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CONDOMINIUM INFORMATION STATEMENT

THE VILLAS AT ROUGH HOLLOW

THE VILLAS AT ROUGH HOLLOW

PURCHASER'S AFFIRMATION AND RECEIPT OF CONDOMINIUM DOCUMENTS

I, THE UNDERSIGNED PURCHASER, HEREBY ACKNOWLEDGE THAT ON THE DATE SHOWN BELOW I RECEIVED THE FOLLOWING INFORMATION FOR THE VILLAS AT ROUGH HOLLOW:

- A. Condominium Information Statement;
- B. Declaration of Condominium Regime;
- C. Certificate of Formation – The Villas at Rough Condominium Community, Inc.;
- D. Community Manual;
- E. Budget; and
- F. Owner's Limited Warranty.

Additionally, by signing below, the above-named Purchaser(s) certifi(y/ies) that the following statements are true:

1. I/We (1) received a Condominium Information Statement from the Seller/Declarant before I signed the purchase contract and/or (2) signed a purchase contract that contained an underlined or bold-print provision acknowledging my receipt of the Condominium Information Statement and recommending that I/we read the Condominium Information Statement before executing the purchase contract and/or (3) have received the Condominium Information Statement on the date indicated below.

2. I/We acknowledge that, having received the Condominium Information Statement on the date indicated below, I/we have until five (5) days after such date to exercise the right of rescission afforded to me pursuant to Section 82.156(b) of the Texas Uniform Condominium Act.

3. Even though I/we may have seen or been shown a furnished model, a condominium Unit maintained by the Seller as a sales office, or a "typical Unit" which has been newly decorated, I/we have received no promise or representation from the Seller or any of its

PURCHASER'S CERTIFICATE

representatives that I/we will receive as part of my purchase any such decorations or furnishings, except as completed in the Unit I may purchase.

4. I/We intend to purchase the Unit for my own personal use, for residential purposes, and, in purchasing the Unit, I/we have not sought out, nor am I relying upon, the skill or judgment of the Seller nor its representatives in advising me as to the suitability of the Unit for any particular purpose for which I/we am purchasing it.

5. I/We ☐ intend ☐ do not intend to purchase the Unit for my own occupancy. If the Unit is for my own occupancy, I/we ☐ intend for it to be my/our primary home ☐ intend for it to be my/our secondary home.

PURCHASER 1:

Date I received Items A-F: _____, 200__

Signed:_____

Printed Name:_____

Date Signed:_____

PURCHASER 2:

Date I received Items A-F: _____, 200__

Signed:_____

Printed Name:_____

Date Signed:_____

CONDOMINIUM INFORMATION STATEMENT



ISSUED _____, 2009

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

THE VILLAS AT ROUGH HOLLOW
CONDOMINIUM INFORMATION STATEMENT

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

NAME OF CONDOMINIUM: The Villas at Rough Hollow

LOCATION OF CONDOMINIUM: Lot 1, located within Rough Hollow Section 8, a subdivision in Travis County, according to the map or plat thereof, recorded as Document No. 200600012, Official Public Records of Travis County, Texas

NAME OF DECLARANT: JH Yacht Club Villas, Ltd., a Texas limited partnership

ADDRESS OF DECLARANT: 2101 Lakeway Blvd., Suite 205
Austin, TX 78734

EFFECTIVE DATE OF CONDOMINIUM INFORMATION STATEMENT: May 4, 2009

This Condominium Information Statement presents certain information regarding the condominium development and the units being offered for sale by JH Yacht Club Villas, Ltd. It consists of two parts, a narrative portion and an attachments portion. The attachments include legal documents that are required for the creation and operation of the condominium. The attachments will control any inconsistency between the attachments and the narrative. **JH Yacht Club Villas, Ltd.'s representatives are prohibited from changing or attempting to interpret any of the terms and conditions of this Condominium Information Statement.**

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

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

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I. NAMES & ADDRESSES

a. DECLARANT:

(1) NAME: JH Yacht Club Villas, Ltd., a Texas limited partnership

(2) PRINCIPAL ADDRESS:

2101 Lakeway Blvd., Suite 205
Austin, TX 78734

b. CONDOMINIUM PROJECT:

(1) NAME: The Villas at Rough Hollow

(2) PRINCIPAL ADDRESS:

(a) **Physical location address:**

Marina View Way
Austin, TX 78738

(b) **Mailing and Manager's address:**

Bonnie Carlisle
Southwest Management Services
2114 Lakeway Blvd., Suite 217
Austin, TX 78734

II. NARRATIVE PORTION

1. DECLARANT

The developer or "Declarant" of The Villas at Rough Hollow is JH Yacht Club Villas, Ltd., a Texas limited partnership. JH Yacht Club Villas, Ltd.'s corporate office is located at 2101 Lakeway Blvd., Suite 205, Austin, TX 78734.

2. CONDOMINIUM OWNERSHIP

The Villas at Rough Hollow utilizes the condominium form of ownership. All of the land, driveways and any private streets, and other improvements not defined as Units under the Declaration are common elements of the condominium and are owned collectively (in undivided interests) by all the owners and maintained by the condominium association as a common expense.

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

Not a Typical Condominium Unit

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

3. PROPERTY/UNITS

The property initially submitted to the terms of the Declaration includes Lot 1, located within Rough Hollow Section 8, a subdivision in Travis County, according to the map or plat thereof, recorded as Document No. 200600012, Official Public Records of Travis County, Texas. The Units are restricted to residential use as set forth more fully in the Declaration.

