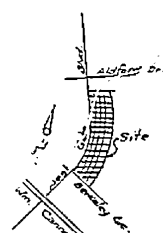
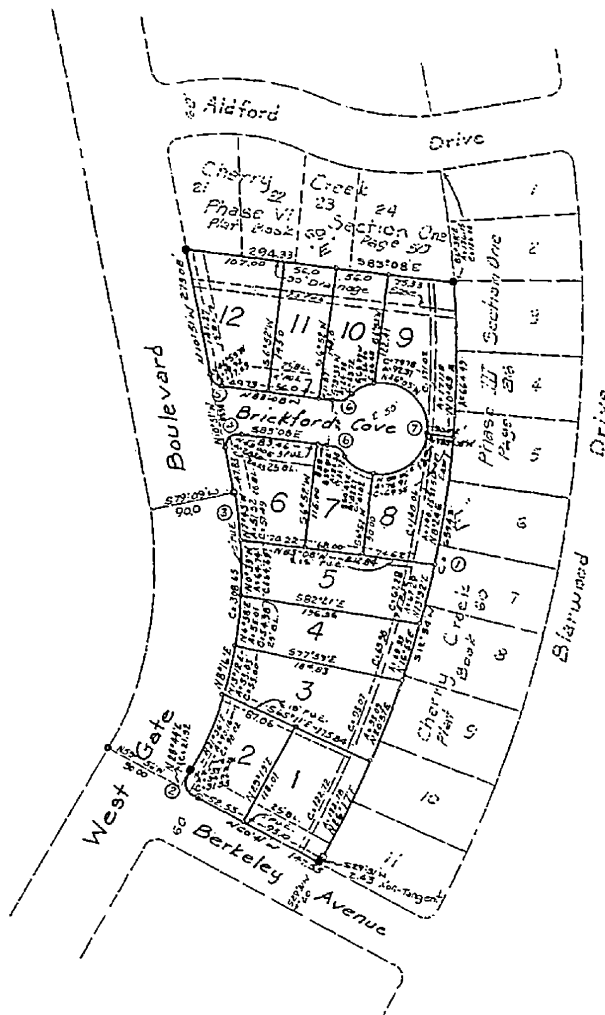


# CHERRY CREEK

## PHASE VI

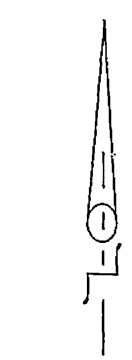
## SECTION FIVE



Location Map  
No Scale

CURVE DATA:

|   | 1       | 2      | 3      |
|---|---------|--------|--------|
| I | 39°04'  | 88°05' | 40°55' |
| R | 1159.56 | 22.68  | 471.04 |
| T | 411.38  | 21.93  | 175.72 |
| A | 790.63  | 34.86  | 336.38 |
| C | 775.41  | 31.53  | 329.28 |
|   |         |        |        |
|   | 4       | 5      | 6      |
| I | 107°43' | 72°17' | 46°34' |
| R | 15.00   | 15.00  | 30.00  |
| T | 20.54   | 10.95  | 12.91  |
| A | 28.20   | 18.92  | 24.38  |
| C | 24.23   | 17.69  | 23.72  |
|   |         |        |        |
|   | 7       |        |        |
| I | 273°08' |        |        |
| R | 50.00   |        |        |
| T |         |        |        |
| A | 238.35  |        |        |
| C |         |        |        |



Legend

- Scale: 1" = 100'
- Iron Stake found
  - Iron Stake set
  - Conc. Monument Set
  - P.U.E. Public Utility Easement
  - BL. Building Line

STATE OF TEXAS:  
COUNTY OF TRAVIS:

KNOW ALL MEN BY THESE PRESENTS: THAT; N.P.C. REALTY CO. HAVING ITS HOME OFFICE IN AUSTIN, TEXAS, AND ACTING BY AND THROUGH JOHN REYNOLDS, ATTORNEY-IN-FACT, FOR THE OWNERS OF THAT CERTAIN 3.189 ACRES OF LAND OUT OF THE THEO. BISSEL LEAGUE, SITUATED IN TRAVIS COUNTY, TEXAS, CONVEYED BY DEED IN VOLUME 5371, PAGE 748, OF THE TRAVIS COUNTY, TEXAS, DEED RECORDS, DOES HEREBY SUB-DIVIDE SAID 3.189 ACRES OF LAND TO BE KNOWN AS "CHERRY CREEK PHASE VI SECTION FIVE" AND DO HEREBY DEDICATE TO THE PUBLIC THE STREETS AND EASEMENTS SHOWN.

WITNESS MY HAND THIS THE 23<sup>rd</sup> DAY OF AUGUST, 1978, A.D.  
  
 JOHN REYNOLDS  
 ATTORNEY-IN-FACT

STATE OF TEXAS:  
COUNTY OF TRAVIS:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR TRAVIS COUNTY, TEXAS, ON THIS DAY PERSONALLY APPEARED JOHN REYNOLDS, ATTORNEY-IN-FACT, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT OF WRITING AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY HEREIN STATED.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE 23<sup>rd</sup> DAY OF AUGUST, 1978, A.D.  
  
 Marjorie L. Mackey  
 NOTARY PUBLIC AND FOR TRAVIS COUNTY, TEXAS

APPROVED FOR ACCEPTANCE:  
SEPTEMBER 5, 1978  
 DATE  
 RICHARD R. LILLIE, DIRECTOR OF PLANNING

ACCEPTED AND AUTHORIZED FOR RECORD BY THE PLANNING COMMISSION; CITY OF AUSTIN, TEXAS, THIS THE 5<sup>TH</sup> DAY OF SEPTEMBER, 1978.  
  
 MARY E. SCHECHTER  
 SECRETARY  
  
 MIGUEL A. GUERRERO  
 CHAIRMAN

FILED FOR RECORD AT 12:50 O'CLOCK P. M. THIS THE 8 DAY OF Sept, 1978, A.D.  
  
 MIKE KILGORE  
 DEPUTY  
  
 DORIS SHROPSHIRE  
 CLERK, COUNTY COURT,  
 TRAVIS CO., TEXAS

STATE OF TEXAS:  
COUNTY OF TRAVIS:

I, DORIS SHROPSHIRE, CLERK OF THE COUNTY COURT, WITHIN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 8 DAY OF Sept, 1978, A.D. AT 12:50 O'CLOCK P. M. AND DULY RECORDED ON THE 8 DAY OF Sept, 1978, A.D., AT 11:20 O'CLOCK P. M. IN PLAT RECORDS OF SAID COUNTY AND STATE IN PLAT BOOK 77, PAGE 779.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT OF SAID COUNTY, THE DATE LAST WRITTEN ABOVE.  
  
 MIKE KILGORE  
 DEPUTY  
  
 DORIS SHROPSHIRE, CLERK, COUNTY COURT,  
 TRAVIS CO., TEXAS

I, THOMAS J. DODD, AM AUTHORIZED UNDER THE LAW OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF SURVEYING AND HEREBY CERTIFY THAT THIS PLAT COMPLIES WITH CHAPTER 41-27 OF THE AUSTIN CITY CODE; IS TRUE AND CORRECT TO THE BEST OF MY ABILITY, AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

SURVEYED BY:  
  
 THOMAS J. DODD  
 DODD SURVEYING COMPANY  
 ENGINEERING BY:  
  
 FREDDIE E. DIPPEL  
 CARLSON AND DIPPEL, INC.

**SIDEWALK RESTRICTION:**  
 SIDEWALKS SHALL BE INSTALLED ON THE EAST SIDE OF WEST GATE BLVD., THE NORTH SIDE OF Berkley Ave.. SUCH SIDEWALKS SHALL BE COMPLETED PRIOR TO ACCEPTANCE OF ANY TYPE I & TYPE II DRIVEWAY APPROACH AND/OR CERTIFICATE OF OCCUPANCY. SIDEWALKS WHICH HAVE NOT BEEN INSTALLED WITHIN TWO YEARS FROM THE DATE OF ACCEPTANCE FOR MAINTENANCE OF THE STREETS, MAY UPON APPROVAL OF THE CITY COUNCIL, BE CONSTRUCTED BY THE CITY OF AUSTIN AND ASSESSMENT SHALL BE MADE AGAINST THE AFFECTED PROPERTIES, FOR ALL ENGINEERING, ADMINISTRATION, AND CONSTRUCTION COSTS.

**FLOOD PLAIN NOTE:**  
 THE 100 YEAR FLOOD PLAIN WILL BE CONTAINED WITHIN THE EASEMENTS AS SHOWN HEREON.

Prepared in the Office of:

Ishmael Law Firm, P.C.  
3009 N. Lamar Blvd.  
Austin, Texas 78705

**DECLARATION OF CONDOMINIUM REGIME FOR THE  
6711 WEST GATE BOULEVARD CONDOMINIUMS**

STATE OF TEXAS            §  
COUNTY OF TRAVIS       §

**Preamble**

This Declaration is made on the 22nd day of December, 2017, in Austin, Texas, by **Christopher Burney** (the "Declarant"), whose mailing address is **7500 Lenape Trail, Austin, Texas 78736**.

