit B. Exhibit B sets forth the allocation to each Unit of (a) each Unit's ownership; (b) a percentage of undivided interests in the Common Elements of the Condominium, (c) a percentage of undivided interests in the Common Expenses of the Association, and (d) the allocation of votes in the Association.
7. Therefore, the Declarant declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the division of the Property into Units, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project and every part of the Project. All of the covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in or any part of the Property and shall be for the benefit of each owner of the Project or any interest in the Project and shall inure to the benefit of and be binding on each successor in the interest of the Owners.

Article 1: Definitions

- 1.01 **Association.** *Association* means the **3506 Tom Green Street Condominiums Owners' Association**, a non-profit corporation organized under the Texas Business Organizations Code for the management of the Project, the membership of which consists of all of the Owners in the Project.
- 1.02 **Board.** *Board* means the Board of Members or the Board of Directors, whichever is applicable, of the Association.
- 1.03 **Bylaws.** *Bylaws* mean the Bylaws of the Association and amendments to the Bylaws that are or shall be adopted by the Board.
- 1.04 **Certificate.** *Certificate* means the Certificate of Formation of the Association that is or shall be filed in the Office of the Secretary of State of the State of Texas.
- 1.05 **Common Elements.** *Common Elements* mean all elements of the Project except the separately owned Units, and includes both General and Limited Common Elements, if any.
- 1.06 **Common Expenses.** *Common Expenses* means and includes:
 1. all reasonable expenses incurred by the Association for promoting the health, safety, welfare and recreation of the Owners of the Units and in particular for the administration and management, ownership, maintenance, operation, repair, replacement, or improvement of and addition to agreed upon Common Elements (including unpaid

Special Assessments and amounts assessed to maintain a reserve for replacement fund and to cover costs incurred by the Association to participate in any condemnation suit);

2. if the units are attached, all reasonable expenses associated with the repair, maintenance and upkeep, or replacement of the roof, foundation, structural walls, exterior walls, bearing walls and columns, common wall and structural components of the Condominiums, if such work affects both Units, and is determined necessary by a third party expert, unless otherwise agreed by the Unit Owners;
3. if the units are attached, all reasonable expenses arising from or associated with the repair, maintenance and upkeep of any plumbing, structural or electrical components located in the common wall between the Units, which shall exclude sheetrock and finishes on the interior of a Unit, if such work affects both Units and a third party expert determines to be necessary, unless otherwise agreed by the Unit Owners;
4. all reasonable expenses arising from or associated with any utility service installations that are located on the Property and serve both Units;
5. all reasonable expenses arising from the master insurance policy as described in 3.08 below; and
6. all other reasonable expenses declared to be Common Expenses by provisions of this Declaration or by the other Governing Instruments.

1.07 **Condominium.** *Condominium* means the **3506 Tom Green Street Condominiums**.

1.08 **Declarant.** *Declarant* means owner of the Project and its successors and assigns.

1.09 **Declarant Control Period.** *Declarant Control Period* shall be defined as either (i) one hundred twenty (120) days after Declarant has conveyed fifty (50) percent of the Units in the Project to Owners other than Declarant; or (ii) until Declarant conveys both Units, whichever occurs first.

1.10 **Declaration.** *Declaration* means this Declaration of Condominium Regime for the **3506 Tom Green Street Condominiums** and all that it contains.

1.11 **Dwelling Building.** *Dwelling Building* means a dwelling structure(s) situated on the Platted Lot and includes the dwelling's exterior surfaces of the perimeter walls, bearing walls and columns, exterior doors and windows, roof, underlying foundation and footings, exterior halls, stairways, entrances and exits, shutters, awnings, doorsteps, porches, balconies, exterior doors, exterior windows, interior floors, and interior walls, ceilings, all lath, furring, sheetrock, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces.

1.12 **Finished Grade.** *Finished grade* means the final grade of the site which conforms to the approved plans.

1.13 **General Common Elements.** *General Common Elements* mean all the Common Elements except the Limited Common Elements, if any, including the land on which the Units are erected.

1.14 **Governing Instruments.** *Governing Instruments* mean the Declaration, the Certificate of

Formation, Bylaws of the Association and Rules of the Association.

1.15 **Grade.** *Grade* means the vertical location of a point or elevation on a site.

1.16 **Limited Common Elements.** *Limited Common Elements* mean the Common Elements allocated for the exclusive use of one or more but less than all of the Units.

1.17 **Majority.** *Majority* means fifty-one percent (51%).

1.18 **Manager.** *Manager* means the person or corporation, if any, appointed by the Board to manage the Project.

1.19 **Owner(s).** *Owner(s)* means any person that owns a Unit within the Project.

1.20 **Person.** *Person* means an individual, firm, corporation, partnership, association, trust, other legal entity, or any combination of persons or entities.

1.21 **Project.** *Project* means the entire parcel or the Property described in **Exhibit A**, including the land, all improvements and structures on the Property, and all easements, rights, and appurtenances belonging to the Property that are divided or are to be divided into Units to be owned and operated as a Condominium. The Project shall be divided into no more than two (2) Units.

1.22 **Rules.** *Rules* mean and refer to the Rules and Regulations for the Project adopted by the Board pursuant to this Declaration.

1.23 **Site Condominium.** *Site Condominium* means a condominium regime where the units are defined by property measurements/boundaries similar to a single family lot. Instead of the walls, foundation and roofline of the dwelling building being the unit boundaries, measurements on the ground (often lot boundaries), the dividing line if any, and a designated height above the ground are the boundaries. *Site Condominium* is further defined in **Exhibit F** and further explained in **Exhibit G**.
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1.24 **Unit.** *Unit* shall mean an individual condominium unit, as described herein and below in Section 2.02, as further defined in **Exhibit F** and as further explained in **Exhibit G**. Each Unit shall include all improvements within the allocated areas, which are shown on the Certified Plan of the Property attached hereto as **Exhibit E**. The actual physical boundaries of a Unit shall be conclusively presumed to be its proper boundaries, regardless of settling, rising or lateral movement of any Dwelling Building that is part of such Unit and regardless of variances between boundaries shown on the survey and the actual boundaries. The condominium unit consists of the entire Dwelling Building (once erected) and other structures (as further defined below) as well as the surface site and air space (as further defined in **Exhibit F** and as further explained in **Exhibit G** incorporated herein for all purposes) and are not considered to be common areas or limited common areas.

1.25 **Yard.** *Yard* shall mean the areas of a Unit not situated within the Dwelling Building or any other allowable structure on or in the Unit.

Article 2: The Property

2.01 **Property Subject to Declaration.** All the real property described in **Exhibit A** to this Declaration, including the land; all improvements and structures on the property; and all easements, rights, and appurtenances belonging to the property (referred to as the "Property") shall be subject to this Declaration.

2.02 **Exclusive Ownership and Possession; Description of Unit.** Each Owner shall be entitled to the exclusive ownership and possession of the Owner's Unit, as further set forth in **Exhibit E**, as further defined in **Exhibit F** and as further explained in **Exhibit G**. Any Unit may be jointly or commonly owned by more than one Person. No Unit may be subdivided. The boundaries of each shall be as described in Section 1.24 above, as further defined in **Exhibit F** and as further explained in **Exhibit G** attached hereto and incorporated herein and as further described in Exhibits F and G attached hereto and incorporated herein. An Owner shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows, and doors bounding the Owner's Dwelling Building, and any other changes allowed in this Declaration or the Rules and Regulations.