The condominium established by the Declaration presently includes six (6) units. During the "Development Period" (as defined in the Declaration), Declarant has reserved the right to create up to fifty (50) Units. Declarant has reserved the right to annex additional land into the regime established by the Declaration. Additional land may be added in phases and each phase may include one or more Units. No assurance is given regarding any additional land that may be included in the regime, or the order in which all or any land or Units may be made subject to the Declaration. No assurance is given as to the

dispersion of Units or buildings, total number of Units or buildings, or the size of Units or buildings to be created upon the addition of any land to the Declaration. In the event additional land is made subject to the Declaration, Declarant will be under no obligation to add any other additional land to the Declaration. Additional Units may be added through the conversion of general common elements to Units and through the addition of land and the creation of Units thereon.

4. THE OWNERS ASSOCIATION

The Villas at Rough Hollow Condominium Community, Inc. (the "Association") is the Texas nonprofit corporation that will administer The Villas at Rough Hollow. During the "Declarant Control Period", as defined in the Declaration, Declarant will retain certain rights regarding operation and administration of the Association, namely the right to appoint and remove all directors and officers of the Association. The Declaration and the Texas Uniform Condominium Act provide for a two-step transition process to resident control of the Association. The first step occurs within 120 days after 50% of the Units that may be created under the Declaration have been conveyed by Declarant. Within this 120 day period, the current Board of the Association will call a meeting of all Unit owners other than Declarant. At this meeting the owners will elect one Board member out of a three person Board. Declarant will retain the right to appoint and remove two Board members. The second step occurs within 120 days after 75% of the Units that may be created under the Declaration have been conveyed by Declarant. Within this 120 day period, the current Board of the Association will call a meeting of all Unit owners including Declarant. At this meeting the owners, including Declarant, will elect the entire Board. The Declarant Control Period is described in Appendix A of the Declaration attached to this Condominium Information Statement.

5. UNITS

The units are restricted to residential purposes and are more particularly described on "Attachment 1" of the Declaration. Declarant has reserved the right in the Declaration to change the sizes and types of units.

All references to square footage sizes of floorplans or units are based on an architect's pre-construction drawings and estimates of the air-conditioned space only for a prototype unit. The size numbers are used to identify which plans are larger and which ones are smaller, and are not intended to be accurate statements of actual sizes of constructed units.

6. WORKING CAPITAL AND RESERVE CONTRIBUTION

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

7. **EASEMENTS, RESTRICTIONS, LIENS, LEASES OR ENCUMBRANCES**

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

8. **WARRANTY**

The Owner's Limited Warranty for a Unit with The Villas at Rough Hollow Condominiums is attached as Attachment 5.

9. **NO JUDGMENTS OR SUITS**

Declarant has no actual knowledge of any unsatisfied judgments against The Villas at Rough Hollow, nor of any pending suits to which the Association is a party, or which are material to the land title and construction of The Villas at Rough Hollow.

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

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

11. **INSURANCE**

INSURANCE COVERAGE provided for the benefit of the Association

Declarant, for the benefit of the Association, will obtain a master insurance policy from an insurance carrier chosen by Declarant. The effective date of the coverage will be on or before the date Declarant first conveys a unit to a third party and will expire one year after its effective date. The following information was provided by **Watkins Insurance Group, Attention: Patrick Watkins, who may be reached at (512) 452-8877 (the "Agent")**.

- a. **PROPERTY EXPOSURE TO LOSS:** The Association will not insure Units, but will obtain property insurance on the insurable General Common Elements within the Regime. Each Owner is obligated to obtain and maintain fire and extended coverage on the Owner's Unit and on any Limited Common Element assigned exclusively thereto, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. The Association strongly recommends that each Owner and resident purchase and maintain insurance on such Owner's or resident's personal belongings.
- b. **LIABILITY EXPOSURE TO LOSS:**
 - (1) The Association will obtain a commercial general liability insurance policy with the following minimum coverage:

- (a) Bodily Injury and Property Damage Liability - \$1,000,000.00 combined single limit per occurrence.
- (b) Personal Injury Liability & Advertising Injury Liability - \$1,000,000.00.
- (c) Fire Damage Legal Liability - \$100,000.00 limit per any one fire.
- (d) Medical Payment - \$5,000.00 limit per person.

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

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

- (2) The Association will obtain a directors and officers liability insurance policy with limits no less than \$1,000,000.00.

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

12. BUDGET

- a. Budget. The projected budget for the first fiscal year of the Association following the date of the first conveyance to a purchaser is attached as Attachment 4.
- b. Preparer. The budgets were prepared for Declarant by the Manager.
- c. Assumptions About Occupancy. The projected budget is based on the assumption that all Units are occupied for all or most of the budget year.
- d. Assumptions About Inflation. All budgets are based on a one-hundred percent (100%) net collection rate and the estimates are in current dollars unadjusted for possible inflation.

13. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Declarant has reserved certain development rights as more particularly described in the Declaration and "Appendix A" attached to the Declaration. Many of these rights expire upon expiration of the Development Period. The "**Development Period**", as specifically defined in the Declaration, means the fifteen (15) year period beginning on the date the Declaration is recorded in the Official Public Records of Travis County, Texas, unless such period is earlier terminated by Declarant' recordation of a notice of termination in the Official Public Records of Travis County, Texas. Certain additional rights expire upon expiration of the Declarant Control Period. The Declarant Control Period expires on the earlier to occur of: (i) within one hundred and twenty (120) days after seventy-five percent (75%) of all Units which may be created by Declarant have been conveyed to Owners other than Declarant; or (ii) when, in the sole opinion of Declarant, the Condominium Association to be established pursuant to the Declaration is viable, self-supporting, and operational.