**Recitals**

1. Declarant is the owner of all of the real property, including the land; all improvements and structures on the property; and all easements, rights, and appurtenances belonging to the property that is located at **6711 West Gate Boulevard, Austin, Texas 78745** in **Travis County** (the "Property"), more particularly described in Exhibit A, which is attached and incorporated by reference.
2. Declarant submits the Property to a condominium regime established by the Texas Uniform Condominium Act (TUCA), which is codified in Chapter 82 of the Texas Property Code.
3. The Property constitutes a condominium project (the "Project") within the meaning of TUCA. The formal name of the Project is **"6711 West Gate Boulevard Condominiums."**
4. Declarant intends and desires to establish by this Declaration a plan of ownership for the Project. The plan consists of individual ownership of residential condominium units (the "Units"), and an interest in the real property on which the Units are located. The Project shall be divided into no more than two (2) Units.
5. The Declarant intends to impose on the Project mutually beneficial restrictions for the benefit of all Units and the persons who own those Units (the "Owners"). The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Project by means of an organization of Owners (herein the "Association"), as more particularly set forth herein. The formal name of the Association is the **"6711 West Gate Boulevard Condominiums Owners' Association."**

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

#### **Article 1 – Definitions**

- 1.01 **Association.** *Association* means the **6711 West Gate Boulevard Condominiums Owners' Association**, a non-profit corporation organized under the Texas Business Organizations Code for the management of the Project, the membership of which consists of all of the Owners in the Project.
- 1.02 **Board.** *Board* means the Board of Members or the Board of Directors, whichever is applicable, of the Association.
- 1.03 **Bylaws.** *Bylaws* mean the Bylaws of the Association and amendments to the Bylaws that are or shall be adopted by the Board.
- 1.04 **Certificate.** *Certificate* means the Certificate of Formation of the Association that is or shall be filed in the Office of the Secretary of State of the State of Texas.
- 1.05 **Common Elements.** *Common Elements* mean all elements of the Project except the separately owned Units, and includes both General and Limited Common Elements.
- 1.06 **Common Expenses.** *Common Expenses* means and includes:
  - (1) all reasonable expenses incurred by the Association for promoting the health, safety, welfare and recreation of the Owners of the Units and in particular for the administration and management, ownership, maintenance, operation, repair, replacement, or improvement of and addition to agreed upon Common Elements (including unpaid Special Assessments and amounts assessed to maintain a reserve for replacement fund and to cover costs incurred by the Association to participate in any condemnation suit);
  - (2) if the units are attached, all reasonable expenses associated with the repair, maintenance and upkeep, or replacement of the roof, foundation, structural walls, exterior walls, bearing walls and columns, common wall and structural components of the Condominiums, if such work affects both Units, and is determined necessary by a third

- party expert, unless otherwise agreed by the Unit Owners;
- (3) if the units are attached, all reasonable expenses arising from or associated with the repair, maintenance and upkeep of any plumbing, structural or electrical components located in the common wall between the Units, which shall exclude sheetrock and finishes on the interior of a Unit, if such work affects both Units and a third party expert determines to be necessary, unless otherwise agreed by the Unit Owners;
  - (4) all reasonable expenses arising from or associated with any utility service installations that are located on the Property and serve both Units;
  - (5) all reasonable expenses arising from the master insurance policy as described in 3.08 below; and
  - (6) all other reasonable expenses declared to be Common Expenses by provisions of this Declaration or by the other Governing Instruments.
- 1.07 **Condominium.** *Condominium* means the **6711 West Gate Boulevard Condominiums**.
- 1.08 **Declarant.** *Declarant* means owner of the Project and its successors and assigns.
- 1.09 **Declarant Control Period.** *Declarant Control Period* shall be defined as either (i) one hundred twenty (120) days after Declarant has conveyed fifty (50) percent of the Units in the Project to Owners other than Declarant; or (ii) until Declarant conveys both Units, whichever occurs first.
- 1.10 **Declaration.** *Declaration* means this Declaration of Condominium Regime for the **6711 West Gate Boulevard Condominiums** and all that it contains.
- 1.11 **General Common Elements.** *General Common Elements* mean all the Common Elements except the Limited Common Elements, including the land on which the Units are erected.
- 1.12 **Governing Instruments.** *Governing Instruments* mean the Declaration, the Certificate of Formation, Bylaws of the Association and Rules of the Association.
- 1.13 **Limited Common Elements.** *Limited Common Elements* mean the Common Elements allocated for the exclusive use of one or more but less than all of the Units.
- 1.14 **Majority.** *Majority* means fifty-one percent (51%).
- 1.15 **Manager.** *Manager* means the person or corporation, if any, appointed by the Board to manage the Project.
- 1.16 **Owner(s).** *Owner(s)* means any person that owns a Unit within the Project.
- 1.17 **Person.** *Person* means an individual, firm, corporation, partnership, association, trust, other legal entity, or any combination of persons or entities.
- 1.18 **Project.** *Project* means the entire parcel or the Property described in **Exhibit A**, including the land, all improvements and structures on the Property, and all easements, rights, and appurtenances belonging to the Property that are divided or are to be divided into Units to be owned and operated as a Condominium. The Project shall be divided into no more than two (2) Units.
- 1.19 **Rules.** *Rules* mean and refer to the Rules and Regulations for the Project adopted by the Board pursuant to this Declaration.
- 1.20 **Unit.** *Unit* shall mean an individual condominium unit, as described below in Section 2.02. Each Unit shall consist of all improvements within the allocated areas, which are shown on the Plat of the Property attached hereto as **Exhibit D**. The actual physical boundaries of a Unit shall be conclusively presumed to be its proper boundaries, regardless of settling, rising or lateral movement of the Building in which such Unit is located and regardless of variances between boundaries shown on the Condominium Plat and the actual boundaries of such Building.

## Article 2 – The Property

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

**2.02 Exclusive Ownership and Possession; Description of Unit.** Each Owner shall be entitled to the exclusive ownership and possession of the Owner's Unit, as further set forth in **Exhibit D**. Any Unit may be jointly or commonly owned by more than one Person. No Unit may be subdivided. The boundaries of each Unit shall be and are the exterior surfaces of the perimeter walls, bearing walls and columns, exterior doors and windows, foundation and roof. The underlying foundation, exterior halls, stairways, entrances and exits, shutters, awnings, doorsteps, porches, balconies, patios, decks, terraces, garages, carports, exterior doors, and exterior windows are specifically made a part of each Unit. Any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that is partially within and partially outside the designated boundaries of a Unit, but serves that Unit is specifically made a part of that Unit. Each Unit shall additionally include all interior floors, and interior walls and ceilings. All lath, furring, sheetrock, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of each Unit. An Owner shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows, and doors bounding the Owner's Unit, and any other changes allowed in this Declaration or the Rules and Regulations.

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

(a) If one does not exist, any Unit Owner may erect a fence on the dividing line between the Limited Common Elements, or within their Limited Common Elements, as set forth in **Exhibit D**. Each Unit Owner must agree on the style and/or type of fence to be erected, and such agreement must not be unreasonably withheld. Unless otherwise agreed by the Unit Owners, any style or type of fence currently existing on the Property or in the neighborhood shall be considered reasonable. If the Unit Owners agree to erect a fence on a dividing line of the Limited Common Elements, the costs and expenses of the construction of such a fence shall be borne equally by each Unit. If the Unit Owners do not agree to erect a fence, or the fence is not located on a dividing line between the Limited Common Elements, the Unit Owner desiring to erect the fence shall bear the costs and expenses of the construction of such a fence, however, the Unit Owner erecting the fence shall have the exclusive right to construct the fence so that he or she receives the benefit of the construction and has the most preferable side of the fence facing his or her Unit.

(b) A Unit Owner shall be allowed reasonable access to the other Unit's Limited Common Elements for any purpose reasonably related to a remodel, alteration or addition to a

- Unit or Limited Common Element, including but not limited to access for permitting, surveying, inspections, access to utilities, and /or the drafting of plans.
- (c) If not present at the time of the initial purchase of a Unit from the Declarant, neither Unit Owner shall build, erect or install a pool or hot tub without the express written unanimous consent of all the other Unit Owners.

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

**Unit A: 50%**

**Unit B: 50%**

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

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

**2.06 Exclusive Use of Limited Common Elements.** Each Owner shall be entitled to the exclusive use of the Common Elements designated as Limited Common Elements and assigned to his or her Unit, as further set forth in **Exhibits B and E**. For example, the Owner(s) of Unit A have exclusive use of the Limited Common Elements assigned to Unit A, as further set forth in **Exhibits B and E**, and the Owner(s) of Unit B have exclusive use of the Limited Common Elements assigned to Unit B, as further set forth in **Exhibits B and E**.

