

**AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
VAN CLEAVE MODERN CONDOMINIUMS**

This Amended and Restated Condominium Declaration for Van Cleave Modern Condominiums ("Declaration"), is made by CM Market Share, LLC, a Texas limited liability company ("Declarant"), on the date signed below. Declarant owns the real property described in *Exhibit "A"* of this Declaration, together with the improvements thereon. By recording this Declaration, Declarant amends and restates the Preliminary Condominium Declaration for Van Cleave Modern Condominiums, recorded as Document No 20230046132 in the Official Public Records of Bexar County, Texas.

RECITALS

WHEREAS, CM Market Share, LLC desires to (i) create a condominium regime, on the property, to be known as Van Cleave Modern Condominiums (the "VCM Condominiums"), as depicted in *Attachment "1"* attached hereto located in Bexar County, Texas, with general and limited common elements for the use and benefit of the owners of VCM Condominiums, and (ii) provide for the preservation of the values and amenities of said VCM Condominiums and for the maintenance of VCM Condominiums, including but not limited to, the general and limited common elements, to the extent required by the terms of this Declaration and any amendment, restatement, annexation, or supplement thereto; consequently, Declarant desires to subject VCM Condominiums to certain covenants, conditions, restrictions, easements, charges, and liens (including, but not limited to, those contained herein) and further to the terms and provisions of the Texas Property Code, including but not limited to, the Texas Condominium Act, Chapter 82, each and all of which are for the benefit of VCM Condominiums and each owner thereof; and

WHEREAS, Declarant deems it necessary to create a mandatory, non-profit property owners association to which the Declarant shall delegate and assign the powers of maintaining, operating, and administering the VCM Condominiums, administering and enforcing the covenants, conditions, and restrictions, and collecting and disbursing the assessments and charges.

NOW, THEREFORE, Declarant hereby declares and states that this instrument is being filed in the Official Public Records of Bexar County, Texas, for the purpose of establishing and preserving certain restrictions, requirements, and rights as contained herein and in *Appendix "A"*; and notifying Owners of property within VCM Condominiums that: (i) the Units are subject to applicable terms, provisions and statutes of the Texas Property Code, including but not limited to, the Texas Condominium Act, Chapter 82 and shall be held, transferred, sold, conveyed, leased, encumbered, used and occupied subject to covenants, conditions, restrictions and easements (including, but not limited to, those contained herein and *Appendix "A"*), all of which shall run with the land that is included in VCM Condominiums, including any property annexed hereto, be binding on all parties having any right, title, or interest in or to VCM Condominiums or any part thereof, including their heirs, successors, and assigns, and inure to the benefit of each such party; (ii) membership in Van Cleave Modern Owners Association, Inc., a Texas nonprofit property owners association, shall be mandatory for each Owner of a Unit within VCM Condominiums; and (iii) there shall be a continuing lien on each Unit within VCM Condominiums to secure owner's personal obligation to pay each category of assessments, as defined herein and other charges owed to the Association.

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ARTICLE 1
DEFINITIONS

1.1 **Definitions.** The following words and phrases, whether or not capitalized, shall have the specified meanings when used in this Declaration and in any other documents incorporated by reference, unless otherwise expressly provided. Unless otherwise defined in this Declaration, terms defined in Section 82.003 of the Act have the same meaning when used in this Declaration.

“Act” shall mean and refer to the Texas Condominium Act, Chapter 82 of the Texas Property Code, as amended from time to time.

“Applicable Law” shall mean and refer to the statutes and public laws and ordinances in effect at the time a provision of this Declaration is applied and pertaining to the subject matter of the Declaration provision contained herein. Statutes and ordinances specifically referenced in this Declaration are “Applicable Law” on the date of this Declaration and are not intended to apply to the Property or VCM Condominiums if they cease to be applicable by operation of law, or if they are replaced or superseded by one (1) or more other statutes or ordinances.

“Architectural Review Committee” or “ARC” shall mean the Architectural Review Committee as described herein, and as established and vested with the powers, authority and duties more fully described in *Article VIII* hereof.

“Assessments” shall mean and refer to those charges established by this Declaration to be charged to the Members, including but not limited to general assessments, special assessments, specific assessments, working capital assessments, and charges as defined in *Article V Section 5.1* hereof.

“Association” shall mean and refer to the Van Cleave Modern Owners Association, Inc., a Texas nonprofit corporation, its successors, and assigns. The Association shall be a mandatory association as to all Owners of any portion of VCM Condominiums and shall serve as the entity having the power, duty, and responsibility of maintaining and administering the common elements, administering, and enforcing the restrictions, and collecting and disbursing the Assessments and charges hereinafter described.

“Board of Directors” or “Board” shall mean and refer to the members of the board of directors of the Association, the election, and procedures of which shall be as set forth in the Certificate of Formation, the Bylaws, this Declaration, and resolutions of the Association.

“Building” shall mean and refer to a building described and depicted on the Plans *as shown in Attachment “2”*, now existing or hereafter constructed on the Property.

“Bylaws” shall mean and refer to the Bylaws of Van Cleave Modern Owners Association, Inc. and any amendments or restatements thereof.

“Certificate of Formation” shall mean and refer to the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas effective February 9, 2023 [File Number: 804938038], as may be amended and as recorded in the Official Public Records of Bexar County, Texas.

“Charges” shall mean and refer to those expenses, late fees, administrative fees, fines, interest, professional fees, including attorney’s fees, and other charges as set forth in this Declaration, and all of which are secured by the Assessment lien established in *Article V Section 5.1*.

“Common Elements” shall mean and refer to all portions of VCM Condominiums, save and except the Units. All Common Elements are “General Common Elements,” except if such Common Elements have been allocated as “Limited Common Elements” by this Declaration or the Plat and Plans for the exclusive use of one (1) or more but less than all the Units. The Common Elements shall include, without limitation, all parts of the Building or any facilities, improvements, and fixtures located within the Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair, or safety of the Buildings or any part thereof or any other Unit therein. Without limiting the generality of the foregoing, the following shall constitute Common Elements:

- A. all of the land, appurtenances, and beneficial easements which are part of the real estate, including without limitation, all access easements, utility easements and other easements benefiting the Property;
- B. all foundations, columns, girders, beams, and supports of any Building;
- C. all deck areas, balconies, patios, fireplaces, fences, driveways, approaches, sidewalks, parking areas, front yards, backyards (subject to reservation for individual Owner use as Limited Common Elements, as hereafter defined and provided);
- D. the exterior walls of any Building, the main or bearing walls within any Building, and the roof of any Building;
- E. the unfinished surfaces of the floors, ceilings, and perimeter walls of the Units;
- F. all other parts of the Property necessary in common use or convenience to its existence, maintenance, and safety;
- G. the roof decks;
- H. all landscaping on the Common Areas outside the fenced backyard of each Unit;
- I. equipment, piping, conduits, and installations used in connection with the provision of sewer, water, electrical, and any other common utilities serving the Property; fixtures and decorating in Common Elements;
- J. any other area shown as “Common Elements” on the Condominium Plat;
and
- K. those areas and things within the definition of “Common Elements” as set forth in the Act.

“Common Expense” or “Common Expenses” shall mean and refer to expenses for which the Association is responsible, including those related to: (i) maintenance and repair of the applicable Common Elements; (ii) casualty, public liability and other insurance coverages required or

permitted to be maintained by the Association under the Governing Documents; (iii) governmental impositions levied and assessed against the Common Elements; (iv) utilities related to the applicable Common Elements and Units, if applicable; (v) professional services for the Association, such as management, accounting and legal services; (vi) trash removal and Common Elements cleaning; (vii) security and janitorial services; (viii) pest control; (ix) Common Elements landscaping; and (x) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation and management of the Common Elements and the administration of the Association and VCM Condominiums.

“Community Manual” shall mean and refer to the community manual, which may be initially adopted and recorded by Declarant as part of the initial Regime documentation for the benefit of the Association and the Property. The Community Manual may include the Bylaws, Rules and policies governing the Association. The Community Manual may be amended, from time to time, by a Majority of the Board with Declarant’s written consent during the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

“Condominium” shall mean and refer to the form of real property established by the Preliminary Condominium Declaration for Van Cleave Modern Condominiums, recorded as Document No 20230046132 in the Official Public Records of Bexar County, Texas, as amended and restated by this Declaration with respect to the VCM Condominiums located in Bexar County, in which portions of VCM Condominiums are designated for individual ownership or occupancy and the remainder of the VCM Condominiums is designated for common ownership or occupancy solely by the Owners of such portions, containing a maximum of twenty-nine (29) Buildings consisting of fifty-eight (58) Units, as depicted in the Plat attached hereto as *Attachment “1”* and the Plans for the first phase of five (5) Buildings comprised of ten (10) Units as depicted *Attachment “2”*.

“Condominium Records” shall mean and refer to the records and books maintained by the County Clerk in the County where condominium declarations and condominium plats and plans are filed in accordance with Section 82.051(d) of the Act.

“County” shall mean and refer to the County of Bexar, in the State of Texas.

“Declarant” shall mean and refer to CM Market Share, LLC, a Texas limited liability company, organized pursuant to the TBOC by filing its Certificate of Formation in the Office of the Secretary of State of Texas, effective January 27, 2018 [File No. 802918510], its successors and assigns who are expressly designated as such in writing by Declarant as an assignee of Declarant’s partial or full rights under this Declaration, and who consent in writing to assume the duties and obligations of the Declarant. The mere conveyance of a portion of the Property without written assignment of rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant. Written evidence of the assignment of any or all of Declarant’s rights shall be filed of record in the Official Public Records of Bexar County, Texas. The Declarant herein has reserved special rights and privileges described in this Declaration to help protect its investment in VCM Condominiums. Many of the rights and privileges do not terminate until either the Declarant (i) has conveyed all Units which may be created as part of VCM Condominiums; or (ii) voluntarily terminates these rights and privileges by recording a written instrument in the Official Public Records of Bexar County, Texas.

“Declarant Control Period” shall mean and refer to that period of time during which Declarant controls the operation and maintenance of the Association and has the right or combination of rights to create, relocate or properly designate Building Units or Common Elements within VCM

Condominiums and to make and record corrections to the Plat to conform the Plat to the actual location of the Buildings and Units or to correct designation of the elements of VCM Condominiums as Units or Common Elements; (ii) to convert Units into Common Elements or convert Common Elements into Units; (iii) to withdraw or add real property from or to the VCM Condominiums; (iv) to subdivide or combine Units within VCM Condominiums; or (v) the right to convert General Common Elements to Limited Common Elements and additionally, the rights retained by Declarant in *Appendix "A"*. The duration of the Declarant Control Period shall expire upon and shall not exceed the date that is the earlier to occur of: (i) one hundred and twenty days (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant; (ii) seven (7) years after the date this Declaration is recorded; or (iii) voluntarily terminates these rights and privileges by recording a written instrument in the Official Public Records of Bexar County, Texas. Not later than the 120th day after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant, not less than one-third (1/3) of the members of the Board of Directors must be elected by Unit Owners other than the Declarant.

"Declaration" shall mean and refer to this Amended and Restated Condominium Declaration together with any amendments, restatements, annexations, and supplements thereto, to be recorded in the Official Public Records of Bexar County, Texas.

"Development Period" shall mean and refer to mean the seven (7) year period beginning on the date this Declaration is recorded, during which Declarant has rights as more particularly describes in *Appendix "A"*, attached hereto, including rights related to development, construction, expansion, and marketing of VCM Condominiums. The Development Period is for a term of years and does not require that Declarant own any portion of VCM Condominiums. Declarant may terminate the Development Period by the recording of a notice of termination.

"Eligible Member" shall mean and refer to a Member that is (i) not ineligible; (ii) is current on all Assessments; and (iii) not in violation of any of the Governing Documents.

"Eligible Mortgagees" shall mean and refer to those holders of First Mortgages secured by Units in the Regime who have requested notice of certain items as set forth in this Declaration.

"General Assessments" shall mean and refer to the uniform Assessment made against all Units pursuant to *Section 5.3* of this Declaration.

"General Common Elements" shall mean and refer to Common Elements which are not Limited Common Elements. General Common Elements are designated as "GCE" of the Plat attached hereto as *Attachment "1"*.

"Governing Documents" shall mean and refer to this Declaration, restrictive covenants, bylaws, Plat, Plans, Certificate of Formation, bylaws, policies, rules, and regulations covering the establishment, maintenance, and operation of the Regime or governing the administration or operation of the Association.

"Improvement" shall mean and refer to every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, Buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennas,

towers and other facilities used in connection with water, irrigation, sewer, gas, electric, telephone, regular or cable television, or other utilities.

“Irrigation Maintenance Services” shall mean and refer to irrigation of the front and back yard area and the repair and maintenance of the irrigation systems, as originally installed by Declaration for the front and back yard area. The Board may modify the Irrigation Maintenance Services provided hereunder from time to time.

“Landscape Services” shall mean and refer to the following services to be provided to the front yard area: (i) mowing and edging all turf areas on a schedule determined by the Board; (ii) applying fertilizer and pre-emergent weed killer to the turf area on a schedule determined by the Board; (iii) maintenance and replacement of mulched flower or garden beds, flowers, plants, shrubs and trees on a schedule determined by the Board; and (iv) manually and mechanically pruning and weeding as required to maintain a reasonably manicured appearance on a schedule determined by the Board. The Board may modify the Landscape Services provided hereunder from time to time. The Landscape Services do not include landscaping maintenance of the Limited Common Element backyard for each Unit. Landscaping, Landscape Services, and grass maintenance in the backyard shall be the full responsibility of the Owner.

“Lien” shall mean and refer to an encumbrance and charge against an Owner(s) Unit to secure all Assessments and Charges, including expenses, late fees, administrative fees, fines, interest, professional fees including reasonable attorney’s fees, incurred by the Association in collection of unpaid amounts which is due and payable to the Association by an Owner as established in *Section 5.3* of this Declaration, as amended, or restated from time to time. The Lien shall be a continuing lien and shall run with the land.

“Limited Common Elements”, if any, shall mean and refer to those portions of VCM Condominiums reserved for the exclusive use of one (1) or more Owners to the exclusion of other Owners. Limited Common Elements are designated as “LCE” of the Plat attached hereto as *Attachment “ 1 ”*.

“Majority” shall mean more than fifty percent (50%).

“Member” shall mean and refer to 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.

“Mortgagee” shall mean and refer to a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Unit.

“Occupant” shall mean and refer to any Person, including any Owner, resident, tenant or otherwise having a right to occupy or use all or any portion of a Unit for any period of time.

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

“Ownership and Voting Interest” shall mean and refer to, with respect to each Condominium Unit, the appurtenant undivided interest in the Common Elements, the Common Expense liability, and

votes in the Association, as the ownership percentage interest allocated to said Condominium Unit in accordance with this Declaration.

“Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, limited partnership, trust, or any other form of business or entity or Governmental Authority.

“Plat and Plans” shall mean the plat and plans attached hereto as *Attachments “1” and “2”* as changed, modified, or amended in accordance with this Declaration.

“Preliminary Condominium Declaration” shall mean and refer to the Preliminary Condominium Declaration recorded on March 17, 2023, as Document No. 20230046132, in the Official Public Records of Bexar County, Texas, that established the Van Cleave Modern Condominiums, as amended, and restated by this Amended and Restated Condominium Declaration for Van Cleave Modern Condominiums.

“Property” shall mean and refer to the Van Cleave Modern Condominiums, a Condominium Regime in the City of San Antonio, Bexar County, Texas, established upon Lot 2, Block 2, New City Block 18038, Ingram Plaza Subdivision, Unit 1-A, a Subdivision of record according to the Plat thereof recorded in Volume 9500, Page 75 of the Deed and Plat Records of Bexar County, Texas, subject to the exceptions disclosed in *Exhibit “B”* hereto.

“Regime” shall mean and refer to VCM Condominiums, the Buildings, Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established by the Preliminary Condominium Declaration.

“Rules” or “Rules and Regulations” shall mean and refer to the rules and regulations of the Association adopted in accordance with the Governing Documents or the Act. The initial Rules may be adopted by Declarant for the benefit of the Association.

“Special Assessments” shall mean and refer to the Special Assessments for capital improvements or unbudgeted expenses which may be imposed pursuant to *Section 5.5* of this Declaration on each of the Units in the Condominium and secured by the Lien thereon.

“Specific Assessments” shall mean and refer to the Specific Assessments levied by the Association in accordance with *Section 5.6* of this Declaration.

“Structure” shall mean and refer to all foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building or other constructed Improvements.

“Systems” shall mean and refer to all fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, audio and video signals and other utility services, including the main switch gear conduits, plumbing chases and mechanical shafts on the Property.

“TBOC” shall mean and refer to the Texas Business Organizations Code governing nonprofit corporations.

“Trustee” shall mean and refer to a person or entity that holds equitable title to a Unit for purposes of enforcement the Lien created herein to secure an individual’s or entity’s obligation to pay assessments.

“Unit” shall mean one-half of a duplex Building divided by a party wall designed by this Declaration for separate ownership, the boundaries being described in *Section 4.2* herein and each Unit having its identifying number as shown on the Plat and Plans attached hereto as *Attachments “1” and “2”* and shall include the undivided, proportionate ownership in the Common Elements . Each individual Unit being part of the Van Cleave Modern Condominiums, a Condominium Regime in the City of San Antonio, Bexar County, Texas, established upon Lot 2, Block 2, New City Block 18038, Ingram Plaza Subdivision, Unit 1-A, a Subdivision of record according to the Plat thereof recorded in Volume 9500, Page 75 of the Deed and Plat Records of Bexar County, Texas.

“VCM Condominiums” shall mean and refer to the Van Cleave Modern Condominiums, a Condominium Regime in the City of San Antonio, Bexar County, Texas, established upon Lot 2, Block 2, New City Block 18038, Ingram Plaza Subdivision, Unit 1-A, a Subdivision of record according to the Plat thereof recorded in Volume 9500, Page 75 of the Deed and Plat Records of Bexar County, Texas.