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

- a. Annexation. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to the Declaration and the jurisdiction of the Association.
- b. Creation of Units. When created, the Property contains six (6) Units; however, Declarant reserves the right to create up to and including fifty (50) Units upon full buildout of all phases of the project, which may include land added by Declarant in accordance with *Section 2.2* of the Declaration.
- c. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of Units and Common Elements.
- d. Architectural Control. During the Development Period, Declarant has the absolute right to review and approve all improvements constructed within the Regime.
- e. Transfer Fees. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.
- f. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.
- g. Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.
- h. Statutory Development Rights. As permitted by the Texas Uniform Condominium Act, Declarant has reserved the right: (i) to add real property to the Regime; (ii) to create Units, General Common Elements, and Limited Common Elements within the Regime; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Regime any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.
- i. Amendment. During the Development Period, Declarant may amend the Declaration, without consent of other Owners or any mortgagee, for the following limited purposes: (i) to meet the requirements, standards, or recommended guidelines to enable an institutional or governmental lender to make or purchase mortgage loans on the Units; (ii) to correct any defects in the execution of the Declaration or the other Documents; (iii) to add real property to the Regime; (iv) to create Units, General Common Elements, and Limited Common Elements within the Regime; (v) to subdivide, combine, or reconfigure Units or convert Units into Common Elements; (vi) to withdraw from the Regime any portion of the real property marked on the Plat and Plans as "Development Rights

Reserved” or “Subject to Development Rights”; (vii) to resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents; (viii) to change the name or entity of Declarant; and (ix) for any other purpose, provided the amendment has no material adverse effect on any right of any owner.

- j. Additional Rights. As permitted by the Texas Uniform Condominium Act, Declarant has reserved the following rights: (i) the right to complete or make improvements indicated on the Plat and Plans; (ii) the right to exercise any Development Right permitted by the Act and the Declaration; (iii) the right to make the Regime part of a larger condominium or planned community; (iv) the right to use Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Regime; (v) for purposes of promoting, identifying, and marketing the Regime, Declarant has reserved an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Regime, including items and locations that are prohibited to other Owners and residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property.
- k. Easement Rights. Declarant has reserved an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Regime, and for discharging Declarant’s obligations under the Texas Uniform Condominium Act and the Declaration.
- l. Appointment of Association Directors and Officers. During the Declarant Control Period, the right to appoint or remove any Declarant-appointed officer or director of the Condominium Association.
- m. Additional Easements and Rights. Declarant has reserved the following easements and rights, exercisable at Declarant’ sole discretion, for the duration of the Development Period: (i) an easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Regime; (ii) the right to sell or lease any Unit owned by Declarant; (iii) the right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements; (iv) an easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein; (v) an easement over the entire Property, including the Units, to inspect the Common Elements and all improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element improvements; and (vi) 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.

14. ATTACHMENTS

The attachments include documents that will be recorded or filed. Because this Condominium Information Statement is issued before those documents have completed the recording process, executed

or file-marked copies of those documents may be included as attachments. At any time after recording, Declarant may but is not obligated to replace executed or file-marked documents with copies of recorded documents. The following attachments are included with this Condominium Information Statement and are incorporated by reference:

- | | |
|---------------------|--|
| ATTACHMENT 1 | Development Area Declaration and Declaration of Condominium Regime for The Villas at Rough Hollow, recorded or to be recorded in the Official Public Records of Travis County, Texas |
| ATTACHMENT 2 | Certificate of Formation of The Villas at Rough Condominium Community, Inc. |
| ATTACHMENT 3 | Community Manual of The Villas at Rough Hollow |
| ATTACHMENT 4 | Proposed budget for The Villas at Rough Condominium Community, Inc. |
| ATTACHMENT 5 | Limited Warranty |

15. TO BE SIGNED AT CLOSING

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

- Limited Warranty (at Attachment 5)
- Acknowledgement of Receipt of CIS, if not previously signed (located on first page of this CIS)

16. GENERAL INFORMATION

The attachments which follow this narrative portion provide a more detailed description of the condominium and the rights and obligations of the Unit owner. The purchaser should carefully consider the attachments, as well as this narrative portion of the Condominium Information Statement. If the purchaser does not understand any aspect of this Condominium Information Statement, the sales contract, and any other materials provided in connection with the sale of Units, the purchaser should consult with competent legal counsel.

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

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

[SIGNATURE PAGE FOLLOWS]

JH YACHT CLUB VILLAS, LTD.,
a Texas limited partnership

By: JH YACHT CLUB VILLAS, GP, LLC,
a Texas limited liability company, its General Partner

By: _____
Haythem S. Dawlett, Vice President

Date: _____

THE VILLAS AT ROUGH HOLLOW
CONDOMINIUM INFORMATION STATEMENT

ATTACHMENT "1"

DECLARATION OF CONDOMINIUM REGIME

AFTER RECORDING RETURN TO:

**JOSHUA D. BERNSTEIN, ESQ.
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701**

**ORIGINAL
FILED FOR RECORD**



**ROUGH HOLLOW SOUTH SHORE
[THE VILLAS]**

ROUGH HOLLOW SECTION 8

**AMENDED AND RESTATED
DEVELOPMENT AREA DECLARATION AND DECLARATION OF
CONDOMINIUM REGIME FOR**

THE VILLAS AT ROUGH HOLLOW SOUTH SHORE

THIS DECLARATION AMENDS AND RESTATES IN ITS ENTIRETY THE DEVELOPMENT AREA DECLARATION AND DECLARATION OF CONDOMINIUM REGIME FOR THE VILLAS AT ROUGH HOLLOW SOUTH SHORE, RECORDED AS DOCUMENT NO. 2007044146, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DEVELOPMENT AREA DECLARATION AND DECLARATION OF CONDOMINIUM REGIME FOR THE VILLAS AT ROUGH HOLLOW SOUTH SHORE, RECORDED AS DOCUMENT NO. 2007200211, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, THAT CERTAIN SECOND AMENDMENT TO DEVELOPMENT AREA DECLARATION AND DECLARATION OF CONDOMINIUM REGIME FOR THE VILLAS AT ROUGH HOLLOW SOUTH SHORE, RECORDED AS DOCUMENT NO. 2010071274, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND THAT CERTAIN THIRD AMENDMENT TO DEVELOPMENT AREA DECLARATION AND DECLARATION OF CONDOMINIUM REGIME FOR THE VILLAS AT ROUGH HOLLOW SOUTH SHORE, RECORDED AS DOCUMENT NO. 2011072192, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