2.03 **Changes to a Unit.** After the expiration of the Declarant Control Period, each Unit Owner shall have the exclusive right and shall be entitled to make the following changes to his or her Unit:

- a) Subject to Section 5.05 below, if one does not exist, any Unit Owner may erect a fence on the dividing line between the Yards, or within their Yard, as set forth in Exhibit E. Each Unit Owner must agree on the style and/or type of fence to be erected, and such agreement must not be unreasonably withheld. Unless otherwise agreed by the Unit Owners, any style or type of fence currently existing on the Property or in the neighborhood shall be considered reasonable. If the Unit Owners agree to erect a fence on a dividing line, the costs and expenses of the construction of such a fence shall be borne equally by each Unit. If the Unit Owners do not agree to erect a fence, or the fence is not located on a dividing line between the Yards, the Unit Owner desiring to erect the fence shall bear the costs and expenses of the construction of such a fence, however, the Unit Owner erecting the fence shall have the exclusive right to construct the fence so that he or she receives the benefit of the construction and has the most preferable side of the fence facing his or her Unit.
- b) A Unit Owner shall be allowed reasonable access to non-Dwelling Building portions of the other's Unit for any purpose reasonably related to a remodel, alteration or addition to a Unit, including but not limited to access for permitting, surveying, inspections, access to utilities, and /or the drafting of plans.
- c) If not present at the time of the initial purchase of a Unit from the Declarant, neither Unit Owner shall build, erect or install a pool or hot tub without the express written unanimous consent of all the other Unit Owners.

2.04 Allocation of Remaining Impervious Cover, Building Coverage and Building Size. The Unit Owners understand that the total amount of impervious cover, building coverage and building size on the Property is limited by the ordinances and regulations of the City of Austin in place at the time of permitting, and that the total percentage of allowable impervious cover, building coverage and/or building size may increase or decrease over time. Therefore, the total amount of impervious cover, building coverage, and/or building size allowed on the Property under City of Austin Codes and ordinances at any time in excess of the amount of impervious cover, building coverage, and/or building size reflected on the Plat attached as **Exhibit E** (the "Allocated Remaining Coverage and Size"), if any, is hereby allocated between the Units as follows:

Unit 1: 51%

Unit 2: 49%

Each Unit shall be allowed to utilize up to the above percentages of Allocated Remaining Coverage and Size of the total allowed remaining impervious cover, building coverage, and/or building size at the time of any permitting relating to alterations, additions, improvements and/or construction to a Unit or a Unit's Limited Common Elements by a Unit Owner, provided that any such alteration, addition, improvement and/or construction shall be subject to the terms, conditions and approvals as provided in Section 2.03 above.

2.05 Common Elements. Each Owner shall be entitled to an undivided interest in the Common Elements, and obligated for the Common Expenses of the Association, in the percentages expressed in **Exhibit B**. The percentage of the undivided interest of each Owner in the Common Elements, as expressed in **Exhibit B**, shall have a permanent character and shall not be altered without the consent of all Owners, expressed in an amended, duly recorded Declaration. The percentage of the undivided interest in the Common Elements shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though the interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Elements in accordance with the purpose for which they are intended as long as the lawful rights of the other Owners are not hindered or encroached upon.

2.06 Partition of Common Elements. The Common Elements, both General and Limited, if any, shall remain undivided and shall not be the object of an action for partition or division of ownership so long as the Property remains a Condominium Project. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all mortgagees must be obtained.

2.07 Nonexclusive Easements. Each Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements and for ingress, egress, and support over and through the General Common Elements, as described in **Exhibit B and E**. These easements shall be appurtenant to and shall pass with the title to each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Association to regulate time and manner of use, and to perform its obligations under this Declaration.

2.08 **Other Easements.** The Association and each owner shall grant to third parties easements in, on, and over the Common Elements and each owner's unit for the purpose of checking, constructing, installing, or maintaining necessary meters, mailboxes, utilities, services, fixtures and equipment. No such easement may be granted, however, if it would interfere with any exclusive easement or with any Owner's use, occupancy, or enjoyment of the Owner's Unit without the written consent of the Owner so affected. Additionally, present easements and/or restrictions exist on the Property, as more fully described in **Exhibits D and E**. Each Owner, in accepting the deed to the Unit, expressly consents to such easements.

2.09 **Easements for Maintenance of Encroachments.** None of the rights and obligations of the Owners created in this Declaration or by the deeds granting the Units shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist provided, however, that in no event shall a valid easement for an encroachment be created in favor of any Owner if the encroachment occurred because of the willful conduct of the Owner.

2.10 **Allocation of Reserved General Common Elements.** As indicated on the **Exhibit E**, all of the Common Elements have been allocated as either General Common Elements or Limited Common Elements, if any, to a Unit. Therefore, there are currently no reserved General Common Elements, and no portion of the Condominium is reserved or may be further allocated as Limited Common Elements.

2.11 **Shared Utilities.** If there are shared utilities of any kind and only one bill issued that includes all units, the Unit owners will each pay their share in relation to their percentage ownership in the Project.

2.12 **Upkeep Area Maintenance.** To the extent not maintained by the City or other governmental authority or department, each unit owner is responsible for upkeep, mowing and otherwise maintaining the right of way area from the boundary of that unit's limited common element to the street as shown in Exhibit E and labeled as that unit's "Upkeep Area."

Article 3: Unit Owners' Association

3.01 **Association.** The Association, organized as a nonprofit corporation under the Texas Business Organizations Code, operating under the name **3506 Tom Green Street Condominiums Owners' Association**, is charged with the duties and invested with the powers prescribed by law and set forth in this Declaration and in the Association's Certificate of Formation and Bylaws.

3.02 **Membership.** Membership in the Association is automatically granted to the Owner or Owners of each Unit in the Project. On the transfer of title to any Unit, the membership of the transferor automatically ceases and each new Owner becomes a member.

3.03 **Voting Rights.** Voting in the Association shall be on a per Unit basis. Each Unit in the Condominium is entitled to an equal number of votes, and each Unit Owner within a unit is entitled to an equal number of votes. In the situation where each Unit is owned by an individual, each Unit shall be entitled to one vote. The votes cast by a Majority of the Unit Owners shall control.

However, if any Unit is owned by more than one owner, the Unit with the highest number of owners shall be entitled to one vote for each owner, and the other Unit shall be entitled to an equal number of votes, regardless of the number of owners. For example, if Unit 1 is owned by one person, and Unit 2 is owned by three people, then each Unit shall be entitled to three votes.

3.04 Membership Meetings. Meetings of the Members shall be called, held, and conducted in accordance with the requirements and procedure set forth in the Bylaws.

3.05 General Powers and Authority. The affairs of the Condominium shall be managed and administered by the Association. The Association shall have all of the rights, powers and duties established by the TUCA, as well as the powers of a nonprofit corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Instruments. The Association shall have the right, power, and obligation to provide for the maintenance, repair and replacement of the General Common Elements, if any, to the degree and in the manner as provided in the Texas Property Code, except as and to the extent otherwise provided in this Declaration and the other Governing Instruments. The Association shall not be responsible for the maintenance, repair and replacement of the Units, or for any maintenance obligations of the Unit Owners as provided herein. The Association may perform all acts that may be necessary for, or incidental to, the performance of the obligations and duties imposed on it by this Declaration. The powers of the Association shall include, but are not limited to, the following:

- a) The power to establish, fix, and levy assessments against Owners in accordance with the procedures and subject to the limitations set forth in this Declaration and the Governing Instruments.
- b) The right to discipline Owners for violation of any of the provisions of the Governing Instruments or Association Rules by suspension of the violator's voting rights or privileges for use of the Common Elements or by imposition of monetary penalties, subject to the following limitations:
 - i) The accused Owner must be given written notice of the violation or property damage, stating the amount of any proposed fine or damage charge and that the Owner may request a written hearing before the Board within thirty (30) days of the notice.
 - ii) The accused Owner must be given a reasonable time, by a date specified in the notice, to cure the violation and avoid the fine, unless the Owner was given notice and reasonable opportunity to cure a similar violation within the preceding twelve (12) months.
 - iii) The accused Owner must be given written notice of a levied fine or damage charge within thirty (30) days after the date of levy.
 - iv) Any suspension of privileges or imposition of monetary penalties shall be reasonably related to the Owner's violation.

