

005494

DECLARATION

OF

PALACIOS DEL GUADALUPE CONDOMINIUMS

This Declaration of Palacios Del Guadalupe Condominiums is made by Guadalupe Town Creek, Ltd., a Texas limited partnership ("Declarant"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon. By recording this Declaration, Declarant submits the property described in Appendix A to the provisions of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Palacios Del Guadalupe Condominiums.

Declarant desires to develop the real property with a residential condominium to be known as Palacios Del Guadalupe. Declarant further desires to provide for the preservation and maintenance of portions of Palacios Del Guadalupe, and to protect the value, desirability, and attractiveness of Palacios Del Guadalupe. As required by State Law, Declarant is creating a condominium association to perform the functions and activities more fully described in this Declaration.

Declarant DECLARES that the property described in Appendix A will be held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix B, which run with real property and bind all parties having or acquiring any right, title, or interest in the property, their heirs, successors, and assigns, and inure to the benefit of Declarant and each Owner of the property.

ARTICLE 1
DEFINITIONS

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

- 1.1. "ACC" means the Architectural Control Committee of the Association
- 1.2. "Act" means Chapter 82 of the Texas Property Code, the Texas Uniform Condominium Act, as is may be amended from time to time.
- 1.3. "Applicable Law" means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject

matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superceded by one or more other statutes or ordinances.

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

1.5. **"Association"** means the association of Owners of all Units in the Property, initially organized as Palacios Del Guadalupe Owners Association, Inc. a Texas nonprofit corporation, and serving as the "association" defined by the Act, and as the "property owners' association" defined in applicable law, such as Section 202.001 (2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Bylaws, and the Act.

1.6. **"Board"** means the board of directors of the Association.

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

1.8. **"Common Element"** means all of the Property, save and except the Units. All Common Elements are **"General Common Elements"** except, if any, **"Limited Common Elements"** allocated by this Declaration for the exclusive use of one or more but less than all of the Units.

1.9. **"Declarant"** means Guadalupe Town Creek, Ltd., a Texas limited partnership, which is developing the Property, or the successors and assigns of Guadalupe Town Creek, Ltd. which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by Guadalupe Town Creek, Ltd., or by any such successor and assign, in a recorded document.

1.10. **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix B of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) 5 years from date this Declaration is recorded, or (2) 120 days after the conveyance of 75 percent of the Units that may be created to Owners other than Declarant.

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

1.12. **"Development Period"** means the five (5) year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to

Appendix B hereto, including rights relating to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the property described in Appendix A. Declarant may terminate the Development Period at any time by recording a notice of termination.

**NOTICE: DURING THE DEVELOPMENT PERIOD, APPENDIX B HAS
PRIORITY OVER THE MAIN BODY OF THIS DECLARATION.**

1.13. **"Documents"** means, singly, or collectively as the case may be, this Declaration, the Plat and Plans recorded pursuant to the Act, the Bylaws, the Association's Certificate of Formation, and the Rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.14. **"Majority"** means more than fifty percent (50%).

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

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

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

1.18. **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Palacios Del Guadalupe Condominiums. The Property is located on the land described in Appendix A to this Declaration, and includes every Unit and Common Element thereon.

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

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

1.21. **"Underwriting" Lender** means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal

Home Loan Mortgage Corporation (Freddie Mac), or Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or Government National Mortgage Association (Ginnie Mae), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options nor as a representation that the Property is approved by any institution.

1.22 "Unit Square Footage" means the estimated square footage of the area within a Unit's legal boundaries (excluding porches, balconies and patios), as shown on Appendix C attached hereto, regardless of the actual square footage of such Unit.

ARTICLE 2

PROPERTY SUBJECT TO DOCUMENTS

2.1 SUBJECT TO DOCUMENTS. The Property is and shall be held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix B, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of Declarant and each Owner.

2.2 ADDITIONAL PROPERTY. During the Development Period, additional real property may be added to the Property and subjected to this Declaration and the jurisdiction of the Association by Declarant as permitted in Appendix B. After the termination of the Development Period, additional real property may be added to the Property and subjected to this Declaration and the jurisdiction of the Association on approval of Owners representing at least Sixty Seven percent (67%) of the votes in the Association. The addition of property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the county's Real Property Records. If Units are added to the Property, amendment of Appendix C is also required.

2.3 NO REPRESENTATIONS REGARDING ADJACENT LAND USE. Declarant makes no representations of any kind as to current or future uses (actual or permitted) of any land that is adjacent to or near the Property.

2.4. MERGER. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners representing at least Sixty Seven percent (67%) of the votes in the Association. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restriction established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

2.5. RECORDED EASEMENTS AND LICENSES. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, dedications, limitations, restrictions, reservations, and encumbrances of record, including but not limited to those described in the attached Appendix E. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by such prior-recorded instruments affecting the Property.

2.6. COMMON ELEMENTS. The Common Elements of the Property consists of all of the Property, save and except the Units. By accepting an interest in or title to a Unit, each Owner is deemed (1) to accept the Common Elements of the Property, and any improvement thereon, in its then-existing condition; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Elements; (3) to acknowledge the continuity of maintenance of the Common Elements, regardless of charges in the Association's Board of Directors or management.

ARTICLE 3 **PROPERTY EASEMENTS & RIGHTS**

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

3.2 OWNER'S EASEMENT OF ENJOYMENT. Every Owner is granted a right and easement of enjoyment over the General Common Elements and to the use of improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Residents of such Unit, and is not entitled to use the General Common Elements. Notwithstanding the foregoing, if a portion of the General Common Elements such as a recreational feature, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

3.3 OWNER'S MAINTENANCE EASEMENT. Every Owner is granted an easement of access and entry to and over adjoining Units and Common Elements for the maintenance or reconstruction of such Owner's Unit, subject to the consent of the Owner of the adjoining Unit, or the Association in the case of Common Elements, and provided the Owner's use of this easement does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry to an adjoining Unit will be made in advance for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. Requests for entry or access to Common Elements will be made in advance for a time reasonably convenient for the Association, which may not unreasonably withhold consent. If an Owner damages an adjoining Unit or Common Element in exercising this easement, the Owner is obligated to restore the damaged property to its original condition, at such Owner's expense, within a reasonable period of time.

3.4 OWNER'S INGRESS/EGRESS EASEMENT. Every Owner is granted a perpetual easement over the Common Elements, as may be reasonably required, for vehicular and pedestrian ingress to and egress from such Owner's Unit or any appurtenant Limited Common Elements.

3.5 OWNER'S ENCROACHMENT EASEMENT. Each Unit shall have an easement appurtenant to such Unit over all adjoining Units and the Common Elements for the purpose of accommodating any encroachment and/or protrusion due to engineering errors, construction, repair, shifting, settlement or movement of any improvements or any other cause; provided, however, in no event shall a valid easement for encroachment or protrusion be created in favor of an Owner or Owners if such encroachment or protrusion occurred due to the willful misconduct of such Owner or Owners. There shall be easements for the maintenance and repair of such encroachments or protrusions as long as they exist, and the rights and obligations of Owners shall not be altered in any way hereby. In the event an improvement is partially or totally destroyed, and then repaired and rebuilt, minor encroachments and/or protrusions over adjoining Units or Common Elements shall be permitted and there shall be an easement for the maintenance and repair of such encroachments and/or protrusions so long as they shall exist. Such encroachments or protrusions shall not be considered to be encumbrances either on the Common Elements or on a Unit for purposes of marketability of title or otherwise.

3.6. EASEMENT OF COOPERATIVE SUPPORT. This Declaration can not anticipate every possible event in the life of the Property that will require the cooperation of Owners. Accordingly, every Owner is granted an easement of cooperative support over each adjoining Unit and the Common Elements as needed for the common benefit of the Property, or for the benefit of Units in a building, or Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner (1) acknowledges the necessity for cooperation in a condominium, (2) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association, (3) agrees to provide access to such Owner's Unit and any appurtenant Limited Common Elements when needed by the Association to fulfill its duties, and (4) agrees to refrain from actions that unreasonably interfere with the Association's maintenance and operation of the Property.

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

- a. To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by applicable law.
- b. To perform maintenance that is permitted or required of the Owner by the Documents or by applicable law, if the Owner fails or refuses to perform

such maintenance.

- c. To enforce the Documents, including without limitation the architectural standards and use restrictions.
- d. To exercise self-help remedies permitted by the Documents or by applicable law.
- e. To respond to emergencies.
- f. To install, maintain, and inspect, or to grant easements to utility providers as may be necessary to install, maintain, and inspect, utilities serving any portion of the Property.
- g. To perform any and all functions or duties of the Association as permitted or required by the Documents or by applicable law.

In exercising this easement, the Association is not liable to the Owner for trespass.

3.8. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over the Common Elements for utilities, roads, and other purposes necessary for the proper operation of the Property.

READERS PLEASE PAY PARTICULAR HEED TO THE NEXT PROVISION
TITLED "SECURITY".

3.9 SECURITY. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES, ON SUCH OWNER'S AND RESIDENT'S OWN BEHALF AND FOR THEIR RESPECTIVE GUESTS, THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, EMPLOYEES AND REPRESENTATIVES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND ACCEPTS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR SUCH OWNER'S OR RESIDENT'S OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, EMPLOYEES AND REPRESENTATIVES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR RESIDENT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLAR, INTRUSION OR ANY OTHER SECURITY

SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, EMPLOYEES AND REPRESENTATIVES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF ANY FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

3.10. DECLARANT'S EASEMENT TO INSPECT & RIGHT TO CORRECT.

For a period of 10 years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builders, and general contractors the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section shall not be construed to create a duty for Declarant or the Association, and shall not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation all Common Elements and the Owner's Unit, and all improvements thereon for the purposes contained in this Section. Requests for entry to an Owner's Unit will be made in advance for a time reasonably convenient for such Owner, who may not unreasonably withhold consent.

**ARTICLE 4
CERTAIN PROPERTY FEATURES**

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

4.2. TELEVISION. In connection with the construction of the Property, the buildings at the Property will be equipped and wired to provide cable television and/or satellite television service to each Unit. The wiring and equipment will be maintained by the Association as a common expense. No Owner may place or install an antenna, satellite dish or other radio or television equipment or device on the exterior of such Owner's Unit.

4.3. FIREPLACES. **ATTENTION: THE FIREPLACES IN THE UNITS ARE NOT DESIGNED FOR WOOD BURNING FIRES. THEY ARE DESIGNED FOR USE ONLY WITH GAS FIREPLACE INSERTS. OWNERS SHALL NOT**

USE THE FIREPLACES FOR WOOD BURNING FIRES.

ARTICLE 5 UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1 UNIT BOUNDARIES. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached as Appendix D. The boundaries are further described as follows:

5.1.1 Lower Boundary: The top surface of the concrete slab foundation (with respect to a Unit on the ground floor), or the top surface of the floor (with respect to other Units) is the horizontal plane defining the Unit's lower boundary. In other words, the concrete slab foundation (with respect to a Unit on the ground floor), or the floor (with respect to other Units) is a Common Element. Anything on or affixed to the top of the slab or floor (such as finished flooring) is part of the Unit.

5.1.2 Upper Boundary: The outside of the drywall surface of the ceiling of a Unit (i.e., the side oriented toward the roof of the Building) is the horizontal plane defining the Unit's upper boundary.

5.1.3 Lateral Boundaries- Exterior Walls: On perimeter walls, the Unit's lateral boundaries are the planes defined by the inside-facing surfaces of the material comprising the outermost component of the exterior wall and by the outside-facing surfaces of the outermost component of doors and windows in the perimeter walls. For example, if the outermost material is brick veneer, the Unit extends to the inside-facing surface of the brick wall, and includes the entire wall cavity.

5.1.4 Lateral Boundaries- Party Walls: On party walls-- walls between 2 Units-- the Unit's lateral boundaries are the planes defined by the midpoints of the party wall. The Unit on each side of a party wall extends to the middle of the party wall.

5.1.5 Porches, Patios, Decks and Balconies: Any porch, patio, balcony, or deck that is attached to the living area of a Unit and which is accessed via the Unit's living area is part of the Unit. The boundaries of the patio, balcony, or deck portion of a Unit are the outermost construction materials of the walls, floors, railings, and ceilings (if any) of the patio, balcony, or deck area, including for example, concrete patio slabs, wood decking, wood siding, stucco walls, metal railings, and fabric awnings.

NOTICE

The individually owned Units created by this Declaration include some portions of the

building outside of the traditional air-conditioned living areas.

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

5.1.8 Exclusions: Except as specifically included above, each Unit excludes the spaces and improvements lying outside of the vertical and horizontal boundaries. Each Unit also excludes any chute, pipe, flue, duct, wire, or conduit running through a Unit and used in common with other Units, or used for the purpose of furnishing utility and similar services to other Units and/or Common Elements.

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

5.1.10 Representations of Size: The space contained within the Unit's vertical and horizontal boundaries is not related to the size of the Unit's living areas. Similarly, the Units are initially marketed on the basis of a limited number of representational floorplans, each of which is marked with a rounded and estimated size of air-conditioned space, taken from pre-construction architectural drawings. Those marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries.

SIZE OF UNIT

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

5.1.11 Other Rights and Obligations. In addition to the above, a Unit shall include all rights, benefits, obligations, and liabilities allocated or appurtenant to such Unit pursuant to this Declaration, the other Documents, and/or the Act.

5.1.12 Actual Construction Determines Boundaries. In interpreting deeds, mortgages, deeds of trust, and other instruments, the existing physical boundaries

of the Unit as initially constructed, and the existing physical boundaries of the Unit reconstructed in accordance with the original structure, shall be conclusively presumed to be its location, regardless of settling, rising, or lateral movement of the building and regardless of variances between boundaries shown on the Plat and Plans and those of the building.

5.2 INITIAL DESIGNATIONS OF LIMITED COMMON ELEMENTS. The following portions of the Common Elements are Limited Common Elements assigned to the Units:

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

5.2.2 Storage Areas: Any storage area appurtenant to a Unit in the parking garage of a building, is a Limited Common Element appurtenant to such Unit, whether or not so designated on Plats and Plans.

5.2.3 Parking Spaces: Any parking spaces appurtenant to a Unit in the parking garage of a building, is a Limited Common Element appurtenant to such Unit.

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

5.3 SUBSEQUENT ALLOCATIONS OF LIMITED COMMON ELEMENTS. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only pursuant to the provisions of this Article. Declarant reserves the right in Appendix B of this Declaration, to create and assign Limited Common Elements within the Property.

5.4 ALLOCATION OF INTERESTS. The table showing the identifying number and allocated interests of each Unit is attached as Appendix C. The interests have been allocated in accordance with the formulas set out in this Article. The same formulas are to be used in reallocating interests if Units are added to, or eliminated from, the Property, or if Units are subdivided or otherwise modified. The date on which the amendment creating additional Units, eliminating Units, or subdividing or otherwise modifying Units, is recorded in the county's Real Property Records is the effective date

for allocating or re-allocating interests to those Units. The interests allocated to each Unit are calculated by the following formulas:

5.4.1 Common Element Interests. The percentage of undivided interest in the Common Elements allocated to each Unit is based on the Unit Square Footage of such Unit, compared to the total Unit Square Footage for all Units in the Property. Percentages may be rounded up or down to the nearest hundredths of a percent to facilitate calculations. Also, Units of the same Unit Square Footage may have allocations that differ slightly to facilitate the calculation of 100 percent.

5.4.2 Common Expense Liabilities. The percentage of liability for common expenses allocated to each Unit is based on the same formula for Common Element interest.

5.4.3 Votes: Each Unit is entitled to one (1) vote in the Association for each square foot of such Unit's Unit Square Footage.