THE PROPERTY SUBJECT HERETO IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN: (I) MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROUGH HOLLOW SOUTH SHORE, RECORDED AS DOCUMENT NO. 2005181058 IN THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AS AMENDED; AND (II) NOTICE OF APPLICABILITY OF MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROUGH HOLLOW SOUTH SHORE [THE VILLAS], RECORDED AS DOCUMENT NO. 2007044145, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (COLLECTIVELY, THE "MASTER PLAN DOCUMENTS"). THIS DECLARATION CONSTITUTES A DEVELOPMENT AREA DECLARATION UNDER THE MASTER PLAN DOCUMENTS AND THE ASSOCIATION CONSTITUTES A DEVELOPMENT AREA ASSOCIATION UNDER THE MASTER PLAN DOCUMENTS. DECLARANT UNDER THE MASTER PLAN DOCUMENTS EXECUTES THIS DECLARATION FOR THE PURPOSE OF ACKNOWLEDGING ITS CONSENT TO THE DEVELOPMENT AREA DECLARATION AND DEVELOPMENT AREA ASSOCIATION CREATED BY THIS DECLARATION.

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**AMENDED AND RESTATED DEVELOPMENT AREA DECLARATION
AND DECLARATION OF CONDOMINIUM REGIME
FOR THE VILLAS AT ROUGH HOLLOW SOUTH SHORE**

A. JH YACHT CLUB VILLAS, LTD., a Texas limited partnership ("Declarant"), as then-owner of Lot 1, located within Rough Hollow Section 8, a subdivision in Travis County, according to the map or plat thereof, recorded as Document No. 200600012, Official Public Records of Travis County, Texas (the "**Property**"), previously submitted the Property to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code (the "**Act**"), for the purpose of creating The Villas at Rough Hollow South Shore, a condominium regime located in Travis County, Texas, established pursuant to the Development Area Declaration and Declaration of Condominium Regime for the Villas at Rough Hollow South Shore, recorded as Document No. 2007044146, Official Public Records of Travis County, Texas, as amended by that certain First Amendment to Development Area Declaration and Declaration of Condominium Regime for the Villas at Rough Hollow South Shore, recorded as Document No. 2007200211, Official Public Records of Travis County, Texas, that certain Second Amendment to Development Area Declaration and Declaration of Condominium Regime for the Villas at Rough Hollow South Shore, recorded as Document No. 2010071274, Official Public Records of Travis County, Texas, and that certain Third Amendment to Development Area Declaration and Declaration of Condominium Regime for the Villas at Rough Hollow South Shore, recorded as Document No. 2011072192, Official Public Records of Travis County, Texas (the "**Original Declaration**").

B. In accordance with the terms and provisions of Section 82.067 of the Act, and the rights reserved to Declarant pursuant to *Section 19.1* and Appendix "A" to the Original Declaration, Declarant, both as the Declarant under the Original Declaration and as owner of units in the Regime representing at least sixty-seven percent (67%) of the votes in the Villas at Rough Hollow Condominium Community, Inc., now desires to amend and restate the Original Declaration in its entirety as set forth hereinbelow. While this instrument restates the Original Declaration in its entirety, Declarant expressly intends to amend the Original Declaration only in such a manner as it is permitted to do so pursuant to Section 82.067 of the Act and *Section 19.1* and Appendix "A" to the Original Declaration, and this instrument shall not be construed so as to effectuate any amendment to the Original Declaration which would require approval of any parties other than the Declarant. If any provision of this instrument is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Declarant that the remainder of this instrument shall not be affected.

C. Pursuant to that one certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Rough Hollow South Shore [The Villas], recorded as Document No. 2007044145, Official Public Records of Travis County, Texas, the Property together with all improvements thereon and all easements, rights, and appurtenances thereto are subject to the terms and provisions of that certain Master Declaration of Covenants, Conditions and Restrictions for Rough Hollow South Shore, recorded as Document No. 2005181058 in the Official

Public Records of Travis County, Texas, as amended (the "Master Declaration"). **ROUGH HOLLOW DEVELOPMENT, LTD.**, a Texas limited partnership, is the Declarant under the Master Declaration and consents to the recordation of this instrument by its execution of this instrument in the space provided below.

D. The Master Declaration permits the filing of Development Area Declarations applicable to specific Development Areas, as those terms are used and defined in the Master Declaration, which shall be in addition to the covenants, conditions, and restrictions of the Master Declaration.

E. Declarant intends for this instrument to serve as one of the Development Area Declarations permitted under the Master Declaration and desires that the Property described and identified herein shall constitute one of the Development Areas which is permitted, contemplated and defined under the Master Declaration.

NOW, THEREFORE, it is hereby declared that: (i) the Property will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this instrument, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Property, together with all improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; (ii) each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Declaration. In the event of a conflict between the terms and provision of this Declaration and the Master Declaration, the terms of the Master Declaration will control. Upon the recording of this instrument in the Official Public Records of Travis County, Texas, the Original Declaration shall be amended and restated in its entirety as set forth hereinbelow.

ARTICLE 1 **DEFINITIONS**

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

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

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

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

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

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

1.6 **"Attached Unit"** means any Unit within the Regime located within a Building which contains more than (1) Unit.