3.06 Board of Members and Officers of the Association. The affairs of the Association shall be managed by a Board of Members. If the Board of Members elects to have a Board of Directors, the Unit Owners shall elect a board of at least three members who need not be Unit Owners. Provisions regulating the number, term, qualifications, manner of election, and conduct and meetings of the members of the Board of Members shall be set forth in the Bylaws of the

Association. The Board of Members shall appoint officers, who shall include a President, Secretary/Treasurer, and such other officers as the Board may deem proper. Provisions regulating the numbers, term, qualifications, manner of election, powers and duties of the officers shall be set forth in the Bylaws of the Association.

3.07 Consent of Board of Members. Any provisions herein requiring the consent of the Board require the Majority consent of the Board, unless set forth specifically otherwise in the Declaration or Governing Instruments.

3.08 Duties of the Association. In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Instruments, the Association shall be responsible for the following:

- a) The repair, maintenance or replacement of the items listed below and all General Common Elements, including but not limited to the following:
 - i) Roof, foundation, structural walls, exterior walls, bearing walls and columns, common walls, and structural components of the Condominium, if such work affects both Units, and is determined necessary by a third party expert, unless otherwise agreed by the Unit Owners;
 - ii) Any utility service installations that are located on the Property and serve both Units, including but not limited to shared sewer pipes and shared irrigation systems;
 - iii) Plumbing, structural or electrical repair and maintenance that is located in a common wall between Units, if such work affects both Units, and is determined necessary by a third party expert, unless otherwise agreed by the Unit Owners;
 - iv) Any utility service installations that are located on the Property and serve both Units, including but not limited to shared sewer pipes and shared irrigation systems; and
 - v) Plumbing, structural or electrical repair and maintenance that is located in a common wall between Units, if such work affects both Units, and is determined necessary by a third party expert, unless otherwise agreed by the Unit Owners.
- b) Operation and maintenance of any General Common Elements. This duty shall include, but shall not be limited to, maintenance, repair and landscaping of any General Common Elements, as the Board shall determine are necessary and proper. In the event that there are no General Common Elements, the Association shall have no duty under this provision.
- c) Acquisition of and payment from the maintenance fund for the following:
 - i) Each Unit shall be responsible for reimbursing the Association for the cost of any water, sewage, garbage, gas, or other utility service incurred as a result of usage in a Unit, if the Association is billed for any such service.
 - ii) Each Unit shall be responsible for reimbursing the Association for their portion of the cost of any Common Expense defined as such herein, or otherwise approved as such.
 - iii) Each unit owner is required to acquire and maintain a policy or policies of property insurance with extended coverage endorsement for the full insurable replacement value of the Units, Improvements and insurable Limited Common

Elements assigned to the Owner's Unit (if any) insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their mortgagees, as their respective interests may appear. If a Unit Owner fails to acquire and maintain such insurance, the Board may vote to acquire a blanket all-risk policy or other such insurance as the Board deems necessary. Each Unit Owner is solely responsible for insuring the Unit's Dwelling Building and any personal property in the Unit or on the Property.

- iv) Subject to the requirements of Article 6, below, and if reasonably available, and as determined by the Board, a policy or policies of commercial general liability insurance covering the Common Elements—expressly excluding the liability of each Unit Owner and resident within a Unit—insuring the Board, the officers of the Association, and/or the Association against any liability to the public or to the Owners and their tenants and invitees, incident to the ownership and/or use of the Common Elements, including medical payments insurance, in an amount not less than \$1,000,000.00 per occurrence, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. The limits and coverage shall be reviewed at least annually by the Board and varied at its discretion. The policy or policies shall be issued on a comprehensive liability basis and shall provide under the policy or policies that a Unit Owner shall not be prejudiced as respects his, her or their action against another named insured.
- v) The services of personnel that the Board shall determine to be necessary or proper for the operation and maintenance of the Common Elements.
- vi) Legal and accounting services necessary or proper for the operation of the Association or Common Elements or the enforcement of this Declaration or Governing Instruments.

d) Drafting and recording of a Management Certificate not later than the 30th day after the date the Association has notice of a change in any information in a recorded certificate. Each Management Certificate must include:

- i) the name of the Condominium;
- ii) the name of the Association;
- iii) the location of the Condominium;
- iv) the recording data for the Declaration;
- v) the mailing address of the Association, or the name and mailing address of the person or entity managing the Association.

3.09 Property Taxes. Each Unit Owner understands that the taxing authorities may have already made appraisals and/or sent property tax bills for the year in which this Declaration is recorded, and as such there may be a delay in time prior to each Unit receiving a separate appraisal and/or property tax bill. Therefore, each Unit Owner shall be responsible for the payment of any and all property taxes that accrue for his or her Unit that are billed to the Project, the Association, the Declarant or another Unit Owner. If it is not clear from the taxing authority the amount of each Unit's obligation, each Unit's obligation shall be the percentages as

set forth in Exhibit B. If any Unit Owner fails to make timely payment of any property taxes for which he or she is obligated, that Unit Owner additionally has the responsibility and obligation to reimburse any third party, the Association or any other Owner who pays property taxes assessed to a Unit for a time period in which such Unit Owner owned the Unit, including but not limited to any penalties, late fees and/or interest assessed by a taxing authority.

3.10 Declarant's Control Period. Declarant shall have the power to appoint and remove officers and members of the Board of Members, until either (i) one hundred twenty (120) days after Declarant has conveyed fifty (50) percent of the Units in the Project to Owners other than Declarant; or (ii) until Declarant conveys both Units, whichever occurs first, provided, however, that, should a formal Board of Directors be elected after Declarant's conveyance of fifty (50) percent of the Units to Owners other than Declarant, the Board members will be elected according to the voting rights set forth in Section 3.03.

3.11 Powers and Duties of the Board. The Board shall act in all instances on behalf of the Association, unless otherwise provided by the Declaration. The Board shall have all of the powers, authority and duties permitted pursuant to the Texas Property Code necessary and proper to manage the business and affairs of the Condominium, including specifically, but not limited to enforcement of the applicable provisions of this Declaration, the Bylaws, and any Rules of the Association.

3.12 Limitations on Powers of Board. Notwithstanding the powers set forth in Section 3.09 of this Declaration, the Board shall be prohibited from taking any of the following actions except with the approval of a Majority of the voting power of the Association residing in the Owners:

- a) Entering into (i) a contract with a third person under which the third person will furnish goods or services for a term longer than one (1) year, except for a management contract approved by the Federal Housing Administration or Veteran's Administration; (ii) a contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; or (iii) prepaid casualty and/or liability insurance of not more than three (3) years duration, provided that the policy provides for short-rate cancellation by the insured.
- b) Paying compensation to Directors or to officers of the Association for services rendered in the conduct of the Association's business, provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying out the business of the Association.

Article 4: Assessments

4.01 Covenant to Pay. Each Owner by the acceptance of the deed to such Owner's Unit is deemed to covenant and agree to pay to the Association the Regular and Special Assessments levied pursuant to the provisions of this Declaration. All moneys collected shall be put into a maintenance and/or reserve fund to be used to defray expenses attributable to the ownership, operation, and maintenance of the Common Elements incurred by the Association. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common

Elements or by abandonment of the Owner's Unit.