5.6. NUMBER OF UNITS. The maximum number of Units the Declarant reserves the right to create if no additional real property is added to the Property is 81; and the maximum number of Units the Declarant reserves the right to create if additional real property is added to the Property is 160.

ARTICLE 6

COVENANT FOR ASSESSMENT

6.1. PURPOSE OF ASSESSMENTS. The Association will use Assessments for the general purposes of preserving, maintaining and enhancing the Property, maintaining any equipment or other personal property of the Association, and promoting the common benefit and enjoyment of Owners and Residents, including but not limited to, (a) construction and maintenance of roads, driveways, parking areas, sidewalks, curbing, utility lines and facilities, drainage facilities, lighting, landscaping, and other Common Element improvements, (b) management and operation of the Association, and (c) conducting any other activities or the payment of any other expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

6.2. PERSONAL OBLIGATION. An Owner is obligated to pay Assessments levied by the Board against the Owner or his Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of such Owner's Unit. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the

Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

IF YOU OWN A UNIT IN PALACIOS DEL GUADALUPE, YOU MUST PAY ASSESSMENTS TO THE ASSOCIATION.

6.4 TYPES OF ASSESSMENTS. There are 5 types of Assessments: Regular, Special, Utility, Individual, and Deficiency.

6.5 REGULAR ASSESSMENTS.

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

- a. Maintenance, repair, and replacement, as necessary, of the Common Elements, and improvements, equipment, signage, and property owned by the Association.
- b. Utilities billed to the Association.
- c. Pest control.
- d. Services obtained by the Association and available to all Units.
- e. Taxes on property owned by the Association and the Association's income taxes.
- f. Management, legal, accounting, auditing, and professional fees for services to the Association.
- g. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- h. Insurance premiums and deductibles.
- i. Contributions to the reserve funds.
- j. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

6.5.2 Annual Budget. On or before December 1st of each year, or as

soon thereafter as may be practicable, the Board will prepare and approve an *estimated annual budget* for the next calendar year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Unit, although failure to receive a budget or summary does not affect an Owner's liability for Assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

6.5.3 Basis of Regular Assessments. Regular Assessments will be based on the annual budget. Each Unit will be liable for its share of the annual budget, based upon the Unit's allocated common expense liability. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined, until such time as the Board determines new Regular Assessments.

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

6.6 SPECIAL ASSESSMENTS. In addition to Regular Assessments and Utility Assessments, the Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by Owners representing at least a Majority of the votes in the Association: (1) acquisition of real property, (2) construction of additional improvements to the Property (but not repair or replacement of existing improvements, and (3) any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligations for operations, insurance, maintenance, repairs or replacement.

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

allocation, provided the same type of method or combination of methods is used for all Units.

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

6.9. DEFICIENCY ASSESSMENT. The Board may levy a Deficiency Assessment against all Units for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.

6.10. DUE DATE. No Assessment shall be made with respect to a Unit prior to the date the construction of the residence at such Unit is completed and such residence is ready for occupancy (the "Assessment Commencement Date"). After the Assessment Commencement Date, Regular Assessments with respect to such Unit shall due on the first calendar day of each month, and are delinquent if not received by the Association on or before the tenth (10th) day of the month; and Special Assessments, Utility Assessments, Individual Assessments and Deficiency Assessments shall be due on the date stated in the notice of Assessment or, if no date is stated, within 10 days after notice of the Assessment is given.

6.11. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and may fund reserves out of Regular Assessments.

6.11.1 Operations Reserves. The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.

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

6.11.3 Reserve Fund Contribution on Initial Sale of Unit. Upon the closing of the initial purchase of a Unit from the Declarant, the purchaser will make a contribution to the reserve fund of the Association in an amount equal to

forty cents (\$0.40) per Unit Square Footage of the Unit purchased.

6.12. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of Owners representing at least Sixty Seven percent (67%) of the votes in the Association. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

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

ARTICLE 7

ASSESSMENT LIEN

7.1. ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Units. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Unit.

7.2. SUPERIORITY OF ASSESSMENT LIEN. The Assessment lien is superior to all other liens and encumbrances on a Unit; except only for (1) real property taxes and assessments levied by governmental and taxing authorities (unless otherwise provided by the Texas Tax Code), (2) a recorded deed of trust lien securing a loan for construction of the original Unit, and (3) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to a lien for construction of improvements to the Unit, regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien. The Assessment lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage.

7.3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid

Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale is liable for Assessments coming due from and after the date of the sale (which may include the allocation of a share of the pre-foreclosure deficiency as a common expense).

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

7.4. NOTICE AND RELEASE OF NOTICE. The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's Real Property Records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

7.5. POWER OF SALE. By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's Assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

7.6. FORECLOSURE OF LIEN. The Assessment lien may be enforced by judicial or nonjudicial foreclosure. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in applicable law, such as Section 51.002 of the Texas Property Code, or in any other manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorney's fees. The Association has the power to bid on the Unit at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose a lien for Assessments consisting solely of fines.

ARTICLE 8

EFFECT OF NONPAYMENT OF ASSESSMENTS

An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through its Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt

collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The remedies of the Association with respect to the collection of delinquent Assessments set forth in Section 7.5. above, and in Sections 8.1 through 8.9 below are in addition to and not in substitution for all other rights and remedies that the Association may have, at law or in equity.

8.1 INTEREST. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum rate of contractual interest that may be charged under state or federal law. If the Board fails to establish a rate, the rate is the lesser of twelve percent (12%) per annum, or the maximum rate of contractual interest that may be charged under state or federal law.

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

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

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

8.5 SUSPENSION OF VOTE. If an Owner's account has been delinquent for at least 30 days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

8.6 ASSIGNMENT OF RENTS. Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of Assessments to the Association. If an Owner becomes delinquent in the payment of Assessments during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent Assessments; provided that the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the delinquency, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the delinquent Assessments. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

8.7. MONEY JUDGMENT. The Association may file suit seeking a money

judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association's lien for Assessments.

8.8. NOTICE TO MORTGAGEE. The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in payment of Assessments.

8.9. APPLICATION OF PAYMENTS. The Association may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Unit's account.

ARTICLE 9

MAINTENANCE AND REPAIR OBLIGATIONS

9.1. ASSOCIATION RESPONSIBILITY. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association shall maintain, repair, and replace, as a common expense, all General and Limited Common Elements, including the exterior materials of the buildings, including (if any) roof shingles and gutters, foundations, sealants and fillers, and exterior wall materials, such as brick veneer, stucco, or siding, but excluding the storage areas appurtenant to the Units. The storage area appurtenant to a Unit is a Limited Common Element; however, the Owner of a Unit is responsible for the maintenance and repair of the storage area appurtenant to such Unit. The Association also maintains, as a common expense, any component of a Unit the repair of which is delegated to the Association by this Declaration.

9.2. OWNER RESPONSIBILITY. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

- a. To maintain, repair, and replace his Unit; provided that maintenance and repair of any outside components of such Owner's Unit (such as porches, patios, balconies and decks) shall be subject to the Association's architectural control in accordance with Article 10 below.
- b. To keep and maintain such Owner's Unit in a neat, clean, orderly, and attractive condition.
- c. To maintain and repair the storage area, if any, allocated or appurtenant to such Owner's Unit, and to keep such storage area in a neat, clean, orderly and attractive condition.

- d. To maintain, repair, and replace all portions of the Property for which such Owner is responsible under this Declaration or by agreement with the Association.
- e. To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.
- f. To be responsible for the willful or negligent actions or omissions of such Owner, any Resident of such Owner's Unit, and their respective families, agents, employees, contractors, subcontractors, guests, or invitees, when those acts necessitate maintenance, repair, or replacement of the Common Elements, or the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.4. DISPUTES. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by delegating responsibility to the individual Owners. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

9.5. SHEETROCK. Notwithstanding anything to the contrary in the Documents, the Association is not responsible for the repair and replacement of sheetrock in any Unit, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability for insurance. This provision is provided for the benefit of the Association and is warranted by the difficulty of scheduling interior sheetrock work and the possibility that the Owner may not be satisfied with the quality or appearance of spot repairs. If the Association receives insurance proceeds for sheetrock damage to a Unit and chooses to not perform the repairs, the Owner of the damaged Unit is entitled to the proceeds in exchange for identification of the damage and a release from future claims for the same damage.

9.6. CONCRETE. Minor cracks in concrete, including foundations, garage floors, sidewalks, porches, and patio slabs, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the building. The Association's duty to maintain and repair foundations and other concrete or similar components of the building does not extend to minor or cosmetic cracking. Generally, the Association is responsible for repair of the following conditions: (1) leakage or seepage through walls or floors, (2) cracks in concrete, masonry walls, or masonry veneer that exceed one-quarter inch in width, (3) improper drainage of water from stoops and patios, and (4) pitting, scaling, or spalling of

concrete work.

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

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

ARTICLE 10 ARCHITECTURAL COVENANTS AND CONTROL

10.1 PURPOSE. Because the Units are part of a single, unified community, the Association has the right to regulate every aspect of the exterior of the Property, including the exterior design, use and appearance of Units and Common Elements, in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to allow the Association, acting through the ACC, to respond to changes in technology, style, and taste. The Association, acting through the ACC, has the right to regulate every aspect of proposed or existing improvements on the Property, including replacements or modifications of original construction or installation.

10.2. ARCHITECTURAL CONTROL COMMITTEE. During the Development Period, the Declarant is the ACC. Declarant may designate one or more persons from time to time to act on Declarant's behalf in reviewing and responding to applications. After the Development Period, the ACC shall consist of 3 persons appointed by the Board, pursuant to the Bylaws, or, at the Board's option, the Board may act as the ACC. If the Board acts as the ACC, all references in the Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or Residents.

10.3. LIMITS ON LIABILITY. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. Neither the Declarant, nor the ACC, nor any of the members of the ACC, nor the Association, nor the Board, nor the members of the Association, shall be liable in damages or otherwise to anyone submitting

plans and specifications for approval, to any Owner or to any other person or entity, by reason of the exercise of or the failure of the ACC to exercise any of its rights and powers hereunder, including without limitation: (i) the approval or disapproval of any plans and specifications, (ii) the failure to take action with respect to any plans and specifications or the construction of any improvements, or (iv) the construction or performance of any work, whether or not pursuant to any approved plans or specifications. Review and approvals by the ACC are for the purposes of the protection and maintenance of the aesthetic quality of the Property, and not for the purposes of determining the adequacy of the engineering, structural integrity, quality of construction, soundness of construction, safety of plans or construction, code compliance, compliance with any other laws, rules or regulations applicable to the improvements or the construction, or any other matters involving the plans, specifications or construction of the improvements ("Construction Matters"). Consequently, and without limiting the generality of the foregoing provisions of this section, neither the Declarant, nor the ACC, nor any of the members of the ACC, nor the Association, nor the Board of Directors, nor the members of the Association, shall be liable in damages or otherwise to anyone for any causes of action, claims, debts, demands, losses, costs, damages, expenses, obligations or other liabilities arising out of or in any way related to any Construction Matters.

10.4. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. Without the ACC's prior written approval, a person may not commence or continue any construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Property that affects in any way the exterior of the Property or any Unit, or do anything that in any way affects the exterior appearance of the Property or any Unit, or do anything that in any way affects the structural integrity of the Property or any Unit.

NOTICE: AN OWNER CANNOT CHANGE THE EXTERIOR OF A UNIT UNLESS THE OWNER HAS OBTAINED THE SIGNED CONSENT OF THE ACC.

10.5. NO DEEMED OR VERBAL APPROVAL. Approval by the ACC may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by an Association director or officer, a member of the ACC, the chair of the ACC, the Association's manager, or any other representative of the Association. To be valid, approval of the ACC must be (1) in writing, (2) on a form or letterhead issued by the Association, (3) signed and dated by the ACC chair, the Association president, or another officer designated by the Board for that purpose, (4) specific to a Unit, and (5) accompanied by detailed plans and specifications showing the proposed change. If the ACC fails to respond in writing-- negatively, affirmatively, or requesting information-- within 60 days after the ACC's actual receipt of the Owner's application, the application is deemed denied. The Owner, the ACC, or the Association may require that the ACC approval be recorded in the Real Property Records of the County in which the Property is located. An ACC approval automatically terminates if work on the approved improvement has not started by that commencement date stated in the ACC's approval or, if no commencement date is stated, within 90 days after the date of ACC approval.

10.6. APPLICATION TO ACC. To request ACC approval, an Owner must make written application and submit 2 identical sets of plans and specifications, showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The ACC may return one set of plans and specification to the applicant marked with the ACC's response, such as "Approved," "Denied," or "Submit Additional Information." The ACC will retain the other set of plans and specifications, together with the application, for the Association's files. The ACC has the right but not the duty to evaluate every aspect of construction and property use that may alter or adversely affect the general value or appearance of the Property.

10.7. OWNER'S DUTIES. If the ACC approves an Owner's application, the Owner may proceed with the work, provided:

- a. The Owner must adhere strictly to the plans and specifications approved by the ACC.
- b. The Owner must initiate and complete the work in a timely manner.
- c. If the approved application is for work that requires building permits from any federal, state or local authorities, the Owner must obtain the appropriate permits. The ACC's approval of plans and specifications does not mean that they comply with the requirements of any federal, state or local authorities. Alternatively, approval of plans and specifications by any federal, state or local authority does not obligate the ACC to approve such plans and specifications.

10.8. VARIANCES. The ACC may grant a variance or waiver of a restriction or Rule involving the exterior appearance of the Property or a Unit, on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the ACC's right to deny a variance in other circumstances. If the ACC is considering approval of an application that seeks a variance or which, in the ACC's opinion, would constitute a variance of the Property's established standards, the ACC must notify an Owner of each Unit of the nature of the proposed variance at least 20 days before the ACC approves the application. The ACC may approve the variance unless Owners representing at least a Majority of the votes in the Association disapprove of the proposed variance by petition or at a meeting of the Association. This Section 10.8 may not be amended without the approval Owners representing at least sixty seven percent (67%) of the votes in the Association.

10.9. PROHIBITED ACTS. The types of acts affecting the exterior of the Property that may not be commenced without the ACC's written approval include, but are not limited to the following:

- a. Installation of ornamental iron or burglar bars, storm windows or doors, awnings, shutters, exterior lighting, patio covers, chimneys, or skylights.
- b. Installation of equipment that may create a noise annoyance, such as noise-producing security devices, exterior pumps, and speakers.
- c. Installation of walls, screens, fences, or gates.
- d. Enclosure of porches, patios, balconies, decks, or yards.
- e. Installation of impermeable decking or other improvements that may interfere with established drainage patterns.

10.10. DECLARANT RIGHTS. During the Development Period, the Declarant is the ACC. Declarant may designate one or more persons from time to time to act on Declarant's behalf in reviewing and responding to applications. The Association, the Board of Directors, or a committee appointed by the Association or Board (no matter how the committee is named) may not involve itself with architectural control or approval during the Development Period. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization.

10.10.1 Owner Agrees. Each Owner, by accepting an interest in or title to a Unit, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market homes in the property or in Declarant's other developments. Accordingly, each Owner agrees that – during the Development Period – ACC approval may be granted or withheld at Declarant's sole discretion.

10.10.2 Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) an architectural control committee appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

ARTICLE 11 USE RESTRICTIONS

11.1. VARIANCE. The use of the Property is subject to the restrictions

contained in this Article, and subject to Rules adopted pursuant to this Article. The Board may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances.

11.2. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property, including, without limitation, Rules governing:

- a. Use of Common Elements.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.
- f. Landscaping and maintenance of yards.
- g. The occupancy and leasing of Units.
- h. Animals.
- i. Vehicles and parking, including, without limitation, the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Noise.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents.