**2.07 Partition of Common Elements.** The Common Elements, both General and Limited, shall

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

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

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

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

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

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

### **Article 3 – Unit Owners' Association**

**3.01 Association.** The Association, organized as a nonprofit corporation under the Texas Business Organizations Code, operating under the name **6711 West Gate Boulevard Condominiums Owners' Association**, is charged with the duties and invested with the powers prescribed by law and set forth in this Declaration and in the Association's Certificate of Formation

and Bylaws.

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

**3.03 Voting Rights.** Voting in the Association shall be on a per Unit basis. Each Unit in the Condominium is entitled to an equal number of votes, and each Unit Owner within a unit is entitled to an equal number of votes. In the situation where each Unit is owned by an individual, each Unit shall be entitled to one vote. The votes cast by a Majority of the Unit Owners shall control. However, if any Unit is owned by more than one owner, the Unit with the highest number of owners shall be entitled to one vote for each owner, and the other Unit shall be entitled to an equal number of votes, regardless of the number of owners. For example, if Unit A is owned by one person, and Unit B is owned by three people, then each Unit shall be entitled to three votes.

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

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

(a) The power to establish, fix, and levy assessments against Owners in accordance with the procedures and subject to the limitations set forth in this Declaration and the Governing Instruments.

(b) The right to discipline Owners for violation of any of the provisions of the Governing Instruments or Association Rules by suspension of the violator's voting rights or privileges for use of the Common Elements or by imposition of monetary penalties, subject to the following limitations:

i) The accused Owner must be given written notice of the violation or property damage, stating the amount of any proposed fine or damage charge and that the Owner may request a written hearing before the Board within thirty (30) days of the notice.

ii) The accused Owner must be given a reasonable time, by a date specified in the notice, to cure the violation and avoid the fine, unless the Owner was given notice and reasonable opportunity to cure a similar violation within the preceding twelve (12) months.

- iii) The accused Owner must be given written notice of a levied fine or damage charge within thirty (30) days after the date of levy.
- iv) Any suspension of privileges or imposition of monetary penalties shall be reasonably related to the Owner's violation.

**3.06 Board of Members and Officers of the Association.** The affairs of the Association shall be managed by a Board of Members. If the Board of Members elects to have a Board of Directors, the Unit Owners shall elect a board of at least three members who need not be Unit Owners. Provisions regulating the number, term, qualifications, manner of election, and conduct and meetings of the members of the Board of Members shall be set forth in the Bylaws of the Association. The Board of Members shall appoint officers, who shall include a President, Secretary/Treasurer, and such other officers as the Board may deem proper. Provisions regulating the numbers, term, qualifications, manner of election, powers and duties of the officers shall be set forth in the Bylaws of the Association.

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

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

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

accordance with Section 82.111 of the Uniform Condominium Act.

- iv) The services of personnel that the Board shall determine to be necessary or proper for the operation and maintenance of the Common Elements.
- v) Legal and accounting services necessary or proper for the operation of the Association or Common Elements or the enforcement of this Declaration or Governing Instruments.

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

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

**3.09 Property Taxes.** Each Unit Owner understands that the taxing authorities may have already made appraisals and/or sent property tax bills for the year in which this Declaration is recorded, and as such there may be a delay in time prior to each Unit receiving a separate appraisal and/or property tax bill. Therefore, each Unit Owner shall be responsible for the payment of any and all property taxes that accrue for his or her Unit that are billed to the Project, the Association, the Declarant or another Unit Owner. If it is not clear from the taxing authority the amount of each Unit's obligation, each Unit's obligation shall be the percentages as set forth in **Exhibit B**. If any Unit Owner fails to make timely payment of any property taxes for which he or she is obligated, that Unit Owner additionally has the responsibility and obligation to reimburse any third party, the Association or any other Owner who pays property taxes assessed to a Unit for a time period in which such Unit Owner owned the Unit, including but not limited to any penalties, late fees and/or interest assessed by a taxing authority.

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

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

**3.12 Limitations on Powers of Board.** Notwithstanding the powers set forth in Section 3.09 of this Declaration, the Board shall be prohibited from taking any of the following actions except

with the approval of a Majority of the voting power of the Association residing in the Owners:

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

#### **Article 4 – Assessments**

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

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

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

- (a) Assessments, liens, and charges in favor of the State of Texas and any political subdivisions of the State of Texas for taxes past due and unpaid on the Unit; and
- (b) Amounts due under mortgage instruments duly recorded.

**4.04 Lien and Foreclosure for Delinquent Assessments.** The Association shall have a lien on each Unit for any delinquent assessments attributable to that Unit. The Association is authorized to enforce the lien through any available remedy, including non-judicial foreclosure pursuant to Texas Property Code Section 51.002. The Owners expressly grant to the Association a power of sale, through a trustee designated in writing by the Association, in connection with any such liens. The lien for the assessments provided for herein shall be subordinate to the lien of any prior

recorded mortgage or mortgages granted or created by the Owner of any Condominium Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Unit.

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

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

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

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

the Special Assessment shall be due and payable not less than sixty (60) days from the date approved by the Board.

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

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

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

### **Article 5 – Restrictions and Covenants**

**5.01 General Restrictions on Use.** The right of an Owner and the Owner's guest to occupy or use the Owner's Unit or to use the Limited Common Elements assigned to that Unit is subject to the following restrictions, in addition to those in the Rules and Regulations:

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

the street or other Units, including but not limited to alterations necessary for repairs or updating, shall be completed in a reasonable manner so that such alterations are substantially similar to the existing Unit or Limited Common Elements, except by the written consent of the Board and except as otherwise specifically allowed in this Declaration, with both Unit Owners understanding that reasonable alterations from the existing Unit and Limited Common Elements will likely be necessary when replacing or repairing trees, fencing, and other portions of the Unit or Limited Common Elements.

- (g) No Unit shall be allowed to substantially change the exterior paint color of the Units, without the written consent of the other Unit Owner.

#### **5.02 Maintenance of Unit and Common Elements.**

- (a) Each Unit Owner shall, at the Owner's sole cost and expense, reasonably maintain, repair and replace his or her Unit and its associated Limited Common Element so as to keep it in good condition and repair, including, but not limited to, all fixtures, appliances, equipment, pipes, lines, wires, computer cables, cable wires, and conduits used in the production, heating, cooling and/or transmission of air, gas, water, electricity, communications, waste, water, sewage, and audio and video signals that serve only or are a part of the Unit Owner's Unit, and all interior and exterior walls, the roof, foundation and structural components of the Unit in a clean, safe and good condition. Without limitation on the generality of the foregoing, a Unit Owner shall reasonably maintain and keep in good repair any fire or smoke alarms or security system, the electrical and plumbing lines, the air conditioning compressor, fans, ductwork, heating unit and cooling coils, utilized in and for the Unit, as well as other fixtures appurtenant to such Unit which are situated within or installed into or on the Unit or Limited Common Element such as an air conditioning compressor, together with all pipes, wiring, ducts and other equipment appurtenant thereto.
- (b) A Unit Owner shall be obligated to reasonably repair and replace promptly any broken or cracked exterior windows, doors, or glass forming a boundary of such Unit, subject to the other Unit Owner's right to control the exterior finish and color.
- (c) Pipe leaks which are due to breaks, faulty connections, freeze damage, overflows, nails, or protrusions into pipes or appliances which exclusively serve the Unit Owner's Unit and which are the maintenance responsibility of the Unit Owner shall be repaired by the Unit Owner, unless such damage was caused by another Unit Owner or an agent of such Unit Owner and then the maintenance responsibility shall be the responsible Unit Owner. Such Unit Owner shall be responsible for any reasonable damages and reasonable cost of repairs to other Units or Common Elements due to such leaks.
- (d) Each Owner shall be reasonably responsible for eliminating any insects, termites, vermin, rodents, squirrels, birds or other animals (excluding pets) from his or her Unit, and for repairing any damage caused by such insects or animals.
- (e) Notwithstanding anything to the contrary contained in herein, a Unit Owner when exercising his right and responsibility of repair, maintenance, replacement, or remodeling shall use reasonable efforts to substantially maintain the exterior appearance of the Condominium, Unit, or a Limited Common Element without the consent of the Board or other Unit Owner as required herein. Each Owner shall also reasonably maintain, repair and replace the Limited Common Elements associated

with his or her Unit, and those portions of the Common Elements subject to an exclusive easement appurtenant to his or her Unit.