4.02 Declarant's Covenant to Pay. Declarant covenants and agrees that from the initial assessment until Declarant control terminates, or for three years from the first conveyance of a Unit, whichever is earlier, the Declarant shall pay to the Association an amount equal to all operational expenses of the Association, less the operational expense portion of the assessments paid by unit owners other than Declarant. Such expenses do not include any expenses arising from or associated with improvements or units not yet issued a Certificate of Occupancy by the City of Austin.

4.03 Payment of Assessments on Conveyance of Unit. On the sale or conveyance of a Unit, all unpaid assessments against an Owner for the Owner's share in the expenses to which Sections 4.05 and 4.06 of this Declaration refer shall first be paid out of the sale price by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- a) Paying compensation to Directors or to officers of the Association for services rendered in the conduct of the Association's business, provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying out the business of the Association.
- b) Amounts due under mortgage instruments duly recorded.

4.04 Lien and Foreclosure for Delinquent Assessments. The Association shall have a lien on each Unit for any delinquent assessments attributable to that Unit. The Association is authorized to enforce the lien through any available remedy, including non-judicial foreclosure pursuant to Texas Property Code Section 51.002. The Owners expressly grant to the Association a power of sale, through a trustee designated in writing by the Association, in connection with any such liens. The lien for the assessments provided for herein shall be subordinate to the lien of any prior recorded mortgage or mortgages granted or created by the Owner of any Condominium Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Unit.

4.05 Regular Assessments. Regular Assessments shall be made in accordance with the following: Within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements with adjustments to be made for any expected income and surplus from the prior years' fund. This estimated cash requirement shall be assessed to each Owner or Owners according to the ratio of the number of Units owned by said Owner to the total number of Units in the Project subject to assessment. Each Owner is obligated to pay assessments to the Board in equal monthly installments (determined by the yearly charges as described above, divided by twelve), on or before the first day of each month.

4.06 Special Assessments. Special Assessments shall be made in accordance with the following: If the Board determines that the amount to be collected from the Regular Assessments will be inadequate to defray the Common Expenses for the year because of the cost of any construction, unexpected repairs, or for any other reason, it shall make a Special Assessment for the additional amount needed. Such Special Assessments shall be levied and collected in the same

manner as Regular Assessments.

4.07 Limitations on Assessments. The Board may not, without the approval of a Majority of the voting power of the Association residing in Owners other than Declarant, impose a Regular Assessment per Unit that is more than twenty (20) percent greater than the Regular Assessment for the preceding year. These limitations shall not apply to a Special Assessment levied against an Owner to reimburse the Association for that year. These limitations shall not apply to a Special Assessment levied against an Owner to reimburse the Association for funds expended in order to bring the Owner in compliance with the provisions of the Association's Governing Instruments.

4.08 Dispute Regarding Repair and/or Maintenance. If the Owners cannot informally agree upon repair and/or maintenance issues, upon the written request of the Owner of either Unit, repair and/or maintenance issues shall be placed on the agenda of a special meeting of the Board. The special meeting shall be convened not less than fifteen (15) days after receipt of the written request for repair and/or maintenance. If the Board is not able to agree upon a course of action to resolve the repair and/or maintenance issues on its agenda, the Board shall authorize the Owners of each Unit to each retain a licensed professional inspection company to inspect the Unit or Units alleged to require repair and/or maintenance. If the two inspection companies cannot agree upon all repair and/or maintenance issues, they shall collectively name a third inspection company. The three company representatives shall then reach a consensus or Majority decision as to all repair and/or maintenance issues. When the inspection companies reach a decision, the Board shall immediately implement the decision, provided the Association has sufficient funds on hand to pay for required repair and/or maintenance, if such is not the responsibility of any Unit Owner(s). If there is found to be an Association expense, and if sufficient funds are not on hand, the Board shall approve a Special Assessment based on the estimate obtained under this provision to pay for the required repair and/or maintenance. If the required repair and/or maintenance is required to ensure the safety of the Owners and their invitees or to preserve a Unit or Units from immediate additional damage, the Special Assessment shall be due and payable not less than sixty (60) days from the date approved by the Board.

4.09 Conflict in Documents. If there is any conflict between the terms of this Section and any entity documents creating or regulating the Association or Project, the provisions of this Section shall control.

4.10 Commencement of Assessments. Regular Assessments shall commence on the first day of the month following the date of the closing of the first sale of a Unit in the Project.

4.11 Liability for Assessments. Each monthly portion of a Regular Assessment and each Special Assessment shall be a separate, distinct, and personal debt and obligation of the Owner against whom all assessments are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent.

Article 5: Restrictions and Covenants

5.01 General Restrictions on Use. The right of an Owner and the Owner's guest to occupy or use the Owner's Unit is subject to the following restrictions, in addition to those in the Rules and

Regulations:

- a) There shall be no obstruction of and nothing shall be stored in the General Common Elements, if any. Nothing shall be stored in the Yard without the prior consent of the Board, except as expressly provided for in the Declaration or as follows: (1) items may be stored in designated storage areas, or (2) items may be stored in the Yard if they are substantially behind fencing or an enclosure, so such stored items are substantially blocked from view from the street or the from the Unit or Yard of the other Unit.
- b) There shall be no violation of the Rules adopted by the Board and furnished in writing to the Owners pertaining to the use of the Common Elements. The Board is authorized to adopt such Rules.
- c) No structure of a temporary character, trailer, shack, or other outbuilding shall be permitted on the Property at any time, temporarily or permanently, except with prior written consent of the Board; provided, however, any Unit Owner may install a storage shed in her or her Yard in an area behind fencing and temporary structures may be erected for use in connection with the repair or rebuilding of the buildings or structures or any portion thereof.
- d) Nothing shall be substantially altered or constructed in or removed from the General Common Elements, if any, except by the written consent of the Board, except as otherwise specifically allowed in this Declaration.
- e) Nothing shall be constructed in the Yard, except by the written consent of the Board, except as otherwise specifically allowed in this Declaration, or as expressly allowed as follows: storage sheds, additions of landscaping such as flowerbeds, planters, gardens, and planting of trees and bushes shall be expressly allowed to the extent that such landscaping does not substantially alter or substantially block any view from a window of the other Unit.
- f) Any alterations to the Dwelling Building or Yards reasonably visible from the street or other Units, including but not limited to alterations necessary for repairs or updating, shall be completed in a reasonable manner so that such alterations are substantially similar to the existing Dwelling Building or Yards, except by the written consent of the Board and except as otherwise specifically allowed in this Declaration, with both Unit Owners understanding that reasonable alterations from the existing Dwelling Building and Yards will likely be necessary when replacing or repairing trees, fencing, and other portions of the Unit or Yards.
- g) No Unit shall be allowed to substantially change the exterior paint color of the Units, without the written consent of the other Unit Owner.

5.02 Maintenance of Unit and Common Elements.

- a) Each Unit Owner shall, at the Owner's sole cost and expense, reasonably maintain, repair and replace his or her Unit and its associated Dwelling Building, allowable structures/improvements and Yard so as to keep it in good condition and repair, including, but not limited to, all fixtures, appliances, equipment, pipes, lines, wires, computer cables, cable wires, and conduits used in the production, heating, cooling and/or transmission of air, gas, water, electricity, communications, waste, water, sewage, and audio and video signals that serve only or are a part of the Unit Owner's Unit, and all

interior and exterior walls, the roof, foundation and structural components of the Unit in a clean, safe and good condition. Without limitation on the generality of the foregoing, a Unit Owner shall reasonably maintain and keep in good repair any fire or smoke alarms or security system, the electrical and plumbing lines, the air conditioning compressor, fans, ductwork, heating unit and cooling coils, utilized in and for the Unit, as well as other fixtures appurtenant to such Unit which are situated within or installed into or on the Unit or Yard such as an air conditioning compressor, together with all pipes, wiring, ducts and other equipment appurtenant thereto.