11.3. UNITS OWNED SUBJECT TO RULES. In addition to the restrictions contained in this Article, each Unit is and shall be owned and occupied subject to the Rules adopted by the Association from time to time, and penalties for infractions thereof as set forth herein.

11.4. AGES OF RESIDENTS. No person under the age of 18 years may occupy a Unit unless such person lives with a Resident who is such person's spouse, parent, legal guardian, or a designee of his parent or legal guardian. Upon request by the Association, an Owner must provide satisfactory proof of the ages and relationships of the occupants of such Owner's Unit.

11.5. ANIMALS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. The Board may require or

effect the removal of any animal determined to be in violation of the Rules. Notwithstanding anything in this section to the contrary, 2 dogs, or 2 cats, or one dog and one cat shall be permitted in each Unit, and the Board shall not have the authority to prohibit cats and dogs, or limit the number of cats and dogs to less than 2 dogs, or 2 cats, or one dog and one cat, unless such prohibition or limitation is approved by Owners representing at least one hundred percent (100%) of the votes in the Association. This Section 11.5. may not be amended without the approval Owners representing at least one hundred percent (100%) of the votes in the Association.

11.6. ANNOYANCE. No Unit or Limited Common Element may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may endanger the health or safety of Residents of other Units; (3) may result in the cancellation of insurance on any portion of the Property; (4) violates any federal, state or local law, rule or ordinance; or (6) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance; provided that such authority must be exercised reasonably and consistently.

11.7. APPEARANCE. The Units must be maintained in a manner so as not to be unsightly when viewed from the street, Common Elements, or neighboring Units. The Board has the sole authority to determine acceptable appearance standards.

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

11.9. DRIVEWAYS AND PARKING AREAS. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access. Parking areas may not be used for any purpose that interferes with their ongoing use for vehicular parking.

11.10. FIRE SAFETY. No flammable or hazardous materials shall be kept or stored in the storage units. No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property, including any sprinkler heads and water lines in and above the ceilings of the Unit, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials. **NOTICE: THE FIREPLACES IN THE UNITS ARE NOT DESIGNED FOR WOOD BURNING FIRES. OWNERS SHALL NOT USE THE FIREPLACES FOR WOOD BURNING FIRES.**

11.11. LANDSCAPING. Other than within an Owner's Unit, no person may perform landscaping, planting, or gardening anywhere upon the Property, without the Board's prior written authorization.

11.12 NOISE & ODOR. A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Units.

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

11.14. RESIDENTIAL USE. The use of a Unit is limited exclusively to residential purposes. This residential restriction does not, however, prohibit a Resident from using the Unit for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the Unit as a dwelling; (2) the uses conform to applicable federal, state and local laws, rules and ordinances (including, without limitation, applicable zoning and land use ordinances); (3) there is no evidence of the uses external to the Unit; (4) the uses do not entail visits to the Unit by employees, clients, customers or other members of the public; and (5) the uses do not interfere with the use and enjoyment of neighboring Units by the other Residents of the Property. Other than the air conditioned part of a Unit, no thing or structure on the Property may be occupied as a residence at any time by any person.

11.15. SIGNS. No sign of any kind – including signs advertising Units for sale or for lease – may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Units. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Board may, but is not required to, authorize a sign, and such authorization may specify the location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway or common area which the Board deems to be unsightly or inappropriate. The Association may effect the immediate removal of any sign or object that violates this Section or which the Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal.

11.16. SPECIFIC USES. Except for ingress and egress, the sidewalks and driveways on the Property may not be used for any purpose that has not been authorized in writing by the Board. Except for vehicular parking, the parking areas may not be used for any purpose that has not been authorized in writing by the Board.

11.17. STRUCTURAL INTEGRITY. No person may directly or indirectly impair the structural soundness or integrity of a building or another Unit, nor do any work or modification that will impair an easement or real property right.

11.18. TELEVISION. Each Resident of the Property will avoid doing or

permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Other than any such equipment installed by the Declarant or the Association, no antenna, microwave or satellite dish, receiving or transmitting tower, or similar equipment may be installed on the Common Elements or the exterior of buildings.

11.19 VEHICLE RESTRICTIONS. All vehicles on the Property, whether owned or operated by the Residents or their guests, are subject to the following restrictions:

11.19.1. Types. No large commercial-type vehicle, mobile home, motor home, camper, bus, trailer, boat, aircraft, inoperable vehicle, or any other similar vehicle or any vehicular equipment, mobile or otherwise, which the Board deems to be a nuisance, unsightly, or inappropriate may be kept, parked, or stored anywhere on the Property.

11.19.2. Repairs. Repairs or restorations of vehicles are prohibited.

11.19.2. Obstruction. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard.

11.19.4. Removal. The Association may effect the removal of any vehicle in violation of this Section or Rules regulating vehicles.

11.20 WINDOW TREATMENTS. Palacios Del Guadalupe is designed to have a uniform window appearance for all Units. Therefore, the color and condition of all window panes, window screens and window treatments must conform to the building standard. All window treatments within the Unit, that are visible from the street or another Unit, must be maintained in good condition and must not detract from the appearance of the Property. The ACC may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the ACC determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The ACC may prohibit the use of certain colors or materials for window treatments.

11.21. EXERCISE OF DECLARANT'S RIGHTS AND PRIVILEGES. In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents, as provided in Appendix B of this Declaration. Consequently, *neither the Use Restrictions of this Article, nor any Rules adopted by the Association, shall apply to limit in any way the rights and privileges reserved by Declarant, as provided for in Appendix B of this Declaration.* In addition, the exercise by Declarant of any of such rights and privileges shall not in any way constitute waiver or abandonment of any restrictions of this Declaration or any Rules adopted by Declarant or the Association.

ARTICLE 12
UNIT LEASING

12.1 LEASE CONDITIONS. The leasing of Units is subject to the following conditions and restrictions: (1) no Unit may be rented for transient, bed and breakfast, hotel or similar purposes, (2) a Unit may not be rented for a period less than 30 days; (3) not less than an entire Unit may be leased; (3) all leases must be in writing and must be made subject to the Documents; (4) an Owner is responsible for providing such Owner's tenant with copies of the Documents and notifying the tenant of changes thereto; and (5) each tenant is subject to and must comply with all provisions of the Documents, and all federal, state and local laws, rules, regulations and ordinances.

12.2 OWNER OCCUPANCY. For purposes of this Article, a Unit is considered "Owner occupied" if at least one Resident of an occupied Unit is an Owner of the Unit or is related by blood, marriage, or adoption to an Owner of the Unit, or if the Unit is vacant – except that a Unit being offered for lease may not be considered "Owner occupied" even though the Unit is then-vacant or then-occupied by an Owner. In calculating occupancy, the Units are counted uniformly regardless of size.

12.3 EVICITION OF TENANTS. Every lease agreement on a Unit, whether written or oral, express or implied, is subject to and is deemed to include the following provisions:

12.3.1 Violation Constitutes Default. Failure by the tenant or a tenant's invitees to comply with the Documents, or with federal, state or local law, rule, regulation or ordinance, is deemed to be a default under the lease. When the Association notifies an Owner of a tenant's violation, the Owner will promptly obtain the tenant's compliance or exercise such Owner's rights as a landlord for such tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain the tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease and/or state law for the default, including eviction of the tenant, subject to the terms of this Section.

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

12.3.3. Association Not Liable for Damages. The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against such Owner's tenant. The

Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

NOTICE: AN OWNER SHOULD CONTACT THE BOARD BEFORE LEASING A UNIT. THIS DECLARATION HAS UNUSUAL RESTRICTIONS ON LEASING UNITS. UNDER SOME CIRCUMSTANCES, NO LEASING IS PERMITTED.

12.4 RESTRICITONS ON LEASING. Leasing of Units is regulated by this Section and Article to protect the Owners' equity in the Property, to preserve the character of the Property as a residential community of predominantly Owner-occupied Units, to prevent the Property from assuming the character of a renter-occupied apartment complex, and to comply with eligibility requirements of Underwriting Lenders for mortgage financing.

12.4.1. Board Approval Required. If fewer than 80 percent of the Units are Owner-occupied at the time a lease originates or renews, the lease must have the prior written approval of the Board. For purposes of determining the percentage of Units that are Owner-occupied, the Unit subject to such new lease or renewal shall be counted as renter-occupied, and not Owner-occupied. Under the following circumstances, the Board may approve the Owner's written application for occupancy by Residents who are not Owners:

- a. Exception for High Ratios. The Board may approve an Owner's application to lease the Unit for a stated period of time if the Unit was occupied for at least one year by an Owner of the Unit, and if, according to the Board's calculations, the percentage of Units in the Property that are Owner-occupied would not be less than 75 percent if the subject Unit were renter-occupied.
- b. Exception for Undue Hardship. The Board may approve an Owner's application to lease the Unit for a stated period of time to avoid undue hardship. By way of illustration and not limitation, examples of circumstances that may contribute to "undue hardship" are those in which (1) an Owner must relocate to another region when market conditions do not favor a timely sale for an amount exceeding the debt against the Unit; (2) the Unit is being administered by the deceased Owner's estate; (3) the Owner temporarily relocates and intends to return to occupy the Unit; (4) the Unit is to be leased to a member of the Owner's extended family. The Owner's application must state why this prohibition against leasing would result in undue hardship to the Owner and describe the circumstances necessitating the leasing.
- c. Application and Approval. The Board may allow reasonable leasing of a Unit on written application by an Owner who

demonstrates, to the Board's satisfaction, that one of the 2 above exceptions applies. Approval by the Board must be in writing, and may not be deemed from lack of a response. The Board's approval may be limited to a stated period of time which, if not stated, is deemed to be one year from the date written approval is granted. On expiration of that period, the Owner may apply anew for Board approval. The Board's approval is not self-renewing.

- d. Violation of Prohibition. A lease or lease renewal made without written approval of the Board is voidable by the Board. The Board has the power to make and enforce reasonable rules and fines relating to enforcement of this Section.

12.4.2. Board Determination. Any Owner or prospective Owner who intends for such Owner's Unit to be occupied by Residents who are not Owners must request from the Board a statement of the number of Owner-occupied Units. If the Board does not respond to an oral request, the Owner may submit the request in writing. If the Board does not respond to the written request within 10 days after receipt of same, the Owner may assume that at least 80 percent of the Units are Owner-occupied unless the Owner has actual knowledge of the Owner occupancy ratio.

12.4.2. Notice Only. If at least 80 percent of the Units are Owner-occupied at the time a lease originates or renews, the Unit may be leased without obtaining the Board's approval. However, the Owner of the leased Unit must give the Board written notice of the lease or renewal. For purposes of determining the percentage of Units that are Owner-occupied, the Unit subject to such new lease or renewal shall be counted as renter-occupied, and not Owner-occupied.

12.5. EXEMPTION. A Mortgagee that acquires title to a Unit by foreclosure of its deed of trust lien or by deed in lieu of foreclosure of its lien is exempt from the terms, provisions, covenants, conditions and restrictions of this Article. During the Development Period, Declarant is exempt from the terms, provisions, covenants, conditions and restrictions this Article.

ARTICLE 13 ASSOCIATION OPERATIONS

13.1. THE ASSOCIATION. The duties and powers of the Association are those set forth in the Documents, together with general and implied powers of a condominium association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents.

13.2. BOARD. The Association will be governed by a Board of Directors elected by the Members in accordance with the Certificate of Formation and Bylaws of the Association.

13.3. MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association.

13.4. BOOKS & RECORDS. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of applicable law, such as the Texas Business Organizations Code.

13.5. INDEMNIFICATION. The Association shall indemnify every officer, director, and committee member (for purposes of this Section, "Leaders") who was, is, or is threatened to be made a named defendant or respondent in any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding by reason of the fact that such Leader is or was a officer, director or committee member of the Association, and shall pay or reimburse the reasonable expenses incurred by such Leader where permitted. The right to indemnification conferred by this Article shall not restrict the power of the Association to make any other type of indemnification permitted by law. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for such Leader's willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association may maintain general liability and directors and officers liability insurance to fund this obligations.

13.6. OBLIGATIONS OF OWNERS. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

13.7.1 Information. An Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Unit; (2) the Owner's address, phone number, email address and driver's license number, if any; (3) any Mortgagee's name, address, phone number and loan number; (4) the name and phone number of any Resident other than the Owner; and (5) the name, address, phone number, and email address of Owner's managing agent, if any. The information required by this subsection to be provided by an Owner shall be provided at each of the following times: (1) within 30 days after acquiring an interest in a Unit, (2) within 30 days after the Owner has notice of a change in any information required by this Subsection, and (3) upon request by the Association from time to time.

13.7.2. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit, and will pay Regular Assessments without demand by the Association. If an Owner sells such Owner's Unit under a contract for deed such Owner will remain liable for all Assessments attributable to the contracted Unit until fee title to the Unit is transferred.

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

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

13.7.5. Liability. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, agents, or invitees, and for all costs incurred by the Association (including, without limitation, attorney's fees) to enforce the Documents and obtain compliance, whether or not suit is filed.

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

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

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

13.8.3. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided that such fees are reasonable. Transfer-related fees are not refundable and may not be regarded as a prepayment of or a credit against Regular or Special assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees.

13.8.4. Exclusions. The requirements of this Section, including the

obligation for the reserve fund contribution and other transfer-related fees, do not apply to the following transfers: the initial conveyance from Declarant; foreclosure of a mortgagee's deed of trust lien, a tax lien or the Association's assessment lien; conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; transfer to, from, or by the Association, voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or a disposition by a government or governmental agency.

ARTICLE 14 ENFORCING THE DOCUMENTS

14.1. NOTICE AND HEARING. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard. The Association's written notice must contain (i) the date the notice is prepared or mailed, (ii) a description of the violation or property damage; (iii) a reference to any rule or provision of the Documents that is being violated, (iv) a description of the action required to cure a violation; (v) the amount of the proposed fine or damage charge; (vi) the date a fine begins accruing and a stated date by which the Owner may cure the violation to avoid the fine; (vii) a statement that not later than the 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge. The Association may also give a copy of the notice to the Owner's Resident, if any. Notwithstanding the above, unless required by applicable law, the Association shall not be obligated to provide any such notice or opportunity to be heard or to cure a violation, if the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communications. The Board may adopt additional or alternative procedures and requirements for notices and hearing, provided they are consistent with the requirements of applicable law..

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

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

14.2.2. Fine. The Association may levy reasonable charges, as an

Individual Assessment, against an Owner and such Owner's Unit if the Owner or Resident, or the Owner's or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

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

14.2.4. Self Help. The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any sign, erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. The Board will make reasonable efforts to give the violating Owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the Owner. Prior notice is not required in the case of emergencies, or to remove signs, to remove debris, or to remove any other item or to abate any other violative condition that is easily removed or abated and that is considered by the Board to be a nuisance, dangerous, or an eyesore to the neighborhood. By accepting an interest in or title to a Unit, each Owner grants to the Association all powers and rights necessary to exercise this right of self-help as to property used or owned by the Owner or a Resident of the Unit, and their respective invitees. Accordingly this Subsection constitutes an Owner's actual written consent to the exercise of such powers or rights by the Association, if any such consent is required by applicable law.

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

14.3. BOARD DISCRETION. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently provable or supportable to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources;

or (4) enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

14.4. NO WAIVER. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents (provided that, any variances granted by the Association in accordance with the terms of this Declaration shall be binding against the Owners). Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

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

ARTICLE 15 **INSURANCE**

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

15.1.1 Unavailability. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure, unless such failure is due to the intentional and willful neglect of the Association.

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

15.1.3. Requirements. The cost of insurance coverages and bonds maintained by the Association is a common expense. Insurance policies and

bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be prejudiced by the any or omission of any Owner or Resident, unless such Owner or Resident is acting within the scope of such Owner's or Resident's authority on behalf of the Association.