- (f) The Association shall reasonably maintain, repair and replace all portions of any General Common Elements, and items or improvements defined herein as Common Expenses, unless otherwise determined by the Board.
- (g) In such cases where utilities, equipment, sewer lines, water lines, or other utility infrastructure passes through a Unit, or a Unit's Limited Common Elements, but serves another Unit, each Owner shall allow access, not to be unreasonably withheld, in order to allow the other Owner access to utilities, equipment, sewer lines, water lines, or other utility infrastructure, in order that such utility infrastructure can be repaired and/or serviced. When such access is granted, the other Unit Owner shall use reasonable efforts to not substantially alter the Unit or Unit's Limited Common Elements to which access is granted.

**5.03 Unit Owner's Failure to Maintain.** In the event a Unit Owner fails to reasonably maintain such Unit Owner's Unit or the Limited Common Elements allocated to his or her Unit in accordance with Section 5.02 above or fails to reasonably repair any damage for which the Unit Owner is responsible under Section 5.04 below, and such maintenance and/or repair is reasonably necessary to preserve another Unit, the other Unit Owner may enter any Unit or Limited Common Element as may be reasonably necessary after giving at least three (3) days prior written notice to the Unit Owner and occupant of the Unit, to perform such maintenance, repair or replacement, and the expense incurred by that Unit Owner in connection with such maintenance and repair work conducted thereon shall be a personal obligation of the Unit Owner of the affected Unit, shall constitute a lien upon such Unit, and shall be enforced in the same manner and to the same extent as provided under Texas Property Code Section 82.113.

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

**5.05 Exemption.** Declarant shall be exempt from the restrictions of Section 5.01 of this Declaration to the extent reasonably necessary for completion of construction, sales, or additions to the Project. Such exemption includes, but is not limited to, maintaining Units as model homes, placing advertising signs on Project property, and generally making use of the Project lot and Common Elements as is reasonable necessary to carry on construction and sales activities.

**5.06 Party Wall/Party Fence.** "*Party Wall*" shall mean and refer to the dividing wall between each adjoining dwelling unit. Any matters concerning a Party Wall which are not covered by the terms of this Agreement shall be governed by the general rules of law regarding party walls. "*Party Fence*" shall mean and refer to the exterior fences separating the two units. Any matters concerning Party Fences which are not covered by the terms of this Agreement shall be governed by the general rules of law concerning party fences.

- a. The cost of maintaining each Party Wall and each Party Fence shall be borne equally by the owners of the units on either side of said Party Wall or Party Fence.
- b. In the event of damage or destruction to any Party Wall, Party Fence, shared

monolithic slab, or shared roof if the roofline is joined ("Common Structure" herein) from any cause, other than the negligence of either party hereto, the owners of the units on either side of said Common Structure shall repair or rebuild said Common Structure. The cost of such repair or rebuilding shall be borne equally by the owners whose units adjoin said Common Structure. Each such owner shall have the right to the full use of said Common Structure so repaired or rebuilt. If either owner's negligence shall cause damage to or destruction of said Common Structure, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other party may have such Common Structure repaired or restored and shall be entitled to have a mechanic's lien on the unit and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable. The party having such Common Structure repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if filed in the Real Property Records of the County where the Property is located, by affidavit declaring under oath the claim of the mechanic's lien.

c. Neither owner shall alter or change a Common Structure in any manner, non-structural interior decoration excepted, and such Common Structures shall remain in the same location as when originally erected. Each adjoining owner to said Common Structure shall have a perpetual easement in that part of the unit of the other on which said Common Structure is located, for the purposes of such Common Structure and any other additional area necessary to repair, replace, and maintain same.

d. Each owner shall keep all exterior walls of his dwelling unit in good condition and repair at his sole cost and expense. No owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e. variance in design, colors, roofing etc.)

e. Each owner shall maintain the roof over his dwelling unit in good condition and in such manner so as not to damage other portion of the building. Each owner shall share equally in the costs to repair or maintain the roof over the Party Wall or Party Fence due to normal wear or physical damage. If a roofline is joined and both roofs must be replaced, replacement will be coordinated between the owners.

f. An owner who, by his negligence, disinterest or willful act causes a Party Wall or roof to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and shall pay all damages resulting from such exposure. The cost of normal and timely weatherproofing and maintenance of the roof shall be in accordance with Paragraph 6.

g. If any monolithic slab repairs are required, the entire monolithic foundation must be involved in the repair process. Owners of both properties must cooperate regarding repairs to the slab. Each party shall share equally in any necessary repair.

h. In the event it shall be necessary for any owner to place this Agreement in the hands of an attorney for the enforcement of any of such owner's rights hereunder or for the recovery of any monies due to such owner hereunder, and if it is necessary to bring suit for the enforcement of such rights or such recovery, the prevailing party in such suit shall recover from the losing party all costs of court and reasonable attorney's fees,

as determined by the court, in addition to any other relief or recovery awarded by the Court.

i. These Party Wall/Party Fence covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded.

j. Enforcement of these covenants shall be by proceeding at law or in equity against any person or persons violating or attempting to violate the same seeking either to restrain violation or to recover damages or both.

### **Article 6 – Insurance**

**6.01 Insurance Requirement.** Commencing upon the first conveyance of any Unit to a Unit Owner other than the Declarant, the Association shall obtain and maintain, as a Common Expense assessment, insurance coverage required pursuant to and in accordance with Section 82.111 of the Uniform Condominium Act and such additional coverage as the Association deems appropriate. As provided in Section 82.111 of the Act, the Association shall maintain “all risk” property damage insurance (or the equivalent that may be available from time to time) covering all of the Building, including all fixtures, other improvements and betterments that are not part of the Units, in an amount equal to the full insurable replacement cost thereof, and shall further maintain commercial general liability insurance for the Common Elements of at least \$1,000,000.00 for bodily injury and property damage from any single occurrence. Each Unit Owner shall be responsible for one-half (1/2) of the deductible under any insurance carried by the Association, and the Unit Owner’s responsibility for the payment of one-half (1/2) of any such deductible in the event of damage or loss shall be a personal obligation of the Unit Owners; shall constitute a lien upon such Unit; and shall be enforced in the same manner and to the same extent as provided under Section 81.113 of the Uniform Condominium Act.

**6.02 Insurance Policies.** Insurance policies obtained and maintained by the Association shall provide:

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

**6.03 Unit Owners’ Insurance.** A Unit Owner shall be responsible for obtaining and maintaining, at such Owner’s sole cost and expense, insurance covering all alterations, betterments and improvements to such Owner’s Unit and all other personal property located therein and not being part of the Common Elements or the Building. Because the individual ownership of each Unit shall include the wallboard, sheetrock, plasterboard, plaster, paneling, tiles, wallpaper, wall coverings, paint or other components of the interior (but not the studs, supports or structural

elements) of the perimeter walls or the interior construction, appliances, fixtures, plumbing and appliances, individual lighting and electrical fixtures, or other separate items of personal property exclusively serving such Unit, any of which may be removed, replaced, disposed of, or otherwise treated without affecting the structural integrity of the Building or other Unit or the ownership, use or enjoyment thereof, each Unit Owner shall be responsible for assuring the insurance obtained by such Unit Owner covers all of the foregoing. Nothing herein shall be deemed or construed as prohibiting a Unit Owner, at such Owner's sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as the Owner may deem necessary or appropriate.

### **Article 7 – Rights to Beneficiaries Under Deeds of Trust**

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

- (a) Should any of the Association's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a beneficiary under a first lien deed of trust to the following:
  - i) To exercise the power of sale, foreclosure, or take title to a Unit pursuant to the remedies provided in the deed of trust.
  - ii) To accept a deed or assignment in lieu of sale or foreclosure in the event of default by a grantor.
  - iii) To interfere with a subsequent sale or lease of a Unit so acquired by the beneficiary.
- (b) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association of any default in the performance by the grantor of any obligation under the Association's Governing Instruments that is not cured within sixty (60) days.
- (c) A beneficiary under a first lien deed of trust is entitled, within ten (10) days, to written notification from the Association of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage;
- (d) A beneficiary under a first lien deed of trust is entitled, within ten (10) days, to written notification from the Association of a lapse, cancellation, or material modification of any insurance policy maintained by the owners' association; and
- (e) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association of any proposed action that requires the consent of a specified percentage of mortgagees.
- (f) Any beneficiary under a first lien deed of trust who obtains title to a Unit pursuant to the remedies provided in the deed of trust will not be liable for such Unit's unpaid assessments that accrue prior to the acquisition of title to the Unit by the beneficiary.
- (g) Unless fifty-one percent (51%) of the beneficiaries under the first deeds of trust (based on one (1) vote for each first deed of trust owned) or Owners other than Declarant give their prior written approval, the Association shall not be entitled to the following:
  - i) By act or omission, to seek to abandon or terminate the Project. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons must be agreed to by mortgagees that represent at least 51 percent of the votes of the unit estates that are subject to mortgages.