“Working Capital Assessments” shall mean and refer to the Working Capital Assessments assessed pursuant to *Section 5.7* of this Declaration.

ARTICLE II
PROPERTY SUBJECT TO GOVERNING DOCUMENTS

2.1 Property Subject to Governing Documents. The real property described in Exhibit “A” is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant’s representations and reservations in the attached *Appendix “A”*, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2 Additional Property/De-Annexation. Additional real property may not be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association. The Declarant during the Development Period may elect to de-annex a portion of the real property from the Declaration without any approval of the Members. If Property is de-annexed, amendment of *Attachment “1”* is also required. De-annexation of property is accomplished by recording a declaration of de-annexation, including an amendment of *Attachment “1”*, in the County’s Official Public Records.

2.3 Recorded Easements and Licenses. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of record, and any shown or referenced on a recorded plat, all of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants, and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses their Unit and for which the Association does not have express responsibility.

ARTICLE III
PROPERTY EASEMENTS AND RIGHTS

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

3.2 Owner's Easement of Enjoyment; No Partition. Every Owner is granted a right and easement of enjoyment over the General Common Elements and to use of Improvements therein, subject to other rights and easements contained in the Governing Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Occupants of the Owner's Unit and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit. The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Governing Documents or nonpayment of Assessments. The Common Elements shall remain undivided, and no Owner or any other Person shall have the right to bring any action for partition or division of the whole or any part thereof except as provided in the Act.

3.3 Owner's Maintenance Easement. Every Owner is granted an easement over adjoining Units and Common Elements for the maintenance or reconstruction of their 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 or Common Element will be made in advance for a time reasonably convenient for the adjoining owner, who 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 not to exceed thirty (30) days after the date the Owner is notified in writing, by the Association or the Owner of the damaged Unit, of the damage to the Unit, as applicable. Prior to commencing work upon a Unit, the person doing the work must deliver to the Board, in a form satisfactory to the Board, certificates of insurance, including commercial general liability and worker's compensation coverage, in amounts and with companies reasonably acceptable to the Board. At the Board's discretion, the Board may require the insurance policies to name the Association as an additional insured.

3.4 Owner's Ingress/Egress Easement. Every Owner is granted a perpetual easement over the Property, as may be reasonably required, for vehicular ingress to and egress from their Unit or the appurtenant Limited Common Elements.

3.5 Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by their Unit on any adjoining unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands. For example, in the event a Unit's HVAC Unit or other Improvement that is part of a Unit, as originally installed by Declarant, encroaches onto an adjacent Unit, the Unit Owner is granted an encroachment easement and Improvement may remain undisturbed as long as the Improvement stands. The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the Architectural Review Committee. At any time, the Improvement is removed and replaced, the Improvement shall be relocated, if possible, to prevent any further encroachment.

3.6 Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over adjoining Units and Common Elements as needed for the common benefit of the Property, or for the benefit of Units that share any aspect of the Property that requires cooperation. By accepting an

interest in or title to a Unit, each Owner: (i) acknowledges the necessity for cooperation in a condominium; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to their Unit and Limited Common Elements when needed by the Association to fulfill its duties; and (iv) agrees to refrain from actions that interfere with the Association's maintenance and operation of the Property.

3.7 Association's Access Easement. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, above, across, under, and through their Property, including without limitation, all Common Elements 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 Governing Documents or by Applicable Law.

B. To perform maintenance that is permitted or required by the Owner by the Governing Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.

C. To enforce the Governing Documents.

D. To exercise self-help remedies permitted by the Governing Documents or Applicable Law.

E. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.

F. To respond to emergencies.

G. To perform all Irrigation Maintenance and Landscape Services.

H. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by Applicable Law.

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 VCM Condominiums. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

3.9 Easement to Inspect and Right to Correct. For a period of ten (10) years from the date of recording this Declaration, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any Structure, Improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive easement of access 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 3.9* may not be construed to create a duty

for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent.

3.10 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 OCCUPANT AND THEIR RESPECTIVE RELATIVES, GUESTS, INVITEES, TENANTS, AGENTS, EMPLOYEES, AND CONTRACTORS ACKNOWLEDGE AND AGREE, FOR THEMSELVES, THEIR RELATIVES, GUESTS, INVITEES, TENANTS, AGENTS, EMPLOYEES, AND CONTRACTORS, THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND LESSEE ACKNOWLEDGES AND ACCEPTS THEIR SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR THEIR OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND OCCUPANT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR OCCUPANT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.**

3.11 Private Streets. Any private streets located within the Property are General Common Elements and are administered and maintained by the Association. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules for use of private streets, including but not limited to: (i) identification of vehicles used by Owners, Occupants and their guests; (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking; (iv) removal or prohibition of vehicles that violate applicable Rules; and (v) fines for violations of applicable Rules. Private streets located within the Property shall provide perpetual access for police and other emergency vehicles, public and private utility maintenance and service personnel, solid waste collection services, the U.S. Postal Service, and government employees in pursuit of their official duties. Access to the private streets for the persons and entities referenced in the preceding shall be reasonably provided by the Association.

ARTICLE IV
UNITS; ALLOCATIONS AND LIMITED COMMON ELEMENTS

4.1 Initial Submitted Buildings and Maximum Number of Buildings.

A. VCM Condominiums shall consist of twenty-nine (29) Buildings comprised of fifty-eight (58) Units as depicted in *Attachment "1"*. The twenty-nine (29) Buildings shall be constructed in phases as determined by Declarant. The first phase shall be five (5) Buildings comprised of ten (10) Units as depicted in *Attachment "2"*. In no event shall the Declarant be allowed to create in excess of fifty-eight (58) individual Units. Each Unit consists of a dwelling

space and its appurtenant percentage of undivided Allocated Interest in the Common Elements as shown on the Ownership and Voting Interests attached as *Attachment "3"* to this Declaration and incorporated herein by this reference. The Allocation of Interest is not based on square footage but instead, on a per Unit basis. The percentage of interest in the Common Elements allocated to each Unit is assigned to each Unit in accordance with a ratio of one (1) to the total number of Units established by this Declaration. The same formula will be used in the event the Ownership and Voting Interests are reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment or notice of annexation to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment or notice of annexation is recorded in the Bexar County Official Public Records. Declarant reserves the right to unilaterally determine the order the construction of the Buildings or modify the development plans for the Regime at any time.

B. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Governing Documents. The Units, and their locations in relationship to other Units, Common Elements, and Limited Common Elements, are depicted on the Plans as shown on *Attachment "2"*. Each Unit includes that part of the structure which lies within the boundaries set forth in *Section 4.2*.

4.2 Horizontal (Upper and Lower) Boundaries.

A. The horizontal boundaries of each Unit shall be the planes formed by the unfinished interior surfaces of the floors and ceilings of the Unit.

B. To the extent that any chutes, flues, fireplaces, ducts, conduits, wires, load bearing walls, load bearing columns, or any other apparatus lie partially inside of the designated boundaries of a Unit: (i) the portions thereof servicing only that Unit shall be deemed a Limited Common Element in favor of that Unit; (ii) all portions thereof serving more than one (1) Unit shall be deemed a part of the Limited Common Elements in favor of those Units; and (iii) all portions thereof serving all Units or the Common Elements generally shall be deemed Common Elements.

C. In interpreting any deeds and plat, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance of the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plat, regardless of settling or lateral movement of the Building in which the Unit is located, and regardless of minor variance between the boundaries shown on the Plat or in a deed and those of the Unit. To the extent of any such discrepancy(ies) and variance(s), an appropriate easement shall exist to prevent involuntary removal, correction, or injunction against use and enjoyment.

4.3 Vertical Boundaries. The vertical boundaries of each Unit shall be the planes formed by the unfinished interior surfaces of the exterior walls of the Unit. Entry doors, exterior doors, and exterior glass surfaces, including, but not limited to, glass windows, glass doors, or other exterior doors serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems serving a single Unit (including any part of such system located outside the boundaries of the Unit), all duct work for heating and air conditioning systems and appliances and plumbing fixtures within a Unit and service only that Unit shall be part of the Unit. Exterior door frames and window frames shall be deemed a part of the Common Elements.

4.4 Description of a Unit. Any instrument affecting a Unit may legally describe it by the identifying number shown on the Plat. This identifying number for a Unit in VCM Condominiums is the number on the Plat identifying the individual space which is part of that Unit. A legal description of a Unit in VCM Condominiums may be in the following form:

Unit _____, Van Cleave Modern Condominiums, a Condominium Regime in the City of San Antonio, Bexar County, Texas, established upon Lot 2, Block 2, New City Block 18038, Ingram Plaza Subdivision, Unit 1-A, a Subdivision of record according to Plat thereof recorded in Volume 9500, Page 75 of the Deed and Plat Records of Bexar County, Texas, in accordance with and subject to the Amended and Restated Condominium Declaration for Van Cleave Modern Condominiums recorded on _____, 2024, as Document No. 2024_____ in the Official Public Records of Bexar County, Texas, together with the appurtenant Ownership and Voting Interests in the General Common Elements, and Limited Common Elements thereto, subject to the exceptions disclosed in *Exhibit "B"* thereof;

and any conveyance or other instrument affecting title to a Unit or any part thereof describing the Unit in VCM Condominiums in substantially the foregoing form or otherwise effectively describing the Unit shall be deemed to include and describe the entire Unit including the appurtenant Ownership and Voting Interests and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefiting or burdening the Unit under the terms of this Declaration.

4.5 Ownership Includes Appurtenances. The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described in the conveyance thereof, the Ownership and Voting Interest attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

4.6 Property Taxation. All taxes, assessments, and other charges of the State or of any governmental subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Unit separately and not on the Buildings or VCM Condominiums as a whole and each Unit shall be carried on the tax books as a separate and distinct parcel. For the purposes of valuation for assessment, the valuation of the Common Elements shall be proportioned to the Ownership and Voting Interests appurtenant to and part of the Units. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

4.7 Description of Easements and Licenses. VCM Condominiums, and consequently each of the Units and the Common Elements, are subject to all of the easements and licenses set forth in *Article III* of this Declaration and the Plat, as well as all easements and licenses of record.

4.8 Utilities. Each Owner or Occupant shall be responsible for contracting for and the payment of the utilities as set forth in *Section 7.8* hereof. The Association shall have no liability or responsibility for the contracting for those services that are solely the responsibility of Unit' Owners or Occupants.

4.9 Unit Numbering. If Units are subdivided or combined, the Unit numbering pattern for the Property must be maintained. All changes in Unit numbers must be approved by the City of San Antonio and by the postal authorities.

4.10 Limited Common Elements. The Limited Common Elements and the Unit(s) or Owner to which they are assigned, licensed, or owned by are:

- A. to the extent that a deck, piazza, patio, porch, or balcony, together with any enclosure of such elements, serving a Unit is not within the boundaries of the Unit, the deck, piazza, patio, porch, or balcony which is appurtenant to a Unit is assigned as Limited Common Element to the Unit having direct access to such deck, piazza, patio, porch, or balcony;
- B. the exterior walls of any Building, the main or bearing walls within any Building, and the doorsteps or stoops leading as access to a deck, patio, porch, or balcony are assigned as Limited Common Elements to the Unit to which the deck, patio, porch, or balcony is assigned;
- C. the portion of the Common Elements on which there is located any portion of the mechanical, electrical, air conditioning, or heating system exclusively serving a particular Unit or Units is assigned as Limited Common Element to the Unit or Units so served;
- D. the driveway, approach, fences surrounding Unit's backyard, the backyard,
- E. any gas or electric meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served; and
- F. Each Unit is assigned one (1) mailbox which will be located in a mailbox area of the Project.

4.11 Mechanic's Lien. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of the Owner thereof or their agent, contractor, subcontractor, shall create any right to file an affidavit statement of mechanic's lien against either the Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Elements, except the Allocated and Voting Interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against any liability or loss arising from the claim of any lien against any Unit, or any part thereof, of any Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed, or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including reasonable attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments.

ARTICLE V COVENANT FOR ASSESSMENTS

5.1 Creation of Liens to Secure and Personal Obligation of Assessments and Charges. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association as to each such Unit: (i) General Assessments, payable in advance, periodically as set by the Board of Directors pursuant to *Section 5.3* hereof; (ii) Special Assessments for capital improvements and extraordinary expenses pursuant to the *Section 5.5* hereof; (iii) Specific Assessments as herein defined pursuant to *Section 5.6* hereof; (iv) Working Capital Assessment pursuant to *Section 5.7*; and (vi) other Charges, (including but not limited to, fines, professional fees and administrative costs as permitted herein) and expenses which may be charged to the Owner as provided in this Declaration and other Governing Documents. Any and all such General Assessments, Special Assessments, Specific Assessments, Working Capital Assessments, and Charges, together with any interest which may accrue thereon in accordance with this Declaration, and any and all costs, including administrative costs, and attorneys' fees which may be incurred by the Association in the collection of such

Assessments or Charges, or in the enforcement of the covenants, conditions and restrictions of this Declaration or other Governing Document against any Unit or the Owner thereof, shall be a Charge against and shall be secured by a continuing lien with power of sale upon the Unit against which each such Assessment or Charge is made or enforcement is sought, and shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or Charge fell due or the enforcement of the covenants, conditions and restrictions of this Declaration or other Governing Document was commenced. The personal obligation for delinquent Assessments and Charges shall remain the liability of the Owner and shall become the joint and several liability of the successor in title of any Owner, unless due to foreclosure of a priority lien, and shall be secured by the continuing lien on the Unit and subject to foreclosure, subject to Texas law.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property; for the improvement and maintenance of the Common Elements; for retention of professionals to aid and assist the Board, to hire professional management; to fund the day-to-day affairs of the Association, the acquisition of equipment, supplies, software and other necessary personal property for the operation of the Association and enforcement of the Governing Documents. The Assessments shall be placed in an operating account (the "Common Fund") for such purposes. At the sole discretion of the Board, additional money market and/or savings accounts may be maintained to allow all funds to be FDIC insured.

5.3 Budget and Payment of General Assessments.

A. For the General Assessments, during the Development Period, the Declarant and thereafter the Board shall determine the annual budget, based upon the anticipated Common Expenses. The budget may contain other items as the Declarant or Board, as applicable, may approve. The Declarant or Board, as applicable, shall prepare the budget, on an annual basis, in the fourth (4th) quarter of each fiscal year for the following fiscal year, with each fiscal year beginning on January 1. The Declarant or the Board shall calculate each Unit's proportionate share and levy the General Assessments against each of the Units for each calendar year on a uniform basis.

B. For the year in which the first Units are sold, the Declarant may by resolution arbitrarily establish the General Assessment based off Declarant's projections for the costs for the initial operational costs and expenses. During the Development Period, the Declarant may adjust the General Assessment as needed from time to time to meet the financial obligations of the Association as determined by the Declarant in its sole discretion. Thereafter, the General Assessment may be adjusted annually by the Board but shall not be increased by more than fifteen percent (15%) above that of the previous year except if the increase is needed as a result of changes in regulatory costs or changes related to costs associated with the safety or welfare of the Members and operation of VCM Condominiums. After the Development Period, any increase in the General Assessment of more than fifteen percent (15%) above that of the previous year shall require the approval of at least sixty-seven percent (67%) of the total Member votes in the Association at a meeting duly called for that purpose.

C. After the Board has determined the annual budget and the General Assessment for a given year, it shall give each Member prior written notice of the next General Assessment and each Member's proportionate share thereof, which will be uniform across all Units subject to Assessments pursuant to this Declaration. The Members' General Assessments are due and payable on the first (1st) day of January of each year and shall be collected annually, semi-annually, quarterly, or monthly in advance, as determined by the Board from time-to-time. Special Assessments, Specific Assessments, Working Capital Assessments, and Charges are due and

payable in accordance with the due date specified by the invoice provided to the Owner or party liable for the payment thereof.

D. The obligation to pay Assessments shall be the joint and several obligation of each Member, provided, however, that if more than one (1) Person owns a Unit, then each such fractional Owner shall be jointly and severally liable for all of the obligations attributable to the Unit in the same manner as if such Unit were owned by one (1) Person.

E. The Declarant, in lieu of paying its proportionate share of General Assessments, shall pay the shortfall under the then-applicable annual budget, other than any shortfall attributable to budgeted contributions to reserves and any shortfall due to failure by other Members to pay their Assessments.

5.4 Declarant's Exemption from Assessments. The Declarant is exempt and will never be required to pay Assessments for any Unit it may own, and no Assessment will be levied upon Units owned by Declarant while they are owned by Declarant.

5.5 Payment of Special Assessments. In recognition of the possibility that the Association may desire to levy a Special Assessment from time to time by action of the Board for the purpose of defraying all or part of the cost of any major capital improvements or repairs to the Common Elements; the acquisition of property to become part of the Common Elements, to cover over budget or unbudgeted expenditures or to cover extraordinary expenses, the following described procedure is hereby established for imposing any Special Assessment:

A. After the Development Period, once the Board has approved a Special Assessment applicable to all Members, a special meeting of all Members shall be called by the Board in accordance with all regular requirements for a special meeting of the Members, provided that written notice of any such meeting shall be given to all Members specifying that the purpose of the meeting is to vote on a proposed Special Assessment for the purpose generally described in the notice, and further provided that such notice shall be sent to all Members not less than ten (10) days nor more than sixty (60) days prior to the date of such meeting. The Declarant shall have full authority to approve a Special Assessment if determined by the Declarant, in its sole discretion, a Special Assessment is warranted.

B. The special meeting of the Members called for the purpose of approving the levy of a particular Special Assessment shall require a quorum as set forth in the Bylaws of the Association.