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

1.8 **"Building"** means the detached, semi-attached, or attached residential dwelling constructed within the Regime, together with all appurtenant Improvements. Each Building and Unit is described in *Section 5.2* below and described and depicted on Exhibit "B", attached hereto. Declarant has reserved the right to add additional Units and Buildings to the Regime as permitted in Appendix "A", attached hereto.

1.9 **"Building LCE"** is defined in *Section 5.6* below.

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

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

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

1.13 **"Community Manual"** means the community manual, adopted by the Board for the benefit of the Association as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules, and may also include such other policies governing the Association as the Board determines to be in the best interests of the Association, in its sole and absolute discretion.

1.14 **"Declarant"** means JH Yacht Club Villas, Ltd., a Texas limited partnership, which is developing the Property, or the successors and assigns thereof which acquire any portion of the Property for the purpose of development and is designated as a Successor Declarant in accordance with this Declaration. A designation of a Successor Declarant must be expressly set forth in writing and Recorded.

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

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

1.17 **"Development Period"** means the fifteen (15) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by the Recording of a notice of termination.

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

1.18 **"Documents"** mean, singly or collectively as the case may be, the Master Plan Documents, this Declaration, the Plat and Plans, attached hereto as Exhibit "A", the Certificate, Bylaws, the Community Manual and the Rules of the Association as each may be 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 Villas at Rough Hollow South Shore, you agree to comply with the terms and provisions of the Documents, as amended or modified.

1.19 **"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 "A", attached hereto.

1.20 "Improvement" means every Building, 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.

1.21 "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 "Building LCE," "Limited Common Elements", or "Limited Common Areas" on Exhibit "A", attached hereto and as provided in *Section 5.4* of this Declaration, and may be reallocated pursuant to this Declaration or *Section 82.058* of the Act. Limited Common Elements may also be assigned to one or more Units in a Notice of Revision pursuant to *Section 1.36* of this Declaration and *Section A.4(iii)* in Appendix "A".

1.22 "Majority" means more than half.

1.23 "Master Plan Documents" means that certain: (i) Master Declaration of Covenants, Conditions and Restrictions for Rough Hollow South Shore, recorded as Document No. 2005181058 in the Official Public Records of Travis County, Texas, as amended; and (ii) Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Rough Hollow South Shore [The Villas], recorded as Document No. 2007044145, Official Public Records of Travis County, Texas

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

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

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

1.27 "Person" shall mean any individual or entity.

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

1.29 **"Property"** means Lot 1, located within Rough Hollow Section 8, a subdivision in Travis County, according to the map or plat thereof, recorded as Document No. 200600012, Official Public Records of Travis County, Texas, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.30 **"Recorded"** means recorded in the Official Public Records of Travis County, Texas.

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

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

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

1.34 **"Stand-Alone Unit"** means any Unit within the Regime located within a Building which contains only one (1) Unit.

1.35 **"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), singularly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any institution.

1.36 **"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 "A", as further described in the Unit Boundaries Section of this Declaration. Declarant reserves the right to change, modify, and amend the building footprint in conjunction with Declarant's change, modification or amendment of the plan assigned to the Unit in accordance with Declarant rights reserved in Appendix "A". On or before the substantial completion of a Unit, Declarant, or an assignee of Declarant's rights reserved pursuant to *Section A.4(iii)* in Appendix "A", may, but will not be obligated to, Record a Notice of Revision (the "Notice"). The Notice shall specifically locate the Unit within its associated building footprint shown on Exhibit "A", as revised or modified in accordance with *Section A.4(iii)* in Appendix "A", and will include a vertical and/or horizontal description of the Unit. The Notice may also reallocate portions of the Unit as General Common Elements or Limited Common Elements or may reallocate portions of the General Common Elements and Limited Common Elements as part of the Unit pursuant to *Section A.4(iii)* in Appendix "A". The Notice, upon Recordation, shall automatically amend this Declaration for the purpose of defining the Unit to which the Notice relates.

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

2.1. **Subject To Documents.** The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Appendix "A", attached hereto, which run with the Property, bind all 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 into the Regime 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 Appendix "A". Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime.

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

2.4. **Common Elements.** The Common Elements of the Property consist of all of the Property, save and except the Units.

2.4.1. **Ownership & Maintenance.** The designation of Common Elements is determined by this Declaration. The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with the development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration elsewhere provides for a different allocation for a specific Common Element.

2.4.2. **Acceptance.** By accepting an interest in or title to a Unit, each Owner is deemed: (i) to accept the Common Elements of the Property, and any Improvement thereon, in its then-existing condition; (ii) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the

Common Elements; (iii) to acknowledge that transfer of a Common Element's title (if any) to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (iv) to acknowledge the continuity of maintenance of the Common Elements, regardless of changes in the Association's Board of Directors or management.

ARTICLE 3 PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

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

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

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

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

- (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

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

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

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

3.7. **Association's Access Easement.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the

Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner's Unit and all Improvements thereon for the following purposes:

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

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

NOTICE

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

3.9. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that 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 as 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 any failure to provide adequate security or the ineffectiveness of security measures undertaken.

3.10. **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: (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 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.

3.11. **Easement to Inspect and Right To Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's

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

3.12. **Parking.** Declarant reserves the right to designate and assign portions of the General Common Elements as parking for the exclusive use of any Owner. The assignment of parking spaces within the General Common Elements not specifically designated by the Declarant for the exclusive use of an Owner of a Unit will be under the exclusive control and administration of the Declarant until 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, but subject to any assignment previously made by the Declarant. 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 the 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, will be considered an agreement between the Association and such Owner with regard to use of the parking spaces so assigned, 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 the parking space was assigned. The Declarant may be required periodically to re-allocate parking to comply with the site plan approved for the Property.