- ii) To change the pro rata interest or obligations of any individual Unit for the purpose of:
    - 1. Levying assessments or charges.
    - 2. Allocating distributions of hazard insurance proceeds or condemnation awards.
    - 3. Determining the pro rata share of ownership of each Unit in the common Elements and in the improvements in the Common elements.
  - iii) To partition or subdivide any Unit.
  - iv) By act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause.
  - v) In case of loss to a Unit and/or Common Elements of the Project, to use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute.
  - vi) Enact any amendment of a material adverse nature to mortgagees/beneficiaries unless consented to by mortgagees that represent at least 51 percent of the votes of unit estates that are subject to mortgages.
- (h) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law shall relate only to the individual Units and not to the Project as a whole.
  - (i) No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of a beneficiary under a first lien deed of trust to an Unit pursuant to its deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Elements or portions of the Common Elements.
  - (j) Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. The reserve fund will be funded through the regular monthly assessments rather than by special assessments.

**7.02 Notice of Actions.** The Association will send timely written notice to a beneficiary of a deed of trust of each of the following actions:

- (a) Any condemnation or casualty loss that affects a material portion of the Project.
- (b) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of beneficiaries under a deed of trust.
- (d) Any proposed amendment of a material nature, which shall include, but not necessarily be limited to:
  - (i) reallocation of interests in General Common Elements or Limited Common Elements;
  - (ii) redefinitions of boundaries of Units;
  - (iii) the addition, annexation, or withdrawal of property to or from the Project;
  - (iv) changes to insurance requirements;
  - (v) restoration or repair of the Project in a manner other than specified in the

Declaration; and

- (vi) a change to any provision that expressly benefits mortgage holders or insurers.
- (e) Any proposed termination of the condominium status of the Project.

### **Article 8 – General Provisions**

#### **8.01 Amendment.**

- (a) This Declaration may be amended only at a meeting of the Unit Owners at which the amendment is approved by the holders of at least sixty-seven (67) percent of the ownership interests in the Project.
- (b) An amendment of the Declaration may not alter or destroy a Unit or a Limited Common Element without the consent of the affected Owner and the Owner's first lien mortgagee.
- (c) Any amendment shall be evidenced by a writing that is prepared, signed, and acknowledged by the President or other officer designated by the Board to certify amendments. The amendment shall be effective on filing in the office of the county clerk of Travis County, Texas.
- (d) So long as notice of any proposed amendment is delivered by certified or registered mail, with a "return receipt" requested, implied approval of a proposed amendment shall be assumed when a mortgagee / beneficiary under a first lien deed of trust fails to submit a response to any such written proposal for an amendment within 60 days after receiving proper notice of the proposal.

#### **8.02 Dispute Resolution.**

- (a) Subject to the provisions hereof and the Texas Property Code, in the event of any controversy, dispute, claim, question or disagreement arising out of or relating to this Declaration, or the Governing Instruments of the Association, or the breach thereof, the parties to such controversy, dispute, claim, question or disagreement shall use their best efforts to settle such controversy, dispute, claim, question or disagreement. Towards that end, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution satisfactory to all parties.
- (b) To the extent allowed by the Texas Property Code and applicable Texas law, if the parties to any controversy, dispute, claim, question or disagreement do not reach a negotiated solution within a period of thirty (30) days after the dispute arises, then upon notice by any party to the other parties, such controversy, dispute, claim, question or disagreement shall be submitted to mediation before resort to binding arbitration. The consent or approval of the Association, Board or Owners shall not be required to permit an Owner to require mediation and any subsequent arbitration.
- (c) Any party shall initiate mediation, by notifying the other parties, in writing, of his or her intent to mediate a dispute. Such notification shall set forth the nature of the dispute, the amount involved, if any, and the remedy sought. The date that the written notice is received is the Notification Date. Mediation shall be held not later than thirty (30) days from the Notification Date. A Mediator shall be jointly agreed upon

between the parties, within five (5) days of the Notification Date. If the parties are unable to agree upon a Mediator, then each party shall appoint a Mediator, and those Mediators will select a Mediator who shall mediate the dispute. The fees of the Mediator and all costs of Mediation shall be shared equally by the parties.

- (d) If the parties are unable to resolve all of their disputes through mediation, then any and all remaining disputes shall immediately be submitted to arbitration. The parties shall proceed with arbitration under the rules and guidelines set forth by the American Arbitration Association. Any court with competent jurisdiction may enter any judgment resulting from arbitration.
- (e) If the need for arbitration arises, any party shall initiate arbitration, by notifying the other parties, in writing, of his or her intent to arbitrate the dispute. Such notification shall set forth the nature of the dispute, the amount involved, if any, and the remedy sought. The date that the written notice is received by the other party is the Notification Date. Arbitration shall be held not later than thirty (30) days from the Notification Date. An arbitrator shall be jointly agreed upon by the parties, within five (5) days of the Notification Date. If the parties are unable to agree upon an arbitrator, then each party shall appoint an arbitrator, and those arbitrators will select an arbitrator who shall arbitrate the dispute. The arbitration award shall include a determination as to which party or parties should incur all or a portion of the cost of arbitration, and any related fees and expenses.
- (f) Each Mediator and Arbitrator appointed hereunder shall be an unbiased, third party, with no personal interest in the outcome of the dispute.
- (g) Each party shall continue performance of the Governing Instruments pending resolution of the dispute. Nothing herein shall be construed as limiting a party's right to seek injunctive relief to prevent a breach or anticipated breach of the Governing Instruments, pending a resolution of the controversy pursuant to the provisions of this Section.

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

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

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

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

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

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

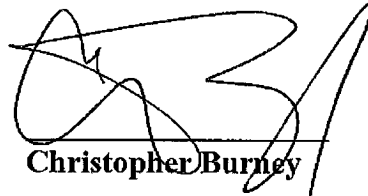
8.09 **Notices.**

- (a) Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally at the appropriate address, or seventy-two (72) hours after deposit in any United States post office box, postage prepaid, certified mail, return receipt requested, addressed to appropriate address.
- (b) Any notice to an owner required under this Declaration shall be addressed to the Owner at the last address for the Owner appearing in the records of the Association or, if there is none, at the address of the Owner's Unit in the Project. Notice to the Association shall be addressed to the address designated by the Association and by written notice to all Owners. Notices to the Manager shall be addressed to the address designated by the Manager, if any. Notices to Declarant shall be addressed to the address for Declarant set forth above.

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

*[Remainder of page intentionally left blank; Signature page follows]*

**Declarant:**



**Christopher Burney**

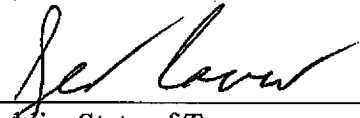
**ACKNOWLEDGMENT**

STATE OF TEXAS

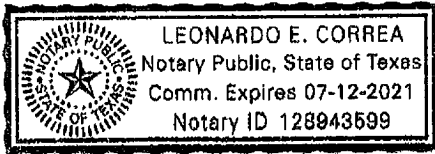
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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 22nd day of December, 2017, by **Christopher Burney** for the purposes and consideration therein expressed.



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



**Exhibit A**

**Lot 5, CHERRY CREEK PHASE VI SECTION FIVE, according to the map or plat thereof, recorded in Volume 77, Page 79, Plat Records, Travis County, Texas;**

**The Real Property or its address is commonly known as 6711 West Gate Boulevard, Austin, Texas 78745.**

## **Exhibit B**

### **Limited Common Elements of Unit A**

The Limited Common Elements of Unit A consist of:

- (a) the exclusive use of the land on which Unit A is located, as set forth in **Exhibit D**; with the exception of any General Common Elements;
- (b) the mail receptacles, yards, gardens, perimeter fences and walks, walkways and sidewalks assigned to Unit A, as set forth in **Exhibit D**; and
- (c) the installations consisting of the equipment and materials making up the central services such as gas, refrigerant, central air conditioning and central heat, water tanks, heaters, pumps and the like, to the extent that such equipment and materials serve Unit A.

### **Limited Common Elements of Unit B**

The Limited Common Elements of Unit B consist of:

- (a) the exclusive use of the land on which Unit B is located, as set forth in **Exhibit D**; with the exception of any General Common Elements;
- (b) the mail receptacles, yards, gardens, perimeter fences and walks, walkways and sidewalks assigned to Unit B, as set forth in **Exhibit D**; and
- (c) the installations consisting of the equipment and materials making up the central services such as gas, refrigerant, central air conditioning and central heat, water tanks, heaters, pumps and the like, to the extent that such equipment and materials serve Unit B.

### **General Common Elements**

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

### **Non-Property Driveway Area**

The area of the driveway outside the Property boundary as set forth in **Exhibit D** shall be treated for maintenance, expense, upkeep, repair and responsibility purposes as though it were a General Common Element.