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

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

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

15.2. PROPERTY INSURANCE. The Association will obtain blanket all risk insurance, if reasonably available, for all common elements insurable by the Association. If blanket all-risk insurance is not reasonable available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard.

15.2.1. Common Property Insured. The Association will insure (1) General Common Elements (2) Limited Common Elements; and (3) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

15.2.2. Units Insured by Association. In addition to insuring the Common Elements against casualty loss, the Association will maintain property insurance on the Units as originally constructed. The Association may, but shall not be obligated to, insure betterments and improvements installed by current or previous Owners. In insuring Units, the Association may be guided by types of policies customarily available for similar types of properties.

15.2.3. Endorsements. To the extent reasonable available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender, such as Inflation Guard Endorsement, Building Ordinance or Law Endorsement, and a Special Condominium Endorsement.

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

15.4. WORKER'S COMPENSATION. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

15.5. FIDELITY COVERAGE. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his or her services. If maintained, the policy should be for an amount that exceeds the greater of (1) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (2) an amount equal to 3 months of Regular Assessments on all Units.

15.6. DIRECTORS AND OFFICERS LIABILITY. The Association may maintain directors and officers liability insurance, errors and omissions insurance,

indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

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

15.8. OTHER POLICIES. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

15.9. OWNER'S RESPONSIBILITY FOR INSURANCE.

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

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

15.9.3 Association Does Not Insure Owner's or Resident's Personal Property. **ATTENTION: THE ASSOCIATION DOES NOT INSURE AN OWNER OR RESIDENT'S PERSONAL PROPERTY. EACH OWNER AND RESIDENT IS SOLELY RESPONSIBLE FOR INSURING THEIR PERSONAL PROPERTY IN A UNIT AND ON THE PROPERTY, INCLUDING FURNISHINGS, VEHICLES, AND STORED ITEMS. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON THEIR PERSONAL BELONGINGS.**

ARTICLE 16
RECONSTRUCTION OR REPAIR AFTER LOSS

16.1. SUBJECT TO ACT. The Association's response to damage or destruction

of the Property will be governed by Section 82.111(i) of the Act. The provisions of this Article apply to the extent the Act is silent.

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

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

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

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

16.3. COSTS AND PLANS.

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

16.3.2. Plans and Specifications. Common Elements will be repaired and restored to substantially the same condition as they existed immediately prior to the damage or destruction. Units will be repaired and restored substantially in accordance with original construction plans and, with regard to such repair and restoration in accordance with such original construction plans, to substantially the same condition as the Units existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either

Common Elements or Units must be approved by Owners holding at least Sixty Seven percent (67%) of the votes in the Association, and by certain Mortgagees if so required by Article 18 of this Declaration.

16.4. OWNER'S DUTY TO REPAIR.

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

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

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

16.5. OWNER'S LIABILITY FOR INSURANCE DEDUCTIBLE. If repair or restoration of Common Elements or Units is required as a result of an insured loss, and if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner of Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with the Notice and Hearing Section of this Declaration.

ARTICLE 17

TERMINATION AND CONDEMNATION

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

17.2. TERMINATION. Termination of the terms of this Declaration and the

condominium status of the Property will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. In all other circumstances, an amendment to terminate must be approved by Owners holding at least Eighty percent (80%) of the votes in the Association and by certain Mortgagees pursuant to Article 18 of this Declaration.

ARTICLE 18

MORTGAGEE PROTECTION

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

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

18.1.2. **Eligible Mortgagees.** "Eligible Mortgagee" means the holder, insurer, or guarantor of a first purchase money mortgage secured by a recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Association will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the Unit Square Footage of Units subject to mortgages held by Eligible Mortgagees. For example, "51 percent of Eligible Mortgagees" means Eligible Mortgagees holding mortgages against Units with Unit Square Footage totaling more than 50% of the total Unit Square Footage of all Units that are subject to mortgages held by all Eligible Mortgagees.

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

18.3. TERMINATION. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by Owners holding at least Eighty percent (80%) of the votes in the Association, and by at least 51 percent of Eligible Mortgagees. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least 67 percent of Eligible Mortgagees.

18.4. IMPLIED APPROVAL. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within 30 days after receiving the Association's written request for approval of a proposed action, provided the Association's request is delivered by certified or registered mail, return receipt requested.

18.5. OTHER MORTGAGEE RIGHTS.

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

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

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

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

18.6. INSURANCE POLICIES. If an Underwriting Lender that holds a mortgage on a Unit, or that desires to finance a Unit, has requirements for insurance of condominiums, the Association must use reasonable good faith efforts to obtain and maintain the required coverages, to the extent they are reasonably available, and must use reasonable good faith efforts to comply with any notifications or processes required by the Underwriting Lender. Because underwriting requirements are subject to change, they are not recited here.

18.7. NOTICE OF ACTIONS. The Association will use reasonable, good faith efforts to send timely written notice to Eligible Mortgagees of the following actions:

- a. Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit.
- b. Any 60-day delinquency in the payment of Assessments or charges owed

by the Owner of the mortgaged Unit.

- c. A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.
- e. Any proposed amendment of a material nature, as provided in this Article.
- f. Any proposed termination of the condominium status of the Property.

18.8. AMENDMENTS OF A MATERIAL NATURE. A Document amendment "of a material nature" must be approved by Owners holding at least Sixty Seven percent (67%) of the votes in the Association, and by at least 51 percent of Eligible Mortgagees. This approval requirement does not apply to amendments effected by the exercise of a Development Right provided in Appendix B hereto. A change to any of the provisions of the Documents governing the following shall be considered amendments "of a material nature":

- a. Voting rights.
- b. Increases in Assessments that raise the previously assessed amount by more than 25 percent, Assessment liens, or the priority of Assessment liens.
- c. Reduction in reserves for maintenance, repair, and replacement of Common Elements.
- d. *Responsibility for maintenance and repairs.*
- e. Reallocation of interests in the General or Limited Common Elements, or rights to their use, except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action.
- f. Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action.
- g. Converting Units into Common Elements or Common Elements into Units.
- h. Expansion or contraction of the Property, or the addition, annexation, or

withdrawal of property to or from the Property.

- i. Property or liability insurance requirements.
- j. Imposition of any restrictions on the leasing of Units.
- k. Imposition of any restrictions on Owners' right to sell, or transfer their Units.
- i. Restoration or repair of the Property in a manner other than that specified in the Documents, after hazard damage or partial condemnation.
- m. Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 19 AMENDMENTS.

19.1. CONSENTS REQUIRED. As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by certain Owners alone, or by the Board alone. Otherwise, amendments to this Declaration must be approved by Owners holding at least Sixty Seven percent (67%) of the votes in the Association.

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

19.3. EFFECTIVE. To be effective, an amendment must be recorded in the real property records of the County in which the Property is located.

19.4. DECLARANT PROVISIONS. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

ARTICLE 20 DISPUTE RESOLUTION.

20.1. INTRODUCTION & DEFINITIONS. The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to

encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have following specified meanings:

20.1.1. **"Claim"** means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

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

20.1.3. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article:

- a. The Association's claim for Assessments, and any action by the Association to collect Assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.
- e. A dispute that is subject to alternate dispute resolution – such as mediation or arbitration – by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

20.1.4. **"Respondent"** means the Party against whom the Claimant has a Claim.

20.2. **MANDATORY PROCEDURES.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

20.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

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

20.5. **MEDIATION.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

20.6. **TERMINATION OF MEDIATION.** If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

20.7. **ALLOCATION OF COSTS.** Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees

charged by the mediator.

20.8. ENFORCEMENT OF RESOLUTION. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

20.9. GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

20.10. LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternate dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of Owners holding at least Sixty Seven percent (67%) of the votes in the Association.

20.10.1. Owner Approval. The Association may not initiate any judicial or administrative proceedings without the prior approval of Owners holding more than Fifty percent (50%) of the votes in the Association, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of Assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo.

20.10.2. Suit Against Declarant. Also, the Association may not initiate any judicial or administrative proceeding against Declarant without the approval of Owners holding at least Seventy Five percent (75%) of the votes in the Association.

20.10.3. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a Special Assessment, the Association must levy a Special Assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income or reserve funds or savings to fund litigation, unless the Association's annual budget or a

savings account was established and funded from its inception as a litigation reserve fund.

20.10.4. Settlement. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waivers or releases of claims.

ARTICLE 21 GENERAL PROVISIONS

21.1. COMPLIANCE. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

21.2. HIGHER AUTHORITY. The Documents are subordinate to federal, state and local law, rule, regulation and ordinance. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with any such laws, rules, regulations, or ordinances.

21.3. NOTICE. All demands or other notices required to be sent to an Owner or Resident by the terms of this Declaration shall be sent by regular or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's Unit, and the Owner is deemed to have been given notice whether or not such Owner actually receives it.

21.4. LIBERAL CONSTRUCTION. The terms and provisions of each Document are to be liberally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions of the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Documents, regardless which party seeks enforcement.

21.5. SEVERABILITY. Invalidity of any provision of this Declaration by judgment or court order does not affect any other provision, which shall remain in full force and effect.

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

21.7. INTERPRETATION. Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly a reference to

the singular includes the plural, the plural the singular, where the same would be appropriate. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

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

21.10 APPENDIXES. The following appendixes are attached to this Declaration and incorporated herein by reference:

- A – Description of Property
- B – Declarant's Representations and Reservations
- C – Allocations of Interest
- D – Plats and Plans
- E – Easements and Licenses

Signature and Acknowledgment

SIGNED on this 7th day of June, 2007

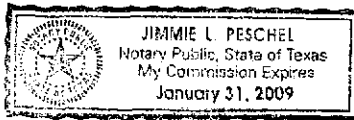
Guadalupe Town Creek, Ltd.
By: GTC Partner, LLC, its General Partner

By: [Signature]
L. Brent Bates, President

THE STATE OF TEXAS

COUNTY OF Ker

This instrument was acknowledged before me on the 7th day of June, 2007 by L. Brent Bates, President of GTC Partner, LLC, the General Partner of Guadalupe Town Creek, Ltd., a Texas limited partnership, for and on behalf of said limited partnership.



[Signature]
Notary Public The State of Texas

Filed By & Return To:

Fidelity Abstracy & Title Co.
829 Jefferson Street
Kerrville, TX 78028

GF# 070421F

FILED FOR RECORD
at 4:35 o'clock PM
JUN 19 2007

JANNETT PIEPER
Clerk County Court, Kerr County, Texas
[Signature] Deputy

APPENDIX A

Description of Property

FIELD NOTE DESCRIPTION

4.39 ACRES

Being a tract of land containing 4.39 acres and being approximately 1.33 acres situated in the Walter Fosgate Survey No. 120, Abstract No. 138 and approximately 3.06 acres situated in the John Young Survey No. 119, Abstract No. 376, and being the north portions of a 3.51 acre tract called Tract One and a 7.42 acre tract called Tract Two, both of record in Volume 1437, Page 92, Real Property Record of Kerr County and being more particularly described by metes and bounds as follows:

BEGINNING at a $\frac{3}{8}$ " iron rod found in concrete, in the south right of way line of a public roadway known as Guadalupe Street for the northwest corner of a 6.21 acre tract of record in Volume 1238, Page 778, Real Property Record of Kerr County and being the northeast corner of said 7.42 acres and the subject tract;

THENCE with the common line of said 6.21 acres and the subject tract, S $01^{\circ}46'34''$ W, passing at 267.16 feet a $\frac{3}{8}$ " iron rod found and continuing a total distance of 281.34 feet to a $\frac{1}{2}$ " iron rod set for the southeast corner of the subject tract;

THENCE through the interior of said 7.42 acres and subsequently said 3.51 acres with the southerly lines of the subject tract, the following calls:

S $85^{\circ}45'44''$ W, 122.19 feet to a 60d nail set for an angle point;
 N $75^{\circ}51'33''$ W, 174.59 feet to a 60d nail set for an angle point;
 N $74^{\circ}24'52''$ W, passing at 197.19 feet a 60d nail set and continuing a total distance of 234.19 feet to a 60d nail set for an angle point;
 N $42^{\circ}01'44''$ W, 36.00 feet to a 60d nail set for an angle point;
 N $58^{\circ}26'59''$ W, 220.09 feet to a 2" steel fence post in the southeast line of a 2.3 acre tract of record in Volume 1128, Page 308, Real Property Record of Kerr County and being the northwest line of said 3.51 acre tract and being the westerly southwest corner of the subject tract;

THENCE with the common line of said 2.3 acres and the subject tract, N $32^{\circ}09'46''$ E, 257.99 feet to a $\frac{1}{2}$ " iron rod found in the southwest right of way line of the aforementioned Guadalupe Street for the northwest corner of the subject tract;

THENCE with the southerly right of way lines of said Guadalupe Street, the following calls:

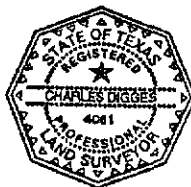
S 58°33'53"E, 232.06 feet to a ½" iron rod set for an angle point;
S 72°42'37"E, 142.59 feet to a ½" iron rod set for an angle point;
S 87°21'42"E, 265.91 feet to the POINT OF BEGINNING and containing
4.39 acres within these metes and bounds.

Note: All iron rods that were set are capped with an orange plastic cap marked "Guadalupe Survey".

Note: This survey is based on the North American Datum 1983, Texas State Plane Coordinate System, South Central Zone. All bearings, distances and acreages shown hereon relate to this datum and coordinate system.

This description is a companion to a Plat of Survey dated April 28, 2006 and was prepared this 28th day of April 2006.

Charles Digges RPLS
Texas Registration No. 4061
File#2006042701 misword D3



APPENDIX B

Declarant Representations & Reservations.

B.1. GENERAL PROVISIONS.

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

B.1.2. Purpose. The purpose of this Appendix is to protect Declarant's interest in the Property. This Appendix gives Declarant certain extraordinary rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees.

B.1.3. General Reservation and Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interest in the Property.

B.2. Declarant Control Period Reservations. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly buildout and sellout of the Property, Declarant will retain control of the Association, subject to the following:

B.2.1. Organizational Meeting. Within 120 days prior to the end of the Declarant Control Period, the Owners will elect directors to the Board at an organizational meeting of the Members of the Association, such directors to take office effective on the date the Declarant Control Period ends. Subject to the Bylaws of the Association, the Declarant or the Association shall determine the number of directors to be elected at the

organizational meeting of the Members. Declarant or the Association will give written notice of the organizational meeting to an Owner of each Unit at least 10 days before the meeting. For the organizational meeting, Owners of 10 percent of the Units constitute a quorum. The Board elected at the organizational meeting will elect the officers of the Association not later than 30 days after the end of the Declarant Control Period. The directors elected at the organizational meeting will begin to serve at the end of the Declarant Control Period and will continue to serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors.

B.2.2. Officers & Directors. During the Declarant Control Period, the Board may consist of 3 persons. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners, and each of whom shall be indemnified by the Association as a "leader". Notwithstanding the above, within 120 days after the conveyance of 50 percent of the Units that may be created (including real property subject to being added to the Property) to Owners other than Declarant, at least one-third of the Board must be elected by Owners other than Declarant.

B.2.3. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments, during the Declarant Control Period only, Declarant at Declarant's option may support the Association's budget by either of the following methods: (i) Declarant will pay Regular Assessments on each Declarant owned Unit in the same manner as any Owner; or, alternately, (ii) Declarant will assume responsibility for the difference between the Association's actual common expenses as they are paid and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant owned Unit according to the Unit's allocated interest for Assessments.

B.3. DEVELOPMENT PERIOD RESERVATIONS. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

B.3.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and

opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of Units, buildings, and Common Elements.

