

06-12925

**DECLARATION  
OF  
THE WATERS  
AT HORSESHOE BAY  
RESORT CONDOMINIUM**

**Llano County, Texas**

**By**

**CENTEX DESTINATION PROPERTIES**

**DECLARATION  
OF  
THE WATERS AT HORSESHOE BAY  
RESORT CONDOMINIUM**

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This Declaration of The Waters at Horseshoe Bay Resort Condominium is made by Centex Destination Properties, an assumed business name of Centex Homes, a Nevada general partnership ("Declarant"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon. By recording this Declaration, Declarant submits the property described in Appendix A to the provisions of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating The Waters at Horseshoe Bay Resort Condominium.

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

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

**ARTICLE 1  
DEFINITIONS**

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

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

1.2.   **"Additional Phase"** means real property which may be added to the Property and subjected to this Declaration by Declarant and the owner of such property, as described in Section B.3.1 and Appendix H of this Declaration. It is not necessary for an Additional Phase to be contiguous with or adjacent to property already subject to this Declaration.

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

VOL. 3 PAGE 315

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

1.4. **"Architectural Reviewer"** means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the Architectural Reviewer is the Association's board of directors or an architectural control committee appointed by the Board.

1.5. **"Assessment"** means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or other public law, including but not limited to Annual Assessments, Special Assessments, Utility Assessments, Phase Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 7 of this Declaration.

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

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

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

1.9. **"Common Element"** means all of the Property, save and except the Units. All Common Elements are **"General Common Elements"** except, if any, **"Limited Common Elements"** allocated by this Declaration for the exclusive use of one or more but less than all of the Units. General Common Elements include the Common Areas described in Article 6.

1.10. **"Declarant"** means Centex Destination Properties, an assumed business name of Centex Homes, a Nevada general partnership, which is developing the Property, or the successors and assigns of Centex Homes d/b/a Centex Destination Properties which acquire any portion of the Property or the Additional Phases for the purpose of development and which are designated a Successor Declarant by Centex Homes d/b/a Centex Destination Properties, or by any such successor and assign, in a recorded document.

1.11. **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix B of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) 15 years from date this Declaration is recorded, or (2) 120 days after title to 75 percent of the Units in the Property that may be created (including property subject to annexation) has been conveyed to Owners other than Declarant.

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

During the Development Period, Appendix B has priority over the main body of this Declaration.

1.13. **"Development Period"** means the 20-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to Appendix B hereto, including rights relating to development, construction, expansion, and marketing of the Property and the Additional Phases. The Development Period is for a term of years and does not require that Declarant own any portion of the property described in Appendix A. Declarant may terminate the Development Period at any time by recording a notice of termination.

VOL. 3 PAGE 316

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

1.15. **"Majority"** means more than half.

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

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

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

1.19. **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is The Waters at Horseshoe Bay Resort Condominium. The Property is located on land described in Appendix A to this Declaration (as amended), and includes every Unit and Common Element thereon.

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

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

1.22. **"Underwriting Lender"** means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or Government National Mortgage Association (Ginnie Mae), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options nor as a representation that the Property is approved by any institution.

1.23. **"Unit"** means a physical portion of the Property designated by this Declaration for separate ownership and occupancy, the boundaries of which are shown on the Plat and Plans attached hereto as Appendix D, as further described in the Unit Boundaries Section of this Declaration.

## **ARTICLE 2** **PROPERTY SUBJECT TO DOCUMENTS**

2.1. **SUBJECT TO DOCUMENTS.** The real property described in Appendix 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 B, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **ADDITIONAL PROPERTY.** Additional real property may be annexed to the Property and subjected to this Declaration and the jurisdiction of the Association on approval of Owners of at least two-thirds of the Units in the Property, or, during the Development Period, by Declarant as permitted in Appendix B. Annexation of

VOL 3 PAGE 317

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additional property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the Real Property Records of Llano County, Texas. If Units are added to the Property, amendment of Appendixes C and D are also required.

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

2.4. LOCATION WITHIN CITY LIMITS. An election was recently held and approved by the voters to incorporate the town of Horseshoe Bay, which includes the Property. The incorporation election was held prior to the date of the drafting of this document, and a subsequent election will occur for a city council. The information regarding the establishment of a city government and city services is not available at this time. We will provide additional information prior to the recordation of the Declaration of Condominium. Declarant makes no warranties or representations regarding the incorporation and its effect on the Property and ownership and costs of ownership related to the Units.

2.5. NOTICE OF POTENTIAL ANNEXATION. All or part of the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by a municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities in the general proximity of The Waters at Horseshoe Bay for further information. This Section will automatically cease to apply to any part of the Property that is annexed by a municipality, without the necessity of amending this Declaration.

2.6. LAKE LBJ DISCLOSURE. Lake LBJ is under the jurisdiction of the Lower Colorado River Authority (LCRA).

2.7. MERGER. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by the Owners of at least two-thirds of the Units. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will affect a revocation, change, or addition to the covenants established by this Declaration within the Property.

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

### **ARTICLE 3** **PROPERTY EASEMENTS & RIGHTS**

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

3.2. DECLARANT PRIVILEGES. During the lengthy periods in which Declarant controls the Association and retains development rights, such as the right to enlarge the condominium, Appendix B of this Declaration "overrules" a number of provisions in the main body of this Declaration and in the other Documents.

VOL. 3 PAGE 318

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

3.4. OWNER'S MAINTENANCE EASEMENT. Every Owner is granted an easement over adjoining Units and Common Elements for the maintenance or reconstruction of his 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 his expense, within a reasonable period of time.

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

3.6. OWNER'S ENCROACHMENT EASEMENT. Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the improvement stands.

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

3.8. ASSOCIATION'S ACCESS EASEMENT. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all Common Areas and the Owner's Unit and all improvements thereon for the below-described purposes. In exercising this easement on an Owner's Unit, the Association is not liable to the Owner for trespass.

- a. To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by applicable law.
- b. To perform maintenance that is permitted or required of the Owner by the Documents or by applicable law, if the Owner fails or refuses to perform such maintenance.
- c. To enforce the Documents, including without limitation the architectural standards and use restrictions.
- d. To exercise self-help remedies permitted by the Documents or by applicable law.

VOL.3 PAGE 319

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

- e. To respond to emergencies.
- f. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- g. To perform any and all functions or duties of the Association as permitted or required by the Documents or by applicable law.

3.9. **OWNER'S COOPERATION FOR ACCESS.** By accepting an interest in or title to a Unit, or by occupying a Unit, each Owner and Resident acknowledges that certain persons may require access to or through the Unit for specific purposes. The Owner may be present or have a representative present in the Unit during the period of access. A request for access must be in writing and must state, with reasonable particularity, the purpose of the access and an estimate of the period of time for which access will be needed. Each Owner and Resident agrees to be responsive to requests for access to the Unit as permitted by this Declaration or by law, and to be reasonable and cooperative in providing the requested access. In case of an emergency, however, the written request may be waived. If the Owner or Resident fails or refuses to respond to a reasonable request for permitted access, or to provide access at a time that is reasonable under the circumstances, the party seeking access to the Unit under this Declaration or by law is hereby authorized to effect entry to the Unit as necessary for the permitted purpose. In exercising the self-help right of access, a person must make a reasonable effort to minimize damage to the Unit and to restore the integrity of the Unit's perimeter when the need for access is concluded. The cost of repairing the Unit after a self-help entry for an authorized purpose is the Unit Owner's expense. Examples of persons who may require access are the Declarant under Section 3.12, the Association under Section 3.7, and an Owner under Section 3.3.

3.10. **DECLARANT'S EASEMENT TO INSPECT & RIGHT TO CORRECT.** For a period of 10 years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, 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 located may be warranted by a change of circumstance, imprecise sighting of the original wall, or desire to comply more fully with public codes and ordinances applicable at the time of original construction. This Section 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. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation all Common Elements and the Owner's Unit and all improvements thereon for the purposes contained in this Section.

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

**READERS, PLEASE PAY PARTICULAR HEED TO THE NEXT 2 PROVISIONS ENTITLED  
"SECURITY" & "RISK".**

3.12. **SECURITY.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers,

**VOL. 3 PAGE 320**

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committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.13. RISK. Each Resident uses all common areas at his own risk. All common amenities are not attended or supervised. Each Resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the common amenities.

#### **ARTICLE 4** **CERTAIN PROPERTY FEATURES**

4.1. GENERAL. This Article discloses selective features of the Property that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation. The Property is a condominium subject to the Texas Uniform Condominium Act. The Property is not a timeshare regime and is not subject to the Texas Timeshare Act.

4.2. DEVELOPMENT PLAN. It is anticipated that The Waters at Horseshoe Bay Resort Condominium will eventually consist of several phases, none of which may be adjacent to one another and some of which may be separated by changes of terrain and/or altitude. Because each phase may consist of a relatively small number of Units, it would be cumbersome and costly to create and operate a separate condominium regime for each phase. For that reason, this Declaration authorizes annexation of additional non-contiguous parcels. A phase of the Property may have common areas that are reserved for the exclusive use of Residents of that phase, or that are available for use by Residents of the entire Property.

4.3. PROXY PARTICIPATION. On the date of this Declaration, it is anticipated that some Units may not be occupied as primary residences, and many Owners may not be inclined to participate directly in the affairs of the Association. Therefore, Article 4 of the Bylaws contains provisions that allow Owners who do not participate personally to participate through a specifically appointed proxy.

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

4.5. PEST CONTROL TUBES DISCLOSURE. The Property is being constructed with tubes under the foundations and in some walls for the delivery of chemicals to deter, control, or eliminate certain common pest populations via an external port on each Unit. By acquiring an ownership or occupancy interest in the Property, each Owner and Resident grants to the Association the right to use the tubing system for purposes of pest control. The Association has the right, but not the duty, (1) to treat the Property for pest control and (2) to use the tubing system for that purpose. Any Owner may petition the Board to have the Owner's Unit excluded from the Association's pest control treatment program, in which case the Owner is responsible for keeping his Unit substantially pest-free.

VOL. 3 PAGE 321

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

4.6. CABLE TV. On the date of this Declaration, neither the Declarant nor the Association has granted a blanket easement across the Property to a cable television franchise. The Property is being constructed with conduit for cable television lines. An Owner who contracts for cable television services must require his vendor to use the Common Element cable conduit on the Property, which may not be removed or relocated by the vendor without the Association's prior written approval. Without prior notice to any person, the Association may remove any cable line or additional conduit found elsewhere on the grounds or the exterior surfaces of the buildings that do not have the Association's prior written approval.

## **ARTICLE 5** **UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS**

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

5.1.1. Lower Boundary: The top surface of the concrete slab or concrete sub-flooring is the Unit's lower horizontal boundary. In other words, the sub-flooring is a Common Element, but anything affixed to the sub-flooring is part of the Unit.

5.1.2. Upper Boundary: The exterior (sky-side) surface of the sheetrock comprising the perimeter ceilings is the Unit's upper horizontal boundary. In other words, the ceiling sheetrock is part of the Unit.