- b) A Unit Owner shall be obligated to reasonably repair and replace promptly any broken or cracked exterior windows, doors, or glass forming a boundary of such Unit, subject to the other Unit Owner's right to control the exterior finish and color.
- c) Pipe leaks which are due to breaks, faulty connections, freeze damage, overflows, nails, or protrusions into pipes or appliances which exclusively serve the Unit Owner's Unit and which are the maintenance responsibility of the Unit Owner shall be repaired by the Unit Owner; unless such damage was caused by another Unit Owner or an agent of such Unit Owner and then the maintenance responsibility shall be the responsible Unit Owner. Such Unit Owner shall be responsible for any reasonable damages and reasonable cost of repairs to other Units or Common Elements due to such leaks.
- d) Each Owner shall be reasonably responsible for eliminating any insects, termites, vermin, rodents, squirrels, birds or other animals (excluding pets) from his or her Unit, and for repairing any damage caused by such insects or animals.
- e) Notwithstanding anything to the contrary contained in herein, a Unit Owner when exercising his right and responsibility of repair, maintenance, replacement, or remodeling shall use reasonable efforts to substantially maintain the exterior appearance of the Condominium, Unit, Dwelling Building, allowable structures/improvements, or a Yard without the consent of the Board or other Unit Owner as required herein. Each Owner shall also reasonably maintain, repair and replace the Dwelling Building, allowable structures/improvements and Yard associated with his or her Unit, and those portions of the Common Elements subject to an exclusive easement appurtenant to his or her Unit.
- f) The Association shall reasonably maintain, repair and replace all portions of any General Common Elements, and items or improvements defined herein as Common Expenses, unless otherwise determined by the Board.
- g) In such cases where utilities, equipment, sewer lines, water lines, or other utility infrastructure passes through a Unit, but serves another Unit, each Owner shall allow access, not to be unreasonably withheld, in order to allow the other Owner access to utilities, equipment, sewer lines, water lines, or other utility infrastructure, in order that such utility infrastructure can be repaired and/or serviced. When such access is granted, the other Unit Owner shall use reasonable efforts to not substantially alter the Unit or Unit's Yard to which access is granted.

5.03 Damage Liability. Each Owner shall be liable to the Association for all damage to the Common Elements or to other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or the Owner's family, guests, or tenants.

5.04 Exemption. Declarant shall be exempt from the restrictions of Section 5.01 of this Declaration to the extent reasonably necessary for completion of construction, sales, or additions

to the Project. Such exemption includes, but is not limited to, maintaining Units as model homes, placing advertising signs on Project property, and generally making use of the Project lot and Common Elements as is reasonable necessary to carry on construction and sales activities.

5.05 Party Fence. "Party Fence" shall mean and refer to the exterior fences separating the two units. Any matters concerning Party Fences which are not covered by the terms of this Agreement shall be governed by the general rules of law concerning party fences.

- a) The cost of maintaining each Party Fence shall be borne equally by the owners of the units on either side of said Party Fence.
- b) In the event of damage or destruction to any Party Fence from any cause, other than the negligence of either party hereto, the owners of the units on either side of said Party Fence shall repair or rebuild said Party Fence. The cost of such repair or rebuilding shall be borne equally by the owners whose units adjoin said Party Fence. Each such owner shall have the right to the full use of said Party Fence so repaired or rebuilt. If either owner's negligence shall cause damage to or destruction of said Party Fence, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other party may have such Party Fence repaired or restored and shall be entitled to have a mechanic's lien on the unit and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable. The party having such Party Fence repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if filed in the Real Property Records of the County where the Property is located, by affidavit declaring under oath the claim of the mechanic's lien.
- c) Neither owner shall alter or change a Party Fence in any manner, non-structural interior decoration excepted, and such Party Fences shall remain in the same location as when originally erected. Each adjoining owner to said Party Fence shall have a perpetual easement in that part of the unit of the other on which said Party Fence is located, for the purposes of such Party Fence and any other additional area necessary to repair, replace, and maintain same.
- d) Each owner shall keep all exterior walls of his dwelling unit in good condition and repair at his sole cost and expense. No owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e. variance in design, colors, roofing etc.)
- e) Each owner shall share equally in the costs to repair or maintain the Party Fence due to normal wear or physical damage.
- f) The cost of normal and timely weatherproofing and maintenance of the Party Fence shall be in accordance with Paragraph e.
- g) In the event it shall be necessary for any owner to place this Agreement in the hands of an attorney for the enforcement of any of such owner's rights hereunder or for the recovery of any monies due to such owner hereunder, and if it is necessary to bring suit for the enforcement of such rights or such recovery, the prevailing party in such suit shall recover from the losing party all costs of court and reasonable attorney's fees, as determined by the court, in addition to any other relief or recovery awarded by the Court.

- h) These Party Fence covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded.
- i) Enforcement of these covenants shall be by proceeding at law or in equity against any person or persons violating or attempting to violate the same seeking either to restrain violation or to recover damages or both.

Article 6: Insurance, Damage or Destruction

6.01 Insurance Requirement – Separate Hazard Policies and Separate Liability Policies naming the Association as an Insured.

- a) Unless otherwise determined by the Board:
 - i) Each Unit Owner is required to maintain an individual policy or policies of property insurance, insuring against all risks of direct physical loss commonly insured against, including fire insurance with extended coverage endorsement for the full insurable replacement value (as of the effective date and at each renewal date of the policy) of his or her Unit, and a general liability insurance policy, naming the Association as an insured, including medical payments insurance, in an amount not less than \$500,000.00 per occurrence, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements or Units, and covering the Units, and all General Common Elements; and
 - ii) As determined by the Board, and unless substantially similar coverage is afforded by policies acquired by each unit owner naming the Association as additional insured (as stated above), the Association shall be required to maintain, a commercial general liability insurance policy, including medical payments insurance, in an amount not less than \$1,000,000.00 per occurrence, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements or Units, covering the Units, and all General Common Elements. The limits and coverage shall be reviewed at least annually by the Board and varied at its discretion. The policy or policies shall be issued on a comprehensive liability basis and shall provide under the policy or policies that a Unit Owner shall not be prejudiced as respects his, her or their action against another named insured.
 - iii) The Declarant has determined that a property insurance and commercial general liability insurance policy in the name of the Association as insured covering the common elements is not reasonably available.

6.02 Rebuilding, Insufficient Insurance Proceeds. If the Project is damaged or destroyed by fire or any other disaster, each Unit Owner shall use any of his or her insurance proceeds, to reconstruct, repair or replace: (1) his or her Unit, (2) any portions of the Limited Common Elements assigned to his or her Unit, if any, (3) his or her percentage of any General Common Elements, and (4) any other portion of the Project owned or assigned to his or her use, unless the

Condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance.