B.3.2. Architectural Control. During the Development Period, Declarant has the absolute right to appoint the ACC, consisting of any number of persons who serve at the pleasure of Declarant, and who may be removed and replaced by Declarant. Notwithstanding the foregoing, during the Development Period -- after termination of Declarant Control, or earlier if Declarant permits -- the Board may appoint or serve as a "modifications committee" to respond exclusively to modifications of completed Units that are owned by persons other than Declarant. A modifications committee may not involve itself with the approval of new Units, Common Elements, or Units owned or leased by Declarant.

B.3.3. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the Property name by the Association.

B.3.4. Transfer Fees. During the Development Period, Declarant may not be required to pay transfer-related and resale certificate fees.

B.3.5. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:

- a. To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- b. To correct any errors or defects in the execution of this Declaration or the other Documents.
- c. To add real property to the Property in the exercise of statutory Development Rights.
- d. To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.

- e. To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.
- f. To withdraw from the Property any portion of the real property, in the exercise of statutory Development Rights.
- g. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- h. To change the name or entity of Declarant.
- i. For any other purpose provided the amendment has no material adverse effect on any right of any Owner.

B.3.6. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights ("Development Rights") which may be exercised during the Development Period: (1) to add real property to the Property; (2) to create Units, General Common Elements, and Limited Common Elements within the Property; (3) subdivide, combine, or reconfigure Units or convert Units into Common Elements, (4) to withdraw from the Property any portion of the real property.

B.3.7. Development Rights Reserved. Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions of the Property will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions.

B.4. SPECIAL DECLARANT RIGHTS. As permitted by the Act, Declarant reserves the below-described Special Declarant Rights ("Special Declarant Rights"), to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Property:

- a. The right to complete or make improvements indicated on the Plat and Plans.
- b. The right to exercise any Development Right.
- c. The right to make the Property part of a larger condominium or planned community.

- d. The right to use Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.
- e. For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and brokers' parties – at the Property to promote the sale of Units.
- f. Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of making improvements within the Property (or within real property that may be added to the Property), and for purposes of developing, constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- g. The right to appoint or remove any Declarant-appointed officer or director of the Association during the Declarant Control Period consistent with the Act.

Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds a Development Right to create additional Units or Common Elements or Declarant owns a Unit, whichever ceases last. Earlier termination of certain rights may occur by statute.

B.5. ADDITIONAL EASEMENTS & RIGHTS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:

- a. An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in

connection with the development, construction, completion, management, maintenance, and marketing of the Property.

- b. The right to sell or lease any Unit Owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.
- c. The right to exercise the marketing, promotional, signage, and usage rights herein to market Declarant's products located outside the Property.
- d. The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.
- e. An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein.
- f. An easement over the entire Property, including the Units, to inspect the Common Elements and all improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element improvements.
- g. The right to create easements for access and utilities to and from (i) any property withdrawn from the condominium created by this Declaration, or (ii) any property owned by Declarant adjoining the Property.
- h. The right to prepare and record new Plats and Plans from time to time after the exercise of Development Rights, and the right to amend this Declaration to modify the Plats and Plans to conform to such new Plats and Plans, in order to cause the Plats and Plans attached hereto to accurately reflect the construction of buildings or other improvements and to otherwise conform to the requirements of Section 82.059 of the Act.
- i. The right to amend this Declaration to cause the Schedule of Allocated Interests attached hereto as Exhibit C to accurately reflect

the actual square footage of a Unit after the construction of the Unit's improvements

B.6. COMMON ELEMENTS.

B.6.1. Maintenance Orientation. Within 60 days of the organizational meeting of the Association, Declarant will invite a non-Declarant representative of the Association to an orientation on the maintenance aspects of the Property. The Association's managing agent is qualified to serve as the Association's representative at the orientation, even if having been hired by the Declarant-appointed Board. One purpose of the orientation is to provide continuity of maintenance information during the period in which control of the Association transfers from Declarant to the other Owners. A typical orientation occurs during a site inspection and is formalized with a writing signed by the representatives of Declarant and the Association.

B.6.2. No Conveyance. Because the Common Elements are owned by the Owners, collectively and in undivided interests, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

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

(End of Appendix B)

APPENDIX CSchedule of Allocated Interests
(Building A)

<u>Building A</u> <u>Unit No.</u>	<u>Unit Square</u> <u>Footage</u>	<u>Share of</u> <u>Common</u> <u>Elements</u>	<u>Share of</u> <u>Common</u> <u>Expenses</u>	<u>Votes in the</u> <u>Association</u>
A-1-1	2291	0.0181	0.0181	2291
A-1-2	2209	0.0175	0.0175	2209
A-1-3	2515	0.0199	0.0199	2515
A-1-4	2515	0.0199	0.0199	2515
A-1-5	2209	0.0175	0.0175	2209
A-1-6	2291	0.0181	0.0181	2291
A-2-1	2291	0.0181	0.0181	2291
A-2-2	2209	0.0175	0.0175	2209
A-2-3	2515	0.0199	0.0199	2515
A-2-4	2515	0.0199	0.0199	2515
A-2-5	2209	0.0175	0.0175	2209
A-2-6	2291	0.0181	0.0181	2291
A-3-1	2291	0.0181	0.0181	2291
A-3-2	2209	0.0175	0.0175	2209
A-3-3	2515	0.0199	0.0199	2515
A-3-4	2515	0.0199	0.0199	2515
A-3-5	2209	0.0175	0.0175	2209
A-3-6	2291	0.0181	0.0181	2291

APPENDIX C (Continued)

Schedule of Allocated Interests
(Building B)

<u>Building B</u> <u>Unit No.</u>	<u>Unit Square</u> <u>Footage</u>	<u>Share of</u> <u>Common</u> <u>Elements</u>	<u>Share of</u> <u>Common</u> <u>Expenses</u>	<u>Votes in the</u> <u>Association</u>
B-1-1	2291	0.0181	0.0181	2291
B-1-2	2209	0.0175	0.0175	2209
B-1-3	2515	0.0199	0.0199	2515
B-1-4	2515	0.0199	0.0199	2515
B-1-5	2209	0.0175	0.0175	2209
B-1-6	2291	0.0181	0.0181	2291
B-2-1	2291	0.0181	0.0181	2291
B-2-2	2209	0.0175	0.0175	2209
B-2-3	2515	0.0199	0.0199	2515
B-2-4	2515	0.0199	0.0199	2515
B-2-5	2209	0.0175	0.0175	2209
B-2-6	2291	0.0181	0.0181	2291
B-3-1	2291	0.0181	0.0181	2291
B-3-2	2209	0.0175	0.0175	2209
B-3-3	2515	0.0199	0.0199	2515
B-3-4	2515	0.0199	0.0199	2515
B-3-5	2209	0.0175	0.0175	2209
B-3-6	2291	0.0181	0.0181	2291

APPENDIX C (Continued)

Schedule of Allocated Interests
(Building C)

<u>Building C Unit No.</u>	<u>Unit Square Footage</u>	<u>Share of Common Elements</u>	<u>Share of Common Expenses</u>	<u>Votes in the Association</u>
C-1-1	2291	0.0181	0.0181	2291
C-1-2	2209	0.0175	0.0175	2209
C-1-3	2515	0.0199	0.0199	2515
C-1-4	2515	0.0199	0.0199	2515
C-1-5	2209	0.0175	0.0175	2209
C-1-6	2291	0.0181	0.0181	2291
C-2-1	2291	0.0181	0.0181	2291
C-2-2	2209	0.0175	0.0175	2209
C-2-3	2515	0.0199	0.0199	2515
C-2-4	2515	0.0199	0.0199	2515
C-2-5	2209	0.0175	0.0175	2209
C-2-6	2291	0.0181	0.0181	2291
C-3-1	2291	0.0181	0.0181	2291
C-3-2	2209	0.0175	0.0175	2209
C-3-3	2515	0.0199	0.0199	2515
C-3-4	2515	0.0199	0.0199	2515
C-3-5	2209	0.0175	0.0175	2209
C-3-6	2291	0.0181	0.0181	2291
Total (Buildings A, B and C)	126,270			126,270

(End of Appendix C)

APPENDIX D

Plats and Plans

Certification

The undersigned, being an independent licensed Surveyor, Engineer, or Architect, certifies that the attached plats and plans contain the following information required by Section 82.059(b) of the Texas Condominium Act:

- (1) the name and a survey or general schematic map of the entire condominium;
- (2) a legally sufficient description of any real property subject to development rights, labeled to identify the rights applicable to each parcel;
- (3) the extent of any encroachments by or on any portion of the condominium;
- (4) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium, and the location of any underground utility line that is actually known by the Declarant at the time of filing the declaration to have been constructed outside a recorded easement;
- (5) the location and dimensions of any vertical unit boundaries not shown or projected on recorded plans and the unit's identifying number;
- (6) the location, with reference to established data, of any horizontal unit boundaries not shown or projected on recorded plans and the unit's identifying number;
- (7) the location and dimensions of limited common elements;
- (8) the intended location and dimensions of a contemplated improvement to be constructed anywhere within the condominium, which must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT"; and
- (8) any units, appropriately identified, in which the Declarant has reserved the right to create additional units or common elements.

The plats and plans do not contain the following information for the reasons stated:

Information**Reason**

- | | |
|---|--|
| 1. the location and dimensions of all real property not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real property | 1. According to the Declarant, all real property in the condominium is subject to development rights |
| 2. a legally sufficient description of any | 2. According to the Declarant, no such |

real property in which the unit owners will own only an estate for years, labeled as "leasehold real property"

3. the distance between noncontiguous parcels of real property constituting the condominium

4. in the case of real property not subject to development rights, all other matters required by law on land surveys

5. the distance and bearings locating each building from all other buildings and from at least one boundary line of the real property constituting the condominium

property has been established

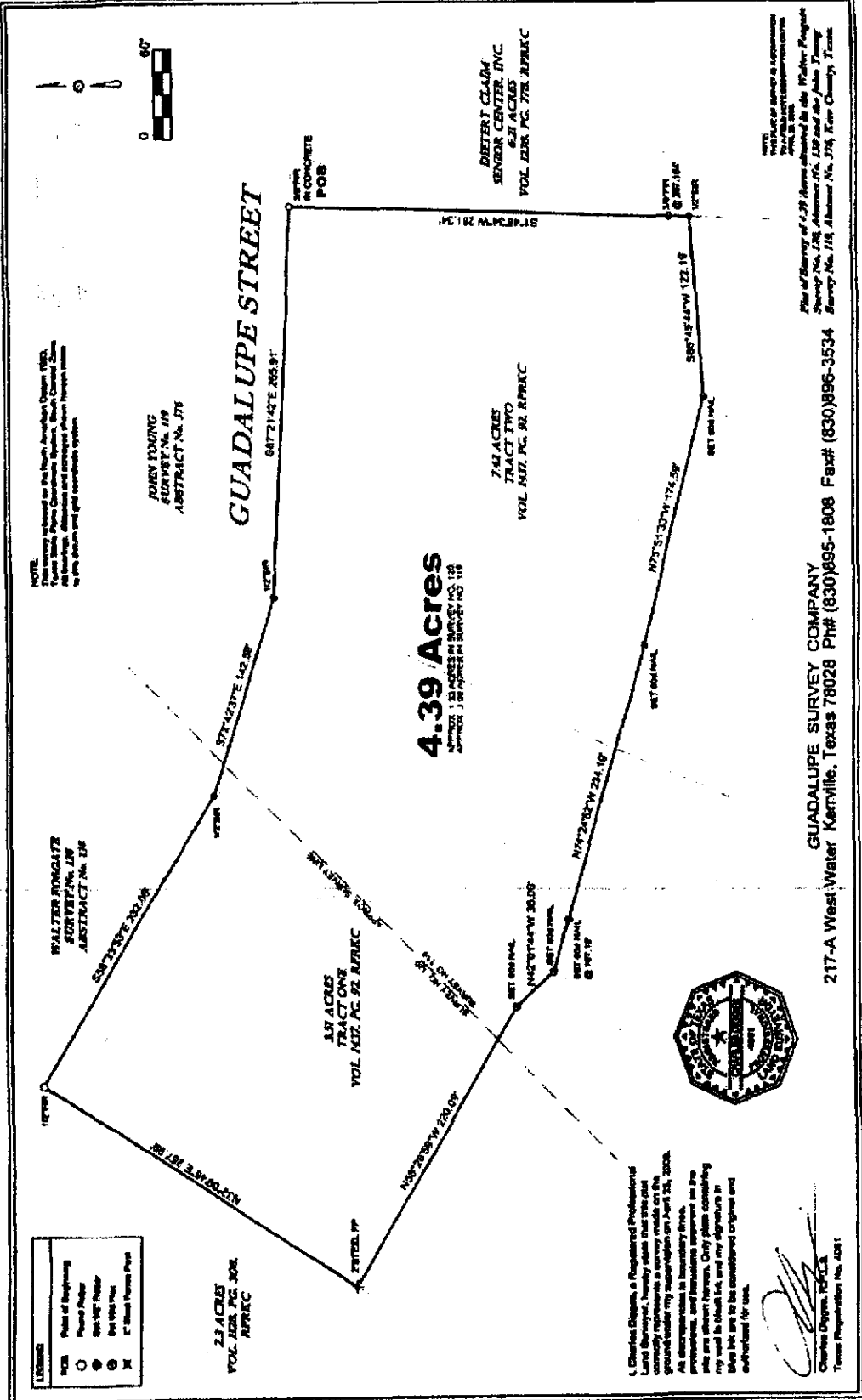
3. All parcels are contiguous

4. According to the Declarant, all real property in the condominium is subject to development rights

5. No buildings have been constructed; however, the general schematic map of the condominium depicts the distances between units and from at least one boundary line of the real property constituting the condominium

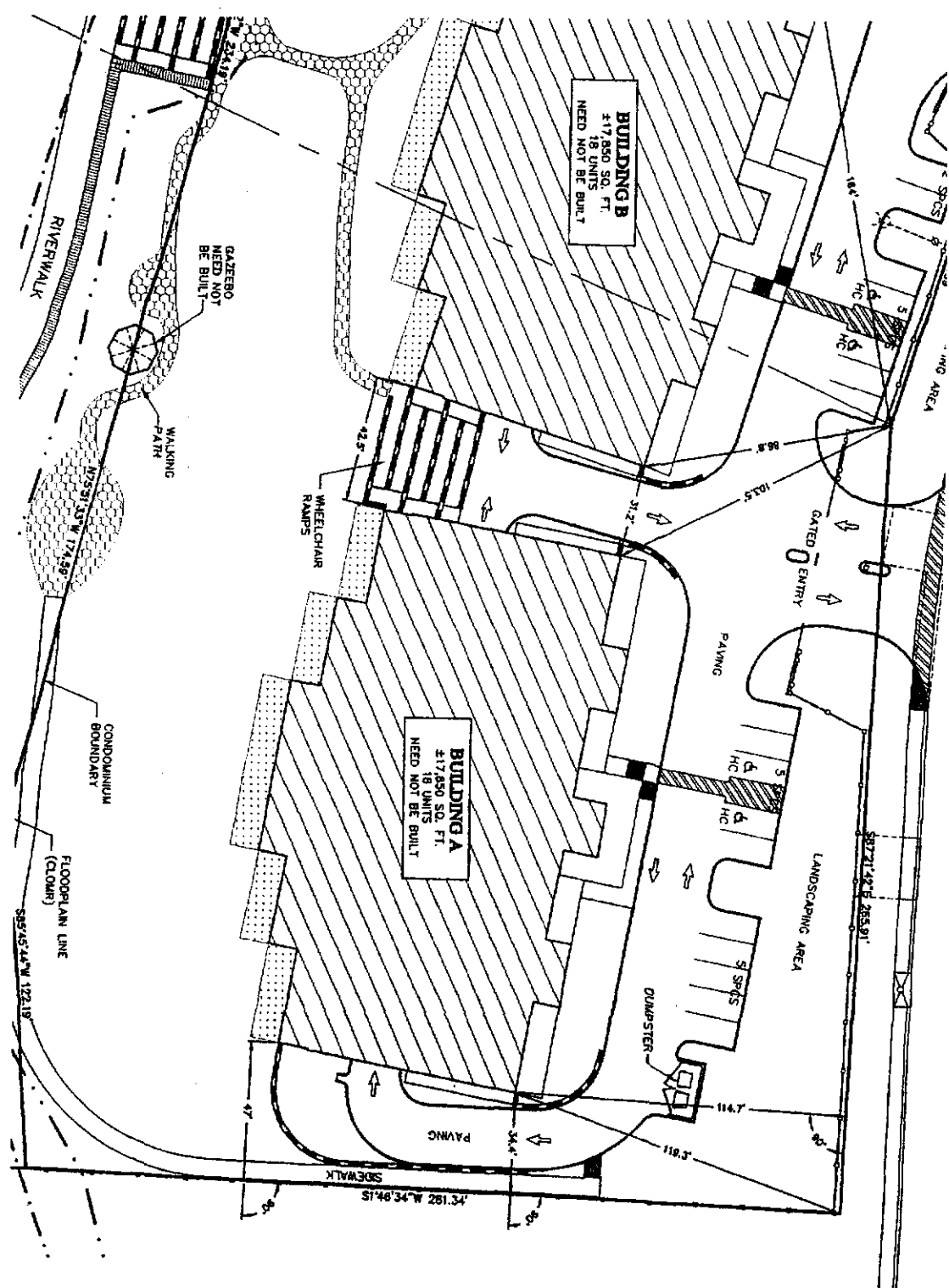
Ki W. Jeng P.E.