C. If a quorum is established, then the Special Assessment will be effective if approved by a majority of the votes of those Members constituting the quorum.

D. After a Special Assessment is effective in accordance with the provisions set forth above, the Board shall give each Member written notice of the Assessment and each Member's respective proportionate share thereof. Each Member, by acceptance of a deed for its Lot or Lots, covenants, and agrees to pay such Member's proportionate share of the Special Assessment. The Member's proportionate share of the Special Assessment shall be due and payable on the date specified in the notice to the Members, which date shall be no earlier than sixty (60) days after the date of the letter giving notice of such Special Assessment.

E. Each Special Assessment shall be allocated among the Members based on each Member's allocated share, provided that during the Development Period, Declarant, in lieu of

paying its allocated share of Assessments, shall pay the shortfall with respect to the capital improvement, repair, acquisition, or expenditure that is the subject of the relevant Special Assessment. The obligation to pay Special Assessments shall be the joint and several obligation of each Member, provided, however, that if more than one (1) Person owns a Unit, then each such fractional Owner shall be jointly and severally liable for all of the obligations attributable to the Unit in the same manner as if such Unit were owned by one (1) Person.

5.6 Payment of Specific Assessments. The Association may levy a Specific Assessment against an individual Member or Members for any of the Charges which may be incurred herein that are specific to such Member or Members including, but not limited to, expenditures related to violations and enforcement of any of the Governing Documents. Unless otherwise stated herein, any such Specific Assessment shall be due and payable thirty (30) days after the date of the invoice delivered to the Member containing the Specific Assessment. The Specific Assessment is secured by a continuing Assessment Lien as set forth in *Section 5.1* herein.

5.7 Working Capital Assessments. In addition to any projected capital reserves included in the budget for calculation of the General Assessments, additional Working Capital Assessments shall be levied as follows:

A. Upon the sale or transfer of a Unit by an Owner, a Working Capital Assessment shall be charged to the Grantee in the amount of Three Hundred Fifty and 00/100 Dollars (\$350.00). Such Working Capital Assessment shall be paid simultaneously with each transfer of the Unit. All Working Capital Assessments shall be maintained in a segregated Working Capital Assessment account for the purposes set forth herein. The Working Capital Assessment shall be in addition to any other transfer fees that may be set by the Board. The Board shall have the authority to increase or decrease the Working Capital Assessment, in its sole discretion, limited to a maximum of One Thousand and 00/100 Dollars (\$1,000.00).

B. The Working Capital Assessment account shall be maintained and made available for non-recurring maintenance or for acquisition, construction, reconstruction, repair, or replacement of any capital improvements or Common Elements, including fixtures and personal property related thereto, or for any other use consistent with the provisions of this Declaration. The Working Capital Assessment is secured by a continuing Assessment Lien as set forth in *Section 5.1* hereof.

C. Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (ii) transfer to, from, or by the Association; or (iii) voluntary transfer by an Owner to one (1) or more co-owners, or to the Owner's spouse, child, or parent. Additionally, the Declarant will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Unit from Declarant. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, the determination by the Declarant during the Development Period, and the Board thereafter, regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 5.7*. The Working Capital Assessment will be in addition to, and not in lieu of, any other Assessments levied in accordance with this *Article V* and will not be considered an advance payment of such Assessments. The Working Capital Assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Unit, including upon transfer of title from the Owner of such Unit to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable

to a Unit (or all Units) by the recordation of a waiver, which waiver may be temporary or permanent.

5.8 Reserves and Surplus. The Board may establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary to be desirable for the greater financial security of the Association and the effectuation of its purpose. The Association shall not be obligated to spend in any fiscal year all of the sums collected in such year, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the General Assessment in the succeeding year but may carry forward same from year to year.

5.9 Subordination of the Lien to Mortgages. The lien for the Assessments and Charges provided for herein shall be subordinate and inferior to any mortgage, vendor's lien, deed of trust or other security instrument which secures any loan made by any lender to an Owner for any part of the purchase price of any Unit and the Improvements thereon, if improved, when the same is purchased, and which mortgage, vendor's lien, deed of trust or other security instrument is filed for record prior to the date on which payment of any such Charges or Assessments become due and payable. The sale or transfer of any Unit shall not affect the assessment lien and the Association may proceed with an *in rem* action to foreclose the assessment lien. No sale or transfer shall relieve the Owner of the Unit from liability for any Assessments and Charges thereafter becoming due or from the Lien thereof.

5.10 Exempt Property. All property dedicated to and accepted by a local public municipality or authority and the Common Elements shall be exempt from the Assessments created herein.

5.11 Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of the Governing Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against General or Special Assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment Lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one (1) or more co-owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's Assessment Lien, and are not payable by the Association. This *Section 5.11* does not obligate the Board or the managing agent to levy transfer-related fees.

5.12 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 Governing 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 General and Special Assessments, or reimbursed to the Owner if those Assessments are paid in full.

ARTICLE VI
EFFECT OF NONPAYMENT OF ASSESSMENTS

6.1 Assessment Lien. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants, and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien with power of sale on the Unit. Each Owner, and each prospective owner, is placed on notice that their title may be subject to the continuing lien for Assessments attributable to a period prior to the date they purchased their Unit.

6.2 Notice and Release of Notice. The Association's Lien for Assessments is created by the 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 Bexar County's Official Public 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.

6.3 Breach of Declaration. If the Owner fails on demand to reimburse the Association for the Assessments or Charges which may become payable hereunder and such failure continues after the Association gives the Owner notice of the failure and the time within which it must be cured, as may be required by law or by written agreement, then the Association, as the Beneficiary of this Declaration, may:

A. Request the Trustee appointed herein, or Trustee's successor, to the extent permitted by Texas law, foreclose the liens created herein with power of sale by non-judicial foreclosure pursuant to TEX. PROP. CODE § 51.002 et seq. then in effect or any successor statute thereto or alternatively, at the Board's discretion, may judicially foreclose; and

B. Purchase the Unit at any foreclosure sale by offering the highest bid and then have the bid credited to the reimbursement or satisfaction of the outstanding indebtedness owed to the Association.

C. If requested by the Association to foreclose the Assessment Lien, the Trustee shall:

(1) Either personally or by agent give notice of the foreclosure sale as required by TEX. PROP. CODE § 51.002 et seq. then in effect (or any successor statute thereto);

(2) Sell and convey the Lot to the highest bidder for cash with a general warranty deed binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty; and

(3) From the proceeds of the sale, pay, in this order:

(a) Expenses of foreclosure;

(b) To the Association, the full amount advanced, attorney's fees, and other charges due and unpaid;

(c) Any amounts required by law to be paid before payment to the Owner; and

(d) To the Owner, any remaining balance.

6.4 Appointment of Trustee. Initially, Michael B. Thurman, Attorney at Law, is appointed Trustee to exercise the power of sale granted herein to the Association and foreclose the lien for unpaid Assessments and Charges, subject to the limitations of the Texas Property Code. The Association, as Beneficiary, may appoint a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee appointed herein, by filing an appropriate designation of substitute trustee in the County Official Public Records.

6.5 Creation of Tenancy. From and after any such foreclosure, the occupants of such Unit shall be required to pay a reasonable rent for the use of such Unit and such occupancy shall constitute a tenancy-at-sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Unit by forcible detainer without further notice.

6.6 Applicability of Texas Property Code. It is the intent of the provisions of this *Article VI* to comply with the provisions of TEX. PROP. CODE § 51.002 as may be amended hereafter, and which amendment is applicable hereto. The President of the Association, acting without joinder of any Owner or mortgagee of any Owner, may, by amendment to this Declaration filed in the County's Official Public Records, amend the provisions hereof so as to comply with said amendments to TEX. PROP. CODE § 51.002.

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

6.8 Money Judgment. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments and Charges, without foreclosing or waiving the Association Assessment Lien.

6.9 Notice to Mortgagee. By accepting a deed to a Unit, Owner agrees the Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in payment of Assessments.

6.10 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. Should the Association accept a partial or conditional payment, acceptance shall not act as accord and satisfaction of the delinquent account unless specifically stated in a written settlement agreement between the parties.

ARTICLE VII MAINTENANCE AND REPAIR OBLIGATIONS

7.1 By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of Owner's Unit and specific improvements made to the Limited Common Elements assigned to the Unit as provided in *Attachment "4"* of this Declaration. This maintenance responsibility shall include, but not be limited to the following: windows, window screens and frames, garage door, window locks, all doors, doorways, door frames, and hardware that are part of the Unit all portions of the heating and air conditioning system, including the air conditioning compressor serving the Unit and the fan coil; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts,

conduits, or other apparatus serving only the Unit). Notwithstanding anything herein to the contrary, this maintenance responsibility excludes window frames, and casings.

A. Some Units contain interior support beams which are load bearing beams. No Owner or Occupant shall do any act which jeopardizes or impairs the integrity of such beams.

B. In addition, each Unit Owner or Occupant shall have the responsibility:

(1) to keep in a neat, clean, and sanitary condition any Limited Common Elements serving their Unit including; without limitation, terraces, and balconies;

(2) to perform Landscaping, Landscape Services, and grass maintenance in the backyard;

(3) to perform Owner's responsibility in such manner so as not to unreasonably disturb the Owners or Occupants in other Units or otherwise lawfully on or about the Property;

(4) to report promptly to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(5) to pay for the cost of repairing, replacing, or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, their family, invitees, tenants, or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable Assessment.

7.2 By the Association.

A. The Association shall maintain and keep in good repair as a Common Expense the following:

(1) all Common Elements, including any Limited Common Elements (but excluding the maintenance of any Limited Common Elements required to be accomplished by an Owner pursuant to *Section 7.1*); and provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Unit Owner to whom the Limited Common Element is assigned under *Section 7.3* of this Declaration;

(2) periodic cleaning and/or painting and/or staining of exterior surfaces of the Buildings and of exterior doors and door frames and entry door(s) of the Units, as determined to be appropriate by the Board; and

(3) all window frames, and casings.

(4) 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 of 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.

B. Subject to the maintenance responsibilities herein provided, the maintenance or repair performed on or to the Common Elements by an Owner or Occupant which are the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements that are the responsibility of the Owner) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

C. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Occupant of any Unit, or any other Person, or resulting from any utility, rain, snow, or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupants, guests, invitees, or family members, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, invitee, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this *Article VII* where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience, discomfort, or consequential damages arising from the action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, or the failure or alleged failure to act.

D. The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint ready". Components that may require repair or replacement, such as tile and trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board. Accessibility around personal belongings for workers to perform such repair; is the responsibility of the Unit Owner or Occupant. Removal, storage, or other protective measures of personal items are also the responsibility of the Unit Owner or Occupant. If the removal, storage, or other protective measures are not taken by the Unit Owner or Occupant and damage occurs due to the repair process, neither the Association nor the Board will be liable for such damage. Upon completion of such repairs the Association will perform cursory cleaning but shall not be responsible for a detailed cleaning. The Board has sole discretion of defining what is reasonable for the level, quality, and extent of the repair and subsequent cleaning. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice, such duties as are approved by the Board.

7.3 Failure to Maintain. If the Board determines that any Owner or Occupant has failed or refused to discharge properly such Owner's or Occupant's obligation with regard to the maintenance, repair, or replacement of items for which such Owner or Occupant is responsible hereunder, then the Association shall give the Owner and Occupant written notice of the failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the

Board. Unless the Board determines that an emergency exists, the Owner and Occupant shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and prosecute the completion thereof with all deliberate speed. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs, including reasonable attorney fees, shall be an Assessment and a Lien against the Unit.

7.4 Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one (1) term of the Board to another. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this *Article VII*. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board. All maintenance of a Unit shall be in conformance with reasonable standards of the Association from time-to-time established. No Owner shall perform any maintenance which may result in a change or alteration to the exterior of the Unit without the prior written approval of the Board as provided in *Article VIII* hereof.

7.5 Measures Related to Insurance Coverage. The Board, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of VCM Condominiums which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Regime, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage(s). This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install and maintain smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed five hundred and 00/100 dollars (\$500.00) per Unit in any twelve (12) month period.

7.6 Performance of Work by Association. In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board pursuant to *Section 7.5* above, the Association, upon fifteen (15) days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost. Such cost shall be an Assessment and a Lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to *Section 7.5*, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

7.7 Association Right of Entry. For the purpose of performing the maintenance of the Common Elements or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Unit or upon any portion of the Common Elements to effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Unit or any portion of the Common Elements to effect repairs, Improvements, replacements, or maintenance which the Association deems necessary, after approval by two-thirds (2/3) vote of the Board. Such entry shall be made with as little inconvenience to the Owner or Occupants as possible. Any damage caused thereby shall be repaired by the Association. Such entry for other than emergency repairs shall be made only upon reasonable notice to the Owner or Occupants.

7.8 Utilities.

A. Electric Service. Each Unit is individually metered for electricity. Electricity service is provided by San Antonio's City Public Services ("CPS"). Each Unit Owner will be required to make payment directly to the provider.

B. Water. The water used by all the Units and Common Elements is provided by the San Antonio Water System ("SAWS"), through the Association's central water meters. Since the service is measured from the Association's central meters, the Association receives the entire property's water bill from SAWS. However, each Unit is sub-metered for the purpose of measuring the Unit's actual consumption of water. The Association contracts with a private service to read each Unit submeter and invoice the residents on a monthly basis. The Association (or its contractor) will charge each Unit for its sub-metered portion of the Association's water bill, plus a servicing or administrative fee. Water charges for the Common Elements administered and maintained by the Association will be paid by the Unit Owners through monthly Assessments.

C. Wastewater. Sewer service is provided by SAWS. The Association is billed for sewerage service in connection with the water service. The Association will charge each Unit for wastewater in the same manner as water.

D. Trash/Recycling. Trash and recycling services are provided by CPS. Each Owner will make payment directly to the provider. Trash charges for the Common Elements administered and maintained by the Association will be paid by the Unit Owners through monthly Assessments.

E. Gas. Gas services are provided by CPS. Each Owner or Occupant will make payment directly to CPS for such services.

F. Phone/Cable/Internet. Phone, cable, and internet services are provided by a variety of vendors. Each Owner will make payment directly to their chosen vendor for such services. Phone, cable, and internet services for the Common Elements administered and maintained by the Association will be paid by the Unit Owners through monthly Assessments.

ARTICLE VIII
ARCHITECTURAL COVENANTS AND CONTROL

8.1 Architectural Standards.

A. Except for the Declarant and except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, playground equipment, light (except for reasonable seasonal decorative lights during the applicable seasonal period), storm door or window, artificial vegetation, exterior sculpture, fountain, flag, or thing on the exterior of the Buildings, in any windows, or make any structural changes to a Unit, or modify the plumbing, electrical or HVAC systems of a Unit, or otherwise make any changes to any Limited Common Elements, or any other Common Elements, without first obtaining the written approval of the Architectural Review Committee.

B. The standard for approval of such improvements shall include, but not be limited to aesthetic consideration, materials to be used, harmony with the external design of the existing

Buildings, the location in relation to surrounding structures and topography, the effect on the structural and other systems shared with other Units. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the Architectural Review Committee may reasonably require. The Architectural Review Committee or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the Architectural Review Committee may publish written architectural standards for exterior and Common Elements alterations and additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing Buildings and Units and the location in relation to surrounding structures and topography. The Architectural Review Committee may allow such encroachments on the Common Elements and Limited Common Elements as it deems acceptable.

C. In the event that the Architectural Review Committee fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Architectural Review Committee may reasonably require have been submitted, its approval will not be required and will be deemed complied with; provided however, even if the requirements of this *Subsection C.* are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the Rules.

8.2 Architectural Review Committee. The Architectural Review Committee shall have exclusive jurisdiction over all construction on any portion of VCM Condominiums. For so long as the Declarant owns any portion of VCM Condominiums, the Declarant retains the right to appoint and remove all members of the Architectural Review Committee, who shall serve at the Declarant's discretion. The Architectural Review Committee shall consist of one (1) to three (3) members, with the exact number being set from time to time by and in the sole discretion of the Declarant for so long as the Declarant retains the right to appoint and remove Architectural Review Committee members. There shall be no surrender of these rights prior to their expiration as provided above, except in a written instrument in recordable form executed by Declarant; provided, however, that Declarant may delegate certain authority of the Architectural Review Committee to the Association for such periods of time as Declarant in its sole discretion may decide. Upon expiration or permanent surrender of such rights, the Board shall set the number of members of the Architectural Review Committee and appoint the members of the Architectural Review Committee, who shall thereafter serve and may be removed in the Board's discretion.

8.3 Architectural Approval. To request architectural approval, an Owner must make a written application and submit two (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 Board will return one (1) set of plans and specifications to the applicant marked with the Board's response, such as "Approved," "Denied," or "Submit Additional Information." The Board will retain the other set of plans and specifications, together with the application, for the Association's files. Verbal approval by an Association director or officer, or the Association's managing agent does not constitute architectural approval, which must be in writing. Architectural approval of a modification or improvement may not be deemed to constitute a waiver of the Board's right to withhold approval of similar proposals, plans, or specifications that are subsequently submitted.

8.4 Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume the obligation to complete all work in accordance with applicable codes and ordinances, free of liens and encumbrances, and assume all responsibilities for maintenance, repair,

replacement, and insurance of such change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be required to verify such condition of approval by written instrument in recordable form acknowledged by such Owner. The Architectural Review Committee may also condition any approval upon the posting of a bond or other form of completion assurance. Each Owner making improvements to such Owner's Unit shall be obligated to deliver to the Association evidence that (i) such Owner maintains current general liability insurance covering the construction to be performed by Owner or its agents, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, and with insurance companies qualified under *Section 13.1 C.*; and (ii) the Association is named as an additional insured under such policy.