### **Percentage Interests**

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

**Unit A: 50%**

**Unit B: 50%**

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

**Unit A: 50%**

**Unit B: 50%**

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

**Unit A = 50%**

**Unit B = 50%**

Each unit is the following percentage of the entire project:

**Unit A: 50%**

**Unit B: 50%**

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

**Unit A: 50%**

**Unit B: 50%**

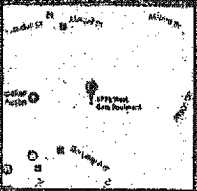
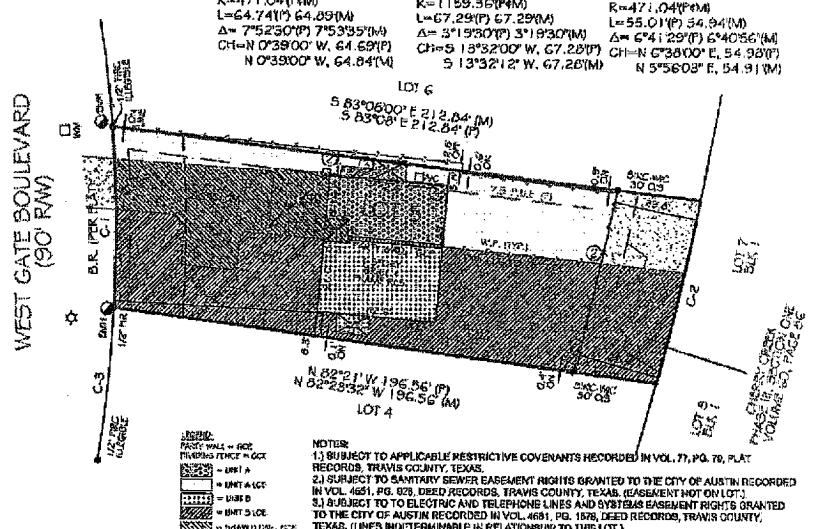
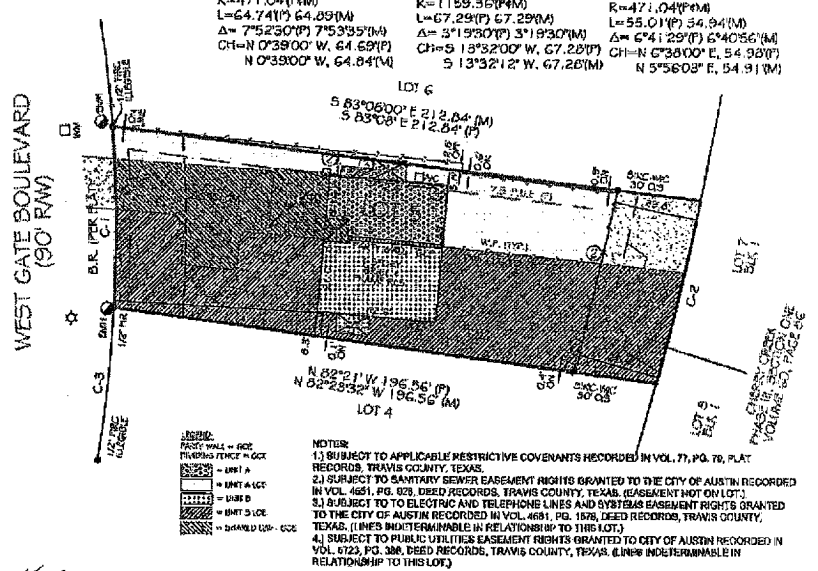
### Exhibit C

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

- **The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception): Volume 77, Page 79, Plat Records, Travis County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, disability, handicap, familial status or national origin.**
- **Rights of Parties in Possession. (Owner Policy)**
- **Rights of tenants, as tenants only, under any and all unrecorded leases or rental agreements. (NOTE: This item can be deleted upon receipt of an Affidavit executed by the seller evidencing there are not any outstanding leases or rental agreements. If the Affidavit reveals unrecorded outstanding leases or rental agreements the exception may be modified to make specific exception to those matters.)**
- **Any visible and apparent easement, either public or private, located on or across the land, the existence of which is not disclosed by the Public Records as herein defined.**
- **Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.**
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose: Public Utility**
  - **Location: 5' along the front property line (Lot 3)**
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose: Drainage**
  - **Location: 22.5' along the rear property line (Lot 3)**
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose: Public Utility**
  - **Location: 7.5' parallel and adjacent to 22.5 drainage easement (Lot 3)**
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose: Public Utility**
  - **Location: 7.5 along the south side property line (Lot 3)**
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose: Public Utility**
  - **Location: 5' along the front property line (Lot 4)**
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**

- **Purpose:**       **Drainage**
- **Location:**   **22.5' along the rear property line (Lot 4)**
  
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose:**       **Public Utility**
  - **Location:**   **7.5' parallel and adjacent to 22.5 drainage easement (Lot 4)**
  
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose:**       **Public Utility**
  - **Location:**   **5' along the front property line (Lot 5)**
  
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose:**       **Drainage**
  - **Location:**   **22.5' along the rear property line (Lot 5)**
  
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose:**       **Public Utility**
  - **Location:**   **7.5' parallel and adjacent to 22.5 drainage easement (Lot 5)**
  
- **Easement as shown on the plat and dedication set out in Schedule A hereof:**
  - **Purpose:**       **Public Utility**
  - **Location:**   **7.5 along the north side property line (Lot 5)**
  
- **Building setback lines as shown on the recorded plat and dedication set out in Schedule A hereof. (Lots 3, 4 and 5)**
  
- **Easement:**
  - **Recorded:**   **Volume 4551, Page 928, Deed Records, Travis County, Texas.**
  - **To:**           **City of Austin**
  - **Purpose:**       **Sanitary Sewer Lines**
  
- **Easement:**
  - **Recorded:**   **Volume 4681, Page 1678, Deed Records, Travis County, Texas.**
  - **To:**           **City of Austin**
  - **Purpose:**       **Electric and Telephone Lines and Systems**
  
- **Easement:**
  - **Recorded:**   **Volume 5723, Page 386, Deed Records, Travis County, Texas.**
  - **To:**           **City of Austin**
  - **Purpose:**       **Public Utilities**