License # 84823



LEGEND

	EXISTING STREET, GATE
	PROPOSED STREET, GATE
	EXISTING SIDEWALK
	PROPOSED SIDEWALK
	EXISTING DRIVEWAY
	PROPOSED DRIVEWAY
	EXISTING PARKING LOT
	PROPOSED PARKING LOT
	EXISTING BUILDING
	PROPOSED BUILDING
	EXISTING FENCE
	PROPOSED FENCE
	EXISTING TREE
	PROPOSED TREE
	EXISTING UTILITY
	PROPOSED UTILITY
	EXISTING LOT
	PROPOSED LOT
	EXISTING EASEMENT
	PROPOSED EASEMENT
	EXISTING RIGHT-OF-WAY
	PROPOSED RIGHT-OF-WAY
	EXISTING BOUNDARY
	PROPOSED BOUNDARY
	EXISTING STRUCTURE
	PROPOSED STRUCTURE
	EXISTING FEATURE
	PROPOSED FEATURE
	EXISTING CONDITION
	PROPOSED CONDITION
	EXISTING NOTE
	PROPOSED NOTE
	EXISTING DETAIL
	PROPOSED DETAIL
	EXISTING ANNOTATION
	PROPOSED ANNOTATION
	EXISTING LABEL
	PROPOSED LABEL
	EXISTING TITLE
	PROPOSED TITLE
	EXISTING SUBTITLE
	PROPOSED SUBTITLE
	EXISTING FOOTNOTE
	PROPOSED FOOTNOTE
	EXISTING ENDNOTE
	PROPOSED ENDNOTE
	EXISTING APPENDIX
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	EXISTING TABLE OF CONTENTS
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	EXISTING LIST OF TABLES
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	EXISTING LIST OF AUTHORS
	PROPOSED LIST OF AUTHORS
	EXISTING LIST OF REVIEWERS
	PROPOSED LIST OF REVIEWERS
	EXISTING LIST OF CONTRIBUTORS
	PROPOSED LIST OF CONTRIBUTORS
	EXISTING LIST OF SPONSORS
	PROPOSED LIST OF SPONSORS
	EXISTING LIST OF SUPPORTERS
	PROPOSED LIST OF SUPPORTERS
	EXISTING LIST OF ADVISORS
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	EXISTING LIST OF JURORS
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	PROPOSED LIST OF JUDGES
	EXISTING LIST OF LAWYERS
	PROPOSED LIST OF LAWYERS
	EXISTING LIST OF DOCTORS
	PROPOSED LIST OF DOCTORS
	EXISTING LIST OF TEACHERS
	PROPOSED LIST OF TEACHERS
	EXISTING LIST OF STUDENTS
	PROPOSED LIST OF STUDENTS
	EXISTING LIST OF PARENTS
	PROPOSED LIST OF PARENTS
	EXISTING LIST OF GRANDPARENTS
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	EXISTING LIST OF SIBLINGS
	PROPOSED LIST OF SIBLINGS
	EXISTING LIST OF FRIENDS
	PROPOSED LIST OF FRIENDS
	EXISTING LIST OF NEIGHBORS
	PROPOSED LIST OF NEIGHBORS
	EXISTING LIST OF COMMUNITY MEMBERS
	PROPOSED LIST OF COMMUNITY MEMBERS
	EXISTING LIST OF CITIZENS
	PROPOSED LIST OF CITIZENS
	EXISTING LIST OF RESIDENTS
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	EXISTING LIST OF INHABITANTS
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	EXISTING LIST OF DENIZENS
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	EXISTING LIST OF POPULATIONS
	PROPOSED LIST OF POPULATIONS
	EXISTING LIST OF COMMUNITIES
	PROPOSED LIST OF COMMUNITIES
	EXISTING LIST OF SOCIETIES
	PROPOSED LIST OF SOCIETIES
	EXISTING LIST OF GROUPS
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	EXISTING LIST OF TERRITORIES
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	EXISTING LIST OF JURISDICTIONS
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	EXISTING LIST OF CONVENTS
	PROPOSED LIST OF CONVENTS
	EXISTING LIST OF MONASTERIES
	PROPOSED LIST OF MONASTERIES
	EXISTING LIST OF NUNNERIES
	PROPOSED LIST OF NUNNERIES
	EXISTING LIST OF FRIARIES
	PROPOSED LIST OF FRIARIES
	EXISTING LIST OF CONVENTS
	PROPOSED LIST OF CONVENTS
	EXISTING LIST OF MONASTERIES
	PROPOSED LIST OF MONASTERIES
	EXISTING LIST OF NUNNERIES
	PROPOSED LIST OF NUNNERIES
	EXISTING LIST OF FRIARIES
	PROPOSED LIST OF FRIARIES
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	PROPOSED LIST OF CONVENTS
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	EXISTING LIST OF FRIARIES
	PROPOSED LIST OF FRIARIES
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	PROPOSED LIST OF CONVENTS
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	PROPOSED LIST OF MONASTERIES
	EXISTING LIST OF NUNNERIES
	PROPOSED LIST OF NUNNERIES
	EXISTING LIST OF FRIARIES
	PROPOSED LIST OF FRIARIES
	EXISTING LIST OF CONVENTS
	PROPOSED LIST OF CONVENTS
	EXISTING LIST OF MONASTERIES
	PROPOSED LIST OF MONASTERIES
	EXISTING LIST OF NUNNERIES
	PROPOSED LIST OF NUNNERIES
	EXISTING LIST OF FRIARIES
	PROPOSED LIST OF FRIARIES
	EXISTING LIST OF CONVENTS
	PROPOSED LIST OF CONVENTS
	EXISTING LIST OF MONASTER



SITE PLAN
PALACIOS del GUADALUPE
 521 GUADALUPE STREET



BUILDING B
±17,850 SQ. FT.
18 UNITS
NEED NOT BE BUILT

FLOODPLAIN LINE
- (CLMR)

GUADALUPE STREET

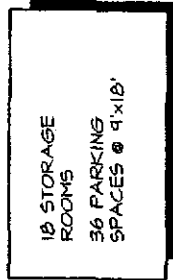
FLOODWAY LINE
(CLOMP)

S85°45'44"W 122.19

NOTES:

1. THE ENTIRE PROPERTY IS SUBJECT TO DEVELOPMENT RIGHTS.
2. DECALRANT HAS RESERVED THE RIGHT TO CREATE ADDITIONAL UNITS OR COMMON ELEMENTS TO ALL UNITS.
3. PARKING, DRIVE ISLES, HANDICAP RAMPS AND OTHER IMPROVEMENTS ASSOCIATED WITH THE BUILDINGS AND OTHER IMPROVEMENTS LABELED "NEED NOT BE BUILT" ALSO NEED NOT BE BUILT UNLESS ASSOCIATED STRUCTURE IS BUILT.

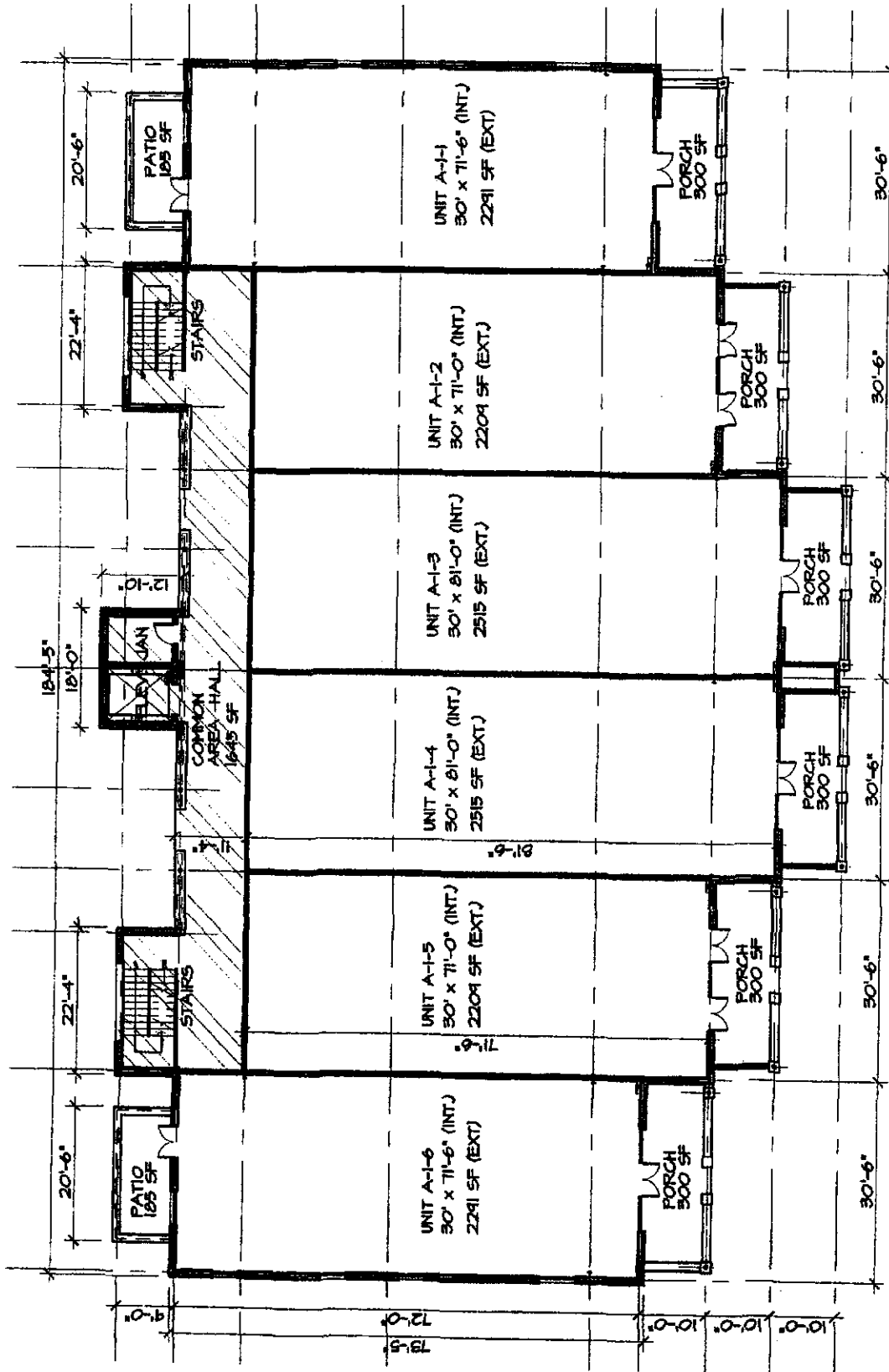
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DATE: 06/01/1	
CHK. BY (REV)	
CHK. BY (REV)	
REVISION:	
RI - PER CITY COMMENTS	
JOB NO: 0501	
SITE PLAN	
SHEET NUMBER	
SP	
1 OF 1	



**BASEMENT PLAN
BUILDING 'A'**

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028

A-1

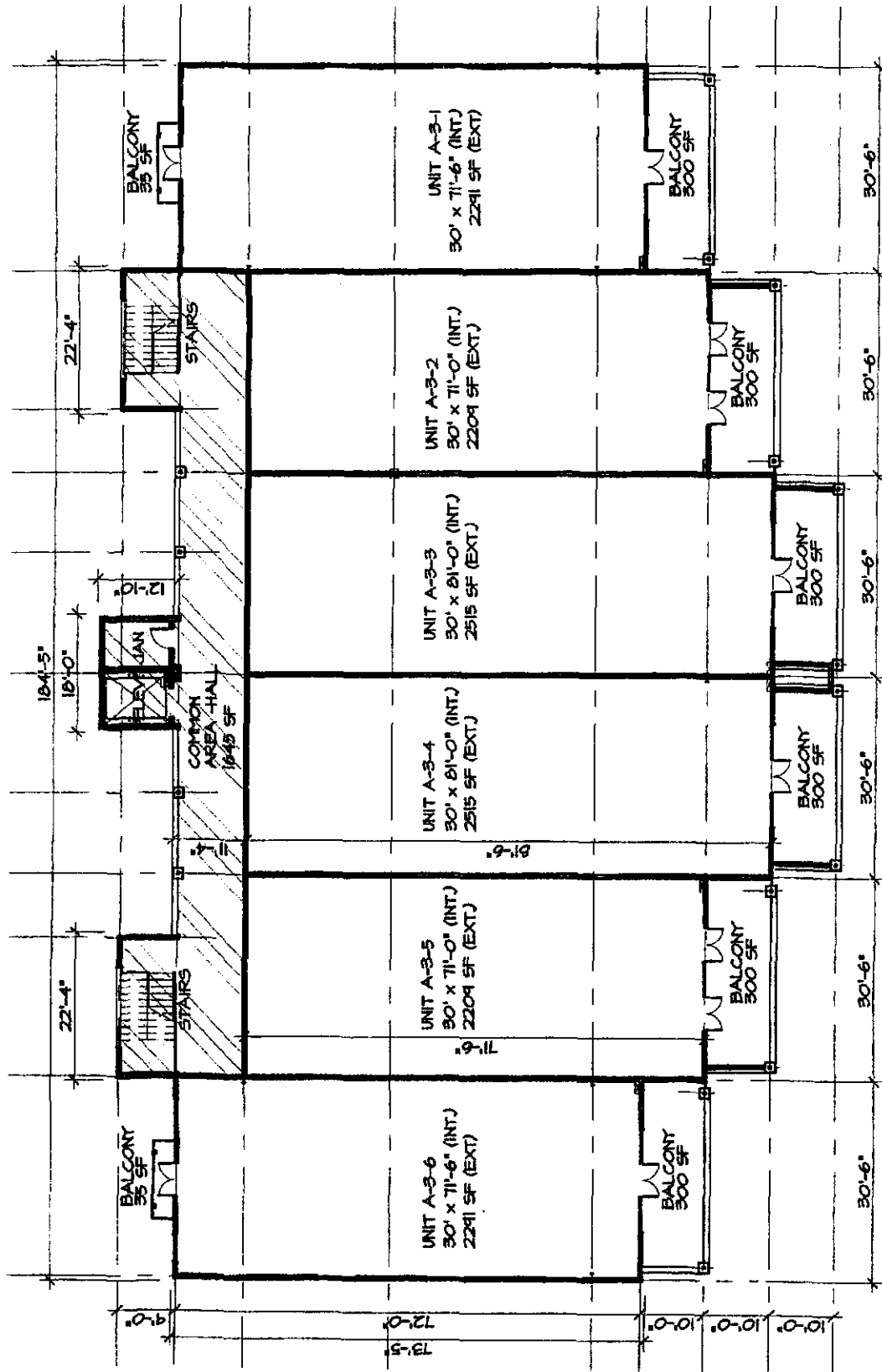


1ST FLOOR PLAN
BUILDING 'A'