8.5 Limitation of Liability. Review, approval, or denial of any application pursuant to this *Section 8.5* is made on the basis of aesthetic considerations only and the Declarant, the Board, and the Architectural Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. The Declarant, the Association, the Board, the Architectural Review Committee, and the members of any of the foregoing shall not be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

8.6 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the Architectural Review Committee will change from time-to-time and that interpretation, application, and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the Architectural Review Committee of any proposals, plans, specifications, or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board or the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, specifications, drawings, or matters whatsoever subsequently or additionally submitted for approval or consent.

8.7 Enforcement. Any construction, alteration, or other work done in violation of this *Article VIII* shall be deemed to be nonconforming. Upon written request from the Architectural Review Committee, or from the Board if said authority has been delegated by the Declaration to the Association or Declarant's right under *Section 8.2* has expired or been surrendered, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the Property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Architectural Review Committee shall have the right to enter the Property, remove the violation and restore the Property to substantially the same condition as existed prior to the construction, alteration, or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Unit, and collected as an assessment pursuant to this Declaration. In addition to the foregoing, the Architectural Review Committee shall have the authority and standing on behalf of the Association, to impose reasonable fines (subject to the provisions of *Section 12.1*) and to pursue all legal and equitable remedies available to enforce the provisions of this *Section 8.7* and its decisions. Any exterior change, alteration, or construction (including landscaping) upon the Common Elements made by an Owner in violation of this Declaration shall be at such Owner's sole risk and expense. The Architectural Review Committee may require that the Owner remove the change, or may require that the change, alteration, or construction remain on the Common Elements without reimbursement to the Owner for any expense incurred in making the change, alteration, or construction.

8.8 No Approval Required. No approval is required to rebuild a Unit in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a Unit, provided: (i) the work does not impair the structural soundness of the Building, and (ii) is not deemed by the Board to create an unattractive condition that would be visible from the Common Elements.

8.9 Declarant Exception.

A. The provisions of this Article VIII shall not apply to the initial construction by the Declarant of Condominium Units or other Improvements to the Regime by Declarant. Notwithstanding anything to the contrary in this Declaration, any Improvement to the Property made by Declarant during the Development Period is deemed to have been approved by the Declarant.

B. Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time-to-time, produce certain conditions within the Regime, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration.

ARTICLE IX
USE RESTRICTIONS

9.1 Compliance. Each Owner of a Unit shall be responsible for ensuring that the Owner and Owner's Occupant, and their respective relatives, guests, invitees, tenants, agents, employees, and contractors comply with all provisions of the Governing Documents. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights that the Association may have against the Owner and Owner's Occupant, and their respective relatives, guests, invitees, tenants, agents, employees and contractors as a result of such Person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's Occupant, and their respective relatives, guests, invitees, tenants, agents, employees or contractors. Whether the same is documented elsewhere or not, under any such circumstances described above, the affected Owner shall have and enjoy a right over for indemnification and/or contribution from and against the offending party. This right over shall not be deemed to diminish the liability of the Owner to the Association, and the Association shall also have all remedies available at law or in equity against the offending party jointly and severally with the Owner. The use restrictions regarding the use of Units and the Common Elements are as set forth below and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws. In addition, the Units are subject to any and all use restrictions currently contained in the Governing Documents.

9.2 Units. All Units shall be used for residential purposes and for ancillary home office uses, except as provided in *Appendix "A"* with respect to Declarant. A home office use shall be considered ancillary so long as: (i) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the activity conforms to all zoning requirements for the Regime; (iii) the activity does not involve regular or unreasonable visitation of the Unit by clients, customers, suppliers, or other invitees, or door-to-door solicitation of residents of other Unit Owners and Occupants; (iv) the activity does not increase traffic or include frequent deliveries within the Regime other than deliveries by couriers, express mail carriers, parcel delivery services, and other such delivery services; (v) the activity is consistent with the primarily residential character of the Regime and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants

of the Regime, as may be determined in the sole discretion of the Board; and (vi) the activity does not result in a materially greater use of Common Element facilities or Association services or increase the premiums for any insurance maintained by the Association

9.3 No Business or Trade. No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Unit shall not be considered a business or trade within the meaning of this *Section 9.3*. This *Section 9.3* shall not apply to any activity conducted by the Declarant or an agent of the Declarant, or a contractor or subcontractor approved by the Declarant, with respect to its development and sale of the Property or its use of any Units which it owns within the Regime.

9.4 Alteration of Units. Subject to the prior approval of the Architectural Control Committee and compliance with the other provisions of this Declaration, Unit Owners may make alterations to the interiors of their Units, relocate the boundaries between adjoining Units, and subdivide their Units as follows:

A. Alterations of the Interiors of the Units. If any Owner acquires an adjoining Unit, such Owner may (subject to the prior written approval of the Mortgagees of the Units involved, the prior written approval of the Board, and, for so long as the Declarant owns a Unit, the prior written approval of the Declarant) remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or in part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements is damaged, destroyed, or endangered, other than that partition and any chutes, flues, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Regime. The alterations permitted by this subsection shall not be deemed an alteration or relocation of boundaries between adjoining Units.

B. Relocation of Boundaries. For so long as Declarant owns one (1) or more Units, boundaries between adjoining Units may be relocated only with the prior written consent of the Declarant. The Declarant shall have the right to relocate boundaries between Units owned by the Declarant or its affiliates without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any required amendment to the Declaration on the Association's behalf pertaining thereto, including but not limited to *Attachment "2"* hereto.

C. Subdivision of Units. An Owner may subdivide Owner's Unit only with the prior written consent of the Association acting through the Board and, for so long as the Declarant owns a Unit, the prior written consent of the Declarant. Notwithstanding the above, the Declarant shall have the right to subdivide Units owned by the Declarant or its affiliates without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any required amendment to the Declaration on the Association's behalf pertaining thereto. Notwithstanding anything in this Declaration to the contrary, any Amendment required to provide for subdivision of Units shall set forth the restated Ownership and Voting Interests attributable to each Unit created by the subdivision, the total of which must equal the Ownership and Voting

Interest attributable to the Unit that existed before subdivision. The Owners hereby delegate authorization to the Board or the Declarant, for so long as the Declarant owns a Unit, without a membership vote, to restate the Ownership and Voting Interests for purposes of this subsection, in its sole discretion. Notwithstanding anything herein to the contrary, the Board is not authorized to restate the Ownership and Voting Interests of a subdivided Unit without the consent of the Declarant, for so long as the Declarant owns any portion of the Project.

9.5 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. This prohibition shall not apply to the Declarant. With the prior written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Occupant may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner or Occupant who reserves a portion of the Common Elements as provided herein shall assume, on behalf of Owner or Occupant, and their respective relatives, guests, invitees, tenants, agents, employees and contractors, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its Directors, officers, committees, agents, or employees.

9.6 Use of Limited Common Elements. Use of the Limited Common Elements is restricted exclusively to the Owners and Occupants of the Unit(s) to which such Limited Common Elements are assigned, and said Owner's and Occupant's family members, guests, and invitees. The Limited Common Elements are reserved for exclusive use but are and remain a part of the Common Elements, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

9.7 Prohibition of Damage, Nuisance and Noise.

A. Without the prior written consent of the Board, nothing shall be done or kept on the Property, or any part thereof, which would increase the rate of insurance on the Regime or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

B. Noxious, destructive, or offensive activity shall not be carried on upon the Property. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Property at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause embarrassment, discomfort, or nuisance to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with aggrieved Owner's property, or personal rights. Notwithstanding anything to the contrary herein, no Owner or Occupant of a Unit may use or allow the use of the Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by Owner(s) and Occupant(s) in another Unit that will, in the sole discretion of the Board, interfere with the rights, comfort, or convenience of the other Owner(s) or Occupant(s).

C. No Owner or Occupant shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Property or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in

real property thereto, without in every such case the unanimous, prior written consent of all Members of the Association and their Mortgagees. No damage to or waste of the Common Elements, or any part thereof, or of the exterior of any Building shall be permitted by any Owner or Owner's Occupants, and their respective relatives, guests, invitees, tenants, agents, employees, and contractors. Each Owner and Occupant shall indemnify and hold the Association and the other Owners and Occupants harmless against all loss to the Association and other Owners and Occupants resulting from any such damage or waste caused by such Owner, Owner's Occupant, and their respective relatives, guests, invitees, tenants, agents, employees, and contractors to their Unit.

9.8 Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, air rifles and other firearms of all types, regardless of size.

9.9 Pets. No Owner or Occupant of a Unit may keep more than four (4) adult household pets, in any combination of dogs and cats, plus two (2) birds in their Unit; as determined by the Association's Rules and Regulations and any applicable ordinances. In the event of conflict, the most restrictive regulations shall apply. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors or kept unattended outdoors, including on any terrace or balcony areas. Dogs, cats, and other pets must be kept on a leash and be under the physical control of a responsible person at all times while outside the Owner's or Occupants Unit and anywhere on or about the Common Elements. The owner of the pet or the person responsible for the pet must promptly remove any feces left upon the Common Elements or Limited Common Elements by pets.

9.10 Parking.

A. The Board may promulgate Rules and Regulations restricting parking on and about the Property, including restricting the number of vehicles which any Owner or Occupant may bring onto the Property and designating, assigning, or licensing parking spaces to Owners and Occupants. This *Section 9.10* shall not prohibit an Owner or Occupant from having service vehicles park temporarily on the Property if otherwise in compliance with this *Section 9.10* and the rules and regulations adopted by the Board.

B. If any vehicle is parked on any portion of the Property in violation of this *Section 9.10*, or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If, twenty-four (24) hours after such notice is placed on the vehicle, the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

C. When a vehicle is temporarily parked on a private street, it should be parked facing in the direction of traffic flow for the side of the street the vehicle is parked and within twelve inches (12") of the curb. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit, is obstructing the flow of traffic, is parked other than in a parking space, is parked on a private street in the opposite direction to the traffic flow, is parked sideways in the driveway for the Unit, is parked in a space which has been reserved or is licensed to another Unit, or otherwise creates a hazardous condition, no notice shall be required and the

vehicle may be towed immediately. If a vehicle is towed in accordance with this subsection, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines (subject to the provisions of *Section 12.1*) or use other available sanctions, rather than exercise its authority to tow, or in addition to the exercise of such authority.

9.11 Abandoned Personal Property.

A. Abandoned or discarded personal property is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Elements or Limited Common Elements without the prior written permission of the Board. If the Board or its designee, in its sole discretion, determines that property is being kept, stored, or allowed to remain on the Common Elements or Limited Common Elements in violation of this section, then the Board may remove and either discard or store the personal property in a location which the Board may determine.

B. Prior to taking any such action, the Board shall place a notice on the personal property and/or on the front door of the Unit of the Owner or Occupant of such property, if known, specifying the nature of the violation, and stating that after two (2) days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the Person or entity which will remove the property, and the name and telephone number of a Person to contact regarding the alleged violation.

C. If two (2) days after such notice is placed on the personal property and/or the front door of the Unit, the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

D. Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this subsection may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Board in a location which the Board may determine; provided however, the Board shall give to the Owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

E. If personal property is removed in accordance with this subsection, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity or subsequent disposition thereof.

F. Notwithstanding anything to the contrary herein, the Board may elect to impose fines (subject to the provisions of *Section 12.1*) or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein, or in addition to the exercise of such authority.

9.12 Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year that might result in damage to any portion of the Property, increased Common Expenses, increased insurance premiums, or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" or "automatic" position

and at a minimum temperature setting of fifty five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps reasonably necessary on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. Subject to the provisions of *Section 12.1*, the Board may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this subsection, in addition to any other remedies of the Association. Any fine imposed pursuant to this subsection shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for correction of assessments.

9.13 Signs. Except as may be required by legal proceedings, no signs, advertising posters, billboards, canopy or awnings, or any variation of the foregoing of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association and to enact reasonable Rules and Regulations governing the general placement of signs on or about the Property. Notwithstanding the restrictions contained in this *Section 9.13*, the Declarant may approve and erect signs for the purpose of carrying on business related to the development, improvement, and sale of Units in the Project, and such signs shall not be subject to approval or regulation by the Association or by the Board.

9.14 Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in closed plastic bags and placed in proper receptacles designated by the Board for collection or shall be removed from the Property. Garbage to be recycled shall be disposed of as instructed by the Association.

9.15 Impairment of Units and Easements. An Owner or Occupant shall not directly or indirectly engage in any activities or work that will impair the structural soundness or integrity of another Unit, Limited Common Element, or Common Element or impair any easement or other interest in real property, nor shall an Owner or Occupant engage in any activities or allow any condition to exist which will adversely affect any other Unit, Limited Common Element, or Common Element or their Owners, Occupants, or licensees.

9.16 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

9.17 Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless and to the extent conducted under the auspices of the Association.

9.18 Window Treatments. Unless otherwise approved in writing by the Board, all windows which are part of a Unit shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color.

9.19 Antenna. Except as expressly provided below, no exterior radio, television, or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an

“Antenna/Dish”), shall be erected, maintained, or placed on a Unit without the prior written approval of the Architectural Review Committee.

A. Dishes Over One Meter Prohibited. Unless otherwise approved by the Architectural Review Committee, an Antenna/Dish which is over one (1) meter in diameter is prohibited within the Regime.

B. Notification. An Owner or Occupant who wishes to install an Antenna/Dish one (1) meter or less in diameter (a "Permitted Antenna") must submit a written notice to the Architectural Review Committee, which notice must include the Owner or Occupant's installation plans for the satellite dish.

C. One Dish Limitation. Unless otherwise approved by the Architectural Review Committee, only one (1) Permitted Antenna per Unit is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one (1) satellite dish, the Owner or Occupant must provide written notification to the Architectural Review Committee. Upon notification, the Owner or Occupant will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.

D. Permitted Installation Locations. Generally, An Owner or Occupant may erect a Permitted Antenna (after written notification has been provided to the Architectural Review Committee) if the Owner or Occupant has an exclusive use area in which to install the antenna. An "exclusive use area" is an area in which only the Owner or Occupant may enter and use to the exclusion of all other Owners and Occupants. Unless otherwise approved by the Architectural Review Committee, the Permitted Antenna must be entirely within the exclusive use area of the Owner's Unit.

E. A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Owners and Occupants of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or Occupant of the Unit. The Association does not insure the Permitted Antenna and is not liable to the Owner or Occupant for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Architectural Review Committee and the Association, its Directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Architectural Review Committee may, from time-to-time, modify, amend, or supplement the Rules regarding installation and placement of a Permitted Antenna.

F. Notwithstanding anything contained in this *Section 9.19*, in the event the roof is included within the Common Elements in accordance with the terms and provisions of *Article VII* hereof for maintenance by the Association and an Owner installs a Permitted Antenna or solar panels approved by the Architectural Review Committee, on the Owner's roof in accordance with this *Section 9.19*, the Association: (i) may assign the responsibility for maintenance of the Owner's roof, or any portion thereof, to the Owner, in the Association's sole discretion, and the Association will be relieved of any of its maintenance responsibilities with respect to the Owner's roof; and (ii) will not be responsible for any installation, maintenance, repair, replacement or damage of the Antenna or solar panel, which shall be the sole obligation of the Owner.

G. Preferred Installation Locations. A Permitted Antenna may be installed in a location within the Unit from which an acceptable quality signal can be obtained and where least visible from the street. In order of preference, the locations of a Permitted Antenna or solar panel which will be considered least visible by the Architectural Reviewer are as follows:

(1) attached to the back of the Building, with no part of the Permitted Antenna or solar panel any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; or

(2) attached to the side of the Building, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street.

(3) any other location permitted by the Architectural Review Committee.

9.20 Time-Sharing. Notwithstanding anything herein to the contrary, no Unit shall be used for or subject to any type of time-sharing plan unless the Owner of said Unit has obtained the prior written approval of the Board and, for so long as the Declarant owns a Unit, the prior written consent of the Declarant.

9.21 Garages. Garages may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein. Trucks, sport utility vehicles, vans, minivans, large sedans, or other vehicles other than compact passenger vehicles may not fit into the garages. Declarant makes no representations or warranties that any trucks, sport utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles will actually fit into any garage parking spaces.

9.22 Driveways. 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. All vehicles must be parked on the driveway or street. Vehicles parked on the driveway must be parked facing forward or backward in the direction of the concrete pad or driveway. Vehicles are prohibited from parking sideways on the concrete pad or driveway.

ARTICLE X UNIT LEASING AND SALES

10.1 Leasing. The Board shall have the power to make and enforce reasonable Rules and Regulations and to fine (subject to the provisions of *Section 12.1*), in accordance with the Declaration and Bylaws, in order to enforce the provisions of this *Article X*.

10.2 Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by a person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

10.3 Leasing Provisions. Leasing of Units shall be governed by the following provisions:

A. General. Units may be leased only in their entirety; no fraction or portion may be leased. All rentals must be for an initial term of no less than six (6) months with no early termination provisions. All leases shall be in writing and in a form approved by the Board prior to the effective

date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. Within seven (7) days after executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must make available to the lessee copies of the Declaration, Bylaws, the Rules and Regulations, and policies adopted by the Association. All adult persons living in a Unit must be a signatory to and obligated by the lease. Each Unit Owner shall be fully responsible for the actions and/or destruction of property and other liabilities that are caused by Unit Owner's lessees or occupants.

B. Compliance With Declaration, Bylaws and Rules and Regulations, Use of Common Elements, and Liability for Assessments. Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(1) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of their Unit to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violations of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. In the event that the lessee, or a person living with or visiting the lessee, violates the Declaration, Bylaws, or a Rule or Regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine shall be assessed against the lessee in accordance with the Bylaws, and subject to the provisions of *Section 12.1*. If the fine is not paid by the lessee within the time period set by the Board, the Board may assess the fine against the Owner and the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any violation of the Declaration, Bylaws, or Rules and Regulations adopted pursuant thereto by the lessee, any Occupant, or any Person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict in accordance with State law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf, and for the benefit, of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and Lien against the Unit.