5.1.3. Lateral Boundaries - Exterior Walls: On the perimeter walls of the Unit, the Unit's vertical boundaries are (1) the exterior (outside) surfaces of the sheetrock comprising the perimeter walls; (2) the exterior (outside) surfaces of window glass and window frames; (3) the exterior (outside) surfaces of closed perimeter doors. In other words, the sheetrock on perimeter walls is part of the Unit, as are the windows and doors in the perimeter walls of the Unit.

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

5.1.5. What the Unit Includes: Each Unit includes the spaces and improvements within the perimeter walls, floors, ceilings, windows, and doors of the Unit. Each Unit also includes improvements and equipment serving the Unit exclusively, whether located inside or outside the physical boundaries of the Unit, whether or not attached to or contiguous with the physical boundaries of the Unit, including the following: electricity meter, fuse box, electrical switches, wiring, pipes, ducts, conduits, smoke or fire detectors, security systems, television antenna, cable equipment, shower pans, wall safes, door and window locks, window frames, door frames and thresholds, peepholes, lighting fixtures (including recessed cans), telephone and electrical receptacles, heating and cooling equipment and systems, and any other utility-related item from the point of its connection with common lines or systems. In other words, in addition to the inside of his Unit, an Owner also owns certain physical components of the Property that exclusively serve the Unit even though located outside the boundaries of the Unit.

5.1.6. Exclusions: Except as specifically included above, each Unit excludes the spaces and improvements lying outside of the perimeter boundaries. Each Unit also excludes any chute, pipe, flue, duct, wire, or conduit running through a Unit for the purpose of furnishing utility and similar services to other Units and/or Common Elements. In other words, a plumbing pipe that serves another Unit is not part of the Unit. However, under the preceding subparagraph, the length of pipe that serves the Unit exclusively is part of the Unit.

VOL. 3 PAGE 322

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

5.1.8. Pest Control Tubes. The Property is constructed with tube-in-the-wall technology for pest control purposes. Each Unit has an external port through which pest control materials may be injected for delivery through tubes under the Unit's floor or through tubes within some of the walls of the Unit. The Unit's external port and all of the tubes connected to the external port are part of the Unit ownership, no matter where a tube is located.

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

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

#### **SIZE OF UNIT**

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

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

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

5.2.2. Parking Spaces. Each Unit will have at least one covered parking space assigned to the Unit as a Limited Common Element either under the building or within a covered structure in the parking lot, as shown on Appendix F of this Declaration. The allocation of assigned parking spaces and the availability of unassigned guest parking may vary from phase to phase of the Property. Any parking space not assigned as a Limited Common Element by Appendix F is a General Common Element of the Property, even though a space may be located in close proximity to only 1 or 2 Units. Notwithstanding the foregoing, the Association may limit the use of certain unassigned parking spaces to visitors or to Residents of a particular phase. As a Limited Common Element, the parking space consists of a surface use and air space, and does not include any part of the construction of the driveway or carport.

5.2.3. Storage Spaces. The Property has a limited number of storage rooms, which will be permanently assigned to particular Units as Limited Common Elements.

**VOL. 3 PAGE 323**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

5.4. ALLOCATION OF COMMON ELEMENT INTERESTS. The Common Elements shall be allocated equally among all units so that each Unit owns an equal share of the Common Elements regardless of where they are located with the Property and when they are annexed into the Property.

5.5. COMMON EXPENSE LIABILITIES. All Units will share equally in the Common Expenses of the Association.

5.6. VOTES. The one vote appurtenant to each Unit is weighted equally for all votes, regardless of the other allocations appurtenant to the Unit. In other words, the one vote appurtenant to each Unit is uniform and equal to the vote appurtenant to every other Unit.

## **ARTICLE 6** **COMMON ELEMENTS & AMENITIES**

6.1. COMPONENTS. The nature and use of components of the common area amenities of The Waters at Horseshoe Bay may change over time in response to many factors, such as changes in the community's recreational preferences, changes in technology, changes in land use, maintenance issues, availability of insurance, and budget constraints and opportunities. During the Development Period, Declarant intends for The Waters at Horseshoe Bay to include:

- a. Picnic Grounds
- b. Board Walks
- c. Park Areas
- d. Common Greens

6.2. COMMON ELEMENTS. The Common Elements of the Property consists of all of the Property, save and except the Units.

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

6.2.2. Acceptance. By accepting an interest in or title to a Unit, each Owner is deemed (1) to accept the Common Elements of the Property, and any improvement thereon, in its then-existing condition; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Elements; (3) to acknowledge that transfer of a Common Element's title (if any) to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the Common Elements, regardless of changes in the Association's Board of Directors or management.

6.3. ASSOCIATION'S RIGHT TO RESERVE, REGULATE & LICENSE. As a limitation on the Owners' right and easement of enjoyment over the General Common Elements, the Association may reserve, condition, and

VOL. 3 PAGE 324

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

regulate the use of each and every General Common Element in a manner that is consistent with the nature of the element. For example, the Association may (1) reserve designated parking spaces for use by visitors only, or (2) allow an amenity to be used exclusively for a particular event or function.

6.4. **PERSONAL RESPONSIBILITY.** Each Owner, by accepting an interest in or title to a Unit in The Waters at Horseshoe Bay Resort Condominium, whether or not it is so expressed in the instrument of conveyance, and each Resident of the Property, by occupying a unit in The Waters at Horseshoe Bay, acknowledges, understands, and agrees to each of the following statements, for himself, the members of his household, and his and their guests:

- a. Each Owner and Resident agrees to be informed about and to comply with the published or posted common area rules of The Waters at Horseshoe Bay.
- b. The use and enjoyment of any recreation amenity on the common areas of The Waters at Horseshoe Bay involves risk of personal injury, risk of death, and risk of damage or loss to property.
- c. Each person using any common amenity in The Waters at Horseshoe Bay assumes all risks of personal injury, death, and loss or damage to property resulting from the use and enjoyment of any common area in The Waters at Horseshoe Bay.
- d. Parents, guardians, hosts, caretakers, and supervisors are at all times responsible for the well being and safety of their children and guests in their use of the common areas of The Waters at Horseshoe Bay. The parent, guardian, host, caretaker, and supervisor assumes responsibility for having skills appropriate for the facility being used by his charges.
- e. Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of personal safety in or on the common areas of The Waters at Horseshoe Bay.
- f. Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties - verbal or written - relating to safety or lack of risks pertaining to the common areas of The Waters at Horseshoe Bay.
- g. Each Owner and Resident agrees to educate the members of his household and his and their guests about the risks, responsibilities, and releases from liability contained in this Article.

6.5. **LIABILITY RELEASE.** Each Owner and Resident of The Waters at Horseshoe Bay further acknowledges, understands, and agrees to each of the following statements, for himself, the members of his household, and his and their guests:

6.5.1. **Consideration.** Each Owner and Resident grants the releases from liability contained in this Article as consideration for, and as a condition to, the Owner and Resident's use and enjoyment of the common areas of The Waters at Horseshoe Bay. Each Owner and Resident acknowledges and agrees that the releases from liability contained in this Article are a material inducement to Declarant to sell, convey, lease, or allow the use of Units in The Waters at Horseshoe Bay.

6.5.2. **Release for Injury or Loss.** Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable to any person claiming any loss or damage including, without limitation, indirect, special, or consequential loss or damage arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the design, construction, maintenance, or use of any common area, expressly including every recreational facility and item of equipment used in connection with The Waters at Horseshoe Bay's common areas, including, without limitation, any claim arising in whole or in part from the negligence of Declarant or the Association.

VOL. 3 PAGE 325

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

6.5.3. Indemnity for Common Area Operations. The Association indemnifies, defends, and holds harmless Declarant against any loss, claim, demand, damage, cost, and expense relating to or arising out of the management and operation of the Association, including without limitation, the collection of assessments, the enforcement of the Documents, and the operation and maintenance of The Waters at Horseshoe Bay's common areas. Indemnified expenses include, without limitation, reasonable attorneys fees, whether or not a lawsuit is filed, and costs at all court levels, including expenses incurred by Declarant in establishing the right to be indemnified, defended, and held harmless pursuant to this Declaration.

6.5.4. Negligence. The releases and indemnities contained in this Article are intended to release and indemnify the specified parties from liability for their own negligence.

6.5.5. Violation. Each Owner and Resident understands and agrees that the Owner or Resident's violation of the release agreement contained in this Article may result in suspension or termination of the use of any common area amenities by the Owner or Resident, the members of his household, and his and their guests.

## **ARTICLE 7** **COVENANT FOR ASSESSMENTS**

7.1. PURPOSE OF ASSESSMENTS. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

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

7.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of Owners of at least 75 percent of the Units. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget. At least 30 days prior to the effective date of a Special Assessment or increase in Regular Assessments, the Board will notify an Owner of each Unit of the amount of, the budgetary basis for, and the effective date of the Special Assessment or increase. The Special Assessment or increase will automatically become effective unless Owners of at least a majority of the Units disapprove the Special Assessment or increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until the Board approves a revised budget.

IF YOU OWN A UNIT IN THE WATERS AT HORSESHOE BAY, YOU MUST PAY ASSESSMENTS TO THE ASSOCIATION.

7.4. TYPES OF ASSESSMENTS. There are 6 types of Assessments: Regular, Special, Utility, Phase, Individual, and Deficiency.

VOL. 3 PAGE 326

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

## 7.5. REGULAR ASSESSMENTS.

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

- a. Maintenance, repair, and replacement, as necessary, of the Common Elements, and improvements, equipment, signage, and property owned by the Association.
- b. Annual maintenance examination and report, as per Article 10.
- c. Utilities billed to the Association.
- d. Pest control.
- e. Services obtained by the Association and available to all Units.
- f. Taxes on property owned by the Association and the Association's income taxes.
- g. Management, legal, accounting, auditing, and professional fees for services to the Association.
- h. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- i. Insurance premiums and deductibles.
- j. Contributions to the reserve funds.
- k. Any other expense that the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

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

7.5.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Unit will be liable for its allocated share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

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

VOL. 3 PAGE 3d7

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

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

7.8. **PHASE ASSESSMENTS.** If a type of common expense is unique to a phase or if the Owners in one phase desire to incur a common expense that is not desired by Owners in the other phases, the Board may levy a Phase Assessment against all the Units in a phase for a phase-specific purpose. To be effective, a Phase Assessment must be approved, as follows, by the Owners in the phase to be assessed. If the phase Owners are voting at a meeting of the Association at which Owners of at least a majority of the phase Units are present, in person or by proxy, the Phase Assessment may be approved by the Owners of a majority of the phase Units represented at the meeting, although they are less than a majority of all Owners in the phase. A vote by any other method requires approval of the Owners of at least a majority of the Units in the phase. The Owners in one phase may not impose a Phase Assessment on Owners in another phase. If the Association levies a Phase Assessment, it must be disclosed in resale certificates prepared by the Association for Units in the phase subject to the Phase Assessment.

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

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

7.11. **DUE DATE.** Regular Assessments are due on the first calendar day of each month, and are delinquent if not received by the Association on or before the first day of the month. Special and Individual Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within 10 days after notice of the Special or Individual Assessment is given.