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028

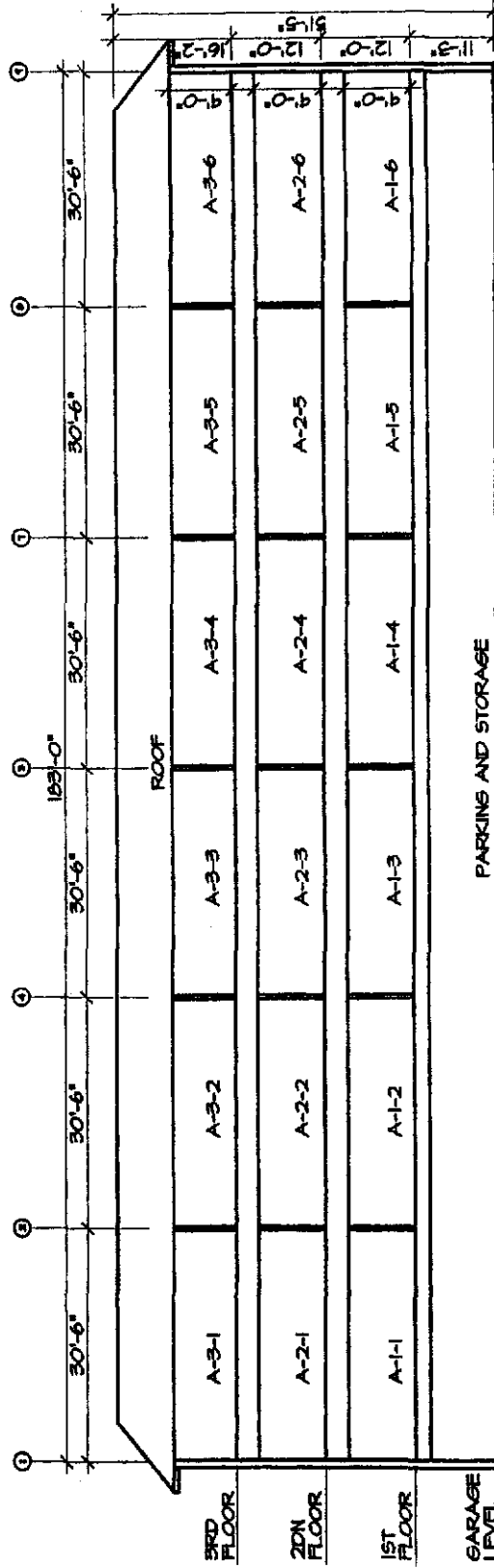
2ND FLOOR PLAN
BUILDING 'A'

Guadalupe Street, Kerrville, TX 78028



A-3

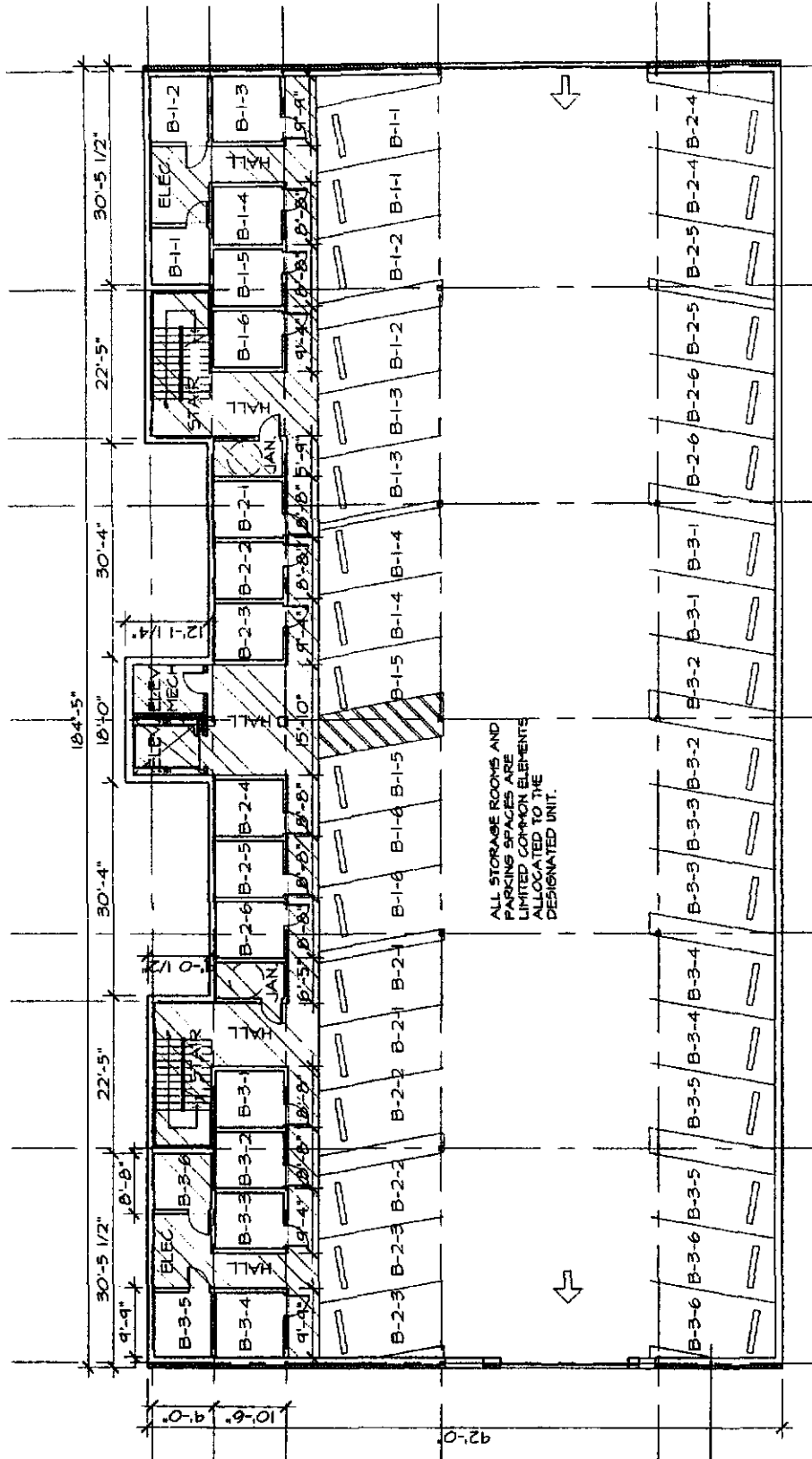
PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028



SCHEMATIC SECTION
BUILDING 'A'

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerville, TX 78028

A-4



COMMON AREAS
1 ELEVATOR
2 STAIRS
1 ELEV. MECH ROOM
2 JANITOR ROOMS
2 ELECTRICAL HALLS
HALLS AND WALK

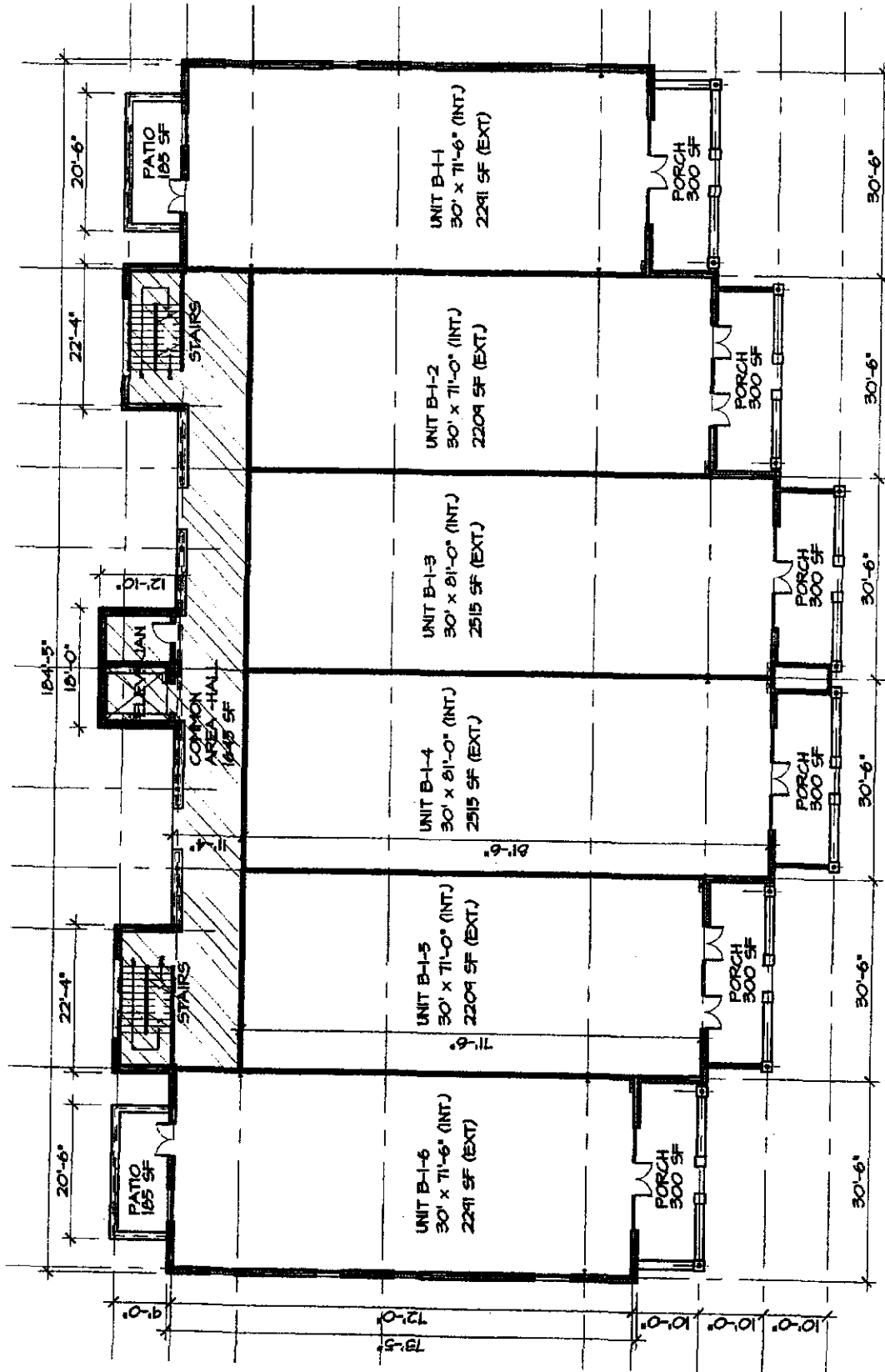
BASEMENT PLAN
BUILDING 'B'

18 STORAGE ROOMS
36 PARKING SPACES @ 9'x18'

ALL STORAGE ROOMS AND PARKING SPACES ARE LIMITED COMMON ELEMENTS ALLOCATED TO THE DESIGNATED UNIT.

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerville, TX 78028

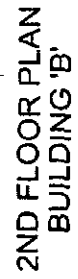
B-0



1ST FLOOR PLAN
BUILDING 'B'

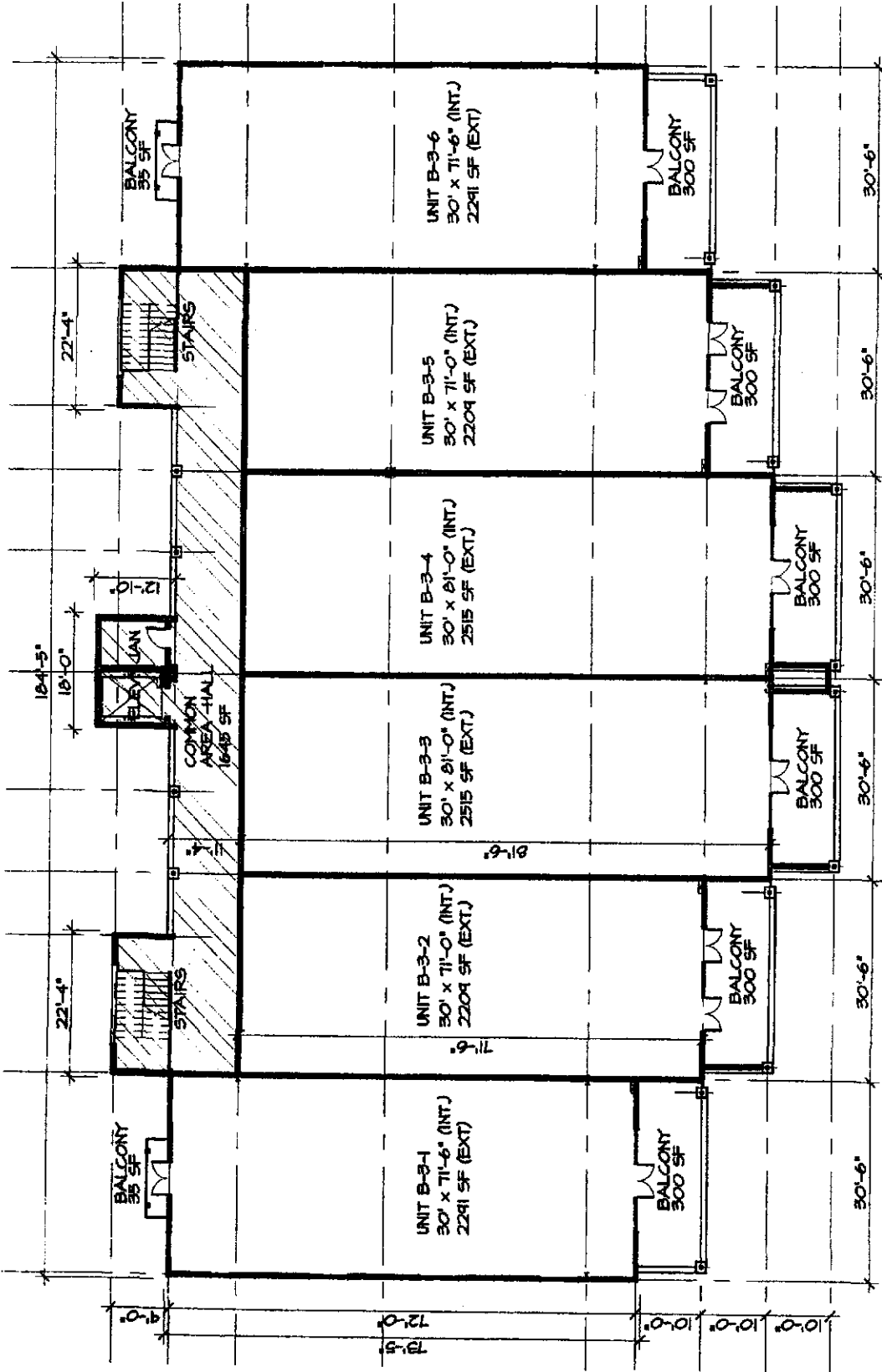
PALACIOS DEL GUADALUPE
Guadalupe Street, Kerville, TX 75028