(2) Use of Common Elements. Except where the Owner also occupies the Unit, the Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements of VCM Condominiums, including, but not limited to, the use of any and all recreational facilities.

(3) Liability for Assessments; Assignment of Rents. When a Unit Owner who is leasing their Unit fails to pay any General, Special, or Specific Assessment, or any other Charge for a period of more than thirty (30) days after it is due and payable, then the

delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and upon request by the Board, lessee shall pay to the Association all unpaid General, Special, Specific Assessments and other Charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by the lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If Owner fails to comply with the Board's request to pay Assessments or other Charges, lessee shall pay to the Association all amounts authorized under this Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which they would otherwise be responsible.

10.4 Eviction of Lessee. Every lease agreement of a Unit, whether written or oral, express, or implied, is subject to and is deemed to include the following provisions:

A. Violation Constitutes Default. Failure by the lessee or lessee's relatives, guests invitees, tenants, agents, employees, and contractors to comply with the Governing Documents, federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of the lessee's violation, the Owner will promptly obtain the lessee's compliance or exercise Owner's rights as a landlord for lessee's breach of lease. If the lessee's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain lessee's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the lessee, subject to the terms of this *Section 10.4*.

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

C. 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 Governing Documents against Owner's lessee. 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 Governing Documents against the Owner's lessee.

10.5 Mortgagees and Declarant Exempt. A Mortgagee acquiring possession of or title to a Unit by exercise of its rights under a deed of trust is exempt from the effect of this *Article X*. This exemption does not pass to the Mortgagee's successors and assigns. During the Development Period, Declarant is exempt from the effect of this *Article X*.

10.6 Unit Resales. This *Section 10.6* applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than the Declarant:

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

B. 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.

C. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title of 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 the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against General 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. This *Section 10.6* does not obligate the Board to levy transfer-related fees.

D. Exclusions. The requirements of *Section 10.6* do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure of deed in lieu of foreclosure; transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; 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 (iv) a disposition by a government or governmental agency. Additionally, the requirements of this *Section 10.6* do not apply to the initial conveyance from Declarant.

ARTICLE XI ASSOCIATION OPERATIONS

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

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

11.3 Governance.

A. Governing Body; Composition. The Association shall be governed by the Board of Directors, each of whom individually ("Director") shall have one (1) vote. Except with respect to Directors appointed by the Declarant, the Directors shall be elected by the membership from among the eligible Members of the Association; provided, however, no two (2) Owners representing the same Unit may serve on the Board at the same time. A "Board Member" shall be any natural person eighteen (18) years of age or older whose principal place of residence is a Unit within the Regime. In the case of a Member which is not a natural person, any officer, director, partner, employee, trust officer, or designated agent of such Member shall be eligible to serve as a Director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one (1) such representative on the Board at a time,

except in the case of Directors appointed by the Declarant. The Association will be administered in accordance with the Bylaws. Unless the Governing Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a Majority of all Units.

B. Number of Directors. The number of Directors may be increased or decreased from time-to-time by resolution of the Board, but no decrease shall have the effect of shortening the term of any incumbent Director and the Board may never consist of less than three (3) nor more than five (5) Directors. A change in number may be made by resolution of the Board and an amendment of the Bylaws shall not be required. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special called meeting of Members called for that purpose.

11.4 Mandatory Membership in Association. Every Person or entity who is a record Owner of a fee or an undivided interest in any Unit which is subject to the jurisdiction of, and to Assessments by, the Association shall be a Member of the Association, provided, however, that any Person or entity holding an interest in any Unit merely as security for the performance of an obligation, shall not be a Member. Each Unit shall be entitled to one (1) vote in the Association and one (1) share of undivided interest in the Common Elements and Common Expenses. When more than one (1) Person or entity holds such interest or interests in any Unit, all such Persons or entities shall be Members and the vote for such Unit shall be exercised as they among themselves determine; provided, however, that such Members collectively shall be entitled to cast only the same number of votes that would have been available if the Unit owned by such Members had been owned by only one (1) Member. *Attachment "3"* sets forth the allocation to each Unit of (i) a fraction of undivided interests in the Common Elements of the Condominium, (ii) a fraction of undivided interests in the Common Expenses of the Association; and (iii) the voting rights for each Member.

11.5 Ineligibility. The Board may determine that no Member may vote at meetings of the Association if the Member's financial account with the Association is in arrears forty-five (45) days before the date of a meeting of the Association at which the Members will vote or is in violation of any of the Association's Governing Documents, provided each ineligible member is given notice of the arrearage and an opportunity to become eligible. The Board may specify the manner, place, and time for payment for purposes of restoring eligibility. A determination of Member entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than forty-five (45) days after the original meeting.

11.6 Books and Records. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of the Texas Business Organizations Code.

11.7 Indemnification. The Association indemnifies every officer, director, and committee member (for purposes of this *Section 11.7*, "Leaders") against expenses, including attorney's fees, reasonably incurred by, or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association may maintain general liability and directors and officers liability insurance to fund this obligation.

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

A. Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner learns of a change in any information required by this *Subsection A*, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the recorded deed by which Owner has title to the Unit; (ii) the Owner's address, phone number, and driver's license number, if any; (iii) any mortgagee's name, address, and loan number; (iv) the name and phone number of any lessee; (v) the name, address, and phone number of the managing agent, if any, of the Owner or Owner's lessee.

B. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or their Unit and will pay General Assessments without demand by the Association.

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

D. Reimburse. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a lessee of the Owner's Unit, or the Owner or lessee's respective relatives, guests, invitees, tenants, agents, employees, and contractors.

E. Liability. Each Owner is liable to the Association for violations of the Governing Documents by the Owner, a lessee of the Owner's Unit, or the Owner or lessee's respective relatives, guests, invitees, tenants, agents, employees, and contractors, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

ARTICLE XII ENFORCING THE GOVERNING DOCUMENTS

12.1 Enforcement. In addition to the remedies for enforcement provided for elsewhere in this Declaration or by law, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or of any guidelines, rules, regulations, policies, bylaws, or Certificate of Formation herein referenced or permitted, by any Owner or Owner's Occupant, and their respective relatives, guests, invitees, tenants, agents, employees, and contractors shall authorize Declarant or the Association to avail itself of any one (1) or more of the following remedies:

A. The assessment of fines pursuant to a duly adopted and recorded Fine Policy and/or suspension by the Association of Owner's and Occupant's rights to use any Association Common Elements for a period not to exceed sixty (60) days per violation, plus reasonable attorney's fees incurred by the Association with respect to the exercise of such remedy;

B. To enter the Unit to cure or abate such violation through self-help and to charge the expense thereof, if any, to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy; or

C. The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to reasonable attorney's fees and court costs.

D. All costs, including reasonable attorney's fees, incurred by the Association or the Declarant in carrying out such action to secure compliance with the terms and provisions of this Declaration shall be billed to the Owner of the Unit by the Association by placing such invoice in

the United States Mail, postage paid and addressed to the last known address on file with the Association or sent by email to Owner's email address provided to the Association for purposes of notice. Any Assessment or Charges which are not paid within thirty (30) days after the same is billed shall bear interest from the date each Assessment or Charge is due, until paid, at an interest rate of ten percent (10%) or the maximum lawful rate per annum allowed, whichever is lower. In addition, the Association may assess a late fee not to exceed Twenty-five and 00/100 Dollars (\$25.00) monthly as an administrative cost. Any Assessments or Charges assessed shall be the personal obligation of the Owner of such Unit at the time the action in enforcement of the terms of this Declaration was commenced and will continue to be an obligation of successive Owners as well. Any such Assessments or Charges assessed and chargeable against a Unit shall be secured by the Lien reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens, with the herein created power of sale, against the Owner's Unit, subject to Texas law. EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 12.1 (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S GROSS NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

E. Before the Association may invoke the remedy assessment of fines or suspension of privileges as set forth in *Subsection A* above, it shall give written notice of such alleged violation to Owner and shall afford the Owner the opportunity of a hearing before the Board. Thereafter, if a violation is found to exist, the Association's right to proceed with the suspension of privileges and voting rights shall be absolute. Each day a violation continues after notice thereof has been given to the Owner shall be deemed a separate violation. Failure of the Declarant or the Association to take any action upon any violation shall not be deemed a waiver of any right to take enforcement action thereafter or upon a subsequent violation. No Owner shall have the right to compel or require the filing of suit by Declarant or the Association.

12.2 Non-waiver. The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

12.3 Waiver and Laches. The obligation to abide by the provisions contained in this Declaration shall be deemed to be continuing in nature. Each and every day an Owner allows a condition to exist on Owner's Unit which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Unit, hereby waives the affirmative defenses of the statute of limitations, waiver, and laches with respect to covenant violations. Noncompliant conditions shall be allowed to exist on a Unit only upon the Owner obtaining a written variance in accordance with the applicable provisions herein. Failure of Declarant, the Association, the Architectural Review Committee, or of any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XIII
INSURANCE

13.1 General Provisions. The broad purpose of this *Article XIII* 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. The Board will make every reasonable effort to comply with the requirements of this *Article XIII*.

A. Unavailability. The Association, and its Directors, officers, and managers, will not be liable for failure to obtain any coverage required by this *Article XIII* or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

B. No Coverage. Even if the Association and the Owner have adequate amounts of recommended and required coverage, 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 Owner's sole expense. This provision does not apply to the deductible portion of a policy.

C. Requirements. The cost of insurance coverage 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 act or omission of any Owner or Occupant who is not under the Association's control.

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

E. 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 Mortgagees, at least ten (10) days prior notice of cancellation, termination, expiration, or material modification.

F. 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 of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an Underwriting Lender. In the event 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 Occupant or their respective relatives, guests, invitees, tenants, agents, employees, and contractors, then the Board may levy an Specific Assessment against the Owner and the Owner's 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 Section 12.1 of this Declaration.

13.2 Property Insurance. The Association will obtain property insurance in accordance with Section 82.III (a) of the Act. Insurance must be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. All hazard and flood insurance policies which include any Units must also have the standard mortgagee clause.

A. Common Property Insured. The Association will insure: (i) General Common Elements; (ii) Limited Common Elements; and (iii) personal property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies;

B. Units Insured by Association. In addition to insuring the Common Elements against casualty loss, the Association will maintain property insurance on the structure of the Buildings as originally constructed. The Association may insure betterments and Improvements installed by current or previous Owners but will have no obligation to insure such items. In insuring Units, the Association may be guided by types of policies customarily available for similar types of properties.

C. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender.

13.3 Liability Insurance. The Association will maintain a commercial general liability insurance policy over the Common Elements - expressly excluding the liability of each Owner and Occupant within their Unit - for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. The amount of coverage should be at least that required by an Underwriting Lender, to the extent reasonably 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 Unit Owners.

13.4 Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of Applicable Law or if the Board so chooses.

13.5 Fidelity Coverage. The Association may maintain blanket fidelity coverage for any Person who manages or is responsible for funds held or administered by the Association, whether or not the Person is paid for their services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of General Assessments on all Units. A managing agent that handles Association funds should be covered by its own fidelity insurance policy with the same coverages. If the Property has more than twenty (20) Units, the Association must maintain fidelity coverage to the extent reasonably available.

13.6 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.

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

13.8 Owner's Responsibility for Insurance.

A. Insurance by Owners. The Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Unit Owners and Occupants if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner or Occupant fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as a Specific Assessment.

B. HO-6 Policy. Notwithstanding any provision in this Declaration to the contrary, if required by any Underwriting Lender, each Unit Owner will be required to procure insurance covering the interior of the Unit, including replacement of interior Improvements and betterment coverage to insure Improvements the Owner may make to the Unit, commonly referred to as HO-6 insurance.

C. Owners' Responsibilities. The Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to the 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 coverage required by the Association pursuant to this *Article XIII*.

D. Association Does Not Insure. The Association does not insure an Owner or Occupant's personal property. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND OCCUPANT PURCHASE AND MAINTAIN INSURANCE ON PERSONAL BELONGINGS.

13.9 Injury to Person or Property. **NEITHER THE DECLARANT, THE ASSOCIATION, NOR THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, OCCUPANT OR THEIR GUESTS: (i) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (ii) TO FENCE OR OTHERWISE ENCLOSE ANY LIMITED COMMON ELECT, GENERAL COMMON ELEMENT, OR OTHER IMPROVEMENT; OR (iii) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION 13.9 ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE ASSOCIATION AND DECLARANT. EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER AND OCCUPANT OR THEIR RESPECTIVE RELATIVES, GUESTS, INVITEES, TENANTS, AGENTS, EMPLOYEES OR CONTRACTORS TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.**

ARTICLE XIV
RECONSTRUCTION OR REPAIR AFTER LOSS

14.1 Subject to Act. The Association's response to damage or destruction of the Property will be governed by *Section 82.111 (i)* of the Act. The following provisions apply to the extent the Act is silent. This *Article XIV* is provided, in part, because this Declaration authorizes the Association to obtain property insurance for a Unit if the Owner fails or refuses to obtain insurance or to provide the Association with proof thereof. Any portion of VCM Condominiums for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the Association unless the Regime is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least eighty percent (80%) of the Unit Owners vote to not rebuild. Each Owner of a Unit may vote, regardless of whether the Owner's Unit or Limited Common Element has been damaged or destroyed. A vote may be cast electronically or by written ballot if a meeting is not held for that purpose or in-person, by proxy or absentee ballot at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss.

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

A. 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.

B. 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.

C. 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 them, and further provided that any delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

14.3 Costs and Plans.

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

B. Plans and Specifications. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Units will be repaired and restored substantially in accordance with original construction plans and specifications, unless the Association insures betterments and improvements made by Owners, in which case the Units

will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either Common Elements or Units must be approved by Owners representing at least two-thirds (2/3) of the votes in the Association and by certain mortgagees if so, required by the Mortgagee Protection article of this Declaration.

14.4 Owner's Duty to Repair.

A. Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of their 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.

B. 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.

C. Failure to Repair. If an Owner fails to repair or restore damage as required by this *Section 14.4*, the Association may affect the necessary repairs and levy a Specific Assessment against the Owner and Unit for the cost thereof, after giving the Owner of the Unit reasonable notice of the Association's intent to do so.

14.5 Owner's Liability for Insurance Deductible. If repair or restoration of Common Elements or Units is required as a result of an insured loss, the Board may levy a Specific Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE XV
TERMINATION AND CONDEMNATION

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

15.2 Termination. Termination of the terms of this Declaration and the condominium status of the Property will be governed by *Section 82.068* of the Act, subject to the following provisions:

A. Substantial Taking. In the event of substantially total damage, destruction, or condemnation of the Property, an amendment to terminate must be approved by Owners representing at least sixty-seven percent (67%) percent of the votes in the Association and by fifty-one percent (51%) of the Eligible Mortgagee Protection article of this Declaration.

B. Total Taking. 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.

C. Other Circumstances. In all other circumstances, an amendment to terminate must be approved by Owners representing at least eighty percent (80%) percent of the votes in the Association and by certain mortgagees pursuant to the Mortgagee Protection article of this Declaration.

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

ARTICLE XVI MORTGAGEE PROTECTION

16.1 Liability of First Mortgagees. Where a First Mortgagee of record or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors, and assigns. Additionally, such acquirer shall be responsible for all Assessments accruing subsequent to the passage of title, including, but not limited to, all Assessments for the month in which title is passed.

16.2 Mortgagee Notice. Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgagee will be entitled to timely written notice of:

A. any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held by such Eligible Mortgagee;

B. any delinquency in the payment of Assessments or Charges owed by an Owner of a Unit subject to a First Mortgage held by such Eligible Mortgagee which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Unit Owner of any other obligation under the Governing Documents which is not cured within sixty (60) days;

C. any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

D. any proposed amendment of a material nature;

E. any proposed termination of the condominium status of the Property or dissolution of the Association, notice at least thirty (30) days prior to the proposed termination or dissolution, as application; and

F. any proposed action which would require the consent of a specified percentage of Eligible Mortgagees, as specified herein.

16.3 Financial Statements. Any First Mortgagee shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

16.4 Additional Mortgagee Rights. Notwithstanding anything to the contrary herein contained, the provisions of *Article X* governing leases and resales shall not apply to impair the right of any first Mortgagee to:

- A. foreclose or take to a Unit pursuant to remedies contained in its Mortgage; or
- B. take a deed or assignment in lieu of foreclosure; or
- C. sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

16.5 Mortgagee's Consent. Provided that the holder of the First Mortgage informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless at least fifty-one (51%) percent of the Eligible Mortgagees which encumbers Units (based upon one vote for each Unit encumbered by such Mortgage) have given their prior written approval:

- A. seek, by act or omission, to abandon the Regime or to terminate the Plat or this Declaration, or change, waive or abandon any scheme or regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Elements;
- B. terminate the legal status of the Regime after substantial destruction or condemnation of the same occurs;
- C. change the Ownership and Voting Interests or obligations of any Unit for purposes of levying Assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the Ownership and Voting Interest of the Common Elements appurtenant to each Unit;
- D. partition or subdivide any Unit (applicable only to the affected Mortgage);
- E. seek, by act or omission, to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements; however, the granting of public utility easements or other public purposes which is consistent with the normal or traditional uses in the geographical area in which the Regime is located shall not be deemed a transfer within the meaning of this provision;
- F. apply hazard insurance proceeds for losses to any portion of the Regime for other than the repair, replacement, or reconstruction of the Regime, except as may be provided by statute upon substantial loss to the Units or Common Elements;
- G. fail to maintain fire and extended coverage insurance on the Regime and all Common Elements on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

16.6 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

16.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested.

16.8 Construction of Article XVI. Nothing contained in this *Article XVI* shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or State law for any of the acts set out in this *Article XVI*.