ARTICLE 4 **DISCLOSURES**

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

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

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

4.3. **Zoning.** No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

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

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

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

4.7. **Moisture.** A Unit may trap humidity created by general use and occupancy. If left unattended and not properly maintained by Owner, the condensation may increase

resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold. **Mold and/or mildew can grow in any portion of the Property that is exposed to elevated levels of moisture.** (See Section 9.5).

4.8. **Name of Regime.** "Villas" is a commonly used word and may have been used by third parties in connection with many different types of real estate properties. As a result, there is a risk that one or more third parties may assert that the term "Villas" has trademark significance and may assert claims for trademark infringement against the Declarant claiming a likelihood of confusion, and may attempt to force Declarant to change the name or recover for damages for trademark infringement. Declarant believes that it has reasonable defenses to such claims on the grounds, *inter alia*, that the term is merely descriptive, primarily geographically descriptive, and/or dilute, to the extent that no third party can claim exclusive rights in use of the term in connection with real estate development projects, including but not limited to the Regime, or that the overall circumstances of use of the term by Declarant is in different channels of commerce, such that there is no likelihood of confusion with any third party's use of the term. It is believed that due to the fact that the name is not known to be in common usage in Austin, Texas, or more generally in connection with a residential condominium community, the term "Villas" cannot be lawfully appropriated as a trademark by any third party and is not protectable as a trademark under federal or state law; provided, however, that: (A) Declarant shall have no liability should the Regime be forced to change its name; (B) Declarant shall have no duty to contest any claim asserting that the name should be changed; and (C) each Owner shall, by taking title to a Unit, acknowledges that the name "Villas" was in no way an inducement to purchase, to not sell after purchase, or to expend funds in detrimental reliance on the name remaining "Villas". During the Declarant Control Period, Declarant shall have the right in its sole discretion to change the name of the Regime without notice to any person.

4.9. **Codes and Permits.** The Units were constructed pursuant to plans and specifications prepared by licensed professionals and permits issued by the applicable regulatory authorities. During the course of the construction of any Improvements, variations from the original plans and specifications, some of which add scope, some of which reduce scope, and some of which alter scope, are inevitable and can, do, and did occur as a matter of intention and/or as a matter of necessity.

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

4.11. **Budgets.** Any budgets are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

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

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

4.14. **Suburban Environment.** The Property is located in a suburban environment. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, and other generators of sound and vibrations typically found in a suburban area. In addition to sound and vibration, there may be odors and light in suburban areas.

4.15. **Plans.** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed on any Unit are merely approximations and do not necessarily reflect the actual as-built conditions of the same.

4.16. **Water Runoff.** While the drainage system for surface water runoff on the Property will be constructed in accordance with applicable governmental standards, the Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. In addition, water may pond on various portions of the Property having impervious surfaces, such as the streets, driveways, and patios.

4.17. **Upgrades.** The cost of upgrades may not necessarily result in a commensurate increase in the value of the Unit and Improvements constructed thereon.

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

4.19. **Marketing.** Declarant's use of a sales center and/or model units or reference to any other construction is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of Improvements available for purchase. The Improvements may not conform, except as herein noted, to any model residence in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model residence is intended only to demonstrate the size and basic architectural features. The Regime, as completed, may not conform to any models displayed by Declarant. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and scale models of the project (collectively "**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Project or any Improvement. Declarant retains the right to obtain and use

photography of the Property (including the Units and all Improvements) for publication and advertising purposes.

4.20. **Club Disclosure.** By acquiring title to a Unit, each Owner acknowledges that, subject to regulatory and other required approvals, Declarant has proposed to develop upon portions of the Property the "Lodge and Spa at Rough Hollow" (the "Resort"). Declarant's current development plan for the Resort include a hotel, spa, restaurant, bar and banquet facility, as well as an event pavilion and other related facilities. Declarant reserves the right to modify its development plan for the Resort at any time and from time to time, and makes no representation or warranty as to the facilities to be included within the Resort, or that the Resort will at any time be developed. If the Resort is developed, each Owner's use and enjoyment of his/her Unit and the Regime may be subject to disruption from time to time incidental to use of the Resort by its guests and others. Such disruption may include, without limitation, traffic related to the resort, noise from use of the resort facilities and odors from food service facilities within the Resort. By acquiring title to a Unit, each Owner acknowledges the potential for development of the Resort, agrees that, if developed, the Resort will add to the value of the Regime and the Unit, and, as a result, approves of and accepts the Resort and any related uses and disruptions to use and enjoyment of the Units or the Regime caused thereby.

4.21. **Driveways and Parking Areas.** Driveways and parking areas within the Property are private and are General Common Elements maintained and administered by the Association.

4.21.1. **Rules and Regulations.** By acquiring a Unit in the Regime, each Owner acknowledges and agrees that use of the streets and driveways will be subject to all applicable Rules, as well as any rules or policies adopted by the Board. The Board has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of streets and driveways, including but not limited to:

- (i) Identification of vehicles used by Owners and Residents and their guests.
- (ii) Designation of parking areas and no-parking areas, and loading/unloading zones.
- (iii) Limitations or prohibitions on driveway and street parking.
- (iv) Limitations on access to any streets or Common Elements enclosed by a gate.
- (v) Removal or prohibition of vehicles that violate applicable rules and regulations.
- (vi) Fines for violations of applicable rules and regulations.