VOL. 3 PAGE 328

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

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

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

7.13. DECLARANT'S RIGHT TO INSPECT & CORRECT ACCOUNTS. For a period of 5 years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to re-characterize an expense or payment to conform to Declarant's obligations under the Documents or applicable State law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control and Development Periods.

7.14. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of the Units and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

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

## **ARTICLE 8** **ASSESSMENT LIEN**

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

8.2. SUPERIORITY OF ASSESSMENT LIEN. The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of

VOL. 3 PAGE 329

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

trust lien securing a loan for construction of the original Unit, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to a lien for construction of improvements to the Unit, regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien. The Assessment lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage.

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

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

8.4. NOTICE AND RELEASE OF NOTICE. The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of Llano County, Texas. 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.

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

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

## ARTICLE 9 EFFECT OF NONPAYMENT OF ASSESSMENTS

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

VOL. 3 PAGE 330

During the Development Period, Appendix B has priority over the main body of this Declaration.

9.1. INTEREST. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of 18 percent per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is 10 percent per annum.

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

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

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

9.5. SUSPENSION OF VOTE. Subject to the below-described limitations, if an Owner's account has been delinquent for at least 30 days, the Association may suspend the right of the Owner and the Residents of the Owner's Unit to use Common Elements and common services during the period of delinquency. Services include master-metered or sub-metered utilities serving the Unit. The Association may not suspend an Owner or Resident's right of access to the Unit. Subject to the below-described limitations, the Association may also suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: be counted towards a quorum, attend meetings of the Association, participate in discussion at Association meetings, be counted as a petitioner for a special meeting of the Association, and vote to remove a Director, and for the replacement of the removed Director. If the number of suspended Members exceeds 20 percent of the total Members (Co-Owners of a Unit constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

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

9.7. MONEY JUDGMENT. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

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

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

VOL. 3 PAGE 331

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

## **ARTICLE 10** **MAINTENANCE AND REPAIR OBLIGATIONS**

10.1. **ASSOCIATION MAINTAINS.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, all General and Limited Common Elements, including the exterior materials of the buildings, including (if any) roof shingles and gutters, foundations, sealants and fillers, and exterior wall materials, such as brick veneer, stucco, or siding. The Association also maintains, as a common expense, any component of a Unit delegated to the Association by this Declaration.

10.2. **ANNUAL INSPECTION OF COMMON AREA.** From the period commencing at the expiration of the Development Period until 10 years thereafter, at least annually, the Association must examine the condition of the Common Elements to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.

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

- a. To maintain, repair, and replace his Unit, except for components expressly assigned to the Association by this Declaration.
- b. The routine cleaning of any balcony or deck area of his Unit, keeping same in a neat, clean, odorless, orderly, and attractive condition.
- c. To maintain, repair, and replace all portions of the Property for which he is responsible under this Declaration or by agreement with the Association.
- d. To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.
- e. To be responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

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

**VOL 3 PAGE 332**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

10.5. **SHEETROCK**. Notwithstanding anything to the contrary in the Documents, the Association is not responsible for the repair and replacement of sheetrock in any Unit, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability 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.

10.6. **MOLD**. In the era in which this Declaration is written, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. This Section addresses that environment. For more information about mold and mold prevention, an Owner should consult a reliable source, such as the U. S. Environmental Protection Agency.

10.6.1. **Owner's Duties**. To reduce the risks associated with concentrations of mold, Owners should be proactive in preventing circumstances conducive to mold, identifying mold, and eliminating mold. Towards that end, each Owner is responsible for:

- (1) Regularly inspecting his entire Unit for evidence of water leaks or penetrations or other conditions that may lead to mold growth.
- (2) Repairing promptly any water leaks, breaks or malfunctions of any kind in his Unit that may cause damage to another Unit or Common Element.
- (3) Regularly inspecting his entire Unit for visible surface mold and promptly removing same using appropriate procedures.
- (4) Reporting promptly to the Association any water leak, penetration, break, or malfunction in any portion of his Unit or any adjacent Common Elements for which the Association may have maintenance responsibility.

10.6.2. **Insurance**. Many insurance policies do not cover damages related to mold. The Association may not maintain insurance coverage applicable to mold damage with respect to any Unit. Accordingly, an Owner who wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowners insurance policy.

10.7. **WOOD FLOORS**. The purpose of this Section is to inform Owners about the wood floor coverings in some Units as originally constructed. As a porous, organic, natural substance, wood is capable of shrinking, swelling, and warping, and of being marred and discolored. Wood floors may require more maintenance than some man-made materials. Owners of Units with wood floors should educate themselves about wood floor care.

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

**FACT: CONCRETE CRACKS**

VOL. 3 PAGE 33

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

10.9. BALCONIES. Except for routine cleaning and bulb replacement, which are the Owner's responsibility pursuant to Section 10.3, the Association is responsible for the maintenance, repair, and replacement of balconies (if any) that are part of a Unit. If the outside components of the Unit are most easily accessed through the Unit, the Owner will cooperate in providing access to the outside components for the Association's agents and contractors. If requested by the Association, the Owner will remove all personal property from the outside components of his Unit to facilitate the required maintenance, repair, or replacement. The Owner is liable to the Association for any additional expense incurred by the Association due to an Owner's failure or refusal to cooperate with reasonable requests for access or removal. This Section may not be construed to prevent an Owner at the Owner's sole expense, without right of reimbursement from the Association, from maintaining, repairing, and replacing components of his Unit's balcony (if any), subject to the Association's architectural control.

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

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

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

## **ARTICLE 11** **ARCHITECTURAL COVENANTS AND CONTROL**

11.1. PURPOSE. Because the Units are part of a single community, the Association has the right to regulate the exterior design, use, and appearance of the Units and Common Elements in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on the Property, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

11.2. ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD. During the Development Period, neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with architectural or appearance issues on the Property or in the Additional Phases.

VOL. 3 PAGE 334

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

11.2.1. Declarant's Rights Reserved. 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 that Declarant has a substantial interest in ensuring that the improvements within The Waters at Horseshoe Bay enhance Declarant's reputation as a resort developer and do not impair Declarant's ability to market its property in the Horseshoe Bay area. Accordingly, each Owner agrees that - during the Development Period - no improvements will be started or progressed in, on, to, or around the Owner's Unit without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

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

**BEFORE PLANNING OR MAKING ANY CHANGE TO THE PROPERTY, AN OWNER MUST  
OBTAIN WRITTEN APPROVAL.**

11.3. ARCHITECTURAL CONTROL BY ASSOCIATION. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association's board of directors, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through its board, will become the Architectural Reviewer.

11.4. LIMITS ON LIABILITY. The Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Article. The Architectural Reviewer has no liability for the Architectural Reviewer's decisions made in good faith, and which are not arbitrary or capricious. The Architectural Reviewer is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with city codes and ordinances, State and federal laws. Architectural Reviewer's approval of a modification or improvement may not be deemed to constitute a waiver of the Architectural Reviewer's right to withhold approval of similar proposals, plans, or specifications that are subsequently submitted.

11.5. ARCHITECTURAL APPROVAL. To request architectural approval, an Owner must make written application and submit to the Architectural Reviewer 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the Owner may but is not required to submit letters of support or non-opposition from Owners of Units that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files.

*If you don't get an "OK" in writing, you can't do it. Sorry.*

VOL. 3 PAGE 335

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

11.5.1. No Verbal Approval. Verbal approval by the Architectural Reviewer, a member of an architectural control committee, the Declarant, an Association director or officer, or the Association's manager does not constitute architectural approval by the Architectural Reviewer, which must be in writing.

11.5.2. No Deemed Approval. The failure of the Architectural Reviewer to respond to an application may not be construed as approval of the application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed.

11.5.3. No Approval Required. Approval is not required for an Owner to remodel or repaint the interior of a Unit, provided the work does not impair the structural soundness of the building.

11.5.4. Building Permit. If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer's approval.

11.5.5. Neighbor Input. The Architectural Reviewer may solicit comments on the application, including from Owners or Residents of Units that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant is solely at the discretion of the Architectural Reviewer. The Architectural Reviewer is not required to respond to the commenters in ruling on the application.

11.5.6. Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

11.6. OWNER'S DUTIES. If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the improvement, provided:

- a. The Owner must adhere strictly to the plans and specifications that accompanied his application.
- b. The Owner must initiate and complete the improvement in a timely manner.
- c. If the approved application is for work that requires a building permit from the city, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the city's requirements. Alternatively, approval by the city does not ensure Architectural Reviewer approval.

11.7. CONTROL FOR VARIANCES. This Section of the Declaration may not be amended without the approval of Owners of at least 75 percent of the Units. If the Architectural Reviewer is considering approval of an application that seeks a variance or which, in the Architectural Reviewer's opinion, would constitute a variance of the Property's established standards, the Architectural Reviewer must notify an Owner of each Unit of the nature of the proposed variance at least 20 days before the Architectural Reviewer approves the application. The Architectural Reviewer may approve the variance unless Owners of at least a majority of the Units disapprove the proposed variance by petition or at a meeting of the Association.

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

VOL. 3 PAGE 3310

During the Development Period, Appendix B has priority over the main body of this Declaration.

- a. Installation of ornamental iron or burglar bars, storm window or door, awnings, shutters, exterior lighting, patio cover, chimney, or skylight.
- b. Installation of equipment that may create a noise annoyance, such as noise-producing security devices, exterior pumps, and speakers.
- c. Installation of walls, screens, fences, gates, or carports.
- d. Enclosure of balconies.
- e. Installation of impermeable decking or other type of floor covering improvement on the balconies that may interfere with established drainage patterns.
- f. Holiday lights must be removed within 14 days after the Holiday.

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

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

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

## **ARTICLE 12** **USE RESTRICTIONS**

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

12.2. **ASSOCIATION'S RIGHT TO PROMULGATE RULES**. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property.

VOL. 3 PAGE 337

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

12.3. **RULES AND REGULATIONS.** In addition to the restrictions contained in this Article, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Elements.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.
- f. Landscaping and maintenance of yards.
- g. The occupancy of Units.
- h. Animals.
- i. Vehicles.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

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

12.5. **ANIMALS.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy quotas, no more than 2 dogs, or 2 cats, or one dog and one cat, may be maintained in each Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation the Rules.

**VOLUME CONTROL**

Although music is a universal language, no one type or volume of music is universally loved, not even your favorite music, as wonderful as it is. Please be mindful of your neighbors' needs for quiet time at home.

12.6. **ANNOYANCE.** No Unit or Limited Common Element may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of Residents of other Units; (4) may result in the cancellation of insurance on any portion of the Property; (5) violates any law; or (6) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

12.7. **APPEARANCE.** Both the exterior and interior of the Units must be maintained in a manner so as not to be unsightly when viewed from the street, Common Elements, or neighboring Units. The Board will be the arbitrator of acceptable appearance standards.