ARTICLE XVII AMENDMENTS

17.1 Amendments During the Declarant's Control Period. **During the Declarant's Control Period, Declarant shall have the right at any time to unilaterally file an amendment, supplement or restatement of this Declaration without the necessity of joinder by any other Owner of a Unit, or any interest therein, or by any mortgagee, for the purpose of correcting a clerical error, clarifying an ambiguity or inconsistency, inserting an omitted portion, or removing any contradiction in the terms hereof, or for any reason whatsoever deemed necessary for the benefit of the Regime as determined by Declarant, in its sole discretion, including but not limited to, making the restrictions contained herein more or less restrictive for all or a portion of the Regime.**

17.2 Amendments After the Declarant's Control Period. After the Declarant's Control Period, this Declaration may be amended by the affirmative vote of at least sixty-seven percent (67%) of the total Member votes in the Association, and fifty-one percent (51%) of the Eligible Mortgagees. Any amendments to this Declaration shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to this Declaration. 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. Any such amendment shall be effective upon filing such amendment or amended restrictions in the Bexar County Official Public Records.

ARTICLE XVIII DISPUTE RESOLUTION

18.1 Introduction and 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 XVIII* (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 XVIII* applies to all claims as hereafter defined. As used in this *Article XVIII* only, the following words, when capitalized, have the following specified meanings:

- A. "Claim" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:
- (i) Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
 - (ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Governing Documents.

- (iii) Claims relating to the design, construction, or maintenance of the Property.
- B. "Claimant" means any Party having a Claim against any other Party.
- C. "Exempt Claims" means the following claims or actions, which are exempt from this *Article XVIII*:
 - (i) The Association's claim for Assessments, and any action by the Association to collect Assessments.
 - (ii) An action by any 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.
 - (iii) Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
 - (iv) A suit to which an applicable statute of limitations would expire within the notice period of this *Article XVIII*, 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 XVIII*.
 - (v) 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 XVIII*, unless the Parties agree to have the dispute governed by this *Article XVIII*.
- D. "Respondent" means the Party against whom the Claimant has a Claim.

18.2 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 XVIII*.

18.3 Notice. Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Article XVIII*.

18.4 Negotiation. Claimant and Respondent will make a reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (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.

18.5 Mediation. If the parties negotiate but do not resolve the Claim through negotiation within one hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (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 five (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 thirty (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.

18.6 Termination of Mediation. If the Parties do not settle the Claim within forty-five (45) 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.

18.7 Allocation of Costs. Except as otherwise provided in this *Section 18.7*, 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 attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

18.8 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 XVIII*. 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.

18.9 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 XVIII*.

18.10 Board Authorization. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate, mediate, arbitrate, settle, and/or litigate any dispute to which the Association is a party, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

ARTICLE XIX INDEMNITY

19.1 Release and Indemnity. **EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF SUCH OWNER'S USE OF ANY COMMON ELEMENTS. EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE DECLARANT AND ASSOCIATION AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF AN OWNER'S OR OCCUPANT'S, AND THEIR RESPECTIVE RELATIVES, GUESTS, INVITEES, TENANTS, AGENTS, EMPLOYEES, AND CONTRACTORS, USE OF OR DAMAGE TO ANY COMMON ELEMENTS (INCLUDING ANY COST, FEES, EXPENSE, LIABILITY, CLAIM OR**

CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S OR DECLARANT'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM, OR CAUSE OF ACTION ARISING BY REASON OF THE DECLARANT'S OR ASSOCIATION'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

NEITHER THE DECLARANT NOR ASSOCIATION SHALL ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE WHICH IS OCCASIONED BY USE OF ANY COMMON ELEMENT, AND IN NO CIRCUMSTANCE SHALL WORDS OR ACTIONS BY THE DECLARANT OR ASSOCIATION CONSTITUTE AN IMPLIED OR EXPRESS REPRESENTATION OR WARRANTY REGARDING THE FITNESS OR CONDITION OF ANY COMMON ELEMENT.

ARTICLE XX
GENERAL PROVISIONS

20.1 **Compliance.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and all 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.

20.2 **Higher Authority.** The Governing Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

20.3 **Notice.** All demands or other notices required to be sent to an Owner or Occupant by the terms of this Declaration will be sent by ordinary 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 he actually receives it.

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

20.5 **Severability.** Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited to the enumeration of specific matters similar to the general.

20.6 **Captions.** 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.

20.7 **Interpretation.** Whenever used in this Declaration, 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.

20.8 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.

20.9 Exhibits, Attachments and Appendixes. The following exhibits, attachments and appendixes are attached to this Declaration and are incorporated herein by reference:

EXHIBIT "A"	Property Description
EXHIBIT "B"	Exceptions Affecting Title to Units
ATTACHMENT "1"	Condominium Plat for Van Cleave Modern Condominiums
ATTACHMENT "2"	Plans for first phase of Five (5) Buildings comprising Ten (10) Units
ATTACHMENT "3"	Ownership and Voting Interests
ATTACHMENT "4"	Common Element – Responsibility and Maintenance Chart
APPENDIX "A"	Declarant Reservations.

The above and foregoing Amended and Restated Condominium Declaration for Van Cleave Modern Condominiums, was approved by the undersigned Declarant on the 23 day of JANUARY, 2024.

CM MARKET SHARE, LLC,
a Texas limited liability company

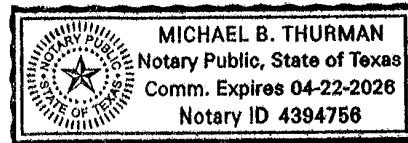
By: Carlo White
CARLO WHITE, President, and Manager

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was sworn to and acknowledged before me on the 23 day of JANUARY, 2024, by CARLO WHITE, President, and Manager of CM Market Share, LLC, a Texas limited liability company, on behalf of said limited liability company.

Michael B. Thurman
Notary Public, State of Texas

After Recording Return to:
Michael B. Thurman
THURMAN & PHILLIPS, P.C.
4093 De Zavala Road
Shavano Park, Texas 78249
Phone: 210 341-2020



CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the superior lien and security interest created by that certain Deed of Trust recorded as Document No. 202202081800 in the Official Public Records of Bexar County, Texas (the "Deed of Trust"), securing a promissory note of even date therewith executed by CM Market Share, LLC, executes this Consent of Mortgagee solely for the purposes of evidencing its consent to the Declarant's execution and recording of the Amended and Restated Condominium Declaration of Van Cleave Modern Condominiums required pursuant to Section 82.051(b) of the Texas Property Code.

SECURITY STATE BANK AND TRUST

By:
Printed Name:
Title:

[Handwritten Signature]
Bryan D D Spain
Branch President

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF Kendall §
§

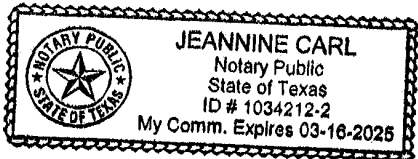
On this, the 24 day of January, 2024, before me, personally appeared Bryan D D Spain, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

Witness my hand and official seal.

[Handwritten Signature: Jeannine Carl]

Notary Public, State of Texas



CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the superior lien and security interest created by that certain Deed of Trust recorded as Document Nos. 20230079971, 20230079974, 20230080462, 20230080463 in the Official Public Records of Bexar County, Texas (the "Deed of Trust"), securing a promissory note of even date therewith executed by CM Market Share, LLC, executes this Consent of Mortgagee solely for the purposes of evidencing its consent to the Declarant's execution and recording of the Amended and Restated Condominium Declaration of Van Cleave Modern Condominiums required pursuant to Section 82.051(b) of the Texas Property Code.

TXN BANK, N.A.

By: Elizabeth Resendez
Printed Name: Elizabeth Resendez
Title: VP-Loan officer

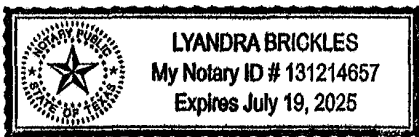
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Atascosa §

On this, the 24th day of January, 2024, before me, personally appeared Elizabeth Resendez, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

Witness my hand and official seal.



Lyandra Brickles
Notary Public, State of Texas

EXHIBIT "A"

PROPERTY DESCRIPTION

Lot 2, Block 2, New City Block 18038, Ingram Plaza Subdivision, Unit 1-A, a Subdivision of record according to the Plat thereof recorded in Volume 9500, Page 75 of the Deed and Plat Records of Bexar County, Texas.

EXHIBIT "B"

EXCEPTIONS AFFECTING TITLE TO UNITS

1. Building setback line, 25 feet wide, along the front lot line and side lot line, as shown on Plat recorded in Volume 9500, Page 75, Deed and Plat Records, Bexar County, Texas.
2. Electric, gas, telephone, cable TV easements, 20 feet wide, along the side lot line, as shown on Plat recorded in Volume 9500, Page 75, Deed and Plat Records, Bexar County, Texas.
3. Sanitary sewer easement, 25 feet by 25 feet wide, along the front and side lot line, as shown on Plat recorded in Volume 9500, Page 75, Deed and Plat Records, Bexar County, Texas.
4. Easements recorded in Volume 8777, Page 1655, Real Property Records of Bexar County, Texas.
5. Easements recorded in Document No. 20220026278, Official Public Records of Bexar County, Texas.
6. Easements recorded in Document No. 20220273379, Official Public Records of Bexar County, Texas.
7. Easements recorded in Document No. 20220273383, Official Public Records of Bexar County, Texas.
8. Utility Service Agreement by and between San Antonio Water Systems (SAWS) and CCE Development, LLC (Developer), recorded in Document No. 20220055176, Official Public Records of Bexar County, Texas.
9. Vendor's Lien retained in the following Deed securing the payment of one note in the principal amount shown below:

Dated: December 2, 2022
Grantor: Row At Northwestern I, LLC, a Texas Limited Liability Company
Grantee: CM Market Share LLC, a Texas Limited Liability Company
Note Amount: \$1,740,000.00
Payable to: Security State Bank and Trust
Recording Date: December 6, 2022
Recording No.: Document No. 20220281799, Official Public Records, Bexar County, Texas.

Additionally secured by Deed of Trust of even date therewith as set forth below:

To: Daniel W. Kemp, Trustee
Loan No.: 174206
Recording Date: December 6, 2022
Recording No.: Document No. 202202081800, Official Public Records, Bexar County, Texas.

10. Deed of Trust securing the payment of one note in the principal amount shown below:

To: David Deanda, Jr., Trustee
Note Amount: \$1,792,000.00
Borrower: CM Market Share LLC
Lender: Lone Star National Bank
Recording Date: March 31, 2023
Recording No.: Document No. 20230055725, Official Public Records, Bexar County, Texas.
Collateral: Units 1701, 1702, Building 17; Units 1801, 1802, Building 18; Units 1901, 1902, Building 19; Units 2001, 2002, Building 20; Units 2101, 2102, Building 21, Van Cleave Modern Condominiums.

11. Deed of Trust securing the payment of one note in the principal amount shown below:

To: Brent R. Given
Note Amount: \$382,500.00
Borrower: CM Market Share, LLC, a Texas Limited Liability Company
Lender: Texas Partners Bank DBA The Bank of San Antonio
Recording Date: April 14, 2023
Recording No.: Document No. 20230064249, Official Public Records, Bexar County, Texas
Collateral: Units 1101, 1102, Building 11, Van Cleave Modern Condominiums.

12. Deed of Trust securing the payment of one note in the principal amount shown below:

To: Ronnie Miller
Note Amount: \$402,333.34
Borrower: CM Market Share, LLC, a Texas Limited Liability Company
Lender: TXN Bank, N.A.
Recording Date: May 5, 2023
Recording No.: Document No. 20230080462, Official Public Records, Bexar County, Texas
Collateral: Units 1201, 1202, Building 12, Van Cleave Modern Condominiums.

13. Deed of Trust securing the payment of one note in the principal amount shown below:

To: Ronnie Miller
Note Amount: \$402,333.34
Borrower: CM Market Share, LLC, a Texas Limited Liability Company
Lender: TXN Bank, N.A.
Recording Date: May 5, 2023
Recording No.: Document No. 20230079971, Official Public Records, Bexar County, Texas
Collateral: Units 1301, 1302, Building 13, Van Cleave Modern Condominiums.

14. Deed of Trust securing the payment of one note in the principal amount shown below:

To: Ronnie Miller
Note Amount: \$402,333.34
Borrower: CM Market Share, LLC, a Texas Limited Liability Company
Lender: TXN Bank, N.A.
Recording Date: May 5, 2023

Recording No.: Document No. 20230079974, Official Public Records, Bexar County,
Texas

Collateral: Units 1401, 1402, Building 14, Van Cleave Modern Condominiums.

15. All other liens, easements, encumbrances, or exceptions filed of Record in the Official Public Records of Bexar County, Texas.

ATTACHMENT "1"

CONDOMINIUM PLAT FOR VAN CLEAVE MODERN CONDOMINIUMS

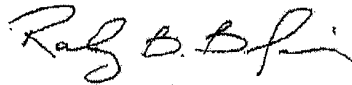
"ATTACHMENT 1"

"VAN CLEAVE MODERN CONDOMINIUMS"
CONDOMINIUM PLAT

A CONDOMINIUM REGIME IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ESTABLISHED UPON LOT 2, BLOCK 2, NEW CITY BLOCK 18038, INGRAM PLAZA SUBDIVISION, UNIT 1-A, A SUBDIVISION OF RECORD ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9500, PAGE 75 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

STATE OF TEXAS
COUNTY OF BEXAR

THE ATTACHED PLATS AND PLANS ATTACHED HERETO AS "ATTACHMENT 1" CONTAIN THE INFORMATION REQUIRED BY SECTION 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT, AS APPLICABLE.



REGISTERED PROFESSIONAL LAND SURVEYOR

03-15-23
DATE



TABLE OF CONTENTS:
SHEET 1: CERTIFICATION
SHEET 2: GENERAL NOTES
SHEET 3: EXISTING CONDITIONS
SHEET 4: UNIT DESCRIPTIONS
SHEET 5: UNIT DESCRIPTIONS
SHEET 6: UNIT DESCRIPTIONS
SHEET 7: GENERIC SITE PLAN

Maverick
Land Surveying Co.

1858 Lockhill Selma, Suite 105, San Antonio, Texas 78213
(210) 348-9455, Fax 348-9624
© 1990-2023, Maverick Land Surveying Co.
TBPELS FIRM No. 10132700

JOB NO.: 58883-0037

SHEET 1 OF 7

"VAN CLEAVE MODERN CONDOMINIUMS" CONDOMINIUM PLAT

A CONDOMINIUM REGIME IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ESTABLISHED UPON LOT 2, BLOCK 2, NEW CITY BLOCK 18038, INGRAM PLAZA SUBDIVISION, UNIT 1-A, A SUBDIVISION OF RECORD ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9500, PAGE 75 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

GENERAL NOTES:

- 1) ALL IMPROVEMENTS AND LAND REFLECTED ON THE PLAT ARE DESIGNATED AS GENERAL COMMON ELEMENTS, SAVE AND EXCEPT PORTIONS OF THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS OR UNITS: (I) IN THE DECLARATION OF CONDOMINIUM REGIME FOR VAN CLEAVE MODERN CONDOMINIUMS (THE "DECLARATION") OR (II) ON THE PLATS AND PLANS OF THE REGIME.
- 2) OWNERSHIP AND USE OF CONDOMINIUM UNITS IS SUBJECT TO THE RIGHTS AND RESTRICTIONS CONTAINED IN THE DECLARATION.
- 3) THE PROPERTY IS SUBJECT TO SPECIAL RIGHTS RESERVED BY THE DECLARANT IN THE DECLARATION. PURSUANT TO SUCH PROVISIONS, AMONG OTHER THINGS, DECLARANT HAS RESERVED THE RIGHT TO (I) COMPLETE OR MAKE IMPROVEMENTS INDICATED ON THE PLAT AND PLANS; (II) 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; (III) TO CORRECT ANY DEFECTS IN THE EXECUTION OF THE DECLARATION OR THE OTHER DOCUMENTS; (IV) TO ADD REAL PROPERTY TO THE PROPERTY, IN THE EXERCISE OF STATUTORY DEVELOPMENT RIGHTS; (V) TO CREATE UNITS, GENERAL COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS WITHIN THE PROPERTY, IN THE EXERCISE OF STATUTORY DEVELOPMENT RIGHTS; (VI) TO SUBDIVIDE, COMBINE, OR RECONFIGURE UNITS OR CONVERT UNITS INTO COMMON ELEMENTS, IN THE EXERCISE OF STATUTORY DEVELOPMENT RIGHTS (VII) TO WITHDRAW FROM THE PROPERTY ANY PORTION OF THE REAL PROPERTY MARKED OR NOTED ON THE PLAT AND PLANS AS "DEVELOPMENT RIGHTS RESERVED" OR "SUBJECT TO DEVELOPMENT RIGHTS" IN THE EXERCISE OF STATUTORY DEVELOPMENT RIGHTS; (VIII) TO RESOLVE CONFLICTS, CLARIFY AMBIGUITIES, AND TO CORRECT MISSTATEMENTS, ERRORS, OR OMISSIONS IN THE DOCUMENTS; (IX) TO CHANGE THE NAME OR ENTITY OF DECLARANT; AND (X) TO UNILATERALLY AMEND THE DECLARATION WITHOUT THE APPROVAL OF OWNERS OF INDIVIDUAL UNITS.
- 4) PREPARED MARCH 2023 FROM SURVEY OF SUBJECT PROPERTY COMPLETED FEBRUARY 2, 2023 AND SITE PLANS PROVIDED BY DECLARANT ON DECEMBER 15, 2022.
- 5) WHERE ACCESSIBLE, A ½" IRON ROD WITH ORANGE PLASTIC CAP OR MAG NAIL WITH WASHER, BOTH MARKED "MLS CO RPLS 5846" WERE SET AT ALL UNIT CORNERS.