ARTICLE 5
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. **Initial Submitted Units and Maximum Number of Units.** The Regime initially consists of seven (7) Units. During the Development Period, Declarant as permitted in Appendix "A", has reserved the right to create a total of fifty-two (52) Units on the Property and additional property added to the Regime, which Units may consist of both Stand-Alone Units and Attached Units. To add Units to the Regime, Declarant during the Development Period may, from time to time, file an amendment to this Declaration creating such additional Units. To add additional Units to the Regime established by the Declaration, Declarant shall prepare, execute, and record an amendment to this Declaration and the Plat and Plans which amendment will: (i) assign an identifying number to each new Unit; (ii) reallocate the Common Interest Allocation among all Units then existing within the Regime; (iii) describe any Limited Common Elements, if any, created or designated to each new Unit; and (iv) with respect to new Units, include the information required by Section 82.055 and Section 82.059(b) of the Texas Uniform Condominium Act. To add additional property to the Regime, Declarant will Record a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may also include a description of the Units added to the Regime if the Declarant elects to create Units upon recordation of the declaration of annexation OR Declarant may elect to create additional Units or Common Elements on the additional property subsequent to the recordation of the declaration of annexation. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Units.

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

5.2.1. **Attached Units.** The boundaries of the Attached Units shall be the walls, floors and ceilings of each Attached Unit.

- (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 a the Attached Unit, and all other portions of the walls, floors, or ceilings are hereby designated as Building LCE.
- (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 an Attached Unit, then the portion serving only that Attached Unit is a Limited Common Element allocated solely to that Attached Unit, and the portion serving more than one Attached Unit or the Common Elements is a part of the Building LCE.

- (iii) Unless otherwise provided above, the spaces, interior partitions, and other fixtures and Improvements within the boundaries of an Attached Unit are a part of the Attached Unit.
- (iv) Shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door hardware, windows, window screens and frames, firebox and fireplace flue or other fixtures designed to serve a single Attached Unit, but located outside the Attached Unit's boundaries, are Limited Common Elements allocated exclusively to that Attached Unit.

5.2.2. Stand-Alone Units. The boundaries and identifying number of each Stand-Alone Unit are shown on the Plat and Plans attached as Exhibit "A". Each Stand-Alone Unit includes the roof, exterior walls and foundation of the Building within which the Unit is located and all other Improvements which constitute the Unit. In addition to the Building and the Improvements which constitute the Unit, each Unit also includes Improvements, fixtures, and equipment serving the Building and the Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Building, including but not limited to any sidewalks, driveways, below-grade foundation, piers, retaining walls, fence, or other structural supports; plumbing, sewerage, and utility lines, pipes, drains, and conduits; landscape irrigation and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Building and the Unit exclusively.

5.3. What a Unit Includes. Each Unit includes the spaces and Improvements within the above-described boundaries, including without limitation, any windows, window screens and frames, exterior doors and door hardware, attic area, firebox and fireplace flue. Each Unit also includes Improvements, fixtures, and equipment serving the Unit exclusively, whether located inside or outside the Unit, whether or not attached to or contiguous with the Unit, including but not limited to, the following (if any): chimneys, water heaters, air conditioners, utility meters, fuse boxes, electrical switches, wiring, pipes, ducts, conduits, smoke detectors, security systems, television antennas, lighting fixtures, telephone and electrical receptacles, and skylights.

5.3.1. Exclusions. Except as specifically included above, each Unit excludes the spaces and Improvements lying outside of the boundaries of the Unit.

5.3.2. Inconsistency with Plans. If the foregoing description of Unit boundaries is inconsistent with the Plats and Plans, then this Section will control.

5.3.3. Representations of Size. The space contained within the Unit's boundaries is not related to the size of the Unit's living areas. Similarly, the Units may

be marketed on the basis of a limited number of representational floorplans, each of which is marked with a rounded and estimated size of air-conditioned space, taken from pre-construction architectural drawings. Those marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries and the actual area contained within the air conditioned space of the Unit.

SIZE OF UNIT

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

5.4. **Initial Designation Of Limited Common Elements.** The following portions of the Common Elements are Limited Common Elements assigned to the Units.

5.4.1. **Shown on Plats and Plans.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as Exhibit "A", by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.

5.4.2. **Appurtenant Areas.** Only to the extent they are not part of the Unit, any front porch, sidewalk or fenced yard space that is obviously intended for the sole and exclusive use of the Unit to which the area is appurtenant is deemed a Limited Common Element, whether or not the area is so designated on Plats and Plans. If the boundaries of an appurtenant area change, with the Board's approval, the altered boundaries of the appurtenant area are the boundaries of the Limited Common Element.

5.5. **Subsequent Allocation Of Limited Common Elements.** A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only pursuant to the provisions of this Article. Declarant reserves the right in Appendix "A" of this Declaration, to create and assign Limited Common Elements within the Property.

5.6. **Designation of Building LCE.** All Buildings in which Attached Units are located are hereby designated as Limited Common Element assigned to all Attached Units (the "**Building LCE**"). Building LCE is assigned to the Attached Units to permit the Association to separately allocate and charge Owners of Attached Units for the costs of: (i) maintaining, repairing, and replacing, as necessary the Buildings which include Attached Units; (ii) utilities billed to the Association and attributable to the Buildings which include Attached Units; (iii) services billed to the Association and serving Attached Units within a particular Building; (iv)

insurance premiums and deductibles attributable to the Buildings which include Attached Units; and (v) contributions to the reserve funds attributable to the Buildings which include Attached Units. The costs associated with Building LCE will be levied as Building LCE Assessments and allocated to each Attached Unit based on such Attached Unit's Building LCE Allocation (defined in *Section 5.9* below).

5.7. **Common Interest Allocation.** The percentage of interest in the Common Elements (the "**Common Interest Allocation**") allocated to each Unit is set forth on Exhibit "B". As set forth on Exhibit "B", the Common Interest Allocation allocated to each Unit is equal to 1 divided by the total number of Units in the Regime. In the event additional Units are added to the Regime, whether through the conversion of General Common Elements, subdivision of Units, combination of Units, or the addition of land, the Common Interest Allocation will be reallocated among the Units using the same formula. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any modification of Units or any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment is Recorded.