12.8. **DECLARANT PRIVILEGES.** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents, as provided in Appendix B of this Declaration. Declarant's exercise of a Development Period right that appears to violate a Rule or a Use Restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

**VOL. 3 PAGE 338**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

12.10. **FIRE SAFETY.** No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property, including the sprinkler heads and water lines in and above the ceilings of the Unit, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

**One man's ceiling is another man's floor.**

12.11. **FLOORING.** Some buildings in the Property are originally constructed with non-padded hard flooring material, such as tile or wood, on the floors of overhead Units. Hard flooring does not have the sound-absorbing acoustical qualities of carpet, nor the footstep cushioning qualities of padding. Residents should expect some sound transmission from adjoining Units. No Owner may install hard surface flooring in their Unit without prior written approval of the Architectural Reviewer.

12.12. **LANDSCAPING.** No person may perform landscaping, planting, or gardening anywhere upon the Property, except within privacy fenced or enclosed Limited Common Elements, without the Board's prior written authorization.

12.13. **NOISE & ODOR.** A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Units. The Rules may limit, discourage, or prohibit noise-producing activities and items in the Units and on the Common Elements.

**NOT SOUNDPROOFED**

Although the Units are constructed to reduce the transmission of sound between adjoining Units, the Units are not soundproofed. Some noise transmission between adjoining Units is possible.

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

12.15. **RESIDENTIAL USE.** The use of a Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using the Unit for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the Unit as a dwelling; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Unit by employees or the public; and (5) the uses do not interfere with Residents' use and enjoyment of neighboring Units. Other than the air conditioned part of a Unit, nothing or structure on the Property may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage and campers.

**Yes, there are lots of Rules!**

EVERY RESIDENT OF THE WATERS AT HORSESHOE BAY IS EXPECTED TO COMPLY WITH THESE RULES AND WITH RULES ADOPTED BY THE BOARD OF DIRECTORS.

**VOL. 3 PAGE 339**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

12.17. **SPECIFIC USES.** Sidewalks, driveways, hallways, stairways, elevators, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

12.18. **STRUCTURAL INTEGRITY.** No person may directly or indirectly impair the structural soundness or integrity of a building or another Unit, nor do any work or modification that will impair an easement or real property right. Because of the potential for impairing the structural integrity of the Building, no Unit may be remodeled or redecorated in any manner, except for repainting or re-carpeting, without the prior approval of the Association.

12.19. **TELEVISION.** Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Without the prior written consent of the Architectural Reviewer, no person may install the following equipment on any Common Element, Limited Common Element or the exterior of buildings, including on a balcony, if it would be visible from a street: an antenna, microwave or satellite dish, receiving or transmitting tower; provided, however, that (1) standard residential reception-only TV antennas, (2) direct broadcast satellites (DBS) that are one meter or less in diameter, and (3) multipoint distribution service (MDS) antennas that are one meter or less in diameter (the 3 permitted types hereafter referred to collectively as the "Antenna/Dish") may be installed, subject to the following provisions, and standards adopted by the Architectural Reviewer.

12.19.1. **Definitions.** As used in this Section "Antenna/Dish Unit" means the Unit served by a satellite dish or antenna, or the Unit that is obviously intended to be served by a satellite dish or antenna, regardless of whether the service is operational. "Antenna/Dish Owner" means the Owner of a Unit served by a satellite dish or antenna, regardless of whether the Unit Owner purchases, uses, or has actual knowledge of the satellite dish or antenna.

BEGINNING HERE THE NUMBERING IS OFF

12.19.3. **Cable Conduit.** The Property is designed with a conduit for use with cable television lines. Each Owner may use the conduit for its intended purpose and for no other purpose. The draping of cable wires on the exteriors of buildings, or the installation of additional conduits is prohibited.

12.19.4. **Prohibited Act.** Other than the proper use of the cable conduit, any other installation pertaining to an Antenna/Dish is prohibited without the prior written consent of the Architectural Reviewer.

12.19.5. **Owner Responsibility.** The installation of an Antenna/Dish on Common Elements automatically subjects the Antenna/Dish Unit and its Owner to this Section, regardless of who installs the Antenna/Dish and regardless of whether the Antenna/Dish Owner has actual notice of the installation. The Antenna/Dish Owner is solely responsible for (1) the cost of maintaining, repairing, replacing, and removing, as necessary, the Antenna/Dish, and (2) the cost of repairing Common Elements if such repairs are necessitated by the Antenna/Dish or its installation, maintenance, repair, or replacement, irrespective of whether the repairs are undertaken by the Antenna/Dish Owner or the Association. If

VOL. 3 PAGE 340

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

required by the Association, the Antenna/Dish Owner will remove the Antenna/Dish, as necessary, to permit the Association to maintain, repair, or replace Common Elements as the Association, in its sole discretion, deems necessary or desirable.

**GET THE BOARD'S WRITTEN APPROVAL BEFORE YOU SHOP FOR AN EXTERIOR ANTENNA OR SATELLITE DISH**

12.19.6. **Association Controls.** To the extent permitted by public law, the Association may adopt and amend reasonable standards for the color, appearance, location, method of installation, maintenance, camouflaging, screening, and use of Antenna/Dishes. **The location and installation of an Antenna/Dish on the Common Elements must have the prior written approval of the Association, unless the location and installation comply with this Declaration and the most current standards that have been adopted and published by the Association.**

12.19.7. **Interference.** An Antenna/Dish or the use of an Antenna/Dish may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Residents of other Units or to the Association. The Board of Directors may determine what constitutes a nuisance to the Association.

12.19.8. **Risk.** An Antenna/Dish on the Common Elements exists at the sole risk of the Owner and/or occupant of the Antenna/Dish Unit. The Association does not insure the Antenna/Dish and is not liable to the Antenna/Dish Owner or any other person for any loss or damage to the Antenna/Dish from any cause. The Antenna/Dish Owner will defend and indemnify 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 Antenna/Dish.

12.20. **VEHICLES.** All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle that the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or restorations of vehicles on the Property. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. The Association may effect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

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

VOL. 3 PAGE 341

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

## **ARTICLE 13** **UNIT LEASING**

13.1. **LEASE CONDITIONS.** The leasing of Units is subject to the following conditions: (1) no Unit may be rented for for a period greater than 180 consecutive days; (2) no Unit may be subdivided for rent purposes, and not less than an entire Unit may be leased; (3) all leases must be in writing and must be made subject to the Documents; (4) an Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto; and (5) each tenant is subject to and must comply with all provisions of the Documents, federal and State laws, and local ordinances.

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

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

13.3.1. **Violation Constitutes Default.** Failure by the tenant or his invitees to comply with the Documents, federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant'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 tenant, subject to the terms of this Section.

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

13.3.3. **Association Not Liable for Damages.** The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

13.4. **EXEMPTIONS.** A Mortgagee that acquires title to a Unit by foreclosure of its deed of trust lien or by deed in lieu of foreclosure of its lien is exempt from the effect of this Article. During the Development Period, Declarant is exempt from the effect of this Article.

13.5. **TIMESHARES.** No Unit may be used as a rooming house, hostel, hotel, or for timesharing, except as may be established by Declarant. The term "timesharing" shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess all or any portion of a Unit rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of 30 consecutive calendar days or less. The provisions of this Section 13.5 may not be amended without the prior consent of the Declarant.

**VOL. 3 PAGE 342**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

## **ARTICLE 14** **ASSOCIATION OPERATIONS**

14.1. **THE ASSOCIATION.** The duties and powers of the Association are those set forth in the 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 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.

**EVERY OWNER OF A THE WATERS AT HORSESHOE BAY UNIT AUTOMATICALLY JOINS A  
MANDATORY MEMBERSHIP ASSOCIATION.**

14.2. **BOARD.** The Association will be governed by a Board of Directors elected by the Members. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the Board will consist of at least 3 persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. Unless the Documents expressly reserve a right, action, or decision to the Members/Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

14.3. **MEMBERSHIP.** Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Unit is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit. A Member who sells his Unit under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Unit until fee title to the Unit is transferred. Unless the 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, or at a meeting by Owners of at least a majority of the Units that are represented at the meeting.

14.4. **APPOINTMENT BY OWNERS.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, automatically appoints the Association, acting through its board, to act as the Owner's attorney-in-fact, agent, trustee, and/or proxy in certain circumstances, in accordance with the powers given below with respect to The Waters at Horseshoe Bay Resort Condominium.

14.4.1. **Duration as to Property.** The Association's authority as attorney-in-fact for the Unit Owners begins on the date this Declaration is recorded and is perpetual as to the Property unless revoked in writing by the Association, as evidenced by an instrument of revocation recorded in the Real Property Records of Llano County, Texas. This power of attorney will not lapse because of a passage of time.

14.4.2. **Duration as to Owner.** As to a particular Owner, the Association's authority as attorney-in-fact begins on the date the Owner acquires an interest in or title to a Unit, and ends when the Owner ceases to hold an interest in or title to a Unit. Each Owner ratifies all acts done under this appointment during the Owner's membership in the Association. This power of attorney is not affected by the disability or incapacity of an Owner.

**VOL. 3 PAGE 343**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

14.4.3. **Hold Harmless.** Each Owner binds himself and his heirs and personal representatives to hold the Association harmless from all claims, demands, losses, damages, actions, and expenses that the Association may sustain or incur in connection with carrying out the authority granted to the Association in this power of attorney.

**14.4.4. Agent. THE ASSOCIATION, AS THE OWNERS' ATTORNEY-IN-FACT OR AGENT OR TRUSTEE, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.**

14.4.5. **Powers.** The Association is hereby specifically empowered to act for the individual Owners in the following circumstances.

- a. To act as trustee for the Owner, to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.
- b. To act as the official representative of the collective interests of Unit Owners before courts, administrative bodies, and government bodies, including taxation, condemnation, and zoning boards.
- c. To serve as attorney-in-fact for the Owner in signing instruments that local governments or public laws require to be signed by a certain percentage of Unit Owners, or by Owners of a certain percentage of the Units.
- d.

14.4.6. **Requirements for Association.** At least 10 days but not more than 60 days before exercising the power of attorney or appointment of agency or trustee created by this Section, the Association must notify the membership of (1) the circumstances that give rise to exercise, (2) how the Association intends to exercise the power created herein, (3) why the exercise is deemed to be in the best interests of the Association, and (4) the time, date, and place of a forum in which the members can share communications about the proposed exercise.

14.5. **MANAGER.** The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Appendix G. The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its officers, directors, members, employees, and agents that are not justified by the needs of the Association. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

14.6. **BOOKS & RECORDS.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of applicable law, such as the Texas Nonprofit Corporation Act.

14.7. **INDEMNIFICATION.** The Association indemnifies every officer, director, and committee member (for purposes of this Section, "**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

**VOL. 3 PAGE 344**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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.

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

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

14.8.2. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or his Unit, and will pay Regular Assessments without demand by the Association.

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

14.8.4. Reimburse. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct or any other act or failure to act by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

14.8.5. Liability. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

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

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

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

14.9.3. Reserve Fund Contribution. **At time of acquisition of a unit by a Unit Owner other than Declarant, a contribution in the amount of the two months of the Unit's regular monthly assessment will be paid to the Association for the Association's replacement reserve funds.** The contribution will be collected at closing. The reserve fund contribution is not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments.