Maverick Land Surveying Co.

1856 Lockhill Selma, Suite 105, San Antonio, Texas 78213
(210) 342-9466, Fax 342-9624
© 1990-2020, Maverick Land Surveying Co.
TBPELS FIRM No. 10132700

GENERAL NOTES

JOB NO.: 58883-0037

SHEET 2 OF 7

"VAN CLEAVE MODERN CONDOMINIUMS" CONDOMINIUM PLAT

LEGEND

- ① 14' ELECTRIC & GAS EASEMENT
DOCUMENT NO. 20220273379, O.P.R.
- ② 25'X28' SANITARY SEWER EASEMENT
VOLUME 9500, PAGE 75, D.P.R.
- ③ VARIABLE WIDTH CLEAR VISION EASEMENT
DOCUMENT NO. 20220026278, O.P.R.
- ④ VARIABLE WIDTH ELECTRIC EASEMENT
DOCUMENT NO. 20220273383, O.P.R.
- ⑤ 20' DRAINAGE EASEMENT
DOCUMENT NO. 20220026278, O.P.R.
- ⑥ 20' ELECTRIC, GAS, TELEPHONE &
CABLE TELEVISION EASEMENT
VOLUME 9500, PAGE 75, D.P.R.
- ⑦ 28' ELECTRIC EASEMENT
VOLUME 8777, PAGE 1655, R.P.R.

FOUND 1/2"
IRON ROD



GRAPHIC SCALE
 SCALE: 1" = 100'

SHEET 4

SHEET 4

SHEET 5

SHEET 5

NORTHWESTERN DRIVE
 (60' PUBLIC RIGHT OF WAY)
 (VOLUME 9500, PAGE 75, D.P.R.)

FOUND 1/2"
IRON ROD

3.598 ACRES
 LOT 2, BLOCK 2
 INGRAM PLAZA SUBDIVISION
 UNIT 1-A
 NEW CITY BLOCK 18038
 VOLUME 9500, PAGE 75, D.P.R.

CURVE DATA				
CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING & DIST.
C1	558.57'	194.12'	19°54'43"	S 75°22'09" W ~ 193.14'
C2	15.00'	23.69'	90°28'22"	N 49°28'18" W ~ 21.30'
C3	370.00'	483.48'	74°52'08"	N 33°13'57" E ~ 449.81'
C4	993.00'	480.31'	27°42'50"	S 10°43'47" E ~ 475.64'
C5	115.00'	100.31'	49°58'20"	S 36°23'41" E ~ 97.15'
C6	85.00'	74.14'	49°58'20"	N 36°23'41" W ~ 71.81'
C7	1113.00'	254.54'	13°06'12"	S 17°57'38" E ~ 253.99'
C8	1143.00'	261.40'	13°06'12"	N 17°57'38" W ~ 260.83'
C9	1243.00'	214.28'	09°52'34"	N 19°34'27" W ~ 213.99'
C10	24.00'	37.70'	90°00'00"	S 20°29'16" W ~ 33.94'
C11	24.00'	37.70'	90°00'00"	N 69°30'44" W ~ 33.94'
C12	24.00'	37.73'	90°04'28"	S 89°32'58" E ~ 33.96'
C13	24.00'	37.67'	89°55'32"	N 20°27'02" E ~ 33.92'

SET MAG NAIL

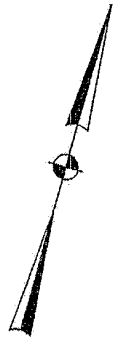
SHEET 5

SHEET 5

SHEET 6

SHEET 6

LOT 3
 NEW CITY BLOCK 18038
 INGRAM PLAZA SUBDIVISION
 (VOLUME 9503, PAGE 103, D.P.R.)



FOUND 1/2"
IRON ROD

FOUND 1/2"
IRON ROD

FOUND 1/2"
IRON ROD

FOUND 1/2"
IRON ROD

VAN CLEAVE DR.
 (60' PUBLIC RIGHT OF WAY)
 (VOLUME 9500, PAGE 75, D.P.R.)

LINE TABLE	
LINE	BEARING & DISTANCE
L1	S 24°35'12" E ~ 295.65'
L2	S 85°24'48" W ~ 240.46'
L3	N 04°12'07" W ~ 496.25'
L4	N 59°06'10" W ~ 16.52'
L5	N 61°23'02" W ~ 15.76'
L6	S 83°39'35" E ~ 16.61'
L7	S 61°22'41" E ~ 15.66'

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EXISTING CONDITIONS

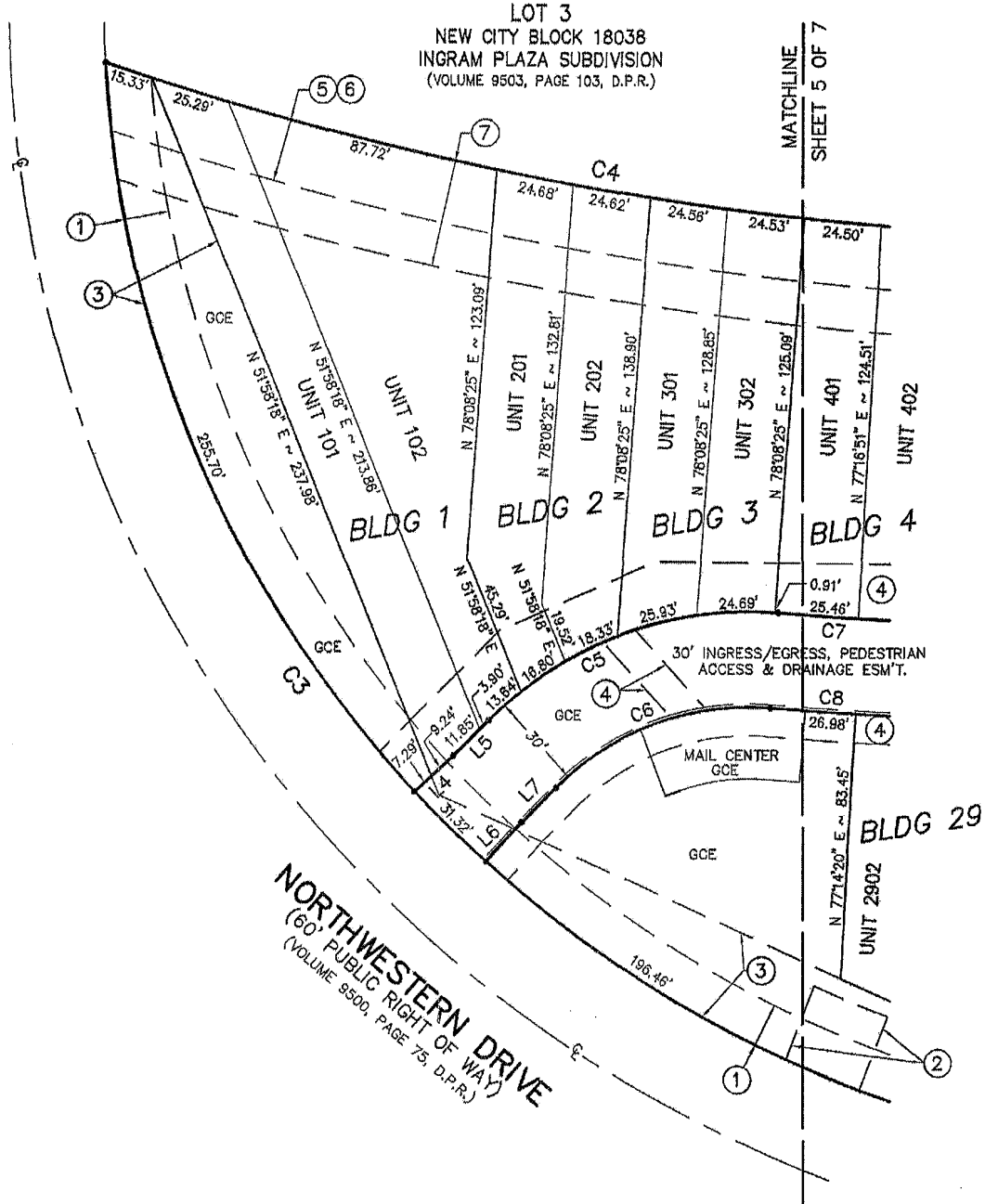
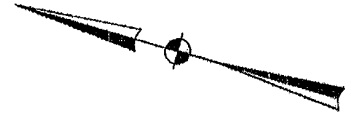
ADDRESS:
 3606 NORTHWESTERN DR.
 SAN ANTONIO, TX 78238

JOB NO.: 58883-0037

SHEET 3 OF 7

**"VAN CLEAVE MODERN CONDOMINIUMS"
 CONDOMINIUM PLAT**

"SEE SHEET 3 OF 7 FOR CURVE DATA, LINE DATA & LEGEND"
 GCE = GENERAL COMMON ELEMENT



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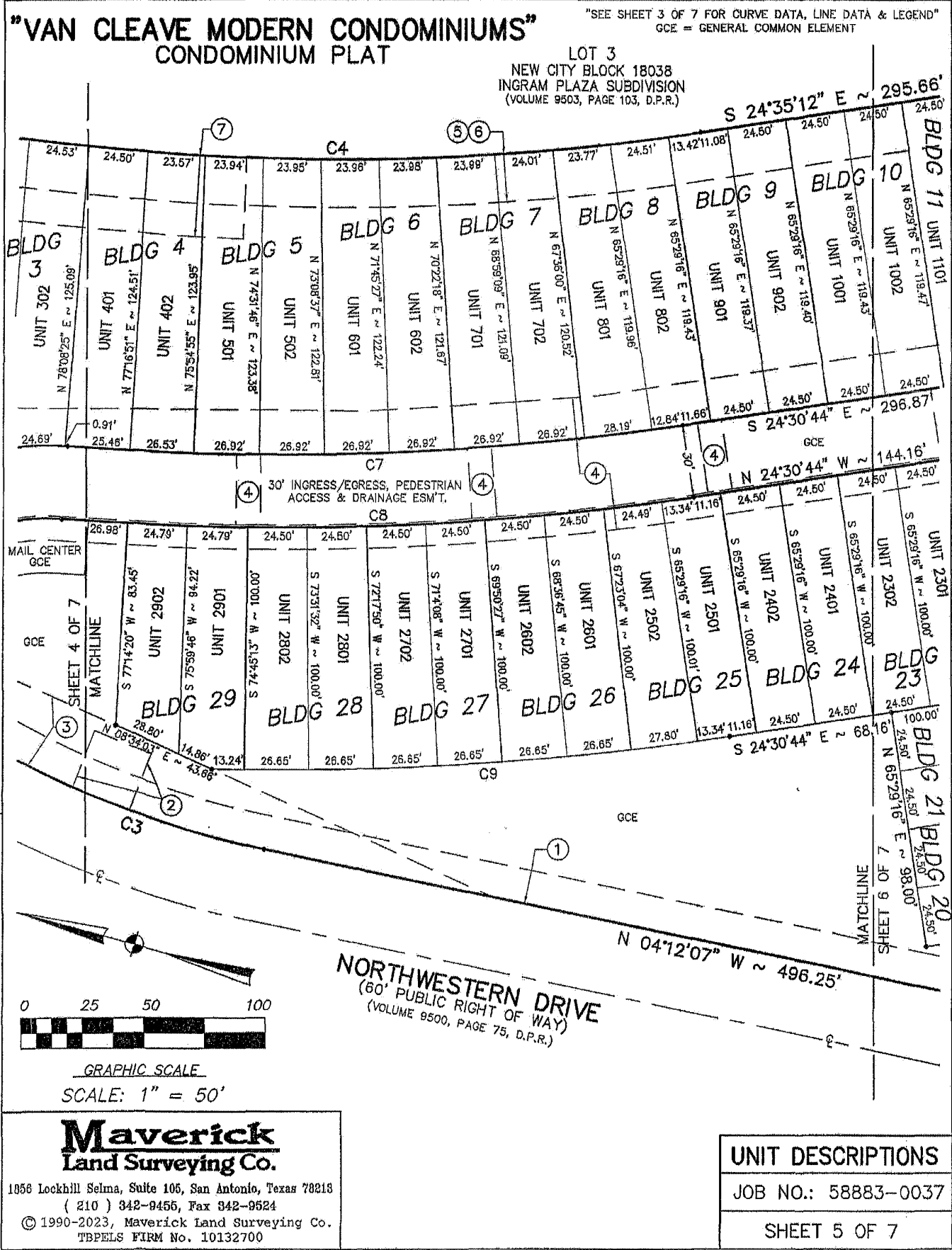


GRAPHIC SCALE
 SCALE: 1" = 50'

UNIT DESCRIPTIONS

JOB NO.: 58883-0037

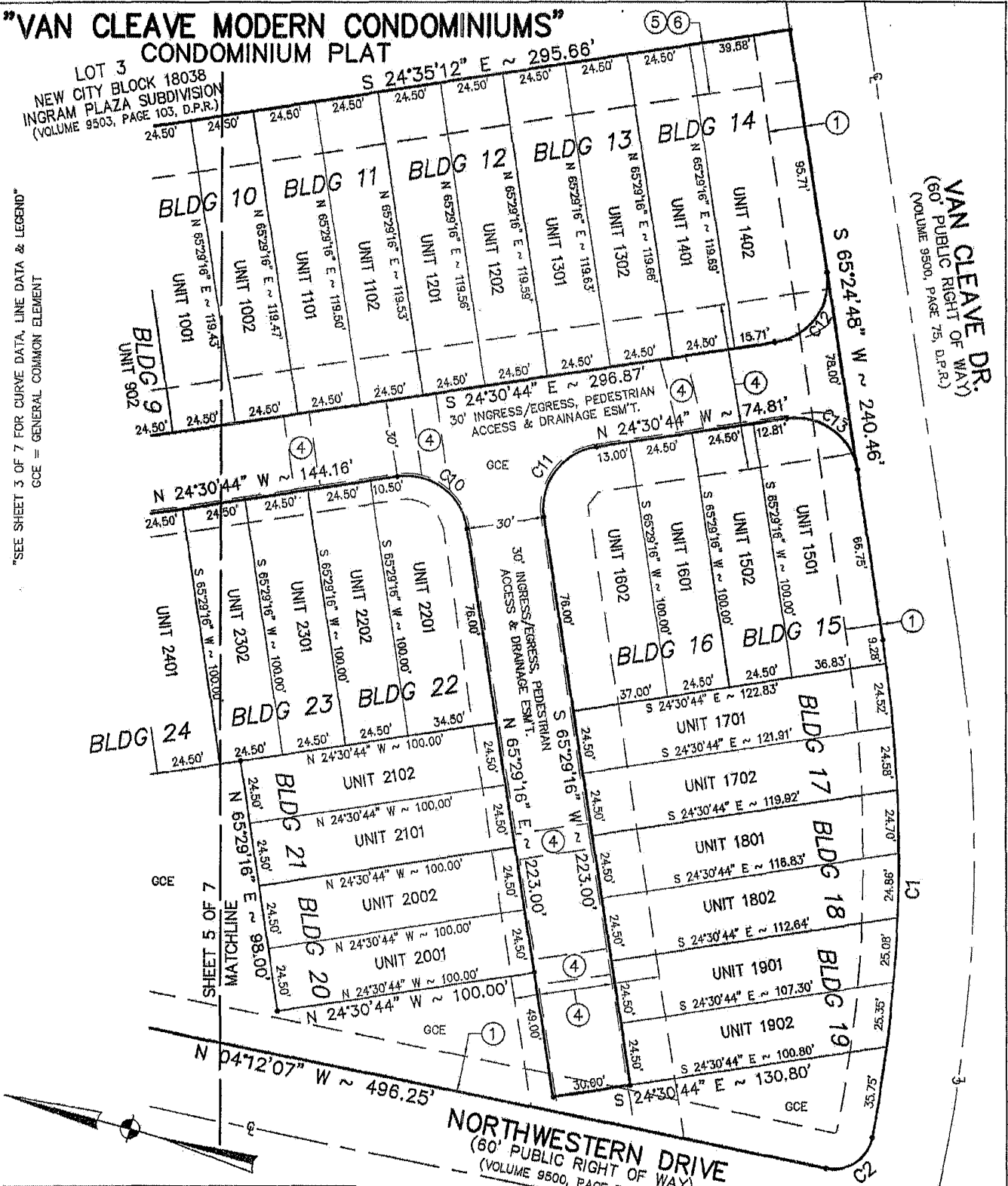
SHEET 4 OF 7



"VAN CLEAVE MODERN CONDOMINIUMS"
CONDOMINIUM PLAT

LOT 3
 NEW CITY BLOCK 18038
 INGRAM PLAZA SUBDIVISION
 (VOLUME 9503, PAGE 103, D.P.R.)

SEE SHEET 3 OF 7 FOR CURVE DATA, LINE DATA & LEGEND*
 GCE = GENERAL COMMON ELEMENT



VAN CLEAVE DR.
 (60' PUBLIC RIGHT OF WAY)
 (VOLUME 9500, PAGE 75, D.P.R.)

NORTHWESTERN DRIVE
 (60' PUBLIC RIGHT OF WAY)
 (VOLUME 9500, PAGE 75, D.P.R.)