6.03 Insurance Requirement if Board determines to have a Master Policy. If so determined by the Board, in place of the insurance as described in Paragraph 6.01 above, the Association shall be required to maintain a master insurance policy pursuant to Paragraph 3.08 which must provide that:

- a) Each Unit Owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the Common Elements or membership in the Association;
- b) The insurer waives its right to subrogation under the policy against a Unit Owner;
- c) No act or omission of a Unit Owner, unless within the scope of the Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- d) If at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

Article 7: Rights to Beneficiaries Under Deeds of Trust

7.01 Rights to Beneficiaries Under Deeds of Trust. Declarant warrants that beneficiaries under deeds of trust to Units in the Project shall be entitled to the following rights and guaranties:

- a) Should any of the Association's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a beneficiary under a first lien deed of trust to the following:
 - i) To exercise the power or sale, foreclosure, or take title to a Unit pursuant to the remedies provided in the deed of trust.
 - ii) To accept a deed or assignment in lieu of sale or foreclosure in the event of default by a grantor.
 - iii) To interfere with a subsequent sale or lease of a Unit so acquired by the beneficiary.
- b) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association of any default in the performance by the grantor of any obligation under the Association's Governing Instruments that is not cured within sixty (60) days.
- c) A beneficiary under a first lien deed of trust is entitled, within ten (10) days, to written notification from the Association of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage;
- d) A beneficiary under a first lien deed of trust is entitled, within ten (10) days, to written notification from the Association of a lapse, cancellation, or material modification of any insurance policy maintained by the owners' association; and
- e) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association of any proposed action that requires the consent of a specified percentage of mortgagees.
- f) Any beneficiary under a first lien deed of trust who obtains title to a Unit pursuant to the

remedies provided in the deed of trust will not be liable for such Unit's unpaid assessments that accrue prior to the acquisition of title to the Unit by the beneficiary.

g) Unless fifty-one percent (51%) of the beneficiaries under the first deeds of trust (based on one (1) vote for each first deed of trust owned) or Owners other than Declarant give their prior written approval, the Association shall not be entitled to the following:

- i) By act or omission, to seek to abandon or terminate the Project. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons must be agreed to by mortgagees that represent at least 51 percent of the votes of the unit estates that are subject to mortgages.
- ii) To change the pro rata interest or obligations of any individual Unit for the purpose of:
 - 1. Levying assessments or charges.
 - 2. Allocating distributions of hazard insurance proceeds or condemnation awards.
 - 3. Determining the pro rata share of ownership of each Unit in the common Elements and in the improvements in the Common elements.
- iii) To partition or subdivide any Unit.
- iv) By act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause.
- v) In case of loss to a Unit and/or Common Elements of the Project, to use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute.
- vi) Enact any amendment of a material adverse nature to mortgagees/beneficiaries unless consented to by mortgagees that represent at least 51 percent of the votes of unit estates that are subject to mortgages.

h) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

i) No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of a beneficiary under a first lien deed of trust to an Unit pursuant to its deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Elements or portions of the Common Elements.

j) Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. The reserve fund will be funded through the regular monthly assessments rather than by special assessments.

Article 8: General Provisions

8.01 Amendment.

a) This Declaration may be amended only at a meeting of the Unit Owners at which the

amendment is approved by the holders of at least sixty-seven (67) percent of the ownership interests in the Project.

- b) An amendment of the Declaration may not alter or destroy a Unit without the consent of the affected Owner and the Owner's first lien mortgagee.
- c) Any amendment shall be evidenced by a writing that is prepared, signed, and acknowledged by the President or other officer designated by the Board to certify amendments. The amendment shall be effective on filing in the office of the county clerk of Travis County, Texas.
- d) So long as notice of any proposed amendment is delivered by certified or registered mail, with a "return receipt" requested, implied approval of a proposed amendment shall be assumed when a mortgagee / beneficiary under a first lien deed of trust fails to submit a response to any such written proposal for an amendment within 60 days after receiving proper notice of the proposal.

8.02 Dispute Resolution.

- a) Subject to the provisions hereof and the Texas Property Code, in the event of any controversy, dispute, claim, question or disagreement arising out of or relating to this Declaration, or the Governing Instruments of the Association, or the breach thereof, the parties to such controversy, dispute, claim, question or disagreement shall use their best efforts to settle such controversy, dispute, claim, question or disagreement. Towards that end, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution satisfactory to all parties.
- b) To the extent allowed by the Texas Property Code and applicable Texas law, if the parties to any controversy, dispute, claim, question or disagreement do not reach a negotiated solution within a period of thirty (30) days after the dispute arises, then upon notice by any party to the other parties, such controversy, dispute, claim, question or disagreement shall be submitted to mediation before resort to binding arbitration. The consent or approval of the Association, Board or Owners shall not be required to permit an Owner to require mediation and any subsequent arbitration.
- c) Any party shall initiate mediation, by notifying the other parties, in writing, of his or her intent to mediate a dispute. Such notification shall set forth the nature of the dispute, the amount involved, if any, and the remedy sought. The date that the written notice is received is the Notification Date. Mediation shall be held not later than thirty (30) days from the Notification Date. A Mediator shall be jointly agreed upon between the parties, within five (5) days of the Notification Date. If the parties are unable to agree upon a Mediator, then each party shall appoint a Mediator, and those Mediators will select a Mediator who shall mediate the dispute. The fees of the Mediator and all costs of Mediation shall be shared equally by the parties.
- d) If the parties are unable to resolve all of their disputes through mediation, then any and all remaining disputes shall immediately be submitted to arbitration. The parties shall proceed with arbitration under the rules and guidelines set forth by the American Arbitration Association. Any court with competent jurisdiction may enter any judgment resulting from arbitration.
- e) If the need for arbitration arises, any party shall initiate arbitration, by notifying the

other parties, in writing, of his or her intent to arbitrate the dispute. Such notification shall set forth the nature of the dispute, the amount involved, if any, and the remedy sought. The date that the written notice is received by the other party is the Notification Date. Arbitration shall be held not later than thirty (30) days from the Notification Date. An arbitrator shall be jointly agreed upon by the parties, within five (5) days of the Notification Date. If the parties are unable to agree upon an arbitrator, then each party shall appoint an arbitrator, and those arbitrators will select an arbitrator who shall arbitrate the dispute. The arbitration award shall include a determination as to which party or parties should incur all or a portion of the cost of arbitration, and any related fees and expenses.

- f) Each Mediator and Arbitrator appointed hereunder shall be an unbiased, third party, with no personal interest in the outcome of the dispute.
- g) Each party shall continue performance of the Governing Instruments pending resolution of the dispute. Nothing herein shall be construed as limiting a party's right to seek injunctive relief to prevent a breach or anticipated breach of the Governing Instruments, pending a resolution of the controversy pursuant to the provisions of this Section.

8.03 Nonwaiver of Remedies. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

8.04 Severability. The provisions of this Declaration and the Governing Instruments shall be deemed independent and severable. The invalidity, partial invalidity, or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

8.05 Binding. This Declaration, as well as any amendment to this Declaration, and any valid action or directive made pursuant to it shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

8.06 Interpretation. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce the provision or any other provision of this Declaration.

8.07 Limitation of Liability. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in the Owner's Unit with respect to obligations arising from and after the date of such divestment.

8.08 Fair Housing. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, sexual orientation, or national origin.

8.09 Notices.

- a) Notices provided for in this Declaration shall be in writing and shall be deemed

sufficiently given when delivered personally at the appropriate address, or seventy- two (72) hours after deposit in any United States post office box, postage prepaid, certified mail, return receipt requested, addressed to appropriate address.

- b) Any notice to an owner required under this Declaration shall be addressed to the Owner at the last address for the Owner appearing in the records of the Association or, if there is none, at the address of the Owner's Unit in the Project. Notice to the Association shall be addressed to the address designated by the Association and by written notice to all Owners. Notices to the Manager shall be addressed to the address designated by the Manager, if any. Notices to Declarant shall be addressed to the address for Declarant set forth above.