# Exhibit D CONDOMINIUM PLAT/TAX CERTIFICATE

|   |  |  |   |  |   |
|---|--|--|---|--|---|
| PREPARED BY:<br><div style="text-align: center; font-size: 24pt; font-weight: bold; margin: 5px 0;">EXACTA</div> TEXAS SURVEYORS, INC.<br>7416 Canal Drive, Lake Worth, FL 33467<br>LB# 10193731   exacta365.com   p: 866.735.1916   f: 866.744.2882  |  |    |   |  |   |
| PROPERTY ADDRESS: 6711 WEST GATE BOULEVARD, AUSTIN, TEXAS 78745   |  | SURVEY NUMBER: 1709.0144-01  |   |  |   |
| FIELD WORK DATE: 9/2/2017   |  | REVISION DATE(S): (REV1) 10/15/2017 (REV2) 9/19/2017   |   |  |   |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">                 1709.0144-01<br/>                 CONDOMINIUM EXHIBIT<br/>                 TRAVIS COUNTY             </div> <div style="width: 65%; text-align: center;"> <h2 style="margin: 0;">6711 WEST GATE BOULEVARD CONDOMINIUMS</h2> </div> </div> <div style="margin-top: 10px;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>C-1</b><br/>                     R=471.04'(P4M)<br/>                     L=64.741'(P) 64.89'(M)<br/>                     Δ= 7°52'30"(P) 7°53'35"(M)<br/>                     CH= S 13°30'00" W, 64.63'(P)<br/>                     N 0°33'00" W, 64.84'(M)                 </td> <td style="width: 33%; vertical-align: top;"> <b>C-2</b><br/>                     R=1159.36'(P4M)<br/>                     L=67.29'(P) 67.29'(M)<br/>                     Δ= 3°19'30"(P) 3°19'30"(M)<br/>                     CH= S 13°32'00" W, 67.26'(P)<br/>                     S 13°32'12" W, 67.26'(M)                 </td> <td style="width: 33%; vertical-align: top;"> <b>C-3</b><br/>                     R=471.04'(P4M)<br/>                     L=55.01'(P) 54.94'(M)<br/>                     Δ= 6°41'29"(P) 6°40'56"(M)<br/>                     CH= N 6°36'00" E, 54.93'(P)<br/>                     N 5°56'03" E, 54.91'(M)                 </td> </tr> </table> </div> <div style="margin-top: 10px;">  </div> <div style="margin-top: 10px;"> <p><b>NOTES:</b></p> <ol style="list-style-type: none"> <li>1.) SUBJECT TO APPLICABLE RESTRICTIVE COVENANTS RECORDED IN VOL. 77, PG. 76, PLAT RECORDS, TRAVIS COUNTY, TEXAS.</li> <li>2.) SUBJECT TO SANITARY SEWER EASEMENT RIGHTS GRANTED TO THE CITY OF AUSTIN RECORDED IN VOL. 461, PG. 323, DEED RECORDS, TRAVIS COUNTY, TEXAS, (EASEMENT NOT ON LOT 7)</li> <li>3.) SUBJECT TO ELECTRIC AND TELEPHONE LINES AND SYSTEMS EASEMENT RIGHTS GRANTED TO THE CITY OF AUSTIN RECORDED IN VOL. 461, PG. 1878, DEED RECORDS, TRAVIS COUNTY, TEXAS. (LINES INDETERMINABLE IN RELATIONSHIP TO THIS LOT)</li> <li>4.) SUBJECT TO PUBLIC UTILITIES EASEMENT RIGHTS GRANTED TO CITY OF AUSTIN RECORDED IN VOL. 6723, PG. 386, DEED RECORDS, TRAVIS COUNTY, TEXAS, LINES INDETERMINABLE IN RELATIONSHIP TO THIS LOT.</li> </ol> </div> <div style="margin-top: 10px;"> <p><b>LEGEND:</b></p> <ul style="list-style-type: none"> <li>PROCT WALL - REC</li> <li>MURPHY FENCE - REC</li> <li>--- UNIT A</li> <li>--- UNIT A LOT</li> <li>--- UNIT B</li> <li>--- UNIT B LOT</li> <li>--- SHARED USE - REC</li> </ul> </div> <div style="margin-top: 10px;"> <p><b>NOTES:</b></p> <p>I HEREBY CERTIFY THAT THIS PLAT REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND ON THE 7th DAY OF SEPTEMBER, 2017. ALL EXISTING AND RECORDED EASEMENTS, ENCUMBRANCES, EASEMENTS, RIGHTS, AND INTERESTS ARE SHOWN AND THE TITLE COMMITMENT ISSUED BY TITLE RESOURCES GUARANTY COMPANY, OF A/C, 17217500.LP, EFFECTIVE JUNE 15, 2017, ARE SHOWN ON THIS PLAT. THERE ARE NO VISIBLE ENCUMBRANCES OR OVERLAPPING OF IMPROVEMENTS EXCEPT AS SHOWN HEREON. THE PROPERTY HAS ACCESS TO A DEDICATED RIGHT-OF-WAY PER PLAT.</p> <p>THIS CONDOMINIUM PLAT COMPLES WITH THE REQUIREMENTS OF PLATS AND PLANS UNDER RATINGS BE OASB AND OEOSS OF THE TEXAS UNIFORM CONDOMINIUM ACT, CHAPTER 89, TEXAS PROPERTY CODE.</p> <p>REV. CONDO DOCS#17 (9/17/2014)<br/>                 REV. CONDO NAME 10/15/17 (REV2)</p> </div> <div style="margin-top: 10px;"> <p><b>NOTES:</b></p> <p>1. CONCRETE DRIVEWAY OVER 8' P.U.L. 2. WOOD FENCE OVER 7.5' P.U.L. &amp; COVERED CONCRETE OVER 7.5' P.U.L. &amp; SIDE LOT LINE 3. RESIDENCE OVER 7.5' P.U.L.</p> <p>GRAPHIC SCALE<br/>1 inch = 40 feet</p> </div> |  |  | <b>C-1</b><br>R=471.04'(P4M)<br>L=64.741'(P) 64.89'(M)<br>Δ= 7°52'30"(P) 7°53'35"(M)<br>CH= S 13°30'00" W, 64.63'(P)<br>N 0°33'00" W, 64.84'(M) | <b>C-2</b><br>R=1159.36'(P4M)<br>L=67.29'(P) 67.29'(M)<br>Δ= 3°19'30"(P) 3°19'30"(M)<br>CH= S 13°32'00" W, 67.26'(P)<br>S 13°32'12" W, 67.26'(M) | <b>C-3</b><br>R=471.04'(P4M)<br>L=55.01'(P) 54.94'(M)<br>Δ= 6°41'29"(P) 6°40'56"(M)<br>CH= N 6°36'00" E, 54.93'(P)<br>N 5°56'03" E, 54.91'(M) |
| <b>C-1</b><br>R=471.04'(P4M)<br>L=64.741'(P) 64.89'(M)<br>Δ= 7°52'30"(P) 7°53'35"(M)<br>CH= S 13°30'00" W, 64.63'(P)<br>N 0°33'00" W, 64.84'(M)   | <b>C-2</b><br>R=1159.36'(P4M)<br>L=67.29'(P) 67.29'(M)<br>Δ= 3°19'30"(P) 3°19'30"(M)<br>CH= S 13°32'00" W, 67.26'(P)<br>S 13°32'12" W, 67.26'(M) | <b>C-3</b><br>R=471.04'(P4M)<br>L=55.01'(P) 54.94'(M)<br>Δ= 6°41'29"(P) 6°40'56"(M)<br>CH= N 6°36'00" E, 54.93'(P)<br>N 5°56'03" E, 54.91'(M)  |   |  |   |
| <b>FLOOD INFORMATION:</b>   |  | <b>POINTS OF INTEREST</b><br>1. CONCRETE DRIVEWAY OVER 8' P.U.L. 2. WOOD FENCE OVER 7.5' P.U.L. & COVERED CONCRETE OVER 7.5' P.U.L. & SIDE LOT LINE 3. RESIDENCE OVER 7.5' P.U.L.                    |   |  |   |
| CLIENT NUMBER: _____ DATE: 10/15/2017   |  | <br>www.surveystars.com  |   |  |   |
| BUYER: CHRISTOPHER BURNLEY  |  |  |   |  |   |
| SELLER: SOUTH AUSTIN PROPERTIES, LTD, A TEXAS LIMITED PARTNERSHIP   |  |  |   |  |   |
| CERTIFIED TO: CHRISTOPHER SURNLEY, INDEPENDENCE TITLE   |  | EXACTA TEXAS SURVEYORS, INC.<br>7416 Canal Drive, Lake Worth, FL 33467<br>LB# 10193731   P: 866.735.1916   F: 866.744.2882<br>Please Remit Payment To: 2132 85th St   Suite 310, Cleveland, OH 44115 |   |  |   |
| This is page 1 of 2 and is not valid without all pages.   |  |  |   |  |   |

**LEGAL DESCRIPTION:**  
 LOT 5, CHERRY CREEK PHASE VI SECTION FIVE, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 77, PAGE 79, PLAT RECORDS, TRAVIS COUNTY, TEXAS.

**JOB SPECIFIC SURVEYOR NOTES:**  
 THE BEARING REFERENCE OF NORTH 0 DEGREES 39 MINUTES WEST IS BASED ON THE CHORD OF THE WESTERLY BOUNDARY OF LOT 5, OF CHERRY CREEK PHASE VI SECTION FIVE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN VOLUME 77, PAGE 79 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

**GENERAL SURVEYOR NOTES:**

1. Firm Branch #10193731 is physically located at 7416 Canal Drive in Lake Worth, FL 33467.
2. The legal description used to perform this survey was supplied by others. This survey does not determine or imply ownership.
3. Due to varying construction standards, house dimensions are approximate.
4. This survey is exclusively for the use of the parties to whom it is certified. It is not transferable to additional institutions or subsequent owners.
5. This property subject to any and all recorded and unrecorded easements. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants or ownership title evidence.
6. If there is a septic tank, well or drain field on this survey, the location of such items was shown to us by others and are not verified.
7. Any additions or deletions of this 2 page survey document are strictly prohibited. Use of this survey beyond the purpose of title without written authorization of the signing surveyor is prohibited.
8. Any FEMA flood zone data contained on this survey is for informational purposes only. Research to obtain such data was performed at www.fema.gov.
9. Dimensions are in feet and decimals thereof.
10. All pins involved as set are 5/8" or 1/2" diameter, 18" iron rebar, with "EXACTA" cap.
11. This survey only shows improvements found above ground. Underground footings, utilities and encroachments are not located on this survey map.
12. The information contained on this survey has been performed exclusively, and is the sole responsibility, of Exacta Surveyors. Additional logos or references to third party firms are for informational purposes only.
13. Points of Interest (POI) are selected above-ground improvements which may be in contact with boundary, building setbacks or easement lines, as defined by the parameters of this survey. There may be additional POI's which are not shown, not called-out as POI's, or which are otherwise unknown to the surveyor. These POI's may not represent all items of interest to the viewer.
14. Utilities shown on the subject property may or may not indicate the existence of recorded or unrecorded utility easements.
15. Easement measurements should not be used for new construction or planning. Measurements should be verified prior to such activity.