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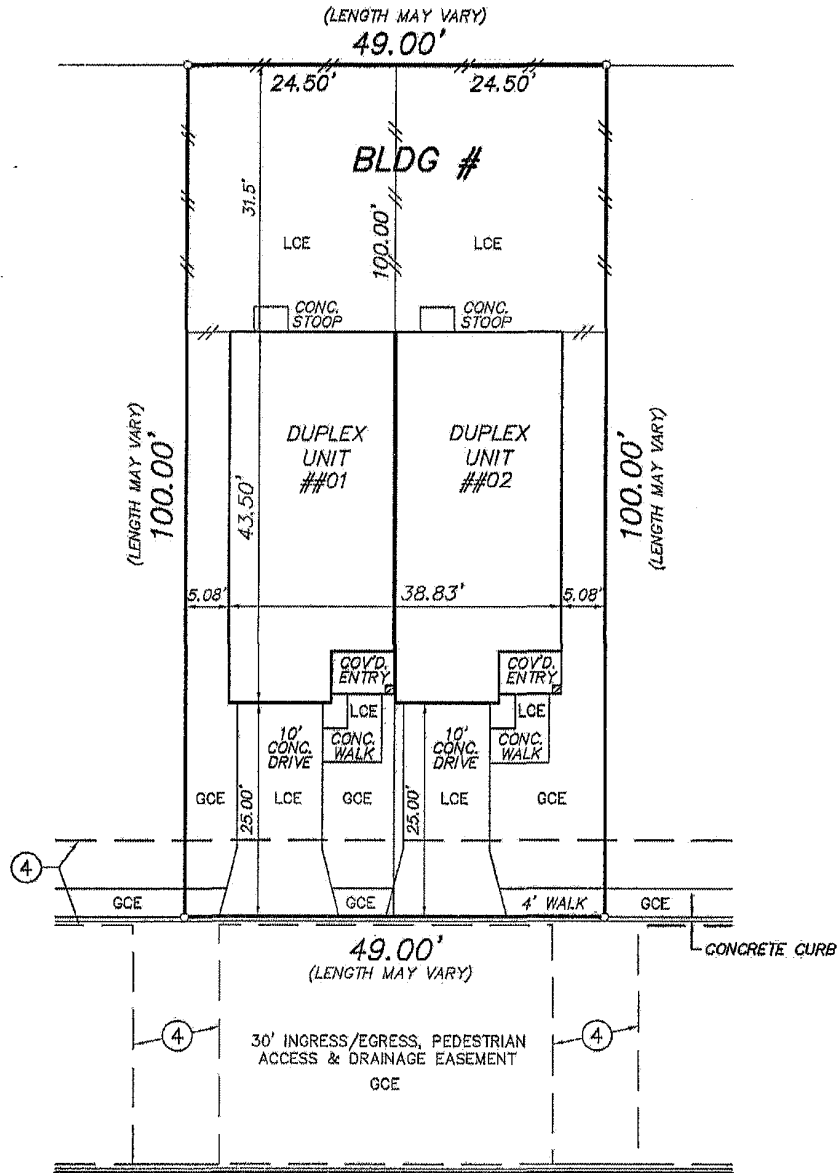
GRAPHIC SCALE
 SCALE: 1" = 50'

UNIT DESCRIPTIONS

JOB NO.: 58883-0037 SHEET 6 OF 7

**"VAN CLEAVE MODERN CONDOMINIUMS"
 CONDOMINIUM PLAT**

"SEE SHEET 3 OF 7 FOR CURVE DATA, LINE DATA & LEGEND"
 GCE = GENERAL COMMON ELEMENT
 LCE = LIMITED COMMON ELEMENT
 // // = WOOD PRIVACY FENCE



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GRAPHIC SCALE
 SCALE: 1" = 20'

GENERIC SITE PLAN

JOB NO.: 58883-0037

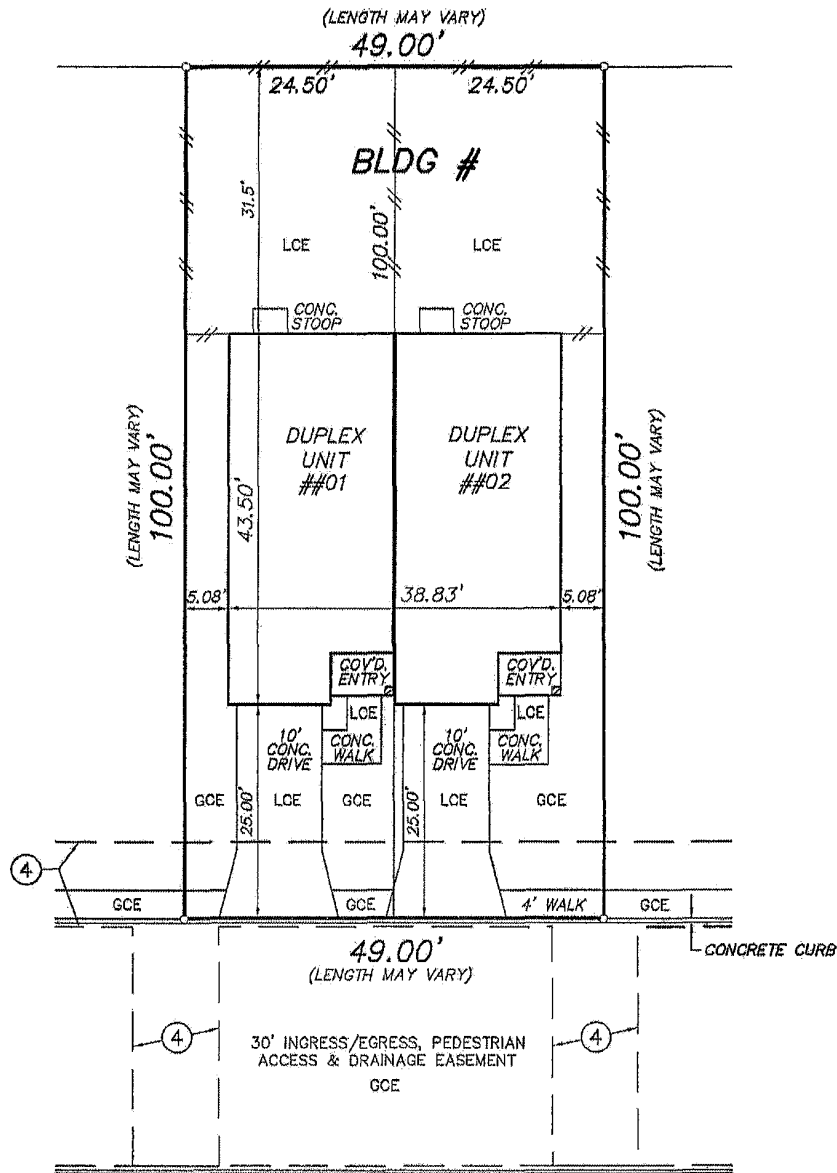
SHEET 7 OF 7

ATTACHMENT "2"

PLANS FOR FIRST PHASE OF FIVE (5) BUILDINGS COMPRISING TEN (10) UNITS

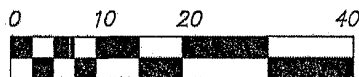
**"VAN CLEAVE MODERN CONDOMINIUMS"
 CONDOMINIUM PLAT**

"SEE SHEET 3 OF 7 FOR CURVE DATA, LINE DATA & LEGEND"
 GCE = GENERAL COMMON ELEMENT
 LCE = LIMITED COMMON ELEMENT
 // // = WOOD PRIVACY FENCE



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 TPPELS FIRM No. 10132700



GRAPHIC SCALE
 SCALE: 1" = 20'

GENERIC SITE PLAN

JOB NO.: 58883-0037

SHEET 7 OF 7

ATTACHMENT "3"

OWNERSHIP AND VOTING INTERESTS

Building Number	Unit Number	Votes in the Association	Undivided Interests in the Common Elements	Undivided Interests in the Common Expenses
1	101	1	1/58th	1/58th
1	102	1	1/58th	1/58th
2	201	1	1/58th	1/58th
2	202	1	1/58th	1/58th
3	301	1	1/58th	1/58th
3	302	1	1/58th	1/58th
4	401	1	1/58th	1/58th
4	402	1	1/58th	1/58th
5	501	1	1/58th	1/58th
5	502	1	1/58th	1/58th
6	601	1	1/58th	1/58th
6	602	1	1/58th	1/58th
7	701	1	1/58th	1/58th
7	701	1	1/58th	1/58th
8	801	1	1/58th	1/58th
8	802	1	1/58th	1/58th
9	901	1	1/58th	1/58th
9	902	1	1/58th	1/58th
10	1001	1	1/58th	1/58th
10	1002	1	1/58th	1/58th
11	1101	1	1/58th	1/58th
11	1102	1	1/58th	1/58th
12	1201	1	1/58th	1/58th
12	1202	1	1/58th	1/58th
13	1301	1	1/58th	1/58th
13	1302	1	1/58th	1/58th
14	1401	1	1/58th	1/58th
14	1402	1	1/58th	1/58th
15	1501	1	1/58th	1/58th
15	1502	1	1/58th	1/58th
16	1601	1	1/58th	1/58th
16	1602	1	1/58th	1/58th
17	1701	1	1/58th	1/58th
17	1702	1	1/58th	1/58th
18	1801	1	1/58th	1/58th
18	1802	1	1/58th	1/58th
19	1901	1	1/58th	1/58th
19	1902	1	1/58th	1/58th
20	2001	1	1/58th	1/58th
20	2002	1	1/58th	1/58th
21	2101	1	1/58th	1/58th

21	2102	1	1/58th	1/58th
22	2201	1	1/58th	1/58th
22	2202	1	1/58th	1/58th
23	2301	1	1/58th	1/58th
23	2302	1	1/58th	1/58th
24	2401	1	1/58th	1/58th
24	2402	1	1/58th	1/58th
25	2501	1	1/58th	1/58th
25	2502	1	1/58th	1/58th
26	2601	1	1/58th	1/58th
26	2602	1	1/58th	1/58th
27	2701	1	1/58th	1/58th
27	2702	1	1/58th	1/58th
28	2801	1	1/58th	1/58th
28	2802	1	1/58th	1/58th
29	2901	1	1/58th	1/58th
29	2901	1	1/58th	1/58th

ATTACHMENT "4"

COMMON ELEMENT – RESPONSIBILITY AND MAINTENANCE CHART

"Full Responsibility" includes maintenance, repair, and replacement, as needed.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Fences, screening walls, and retaining walls.	Full Responsibility	None
Exterior lighting.	None	Full Responsibility
Roofs and roof facilities.	Full Responsibility	None
Exterior Building paint.	Full Responsibility	None
Building foundation.	Full Responsibility	None
Unit interior, including improvements, fixtures, and floor and wall coverings within Unit.	None	Full Responsibility
Sheetrock within Unit & treatments on walls.	None	Full Responsibility
Windows, window screens and frames, garage door, window locks, all doors, doorways, door frames and hardware and hardware.	None	Full Responsibility
Water, wastewater, electrical lines & systems.	Full Responsibility for common lines & systems serving more than one Unit, none for those serving an individual Unit	Full Responsibility for lines, pipes, fixtures, and appliances serving only that Owner's Unit
HVAC System.	None	Full Responsibility
Intrusion alarms, smoke/heat detectors, monitoring equipment.	None	Full Responsibility
Exterior Landscaping.	Full Responsibility for performing Landscape Services to the front yard area	Full Responsibility for backyard landscaping and grass

Monument Signs.	Full Responsibility	None
All pipes, lines, ducts, conduits, or other apparatus which serve only the Unit.	None	Full Responsibility
All gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit.	None	Full Responsibility
Interior load bearing support beams.	Full Responsibility	None
All Common Elements.	Full Responsibility	None (unless otherwise specified in the Declaration)
Window frames and casings.	Full Responsibility	None

NOTE 1: The components listed in the first column are applicable only if they exist and may not be construed to create a requirement to have such a component.

NOTE 2: Set forth above is a summary of the maintenance obligations imposed upon the Association and the Owners generally as described more fully in this Declaration. Please note that the information set forth in this *Attachment "4"* is a summary only and is not intended to modify any of the provisions of this Declaration. Accordingly, in the event of a conflict between the summary set forth in this *Attachment "4"* and any provision set forth in the Declaration above, the provision set forth in the Declaration above will control.

APPENDIX "A"

DECLARANT RESERVATIONS

1. General Provisions.

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

B. Purpose of Development and Declarant Control Periods. This *Appendix "A"* gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the VCM Condominiums, which is ultimately for the benefit and protection of Unit Owners and mortgagees. The "Development Period," as specifically defined in the *Section 1.1* of this Declaration, means the seven (7) year period beginning on the date this Declaration is recorded, unless such period is earlier terminated by Declarant's recordation of a notice of termination. The Declarant Control Period is defined in *Section 1.1* of this Declaration.

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

A. Duration. The duration of Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the date that is the earlier to occur of (i) one hundred and twenty (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant; (ii) seven (7) years after the date this Declaration is recorded; or (iii) three (3) years following the date Declarant owns no part of VCM Condominiums. Not later than the 120th day after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant, not less than one-third (1/3) of the members of the Board of Directors must be elected by Unit Owners other than the Declarant.

B. Obligation for Assessments. The obligation to pay Assessments shall be the joint and several obligation of each Owner, provided, however, that if more than one (1) Person owns a Unit, then each such fractional Owner shall be jointly and severally liable for all of the obligations attributable to the Unit in the same manner as if such Unit were owned by one (1) Person. The Declarant, at Declarant's discretion, may support the Association's budget by either of the following methods: (i) Declarant will pay General Assessments on each Declarant owned Unit in the same manner as any Owner; or (ii) Declarant will assume responsibility for the difference between the Association's actual operational expenses as they are paid, and the General Assessments received from Owners other than Declarant. No Assessments, transfer, or resale

certificate fees for any Unit it may own, will be levied upon the Unit owned by Declarant. Upon the expiration of three (3) years from the recording date of this Declaration, Declarant will pay Assessments only on each Declarant owned Unit in the same manner as any Owner.

C. Obligation for Reserves. During the Declarant Control Period, neither the Association nor the Declarant may use the Association reserve funds to pay operational expenses of the Association.

D. Common Elements. At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of the conveyance. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

3. Development Period Rights. Declarant reserves the following rights during the Development Period:

A. Annexation. VCM Condominiums is not subject to expansion by annexation of any additional Property. During the Development Period, Declarant may de-annex a portion of the Property from being subject to the Declaration and the jurisdiction of the Association without approval of the Members.

B. Creation of Units. VCM Condominiums consists of a maximum of twenty-nine (29) Buildings comprised of fifty-eight (58) Units as depicted in *Attachments "1" and "2"*. VCM Condominiums shall be constructed in separate, individual phases with each building containing two (2) units. Declarant reserves the right to unilaterally determine the order each phase of construction of the Buildings or modify the development plans for the Regime at any time. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit within VCM Condominiums at the time or times Declarant exercises its right of creation. The instrument creating additional Units must include a revised schedule of Ownership and Voting Interests.

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

D. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control, and retains the right to appoint and remove all members of the Architectural Review Committee, who shall serve at the Declarant's discretion.

E. Transfer Fees; Fines and Penalties. Declarant will not pay transfer-related and resale certificate fees. Declarant will not pay to the Association any late fees, fines, administrative charges, or any Charge that may be considered a penalty.

F. Website and Property Name. Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve VCM Condominiums or the Association, all information available on or through VCM Condominiums website, if any, and all uses of the property name by the Association.

G. Statutory Development Rights. As permitted by the Act, Declarant reserves the following development rights which may be exercised during the Development Period: (i) to add real property to the Regime; (ii) to modify Buildings, Units, General Common Elements, and Limited Common Elements within VCM Condominiums; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of real property provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

H. Amendment. During the Development Period, Declarant may amend the Declaration and the other Governing Documents, without consent of other Owners or any mortgagee, for the following purposes:

- (1) To correct any clerical error.
- (2) To clarify an ambiguity or inconsistency.
- (3) To insert an omitted portion.
- (4) To remove any contradiction in the terms hereof.
- (5) For any reason whatsoever deemed necessary for the benefit of the Regime as determined by Declarant, in its sole discretion, including but not limited to, making the restrictions contained herein more or less restrictive for all or a portion of the Regime.
- (6) The prohibition of annexation of additional property into the Regime shall not be subject to amendment.

4. Special Declarant Rights. As permitted by the Act, Declarant reserves the following described special declarant rights, to the maximum extent permitted by the Applicable Law, which may be exercised, where applicable, anywhere within VCM Condominiums during the Development Period:

- A. The right to complete or make Improvements indicated on the Plat and Plans.
- B. The right to exercise any development rights permitted by the Act and this Declaration.
- 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 or Common Elements at models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of VCM Condominiums.

E. For the purposes of promoting, identifying, and marketing VCM Condominiums, Declarant reserves and easement and right to place or install signs, banners, flags, display lighting, plotted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on VCM Condominiums, including items and locations that are prohibited to other Owners and Occupants. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and broker parties – at VCM Condominiums to promote the sale of Units.

F. Declarant has an easement and right of ingress and egress in and through the Buildings, Units and Common Areas owned or leased by Declarant for the purposes of constructing, maintaining, managing, and marketing VCM Condominiums, and for discharging Declarant's obligations under the Act and this Declaration.

G. The right to appoint or remove any Declarant-appointed director or officer of the Association during the Declarant Control Period consistent with the Act.

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

A. An easement to erect, construct, and maintain on and in the Buildings, Units and Common Elements owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the VCM Condominiums.

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 in the Governing Documents.

C. The right of entry and access to all Units and Limited Common Elements 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 reasonable convenient for the Owner who may not reasonably withhold consent.

D. An easement and right to make structural changes and alteration on Buildings, Units and Common Elements used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Buildings, Units and Common Elements to conform to the architectural standards of VCM Condominiums. The restoration will be done no later than one hundred and twenty (120) days after termination of the Development Period.

E. 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 Elements.

F. The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with active marketing of Units by Declarant.

6. Common Elements. Because the Common Elements are owned by the Owners, collectively and in undivided interest, 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 ownership of the Common Elements.

File Information

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

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Recorded Time: 4:30 PM
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Total Fees: \$365.00

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Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 1/29/2024 4:30 PM



Lucy Adame-Clark
Lucy Adame-Clark
Bexar County Clerk