8.10 Number, Gender, and Headings. As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine, unless the context requires the contrary. All headings are not a part of this Declaration and shall not affect the interpretation of any provision.

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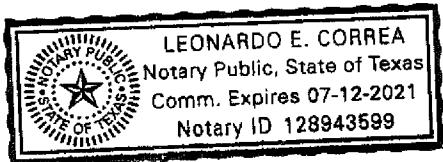
Declarant's Signature:

By: Douglas M. Martin
Douglas M. Martin

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on the **31st day of August, 2018**, by **Douglas M. Martin** for the purposes and consideration therein expressed.



Notary Public, State of Texas

Declaration of Condominium Regime for The 3506 Tom Green Street Condominiums
Page | 23

Exhibit A

**Lot 9, W. A. HARPER'S RESUBDIVISION OF BLOCKS 5, 6, 7 & 8 OF WARD
ADDITION, according to the map or plat thereof, recorded in Volume 3, Page 47A, Plat
Records, Travis County, Texas.**

The Real Property or its address is commonly known as **3506 Tom Green Street, Austin, Texas
78705.**

Exhibit B

Limited Common Elements of Unit 1

As a site condominium, there are no Limited Common Elements.

Limited Common Elements of Unit 2

As a site condominium, there are no Limited Common Elements.

General Common Elements

The General Common Elements, if any, are as set forth in **Exhibit E** and this Declaration. The shared fences dividing the yards of the two units are General Common Elements.

Percentage Interests

Each Unit Owner's undivided interest in the Common Elements is:

Unit 1: 51%

Unit 2: 49%

Each Unit Owner's interest in the Common Expenses of the Association is:

Unit 1: 51%

Unit 2: 49%

Each Unit Owner's portion of votes in the Association is:

Unit 1: 50%

Unit 2: 50%

Each unit is the following percentage of the entire project:

Unit 1: 51%

Unit 2: 49%

Each Unit Owner's responsibility for any property taxes assessed against the Project in its entirety, including but not limited to assessments made in the year in which this Declaration is filed, shall be paid as follows:

Unit 1: 51%

Unit 2: 49%

Exhibit C

Any and all remaining Floor-to-Area Ratio (FAR) and/or Impervious Cover, as those terms are defined by City codes and ordinances, shall be split as follows:

Unit 1: 51%

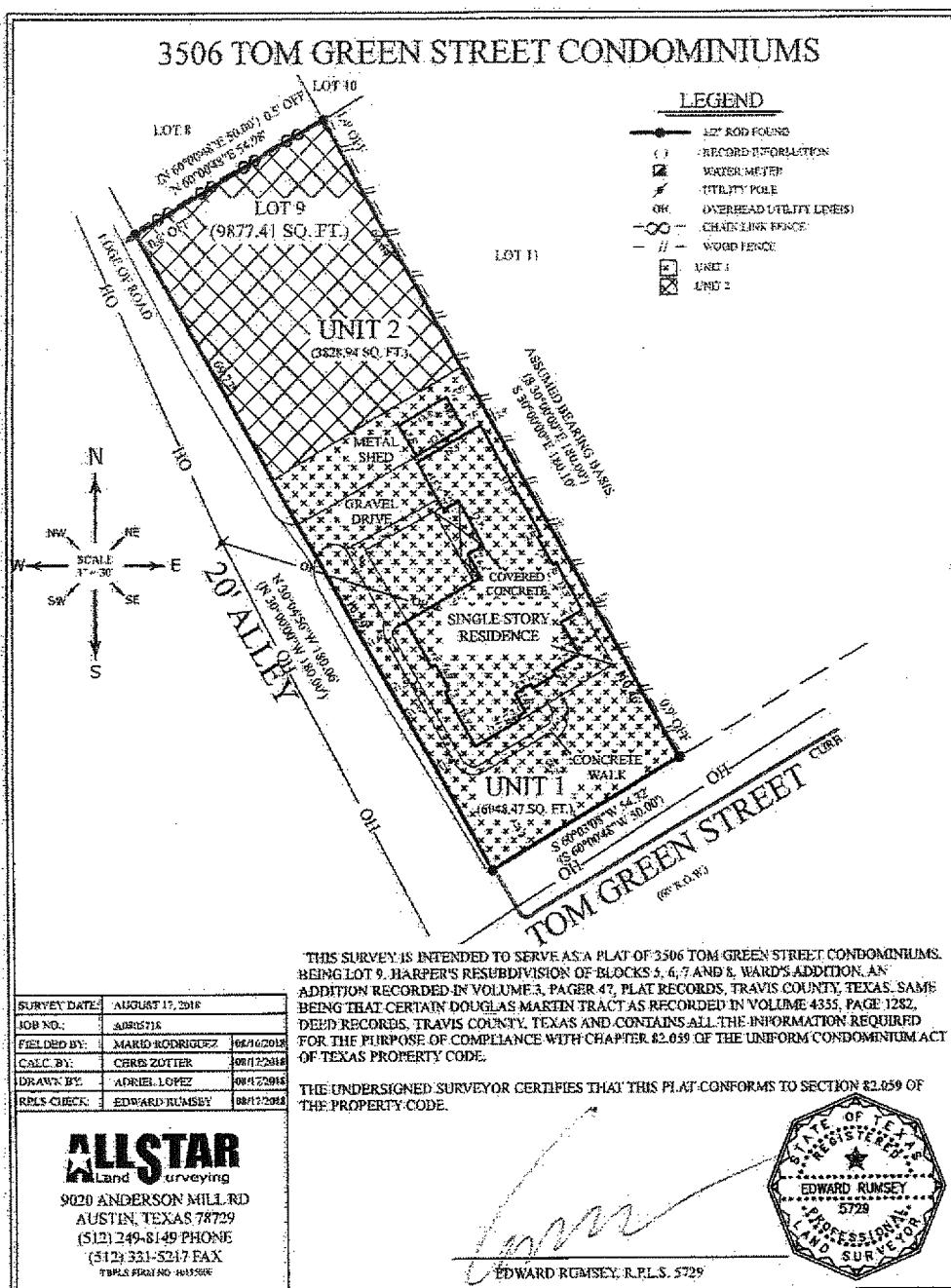
Unit 2: 49%

Exhibit D

The Property is subject to the easements and restrictive covenants of record in Travis County, Texas, including but not limited to:

The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception): **Item No. 1, Schedule B, is hereby deleted.**

Exhibit E
Condominium Plat/Tax Certificate



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

NO 9236

ACCOUNT NUMBER: 02-1706-0409-0000

PROPERTY OWNER:
MARTIN DOUGLAS M
3506 TOM GREEN ST
AUSTIN, TX 78705-1631

PROPERTY DESCRIPTION:
LOT 9 BLK 5-B HARPERS RESUB

ACRES: 0.2233 MIN%

SITUS INFORMATION: 3506 TOM GREEN ST

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

YEAR	ENTITY	TOTAL
2017	AUSTIN ISD	*\$ 3,192.32*
	CITY OF AUSTIN (TRAVIS)	*\$ 4,674.43*
	TRAVIS COUNTY	*\$ 1,187.04*
	TRAVIS CENTRAL HEALTH	*\$ 345.45*
	ACC (TRAVIS)	*\$ 349.87*

TOTAL TAX:	* \$ 6,749.11 *
UNPAID FEES:	* NONE *
PENALTY/INTEREST:	* NONE *
SPECIAL INTEREST:	* \$ 196.85 *
COMMISSION:	* NONE *
TOTAL DUE ==>	* \$ 6,945.96 *

ALL TAXES PAID IN FULL PRIOR TO AND INCLUDING THE YEAR 2017 EXCEPT FOR UNPAID YEARS LISTED ABOVE.
2017 TAX YEARS ARE CURRENTLY IN DEFERRAL STATUS (SECTION 33.06, STATE PROPERTY TAX CODE).