**LEGEND:**

| SURVEYOR'S LEGEND |              | SURVEYOR'S LEGEND |              | SURVEYOR'S LEGEND |              |
|-------------------|--------------|-------------------|--------------|-------------------|--------------|
| AD ADJACENT       | ADJ ADJACENT | ADJ ADJACENT      | ADJ ADJACENT | ADJ ADJACENT      | ADJ ADJACENT |
| AG AG             | AG AG        | AG AG             | AG AG        | AG AG             | AG AG        |
| AL AL             | AL AL        | AL AL             | AL AL        | AL AL             | AL AL        |
| AN AN             | AN AN        | AN AN             | AN AN        | AN AN             | AN AN        |
| AP AP             | AP AP        | AP AP             | AP AP        | AP AP             | AP AP        |
| AR AR             | AR AR        | AR AR             | AR AR        | AR AR             | AR AR        |
| AS AS             | AS AS        | AS AS             | AS AS        | AS AS             | AS AS        |
| AT AT             | AT AT        | AT AT             | AT AT        | AT AT             | AT AT        |
| AV AV             | AV AV        | AV AV             | AV AV        | AV AV             | AV AV        |
| AW AW             | AW AW        | AW AW             | AW AW        | AW AW             | AW AW        |
| AX AX             | AX AX        | AX AX             | AX AX        | AX AX             | AX AX        |
| AY AY             | AY AY        | AY AY             | AY AY        | AY AY             | AY AY        |
| AZ AZ             | AZ AZ        | AZ AZ             | AZ AZ        | AZ AZ             | AZ AZ        |
| BA BA             | BA BA        | BA BA             | BA BA        | BA BA             | BA BA        |
| BB BB             | BB BB        | BB BB             | BB BB        | BB BB             | BB BB        |
| BC BC             | BC BC        | BC BC             | BC BC        | BC BC             | BC BC        |
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| BU BU             | BU BU        | BU BU             | BU BU        | BU BU             | BU BU        |
| BV BV             | BV BV        | BV BV             | BV BV        | BV BV             | BV BV        |
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| BX BX             | BX BX        | BX BX             | BX BX        | BX BX             | BX BX        |
| BY BY             | BY BY        | BY BY             | BY BY        | BY BY             | BY BY        |
| BZ BZ             | BZ BZ        | BZ BZ             | BZ BZ        | BZ BZ             | BZ BZ        |
| CA CA             | CA CA        | CA CA             | CA CA        | CA CA             | CA CA        |
| CB CB             | CB CB        | CB CB             | CB CB        | CB CB             | CB CB        |
| CC CC             | CC CC        | CC CC             | CC CC        | CC CC             | CC CC        |
| CD CD             | CD CD        | CD CD             | CD CD        | CD CD             | CD CD        |
| CE CE             | CE CE        | CE CE             | CE CE        | CE CE             | CE CE        |
| CF CF             | CF CF        | CF CF             | CF CF        | CF CF             | CF CF        |
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| CI CI             | CI CI        | CI CI             | CI CI        | CI CI             | CI CI        |
| CJ CJ             | CJ CJ        | CJ CJ             | CJ CJ        | CJ CJ             | CJ CJ        |
| CK CK             | CK CK        | CK CK             | CK CK        | CK CK             | CK CK        |
| CL CL             | CL CL        | CL CL             | CL CL        | CL CL             | CL CL        |
| CM CM             | CM CM        | CM CM             | CM CM        | CM CM             | CM CM        |
| CN CN             | CN CN        | CN CN             | CN CN        | CN CN             | CN CN        |
| CO CO             | CO CO        | CO CO             | CO CO        | CO CO             | CO CO        |
| CP CP             | CP CP        | CP CP             | CP CP        | CP CP             | CP CP        |
| CQ CQ             | CQ CQ        | CQ CQ             | CQ CQ        | CQ CQ             | CQ CQ        |
| CR CR             | CR CR        | CR CR             | CR CR        | CR CR             | CR CR        |
| CS CS             | CS CS        | CS CS             | CS CS        | CS CS             | CS CS        |
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| CU CU             | CU CU        | CU CU             | CU CU        | CU CU             | CU CU        |
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| CW CW             | CW CW        | CW CW             | CW CW        | CW CW             | CW CW        |
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| CY CY             | CY CY        | CY CY             | CY CY        | CY CY             | CY CY        |
| CZ CZ             | CZ CZ        | CZ CZ             | CZ CZ        | CZ CZ             | CZ CZ        |
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| IH IH             | IH IH        | IH IH             | IH IH        | IH IH             | IH IH        |
| II II             | II II        | II II             | II II        |                   |              |

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

NO 2262420

ACCOUNT NUMBER: 04-1619-1105-0000

PROPERTY OWNER:

BURNEY CHRISTOPHER  
243 LIMESTONE CRK  
NEW BRAUNFELS, TX 78130-7252

PROPERTY DESCRIPTION:

LOT 5 CHERRY CREEK PHS VI SEC 5

ACRES .2907 MIN% .000000000000 TYPE

SITUS INFORMATION: 6711 WEST GATE BLVD

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

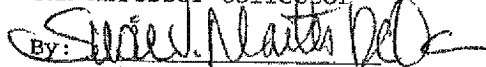
| YEAR           | ENTITY                | TOTAL    |
|----------------|-----------------------|----------|
| 2017           | AUSTIN ISD            | 1,923.83 |
|                | CITY OF AUSTIN (TRAV) | 717.88   |
|                | TRAVIS COUNTY         | 595.55   |
|                | TRAVIS CENTRAL HEALTH | 173.31   |
|                | ACC (TRAVIS)          | 162.69   |
| TOTAL SEQUENCE | 0                     | 3,573.26 |
|                | TOTAL TAX:            | 3,573.26 |
|                | UNPAID FEES:          | * NONE * |
|                | INTEREST ON FEES:     | * NONE * |
|                | COMMISSION:           | * NONE * |
|                | TOTAL DUE ==>         | 3,573.26 |

ALL TAXES PAID IN FULL PRIOR TO AND INCLUDING THE YEAR 2017 EXCEPT FOR UNPAID YEARS LISTED ABOVE.  
The above described property may be subject to special valuation based on its use, and additional rollback taxes may become due. (Section 23.55, State Property Tax Code).  
Pursuant to Section 31.08 of the State Property Tax Code, there is a fee of \$10.00 for all Tax Certificates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS DATE OF 11/14/2017

Fee Paid: \$10.00

Bruce Elfant  
Tax Assessor-Collector

BY: 

MONTESS printed on 11/14/2017 @ 12:12:33:38

Page# 1

**Exhibit E**  
**Lienholder's Consent to Declaration**

The undersigned is the owner and holder of that certain Promissory Note secured by that certain Deed of Trust recorded under **Document No. 2017103967**, Official Public Records of Travis County, Texas (the "Deed of Trust") which encumbers the real property described in Exhibit "A" attached hereto.

The undersigned hereby consents to the recording of the Declaration of Condominium Regime for the **6711 West Gate Boulevard Condominiums** (the "Declaration") and, subject to the terms and provisions of this Consent, subordinates the liens and security interest of the Deed of Trust to the Declaration; provided, however, this Consent (i) shall not be construed or operate as a release of the liens and security interest of the Deed of Trust, but shall instead confine that the liens and security interest of the Deed of Trust shall hereby be upon and against each and all of the Units, and all appurtenances thereto, and all of the undivided shares and interests in the Common Elements of the property and of the Condominium established by the Declaration, and shall continue as a priority lien as set forth in the Declaration; (ii) shall not release, subordinate, impair or otherwise affect any and all rights of the undersigned under the Deed of Trust or any assignment given in connection therewith to succeed to the rights, power and authority of Declarant under the Declaration in the event of a foreclosure of the liens and security interest of the Deed of Trust or any assignment given in connection therewith; and (iii) shall not modify or amend the terms and provisions of the Deed of Trust. The undersigned, on behalf of **Affiliated Bank**, makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Declaration.

Dated: December 21<sup>st</sup>, 2017

Affiliated Bank

By:

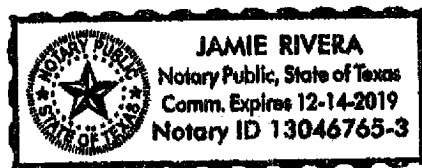
  
\_\_\_\_\_  
**Jeff Bridges, Senior Vice President**

ACKNOWLEDGMENT

STATE OF TEXAS           §

COUNTY OF Williamson §

This instrument was acknowledged before me on this 21<sup>st</sup> day of December, 2017, by **Jeff Bridges** as **Senior Vice President of Affiliated Bank** on behalf of said entity, for the purposes therein stated.



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



**FILED AND RECORDED**  
**OFFICIAL PUBLIC RECORDS**

*Dana Debeauvoir*

DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

January 31 2018 08:13 AM

FEE: \$ 150.00 **2018013967**