14.9.4. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided 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 regular or special assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to

VOL. 3 PAGE 345

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

14.9.5. Information. Within 30 days after acquiring an interest in a Unit, an Owner will provide the Association with the following information: a copy of the settlement statement or deed by which Owner has title to the Unit; the Owner's email address (if any), U. S. postal address, and phone number; any mortgagee's name, address, and loan number; the name and phone number of any Resident other than the Owner; the name, address, and phone number of Owner's managing agent, if any.

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

## **ARTICLE 15** **ENFORCING THE DOCUMENTS**

15.1. NOTICE AND HEARING. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by applicable law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine –unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearing, provided they are consistent with the requirements of applicable law.

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

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

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

VOL. 3 PAGE 340

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

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

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

15.3. BOARD DISCRETION. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

15.4. NO WAIVER. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No officer, director, or member of the Association is liable to any Owner for the failure to enforce any of the Documents at any time.

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

VOL. 3 PAGE 347

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

## **ARTICLE 16** **INSURANCE**

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

16.1.1. **Unavailability.** The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure 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.

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

16.1.3. **Requirements.** The cost of insurance coverages and bonds maintained by the Association is a common expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The 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 Resident who is not under the Association's control.

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

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

16.1.6. **Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration. 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 or any other act or failure to act by an Owner or Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with the Notice and Hearing Section of this Declaration.

16.2. **PROPERTY INSURANCE.** The Association will obtain blanket all-risk insurance, if reasonably available, for all improvements insurable by the Association. If blanket all-risk insurance is not reasonably

**VOL. 3 PAGE 348**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. The Federal National Mortgage Association recommends use of a guaranteed replacement cost endorsement, or a replacement cost endorsement, together with an agreed amount endorsement in case of coinsurance.

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

16.2.2. Units Insured by Association. In addition to insuring the Common Elements against casualty loss, the Association will maintain property insurance on the Units as originally constructed. The Association may insure betterments and improvements installed by current or previous Owners. In insuring Units, the Association may be guided by types of policies customarily available for similar types of properties.

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

16.3. LIABILITY INSURANCE. The Association will maintain a commercial general liability insurance policy over the Common Elements -- expressly excluding the liability of each Owner and Resident within his 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. For example, the Federal National Mortgage Association requires a minimum of \$1 million for bodily injury and property damage per single occurrence. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

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

16.5. FIDELITY COVERAGE. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of (1) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (2) an amount equal to 3 months of Regular Assessments on all Units. A management agent that handles Association funds should be covered by its own fidelity insurance policy with the same coverages. If the Property has more than 20 Units, the Association must maintain fidelity coverage to the extent reasonably available.

16.6. 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.

16.7. 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.

#### 16.9. OWNER'S RESPONSIBILITY FOR INSURANCE.

16.9.1. Insurance by Owners. Notwithstanding the foregoing, the Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained

VOL. 3 PAGE 349

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.

16.9.2. Owners' Responsibilities. On request, an Owner will give the Board written notification of any and all structural changes, additions, betterments, or improvements to his 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 his expense, will maintain any insurance coverages required of Owners by the Association pursuant to this Article. Each Owner, at his expense, may obtain additional insurance coverage of his real property, improvements, and betterments thereto, or personal property.

16.9.3. Association Does Not Insure. The Association does not insure an Owner or Resident's personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Unit and on the Property, including furnishings, vehicles, and stored items. The Association strongly recommends that each Owner and Resident purchase and maintain insurance on his personal belongings.

## ARTICLE 17 RECONSTRUCTION OR REPAIR AFTER LOSS

17.1. 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.

17.2. RESTORATION FUNDS. For purposes of this Article, Restoration Funds include insurance proceeds, condemnation awards, Deficiency Assessments, Individual 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 2 Association directors or that of an agent duly authorized by the Board.

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

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

17.2.3. Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows. If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, 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.

17.3. COSTS AND PLANS.

17.3.1. Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Property. Costs may include premiums for bonds and fees

VOL 3 PAGE 350

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

17.3.2. 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 of at least two-thirds of the Units and by certain Mortgagees if so required by the Mortgagee Protection article of this Declaration.

17.4. OWNER'S DUTY TO REPAIR.

17.4.1. Uninsured Loss. Within 60 days after the date of damage, the Owner will begin repair or reconstruction of any portion of his 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.

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

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

17.5. 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 an Individual 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 18** **TERMINATION AND CONDEMNATION**

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

18.2. TERMINATION. Termination of the terms of this Declaration and the condominium status of the Property will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by Owners of at least 67 percent of the Units and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. In all other

VOL.3 PAGE 351

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

circumstances, an amendment to terminate must be approved by Owners of at least 80 percent of the Units and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

18.3. **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 allocated 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 19** **MORTGAGEE PROTECTION**

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

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

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

19.2. **AMENDMENT.** This Article establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or Mortgagees, may, but is not obligated to, amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

19.3. **TERMINATION.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by Owners of at least 67 percent of the Units, and by at least 51 percent of Eligible Mortgagees. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least 67 percent of Eligible Mortgagees.

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

VOL. 3 PAGE 352

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

19.5. OTHER MORTGAGEE RIGHTS.

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

19.5.2. Financial Statements. If the Property consists of 50 Units or more, and if a Mortgagee submits a written request, the Association will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

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

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

19.5.5. Management Contract. If professional management of the Association is required by this Article, the contract for professional management may not require more than 90 days' notice to terminate the contract, nor payment of a termination penalty.

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

- a. Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit.
- b. Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit.
- c. A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.
- e. Any proposed amendment of a material nature, as provided in this Article.
- f. Any proposed termination of the condominium status of the Property.

19.8. AMENDMENTS OF A MATERIAL NATURE. A Document amendment of a material nature must be approved by Owners representing at least 67 percent of the Common Element interests, and by at least 51 percent of Eligible Mortgagees. This approval requirement does not apply to amendments effected by the exercise of a Development Right provided in Appendix B hereto. A change to any of the provisions governing the following would be considered material:

- a. Voting rights.
- b. Increases in Assessments that raise the previously assessed amount by more than 25 percent, Assessment liens, or the priority of Assessment liens.
- c. Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- d. Responsibility for maintenance and repairs.

VOL. 3 PAGE 363

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

- e. Except as permitted herein, reallocation of interests in the General or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action.
- f. Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action.
- g. Convertability of Units into Common Elements or Common Elements into Units.
- h. Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.
- i. Property or fidelity insurance requirements.
- j. Imposition of any restrictions on the leasing of Units.
- k. Imposition of any restrictions on Owners' right to sell or transfer their Units.
- l. If the Property consists of 50 Units or more, a decision by the Association to establish self-management when professional management had been required previously by the Documents or an Eligible Mortgagee.
- m. Restoration or repair of the Property in a manner other than that specified in the Documents, after hazard damage or partial condemnation.
- n. Any provision that expressly benefits mortgage holders, insurers, or guarantors.

## **ARTICLE 20** **AMENDMENTS**

20.1. **CONSENTS REQUIRED.** As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by certain Owners alone, or by the Board alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least 67 percent of the Common Element interests.

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

20.3. **EFFECTIVE.** To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; and (3) recorded in the Real Property Records of Llano County, Texas.

20.4. **DECLARANT PROVISIONS.** Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix B. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

VOL. 3 PAGE 354

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

## **ARTICLE 21** **DISPUTE RESOLUTION**

21.1. **INTRODUCTION & DEFINITIONS.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

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

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

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

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

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

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

21.2. **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.

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

21.4. **NEGOTIATION.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some

**VOL. 3 PAGE 355**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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.

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

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

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

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

21.9. **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.

21.10. **LITIGATION APPROVAL & SETTLEMENT**. To encourage the use of alternate dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of Owners of at least 75 percent of the Units.

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

VOL. 3 PAGE 356

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

21.10.2. Suit Against Declarant. Also, the Association may not initiate any judicial or administrative proceeding against Declarant without the approval of Owners representing at least 75 percent of the Units.

21.10.3. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income or reserve funds or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

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

## **ARTICLE 22** **GENERAL PROVISIONS**

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

22.2. HIGHER AUTHORITY. The Documents are subordinate to federal and State law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with local, State, or federal law or ordinance.

22.3. NOTICE. All demands or other notices required to be sent to an Owner or Resident 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.

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

### **DRAFTER'S DICTUM**

Users of this document should periodically review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by this document.

22.5. 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 by the enumeration of specific matters similar to the general.

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

**VOL. 3 PAGE 357**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

22.7. INTERPRETATION. Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

22.8. 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.

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

- A - Description of Subject Land
- B - Declarant Representations & Reservations
- C - Schedule of Allocated Interests
- D - Plats and Plans
- E - Easements and Licenses
- F - Assignment of Parking Spaces
- G - Guide to Association's Major Management & Governance Functions
- H - Description of Land Subject to Annexation as Additional Phases

VOL. 3 PAGE 358

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

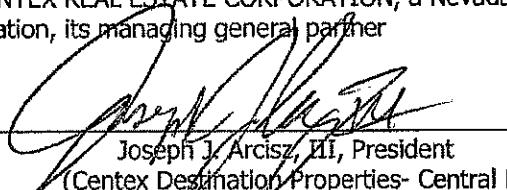
**SIGNED AND ACKNOWLEDGED**

SIGNED on this 28<sup>th</sup> day of November, 2006.

**DECLARANT:**

**CENTEX HOMES**, a Nevada general partnership, d/b/a Centex Destination Properties

By: CENTEX REAL ESTATE CORPORATION, a Nevada corporation, its managing general partner

By: 

Joseph J. Arcisz, III, President

(Centex Destination Properties- Central Division)

[CORPORATE SEAL]

THE STATE OF TEXAS

§  
§

COUNTY OF TARRANT

§

This instrument was acknowledged before me on the 28<sup>th</sup> day of November, 2006, by Joseph J. Arcisz, III, President (Centex Destination Properties - Central Division) of Centex Real Estate Corporation, a Nevada corporation, the managing general partner of Centex Homes, a Nevada general partnership, on behalf of said partnership.

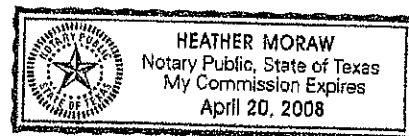
Heather Moraw

Notary Public, State of Texas

Commission Expiration Date:

April 20, 2008

[Notary Seal]



VOL. 3 PAGE 359

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX A**  
**DESCRIPTION OF SUBJECT LAND**

**THE WATERS AT HORSESHOE BAY**

**PHASE ONE**

**Tract AAA-1A on the plat of Horseshoe Bay Plat No. 64.3, recorded in Volume 15, Page 56 in the  
Official Records of Llano County, Texas.**

**VOL. 3 PAGE 360**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX B**  
**DECLARANT REPRESENTATIONS & RESERVATIONS**

**B.1. GENERAL PROVISIONS.**

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

B.1.2. Purpose. The purpose of this Appendix is to protect Declarant's interest in the Property. This Appendix gives Declarant certain extraordinary rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildup and sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.