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS DATE August 21, 2018.

Fee Paid: \$10.00

Bruce Elfant
Tax Assessor-Collector

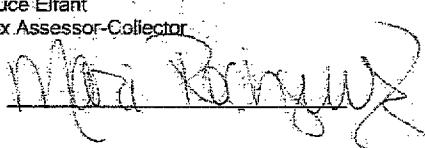
By: 

Exhibit F

A *Unit* shall be conclusively defined by the space it occupies. The location of each *Unit* as situated on the lot is shown in Exhibit E and each *Unit* is a subset of the Three-Dimensional Space. Within this subset of Three-Dimensional Space, the Dwelling Building, the land, and the air are all situated.

Unit 1. In order to precisely define this subset of the Three-Dimensional Space corresponding to a Subdivision A (i.e Unit 1), we shall utilize the definitions of the following auxiliary sets: *Region F_A* and *Region G_A*.

Region F_A shall be a set consisting of all points of the Three-Dimensional Space that are occupied by any structure, such as the Building itself, the foundations and the footings of the Building, sidewalks, patios, retaining walls, or driveways, whose upward or downward projected image onto the Finished Grade of the land lie within Subdivision S.

Region G_A shall be a set consisting of all points of the Three-Dimensional Space, whose downward projected image onto the Finished Grade of the land lie within Subdivision S. Furthermore, any point in *Region G_A* shall have no more than 50' distance from its downward projected image onto the Finished Grade of the land. In other words, *Region G_A* excludes any point whose vertical distance from its downward projected image onto the Finished Grade of the land is more than 50'.

Corresponding to a Subdivision A, *Unit 1* shall be the union of *Region F_A* and *Region G_A*. That is to say any point in the Three-Dimensional Space belongs to *Unit 1* if and only if it belongs to either *Region F_A* or *Region G_A* (or both).

Unit 2. In order to precisely define this subset of the Three-Dimensional Space corresponding to a Subdivision B (i.e Unit 2), we shall utilize the definitions of the following auxiliary sets: *Region F_B* and *Region G_B*.

Region F_B shall be a set consisting of all points of the Three-Dimensional Space that are occupied by any structure, such as the Building itself, the foundations and the footings of the Building, sidewalks, patios, retaining walls, or driveways, whose upward or downward projected image onto the Finished Grade of the land lie within Subdivision S.

Region G_B shall be a set consisting of all points of the Three-Dimensional Space, whose downward projected image onto the Finished Grade of the land lie within Subdivision S. Furthermore, any point in *Region G_B* shall have no more than 50' distance from its downward projected image onto the Finished Grade of the land. In other words, *Region G_B* excludes any point whose vertical distance from its downward projected image onto the Finished Grade of the land is more than 50'.

Corresponding to a Subdivision B, *Unit 2* shall be the union of *Region F_B* and *Region G_B*. That is to say any point in the Three-Dimensional Space belongs to *Unit 2* if and only if it belongs to either *Region F_B* or *Region G_B* (or both).

The precise locations of Unit 1 and Unit 2 as situated on the surface of the lot are shown on **Exhibit E**.

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Exhibit G

SITE UNIT CONDOMINIUM DESCRIPTION

The dwelling you are considering is part of a condominium regime with a Condominiums Owners Association ("HOA"). As such, you will own your "unit" outright and you will also own an undivided interest in the rest of the property. In order to limit the responsibility of the HOA and give each unit owner as much autonomy as possible over the Unit purchased, we have created (i.e. defined in the Declaration) each unit as a site condominium unit. That means that your unit will include not only the dwelling, but also to the extent they are exclusive to your unit, the yard, sidewalks, carports, driveways, porches and decks. In fact, your unit will be your "side" of the property from the surface of the ground ("finished grade") up fifty feet (the air), and from the lot boundary to the mid-plane of the dividing wall, if a duplex, or dividing fence/line if the units are detached.

So each unit is essentially a box with top, bottom and sides described as follows: The bottom of the Unit/box is the surface (i.e. finished grade) of the land within the Units boundaries as shown on the Certified Plan which is attached to the Declaration as Exhibit E, except that the bottom boundary shall also extend below final grade so as to include the bottom surface of any sidewalks, patios, foundations, or driveways, etc. The top of the Unit/box shall be 50 feet above the bottom of the box and essentially parallel to it. The sides of the Unit/box shall correspond to the sides of the Unit boundary as shown on Exhibit F and be perpendicular to the Top and Bottom of the Unit. If there is a dividing wall, yard partition/fence or dividing line drawn on the Certified Plan between the Units, that side Unit boundary is the mid-plane of the wall, partition, fence, or dividing line. The official and more precise definition of Unit is contained in the Declaration and that definition controls.

What this means, is that you own, control, and are responsible for everything within your unit/box. An exception may be if there is a shared driveway, garage, carport or other shared feature described as such in the Declaration. If that is the case, then there will be a shared access, use and/or maintenance agreement governing the use, maintenance, and insurance for that shared feature. You may be required to maintain property and liability insurance covering your Unit. **THE HOA WILL NOT MAINTAIN PROPERTY INSURANCE COVERING YOUR UNIT.**

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Exhibit H
Lienholder's Consent to Declaration

The undersigned is the owner and holder of that certain Promissory Note secured by that certain Deed of Trust recorded under **Document No. 2013168874**, Official Public Records of Travis County, Texas (the "Deed of Trust") which encumbers the real property described in Exhibit "A" attached hereto.

The undersigned hereby consents to the recording of the Declaration of Condominium Regime for the **3506 Tom Green Street Condominiums** (the "Declaration") and, subject to the terms and provisions of this Consent, subordinates the liens and security interest of the Deed of Trust to the Declaration; provided, however, this Consent (i) shall not be construed or operate as a release of the liens and security interest of the Deed of Trust, but shall instead confine that the liens and security interest of the Deed of Trust shall hereby be upon and against each and all of the Units, and all appurtenances thereto, and all of the undivided shares and interests in the Common Elements of the property and of the Condominium established by the Declaration, and shall continue as a priority lien as set forth in the Declaration; (ii) shall not release, subordinate, impair or otherwise affect any and all rights of the undersigned under the Deed of Trust or any assignment given in connection therewith to succeed to the rights, power and authority of Declarant under the Declaration in the event of a foreclosure of the liens and security interest of the Deed of Trust or any assignment given in connection therewith; and (iii) shall not modify or amend the terms and provisions of the Deed of Trust. The undersigned, on behalf of **HEB Federal Credit Union** 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 Declaration.

Dated: August 24, 2018

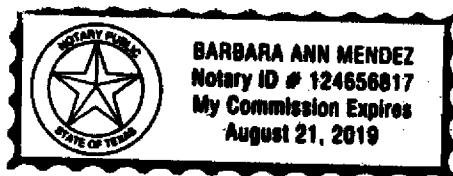
HEB Federal Credit Union

By: Craig Savelle
Name: Craig Savelle
Its: SVP

ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Bexar §

This instrument was acknowledged before me on this 24th day of August, 2018, by Craig Savelle as SVP of **HEB Federal Credit Union** on behalf of said entity, for the purposes therein stated.



Barbara Mendez
Notary Public, State of Texas



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

September 05 2018 11:21 AM

FEE: \$ 154.00 2018141324