B-1



PALACIOS DEL GUADALUPE

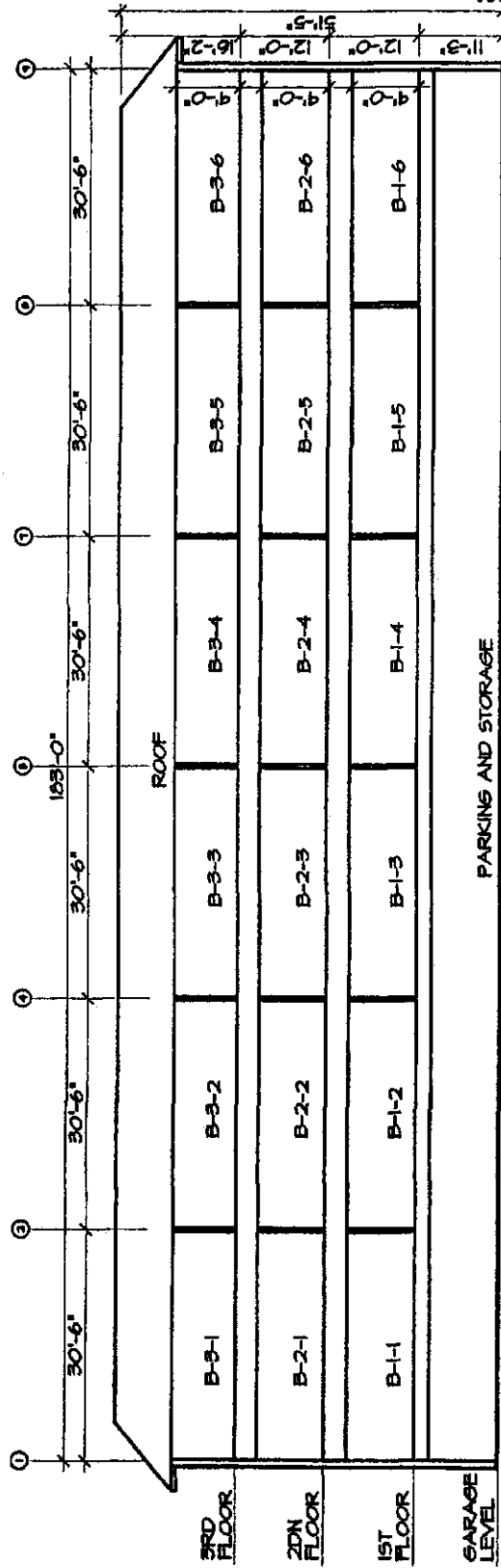
Guadalupe Street, Kerrville, TX 78028



3RD FLOOR PLAN
BUILDING 'B'

PALACIOS DEL GUADALUPE
Guadalupe Street, Kenville, TX 78028

B-3

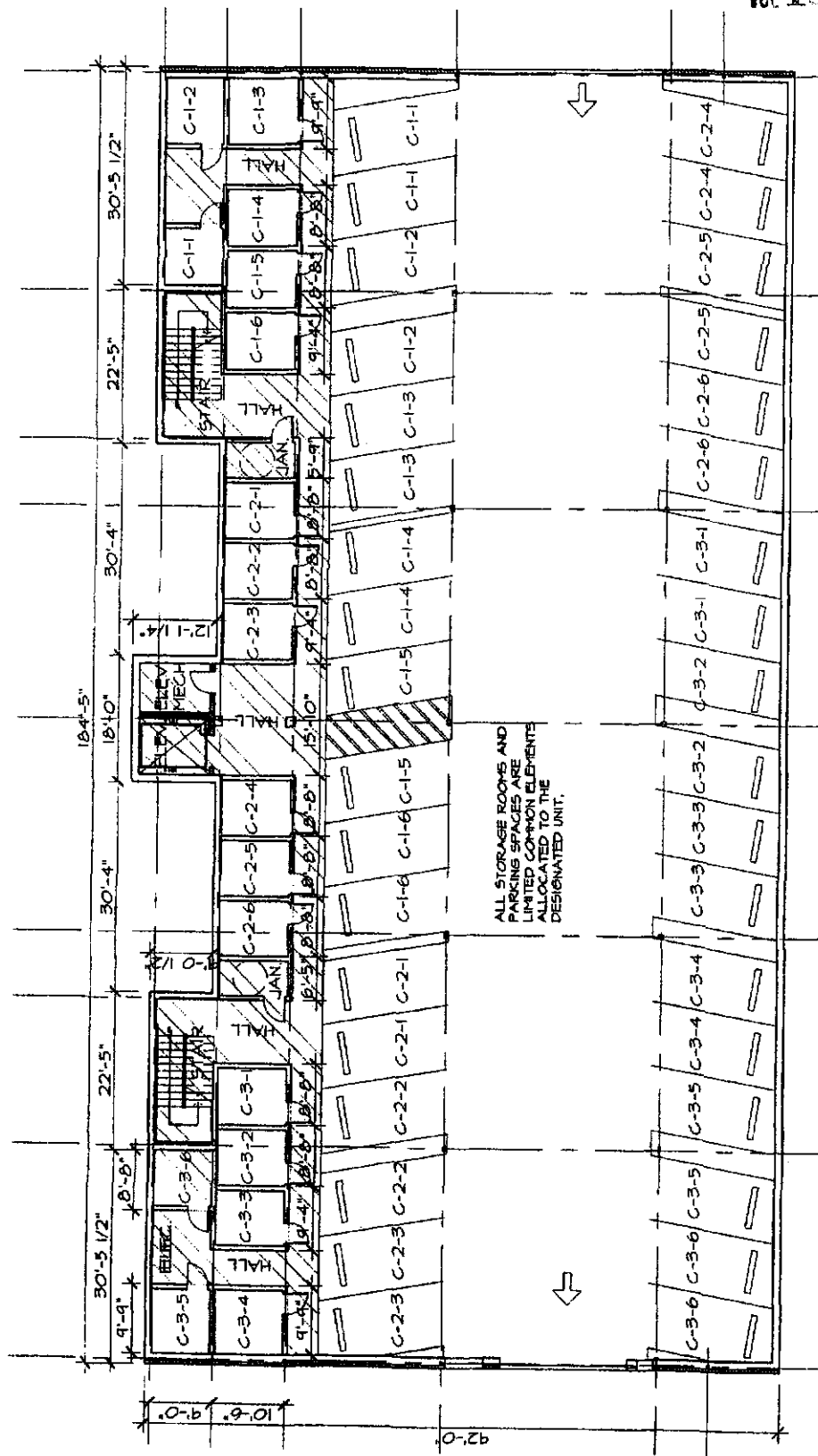


SCHEMATIC SECTION
BUILDING 'B'

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028

B-4

C-0



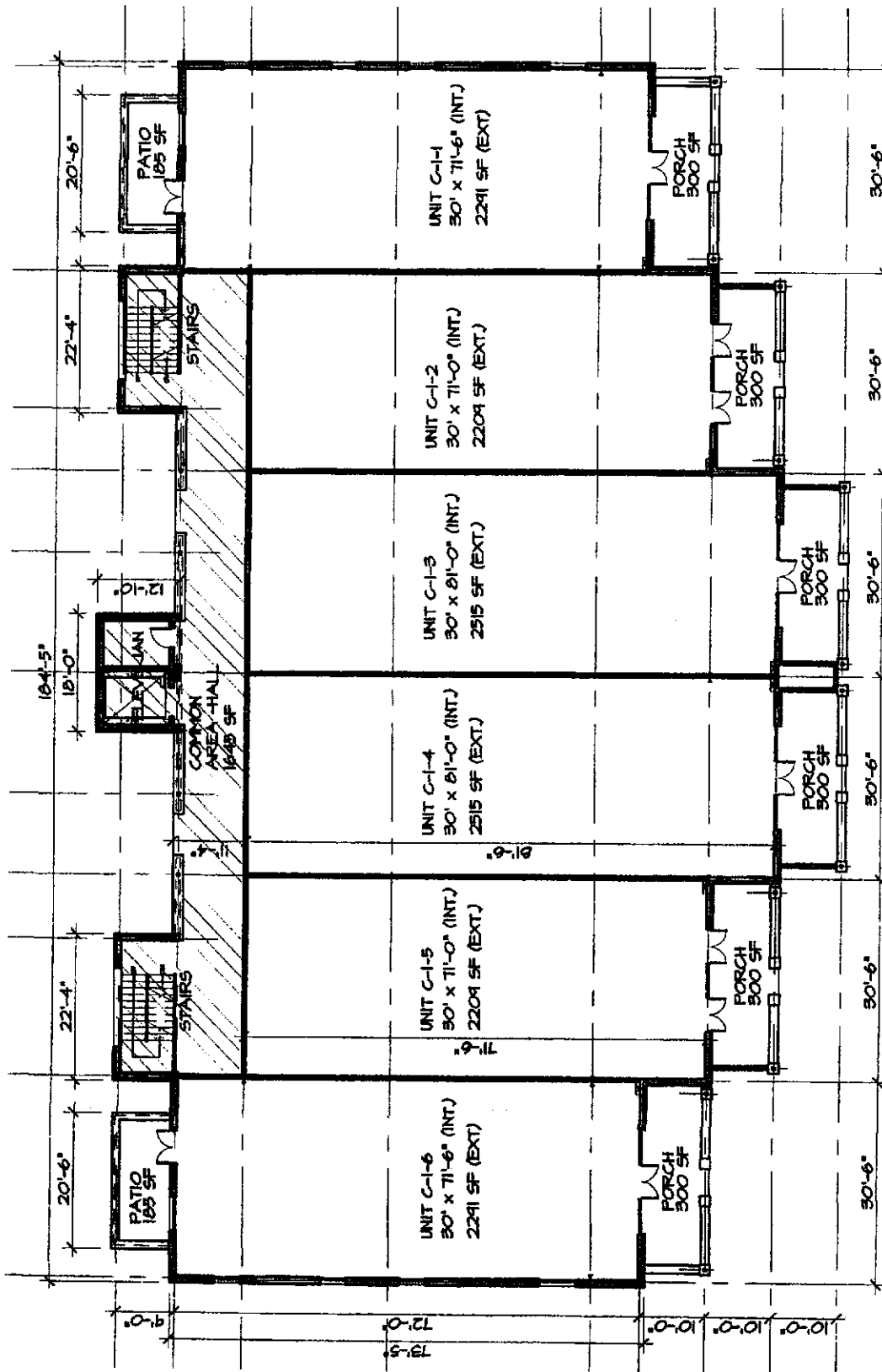
ALL STORAGE ROOMS AND
PARKING SPACES ARE
LIMITED COMMON ELEMENTS
ALLOCATED TO THE
DESIGNATED UNIT.

COMMON AREAS
1 ELEVATOR
2 STAIRS
1 ELEV. MECH ROOM
2 JANITOR ROOMS
2 ELECTRICAL HALLS
HALLS AND WALK

BASEMENT PLAN
BUILDING 'C'

18 STORAGE
ROOMS
36 PARKING
SPACES @ 9'x18'

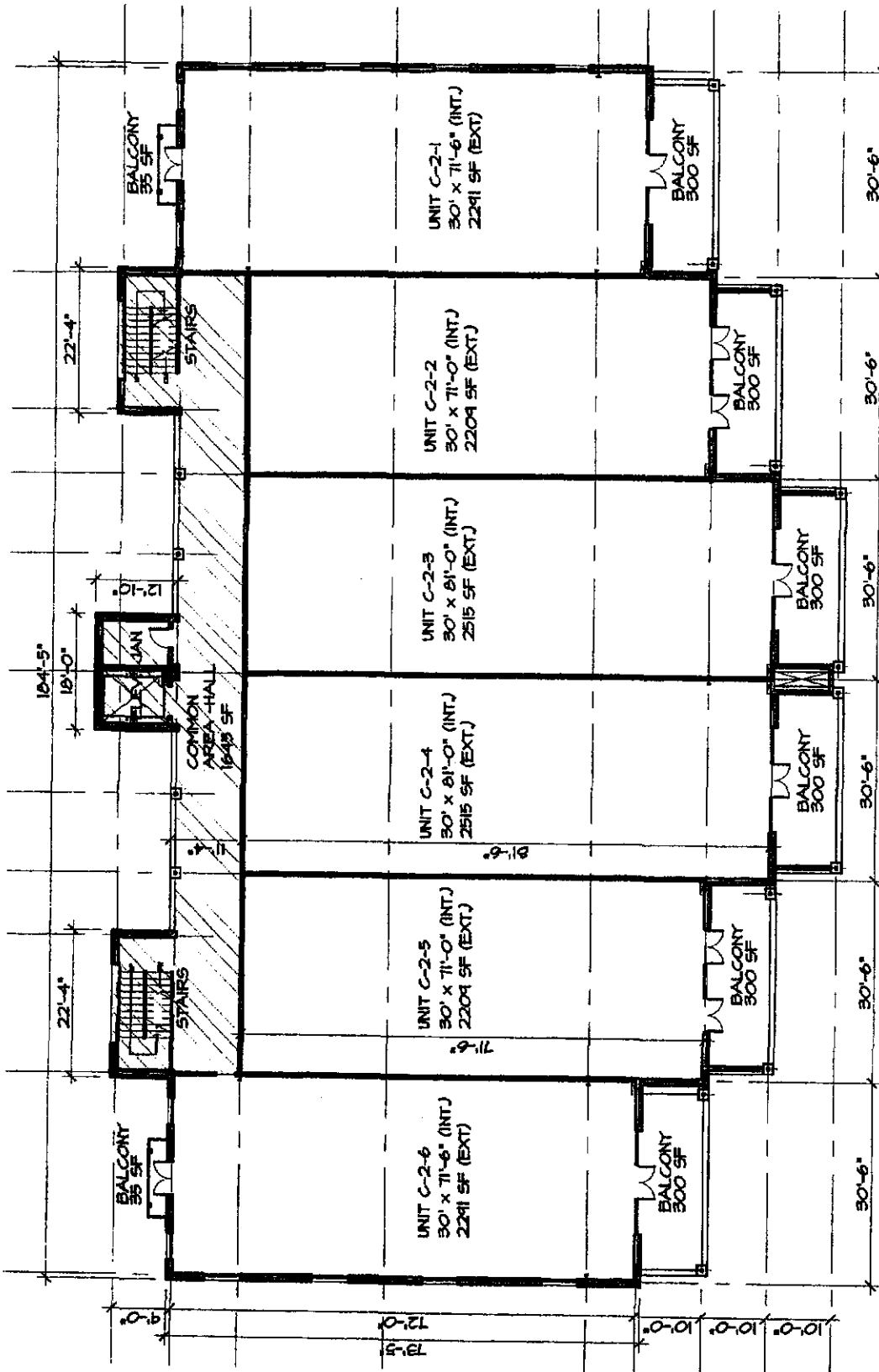
PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028



1ST FLOOR PLAN
BUILDING 'C'

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028

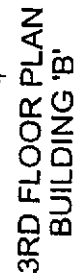
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2ND FLOOR PLAN
BUILDING 'C'

PALACIOS DEL GUADALUPE
Guadalupe Street, Kerrville, TX 78028

C-2



PALACIOS DEL GUADALUPE
Guadalupe Street, Kerville, TX 78028

Guadalupe Street, Kerrville, TX 78028

Provisions herein which restrict the sale, rental or use of the described property because of color or race is invalid and unenforceable under Federal Law.
THE STATE OF TEXAS }
COUNTY OF KERR }
I hereby certify that this instrument was FILED in the File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Kerr County, Texas on

JUN 20 2007



Janet Pieper

COUNTY CLERK, KERR COUNTY, TEXAS

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