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

**B.2. DECLARANT CONTROL PERIOD RESERVATIONS.** This Section pertains to the period in which Declarant controls the Association - a maximum of 15 years - which is distinct from the 20 year period during which Declarant retains development rights. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly buildup and sellout of the Property, Declarant will retain control of the Association, subject to the following:

B.2.1. Organizational Meeting. Before the end of the Declarant Control Period or within 120 days after the conveyance of 75 percent of the Units that may be created (including property subject to annexation as Additional Phases) to Owners other than Declarant, the Owners will elect directors to the Board at an organizational meeting of the Members of the Association. Declarant or the Association will give written notice of the organizational meeting to an Owner of each Unit at least 10 days before the meeting. For the organizational meeting, Owners of 10 percent of the Units constitute a quorum. The Board elected at the organizational meeting will elect the officers of the Association not later than 30 days after the end of the Declarant Control Period. The directors elected at the organizational meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

B.2.2. Officers & Directors. During the Declarant Control Period, the Board may consist of 3 persons. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation. Within 120 days after the conveyance of 50 percent of the Units that may be created (including property subject to annexation, if any) to Owners other than Declarant, at least one-third of the Board must be elected by Owners other than Declarant.

B.2.3. Obligation for Assessments. During the Declarant Control Period, Declarant has the following obligation for assessments and the common expenses of the Association:

- a. Until the Association first levies regular assessments, Declarant must pay all the expenses of the Property as they accrue, as required by Section 82.112(a) of the Act.

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- b. Following termination of the Declarant Control Period, Declarant (for each Unit owned by Declarant) is liable for assessments in the same manner as any Owner, as required by Section 82.112(b) of the Act.
- c. Beginning 3 years after the date on which Declarant first conveys (closes) a Unit, Declarant (for each Unit owned by Declarant) is liable for assessments in the same manner as any Owner, even if the Declarant Control Period is in effect, as required by Section 82.112(b) of the Act.
- d. In the interim - between the time the Association starts levying assessments and the termination of Declarant control or the 3-year period - Declarant solely at Declarant discretion, and to the extent permitted by Section 82.112(b) of the Act, has the following options:
  - (1) Declarant will be liable for assessments in the same manner as any Owner, and is not individually liable for operating deficits, if any; or
  - (2) Alternatively, at Declarant's sole discretion, Declarant will periodically pay to the Association an amount equal to the Association's actual paid operational expenses (hence, not reserves), less the operational portion of the assessments received from the other Unit Owners.
- e. If Declarant elects option (2) in Subparagraph d above, the Association will reimburse Declarant for any amounts paid by Declarant that can be attributed to the assessment delinquency of one or more Owners -if and when the delinquency is cured.

B.2.4. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association reserve funds to pay operational expenses of the Association.

B.2.5. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

B.2.6. Budget Control. During the Declarant Control Period, the right of Owners to veto Special Assessments or increases in Regular Assessments is not effective and may not be exercised.

B.2.7. Management Contract. If Declarant enters into a professional management contract on behalf of the Association during the Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at least 30 days notice to the manager, at any time after a Board elected by the Owners takes office.

B.2.8. 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 by deed - with or without warranty. 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 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.

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

B.3.1. Phasing. The Property is subject to expansion by phasing for the duration of the Development Period. During the Development Period, Declarant may annex to the Property any or all of the Additional Phases, in whole or in part, and subject it to this Declaration and the jurisdiction of the Association by recording an amendment or supplement of this Declaration, executed by Declarant, in the Real Property Records of Llano County, Texas. The annexation instrument must include a legal description of the additional real property or a

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reference to the recorded plat that describes the additional real property and a revised schedule of allocated interests if Units are annexed. When created, the Property initially contains 36 Units. As each phase is added, the Property will contain the number of Units listed in the most current Appendix C. Declarant reserves the right to create up to and including 400 Units. This Section does not require Declarant to expand the Property. Declarant's right to annex land is for a term of years - the length of the Development Period - and does not require that Declarant own the Additional Phase or a Unit in the Property described in Appendix A at the time or times Declarant exercises its right of annexation.

B.3.2. Withdrawal. The Property described in the initial Appendix A is not subject to a right of withdrawal of real property by Declarant. Declarant may subject land in Appendix H to the right of withdrawal.

B.3.3. FNMA Compliance. If Declarant desires the Property to be approved by FNMA for financing, Declarant will comply with FNMA's guidelines for phasing, which may include the following requirements:

- a. All improvements must be substantially completed prior to annexation.
- b. The structure, type, and quality of construction of buildings and improvements will be consistent with that of the buildings and improvements constructed in the phase initially made subject to this Declaration.
- c. All Units and Common Elements created pursuant to Development Rights will be restricted to residential use in the same manner and to the same extent as the Units created under this Declaration.
- d. On annexation, Owners of Units in the Additional Phases will be granted undivided interests in the Property's total Common Elements. If not, the amendment of annexation must provide reciprocal easements for specified Common Elements in various phases of the Property.

B.3.4. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of Units, buildings, and Common Elements.

B.3.5. Architectural Control. During the Development Period, Declarant has the absolute right to appoint the Architectural Reviewer, consisting of any number of persons who serve at the pleasure of Declarant, and who may be removed and replaced by Declarant. Notwithstanding the foregoing, during the Development Period -after termination of Declarant Control, or earlier if Declarant permits - the Board may appoint or serve as a "modifications committee" to respond exclusively to modifications of completed Units that are owned by persons other than Declarant. A modifications committee may not involve itself with the approval of new Units, Common Elements, or Units owned or leased by Declarant.

B.3.6. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the Property name by the Association.

B.3.7. Transfer Fees. During the Development Period, Declarant may not be required to pay transfer-related and resale certificate fees.

B.3.8. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for any purpose, including without limitation the following purposes:

- a. To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- b. To correct any defects in the execution of this Declaration or the other Documents.

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

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

**B.3.9. Statutory Development Rights.** As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (1) to add real property to the Property; (2) to create Units, General Common Elements, and Limited Common Elements within the Property; (3) to subdivide Units or convert Units into Common Elements; (4) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

**B.3.10. Development Rights Reserved.** Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

**B.4. SPECIAL DECLARANT RIGHTS.** As permitted by the Act, Declarant reserves the below-described Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Property during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds a Development Right to create additional Units or Common Elements or Declarant owns a Unit, whichever ceases last. Earlier termination of certain rights may occur by statute.

- a. The right to complete or make improvements indicated on the Plat and Plans.
- b. The right to exercise any Development Right 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 as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.
- e. For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers or other parties - at the Property to promote the sale of Units or for other properties of Declarant.

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**DIFFERENT RULES**

The developer has rights and privileges to use the property in ways that are not available to other owners and residents.

- f. Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- g. The right to appoint or remove any Declarant-appointed officer or director of the Association during the Declarant Control Period consistent with the Act.

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

- a. An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
- b. The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.
- c. The right to exercise the marketing, promotional, signage, and usage rights herein to market Declarant's products located outside the Property.
- d. The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.
- e. An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done within 120 days after termination of the Development Period.
- f. An easement over the entire Property, including the Units, to inspect the Common Elements and all improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element improvements.

**B.6. COMMON AREA USE BY DECLARANT.** Declarant hereby reserves an easement over, under, and through the Common Areas and amenities of The Waters at Horseshoe Bay to fulfill the following purposes:

- a. The right to designate visitor parking spaces for use by prospective homebuyers and real estate agents visiting the sales center.
- b. The right to designate parking spaces for use by Declarant's contractors and their employees.
- c. The right to conduct tours of the Common Area amenities at any time, including periods of use by Residents of the Property.
- d. The right to install and maintain signs, flags, banners, and lighting in, on, and around the Common Area amenities and other parts of the Property to identify the marketing center and to direct prospective homebuyers.
- e. The right to install and maintain temporary fencing and landscaping to create a new home marketing tour that connects to the Common Area amenities.

VOL. 3 PAGE 365

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

- f. The right to use all portions of the Common Area amenities and other parts of the Property for sales events and promotional functions, such as tours, parties, and open houses.
- g. The right to install, maintain, modify, relocate, and remove signs, displays, media presentations, and other items pertaining to the marketing of Declarant's Units in the Property.
- h. The right to use the Common Area buildings, as well as Units owned or leased by Declarant, for business uses relating to the marketing of the Property by Declarant, including (without limitation) new home sales, mortgage financing, warranty work, and home sale closings, provided the uses pertain to the sale or leasing of homes in the Property.
- i. The right to designate portions of the Common Area buildings for the exclusive use of Declarant in connection with the marketing program.

**B.7. MARKETING OTHER LOCATIONS.** This Declaration grants to Declarant a number of significant rights to market the Property. Declarant hereby reserves for itself and its affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing off-site developments of Declarant or its affiliates for the duration of the Development Period, even though Declarant may have completed the marketing of Units in the Property. Additionally, Declarant - at Declarant's sole option and discretion - may extend the effect of this Section for up to 24 months after the end of the Development Period by paying the Association \$5,000.

**B.8. COMMON ELEMENTS.**

**B.8.1. Maintenance Orientation.** Within 60 days of the organizational meeting, Declarant will invite a non-Declarant representative of the Association to an orientation on the maintenance aspects of the Property. The Association's managing agent is qualified to serve as the Association's representative at the orientation, even if having been hired by the Declarant-appointed Board. One purpose of the orientation is to provide continuity of maintenance information during the period in which control of the Association transfers from Declarant to the other Owners. A typical orientation occurs during a site inspection and is formalized with a writing signed by the representatives of Declarant and the Association.

**B.8.2. No Conveyance.** Because the Common Elements are owned by the Owners, collectively and in undivided interests, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

**B.9. HOMEBUYERS CONTRIBUTE AT CLOSING.** Declarant may establish a working capital fund for the Association in an amount that is at least equal to 2 months of regular assessments for each Unit. If Declarant establishes this fund, each Unit's contribution will be collected when the sale of the Unit closes or on termination of the Declarant Control Period, whichever occurs first. Contributions to the fund are not advance payments of regular assessments and are not refundable.

**B.9.1. Frozen Assets.** During the Declarant Control Period, working capital contributions from the Owners may not be used by Declarant or by the Association to pay the Association's operational expenses, as required by Section 82.112(a) of the Act. This means that Declarant may not use the fund to defray Declarant's expenses, reserve contributions, or construction costs, or to cover the Association's budget deficits during the Declarant Control Period.

**B.9.2. Fannie Mae Requirement.** Not later than termination of the Declarant Control Period, the fully funded working capital fund will be transferred to the Association for deposit to a segregated fund. If Declarant has unsold Units on termination of the Declarant Control Period, Declarant may reimburse itself for a Unit's pre-paid contributions from monies collected at the Unit's closing.

**B.9.3. New Sales Only.** This Section applies only to initial Unit sales by Declarant. Subsequent resales are subject to the "Unit Resales" Section of Article 14 of the Declaration.