5.8. **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 the Unit.

5.9. **Building LCE Allocation.** The percentage of liability for Building LCE Assessments ("**Building LCE Allocation**") is set forth on Exhibit "B", and is assigned to each Attached Unit in accordance with a ratio of 1 to the total number of Attached Units. The same formula is to be used in the event the allocated interests are reallocated as a result of any increase or decrease in the number of Attached Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Attached Units, the reallocation will be effective on the date such amendment is recorded in the Official Public Records of Travis County, Texas.

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

ARTICLE 6 **COVENANT FOR ASSESSMENTS**

6.1. **Purpose of Assessments.** The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the

Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

6.2. **Personal Obligation.** An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which 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.

6.3. **Types of Assessments.** There are six (6) types of Assessments: Regular, Special, Utility, Individual, Building LCE and Deficiency Assessments. Additionally, each Unit is subject to the terms and provisions of the Master Declaration, and accordingly, each Owner will be a mandatory member of the homeowners association established pursuant to the Master Declaration (the "**Master Association**") and be required to pay assessments to the Master Association in accordance with the Master Declaration. Pursuant to the Master Declaration, each Unit has been allocated one half (1/2) vote to be cast on all matters to be voted on by the Members of the Master Association and one half (1/2) Assessment Unit (as defined in the Master Plan Documents).

6.4. **Regular Assessments.**

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

- (i) Maintenance, repair, and replacement, as necessary, of the Common Elements, and Improvements, equipment, signage, and property owned by the Association.
- (ii) Annual maintenance examination and report, as required by *Article 9*.
- (iii) Utilities billed to the Association.
- (iv) Services obtained by the Association and available to all Units.
- (v) Taxes on property owned by the Association and the Association's income taxes.

- (vi) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (vii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (viii) Insurance premiums and deductibles (*See Article 15*).
- (ix) Contributions to the reserve funds.
- (x) 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.

6.4.2. Annual Budget-Regular. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association, for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to 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.

6.4.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Unit will be liable for 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, Owners will continue to pay the Regular Assessment as last determined.

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

6.5. Special Assessments. In addition to Regular Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments, the Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes

must be approved by at least a majority of the votes in the Association: (i) acquisition of real property; and (ii) construction of additional Improvements within the Regime (excluding the repair or replacement of existing Improvements and any Improvements constructed by Declarant).

6.6. Utility Assessments. This Section applies to utilities serving the individual Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to Regular Assessments, the Board may levy a Utility Assessment against each Unit. If the Units are submetered for consumption of a utility, the Utility Assessment will be based on the submeter reading. If the Units are not submetered, the Board may allocate the Association's utility charges among the Units by any conventional method for similar types of properties. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The Board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all Units.

6.7. Building LCE Assessments.

6.7.1. Purpose of Building LCE Assessments. Building LCE Assessments are used for:

- (i) Maintenance, repair, and replacement, as necessary, of Buildings which include Attached Units.
- (ii) Utilities billed to the Association and attributable to Buildings which include Attached Units and not otherwise allocable to an Attached Unit within such Building.
- (iii) Services billed to the Association and serving only the Attached Units and not otherwise allocable to a particular Attached Unit.
- (iv) Insurance premiums and deductibles attributable to Buildings which include Attached Units.
- (v) Contributions to the reserve funds attributable to Buildings which include Attached Units.

6.7.2. Annual Budget-Building LCE Assessments. Each fiscal year, the Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association pursuant to *Section 6.7.1* above. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a

projection for uncollected receivables. The Board will make the budget or a summary of the budget available to the Owner of each Attached Unit, although failure to receive a budget or budget summary will not affect an Owner's liability for Building LCE Assessments.

6.7.3. Basis of Building LCE Assessments. Building LCE Assessments will be based on the annual budget for a particular Building, minus estimated income from sources other than Building LCE Assessments. Each Attached Unit will be liable for Building LCE Assessments based on such Attached Unit's Building LCE Allocation. If the Board does not approve an annual budget or fails to determine new Building LCE Assessments for any year, or delays in doing so, Owners of Attached Units will continue to pay the applicable Building LCE Assessments as last determined.

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

Owners of Attached Units will pay Building LCE Assessments in addition to the Regular Assessments, Special Assessments, Individual Assessments, Utility Assessments and Deficiency Assessments. The Building LCE Assessments are for, *inter alia*, the repair, replacement, and maintenance (including the reserves) of particular Buildings which include Attached Units.

6.8. Individual Assessments. In addition to Regular Assessments, Special Assessments, Utility Assessments, Building LCE Assessments and Deficiency 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.

6.9. 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.

6.10. **Working Capital Fund.** Upon the transfer of a Unit, (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid by the transferee of the Unit to the Association for the Association's working capital fund. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Unit. Each working capital contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay operational expenses of the Association until the Declarant Control Period terminates.

6.11. **Due Date.** Regular Assessments and Building LCE 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, Deficiency and Utility 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, Deficiency or Utility Assessment is given.

6.12. **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.

6.12.1. **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.

6.12.2. **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.

6.12.3. **Replacement & Repair Reserves-Building LCE.** The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Building LCE.

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

6.14. **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.

6.15. **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.

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

ARTICLE 7

ASSESSMENT LIEN

7.1. **Assessment Lien.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay

Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments.

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

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

Yes, the HOA *can* foreclose!
**If you fail to pay Assessments to the Association, you may lose title to your Unit
if the Association forecloses its assessment lien against your Unit.**

7.4. **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. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

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

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

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

ARTICLE 8

EFFECT OF NONPAYMENT OF ASSESSMENTS

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

8.1. **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.

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

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

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