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

B.10. SUCCESSOR DECLARANT. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Llano County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

[End of Appendix B]

VOL 3 PAGE 367

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX C**  
**SCHEDULE OF ALLOCATED INTERESTS – BUILDING #2**

THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM  
PHASE ONE

| UNIT | BLDG | PHASE | PLAN TYPE |
|------|------|-------|-----------|
| 11   | 2    | ONE   | E         |
| 12   | 2    | ONE   | D         |
| 13   | 2    | ONE   | B         |
| 14   | 2    | ONE   | C         |
| 15   | 2    | ONE   | B         |
| 16   | 2    | ONE   | D         |
| 17   | 2    | ONE   | E         |
| 21   | 2    | ONE   | E         |
| 22   | 2    | ONE   | D         |
| 23   | 2    | ONE   | B         |
| 24   | 2    | ONE   | C         |
| 25   | 2    | ONE   | B         |
| 26   | 2    | ONE   | D         |
| 27   | 2    | ONE   | E         |
| 31   | 2    | ONE   | E         |
| 32   | 2    | ONE   | D         |
| 33   | 2    | ONE   | B         |
| 34   | 2    | ONE   | C         |
| 35   | 2    | ONE   | B         |
| 36   | 2    | ONE   | D         |
| 37   | 2    | ONE   | E         |
| 41   | 2    | ONE   | E         |

| UNIT            | BLDG           | PHASE | PLAN TYPE |
|-----------------|----------------|-------|-----------|
| 42              | 2              | ONE   | D         |
| 43              | 2              | ONE   | B         |
| 44              | 2              | ONE   | C         |
| 45              | 2              | ONE   | B         |
| 46              | 2              | ONE   | D         |
| 47              | 2              | ONE   | E         |
| 51              | 2              | ONE   | E         |
| 52              | 2              | ONE   | D         |
| 53              | 2              | ONE   | B         |
| 54              | 2              | ONE   | C         |
| 55              | 2              | ONE   | B         |
| 56              | 2              | ONE   | D         |
| 57              | 2              | ONE   | E         |
| 61              | 2              | ONE   | E         |
| 62              | 2              | ONE   | D         |
| 63              | 2              | ONE   | B         |
| 64              | 2              | ONE   | C         |
| 65              | 2              | ONE   | B         |
| 66              | 2              | ONE   | D         |
| 67              | 2              | ONE   | E         |
| <b>42 UNITS</b> | <b>1 BLDG.</b> |       |           |

VOL. 3 PAGE 368

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX C**  
**SCHEDULE OF ALLOCATED INTERESTS – BUILDING #3**

**THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM**  
**PHASE ONE**

| UNIT | BLDG | PHASE | PLAN TYPE |
|------|------|-------|-----------|
| 11   | 3    | ONE   | A         |
| 12   | 3    | ONE   | B         |
| 13   | 3    | ONE   | C         |
| 14   | 3    | ONE   | B         |
| 15   | 3    | ONE   | D         |
| 16   | 3    | ONE   | E         |
| 21   | 3    | ONE   | A         |
| 22   | 3    | ONE   | B         |
| 23   | 3    | ONE   | C         |
| 24   | 3    | ONE   | B         |
| 25   | 3    | ONE   | D         |
| 26   | 3    | ONE   | E         |
| 31   | 3    | ONE   | A         |
| 32   | 3    | ONE   | B         |
| 33   | 3    | ONE   | C         |
| 34   | 3    | ONE   | B         |
| 35   | 3    | ONE   | D         |
| 36   | 3    | ONE   | E         |
| 41   | 3    | ONE   | A         |
| 42   | 3    | ONE   | B         |
| 43   | 3    | ONE   | C         |
| 44   | 3    | ONE   | B         |

| UNIT            | BLDG           | PHASE | PLAN TYPE |
|-----------------|----------------|-------|-----------|
| 45              | 3              | ONE   | D         |
| 46              | 3              | ONE   | E         |
| 51              | 3              | ONE   | A         |
| 52              | 3              | ONE   | B         |
| 53              | 3              | ONE   | C         |
| 54              | 3              | ONE   | B         |
| 55              | 3              | ONE   | D         |
| 56              | 3              | ONE   | E         |
| 61              | 3              | ONE   | A         |
| 62              | 3              | ONE   | B         |
| 63              | 3              | ONE   | C         |
| 64              | 3              | ONE   | B         |
| 65              | 3              | ONE   | D         |
| 66              | 3              | ONE   | E         |
| <b>36 UNITS</b> | <b>1 BLDG.</b> |       |           |

*VOL. 3 PAGE 369*

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX C**  
**SCHEDULE OF ALLOCATED INTERESTS – BUILDING #4**

**THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM**  
**PHASE ONE**

| <b>UNIT</b> | <b>BLDG</b> | <b>PHASE</b> | <b>PLAN TYPE</b> |
|-------------|-------------|--------------|------------------|
| 11          | 4           | ONE          | A                |
| 12          | 4           | ONE          | B                |
| 13          | 4           | ONE          | C                |
| 14          | 4           | ONE          | B                |
| 15          | 4           | ONE          | D                |
| 16          | 4           | ONE          | E                |
| 21          | 4           | ONE          | A                |
| 22          | 4           | ONE          | B                |
| 23          | 4           | ONE          | C                |
| 24          | 4           | ONE          | B                |
| 25          | 4           | ONE          | D                |
| 26          | 4           | ONE          | E                |
| 31          | 4           | ONE          | A                |
| 32          | 4           | ONE          | B                |
| 33          | 4           | ONE          | C                |
| 34          | 4           | ONE          | B                |
| 35          | 4           | ONE          | D                |
| 36          | 4           | ONE          | E                |
| 41          | 4           | ONE          | A                |
| 42          | 4           | ONE          | B                |
| 43          | 4           | ONE          | C                |
| 44          | 4           | ONE          | B                |

| <b>UNIT</b>     | <b>BLDG</b>    | <b>PHASE</b> | <b>PLAN TYPE</b> |
|-----------------|----------------|--------------|------------------|
| 45              | 4              | ONE          | D                |
| 46              | 4              | ONE          | E                |
| 51              | 4              | ONE          | A                |
| 52              | 4              | ONE          | B                |
| 53              | 4              | ONE          | C                |
| 54              | 4              | ONE          | B                |
| 55              | 4              | ONE          | D                |
| 56              | 4              | ONE          | E                |
| 61              | 4              | ONE          | A                |
| 62              | 4              | ONE          | B                |
| 63              | 4              | ONE          | C                |
| 64              | 4              | ONE          | B                |
| 65              | 4              | ONE          | D                |
| 66              | 4              | ONE          | E                |
| <b>36 UNITS</b> | <b>1 BLDG.</b> |              |                  |

**VOL. 3 PAGE 370**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX D**  
**PLATS AND PLANS**

**THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM**

See Attached

**VOL. 3 PAGE 371**

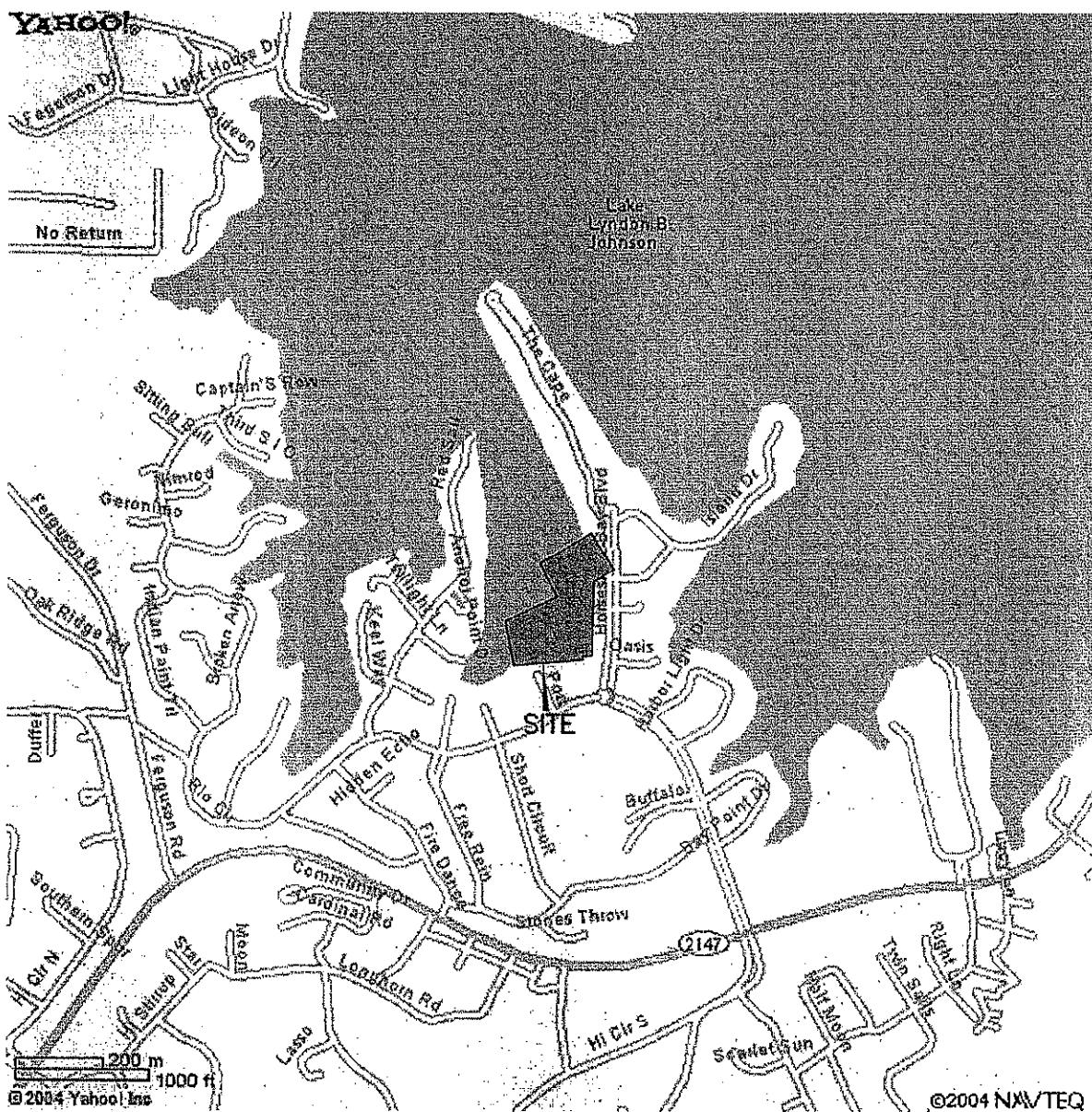
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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
VICINITY MAP



THIS SURVEY IS INTENDED TO SERVE AS A PLAT OF 'THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM, BUILDINGS 2, 3 AND 4 LOCATED ON TRACT AAA-1A, HORSESHOE BAY, PLAT NO. 64.3 RECORDED IN VOLUME 15, PAGES 56 THRU 58 OF THE PLAT RECORDS OF LlANO COUNTY, TEXAS, AND THIS PLAT CONTAINS ALL INFORMATION REQUIRED FOR THE PURPOSE OF COMPLIANCE WITH CHAPTER 82.059 SUBSECTION (b), UNIFORM CONDOMINIUM ACT OF THE TEXAS PROPERTY CODE.

  
DONALD SHERMAN REGISTERED PROFESSIONAL LAND SURVEYOR NO. 1677  
JOB NO. 12144

DATE

12/11/06

VOL. 3 PAGE 312



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## APPENDIX "D" THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM GENERAL NOTES

### 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 The Waters at Horseshoe Bay Resort Condominium (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) Each unit, building, limited common element and general common element is subject to special rights reserved by the Declarant as provided Provision B.4. of Appendix "B" to 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, as provided in Provision B.4(a) of Appendix "B" to the Declaration; (ii) exercise any development right permitted by the Texas Uniform Condominium Act (the "Act") and the Declaration, including the addition of real property to the regime, which property may be added as units, general common elements and/or limited common elements, as provided in Section 2.2 of the Declaration and Provision B.4(b) of Appendix "B" to the Declaration; (iii) make the property part of a larger condominium or planned community, as provided in Provision B.4(c) of Appendix "B" to the Declaration; (iv) use units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the property, as provided in Provision B.4(d) of Appendix "B" to the Declaration; and (v) appoint or remove any Declarant-appointed officer or director of the Association during the Declarant Control Period (as defined in the Declaration) consistent with the Act, as provided in Provision B.4(g) of Appendix "B" to the Declaration. As provided in Provision B.4(e) of Appendix "B" to the Declaration, for purposes of promoting, identifying, and marketing the property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the property, including items and locations that are prohibited to other owners. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the property. As provided in Provision B.4(f) of Appendix "B" to the Declaration, Declarant has an easement and right of ingress and egress in and through the Common Elements (as defined in the Declaration) and units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the property, and for discharging Declarant's obligations under the Act and the Declaration.

VOL. 3 PAGE 373



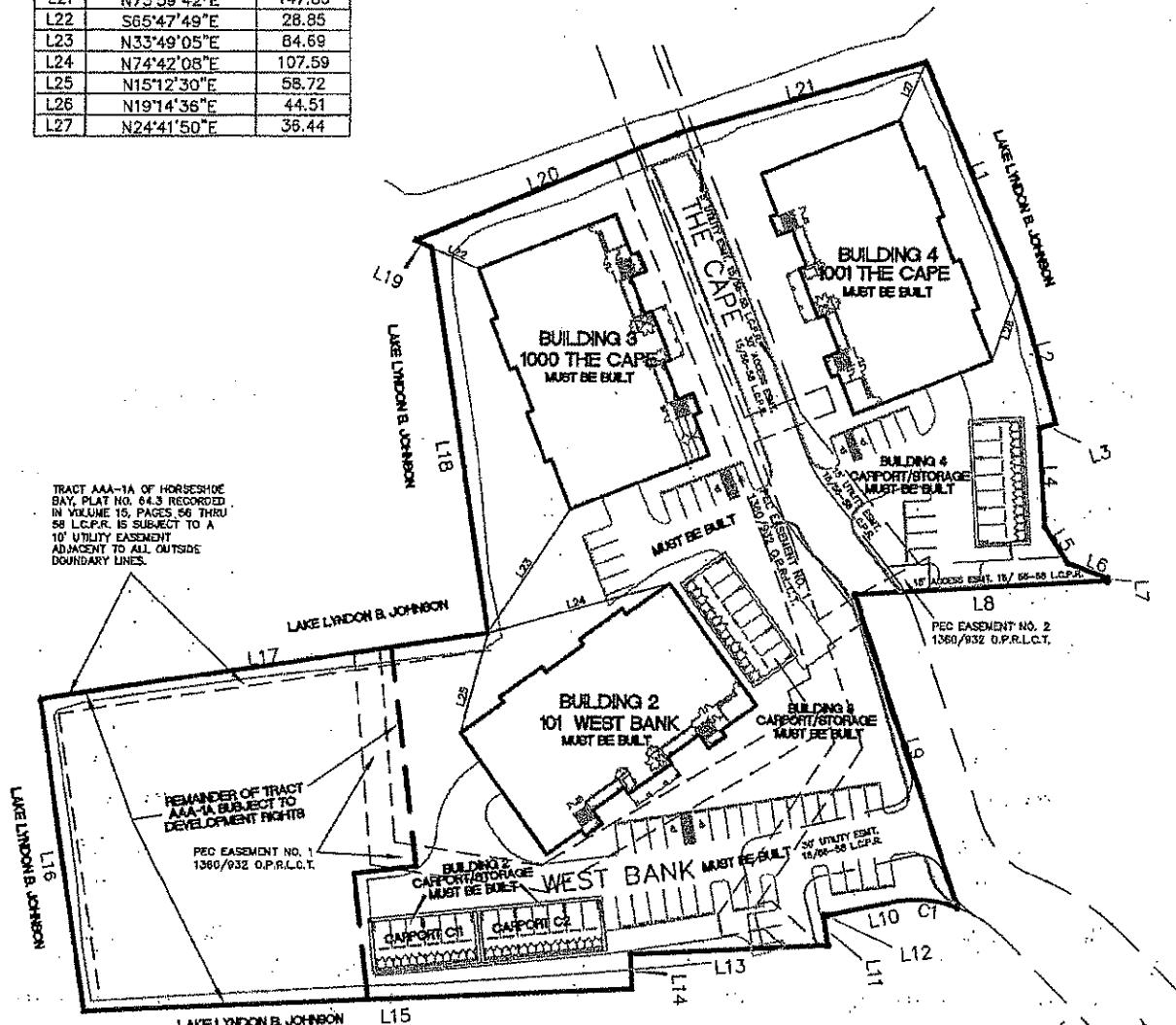
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM

SITE PLAN

SCALE: 1" = 100'

| LINE | BEARING     | LENGTH |
|------|-------------|--------|
| L1   | N22°24'30"W | 137.93 |
| L2   | N15°43'40"W | 80.70  |
| L3   | N74°16'20"E | 10.00  |
| L4   | N03°14'52"W | 56.00  |
| L5   | N32°22'00"W | 24.55  |
| L6   | N69°47'21"W | 23.74  |
| L7   | S01°36'36"E | 1.73   |
| L8   | N86°52'20"E | 144.13 |
| L9   | S18°01'09"E | 187.52 |
| L10  | S78°29'32"W | 40.81  |
| L11  | S07°16'38"E | 17.07  |
| L12  | S85°30'19"W | 1.96   |
| L13  | N87°13'00"E | 112.06 |
| L14  | S02°30'49"E | 19.66  |
| L15  | N87°31'47"E | 312.02 |
| L16  | S08°24'29"E | 180.01 |
| L17  | S81°35'31"W | 258.00 |
| L18  | S08°24'29"E | 221.00 |
| L19  | S66°00'23"E | 10.45  |
| L20  | S67°44'47"W | 161.82 |
| L21  | N73°59'42"E | 147.86 |
| L22  | S65°47'49"E | 28.85  |
| L23  | N33°49'05"E | 84.69  |
| L24  | N74°42'08"E | 107.59 |
| L25  | N15°12'30"E | 58.72  |
| L26  | N19°14'36"E | 44.51  |
| L27  | N24°41'50"E | 36.44  |

| CURVE TABLE |        |        |           |             |       |
|-------------|--------|--------|-----------|-------------|-------|
| CURVE       | LENGTH | RADIUS | DELTA     | BEARING     | CHORD |
| C1          | 34.47  | 70.13  | 28°09'34" | N83°46'55"W | 34.12 |



**APPENDIX "D"**  
**THE WATERS AT**  
**HORSESHOE BAY**  
**RESORT CONDOMINIUM**  
**BUILDING 2**

Willis-Sherman Associates, Inc.

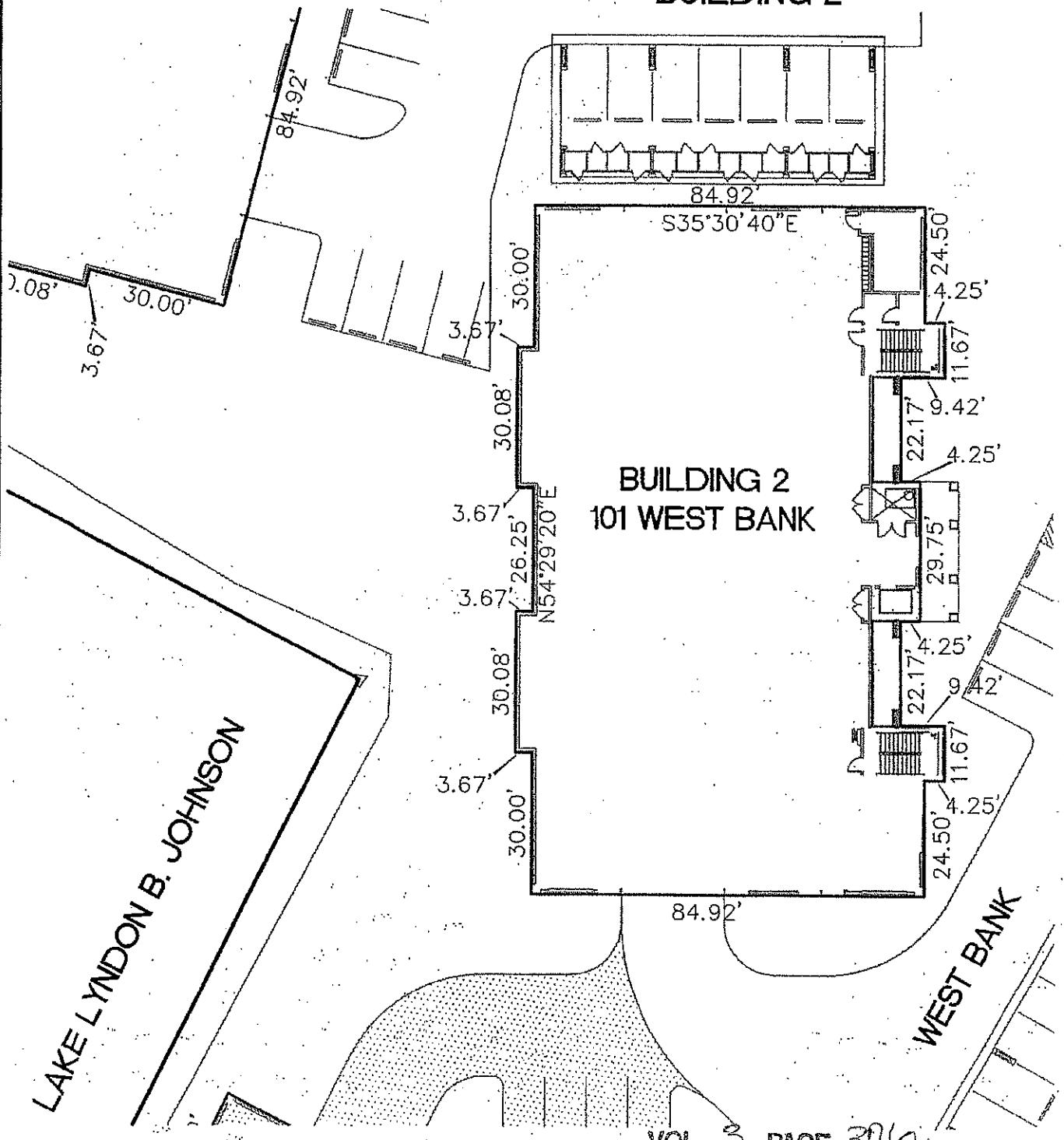


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## APPENDIX "D"

### THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM

#### BUILDING 2

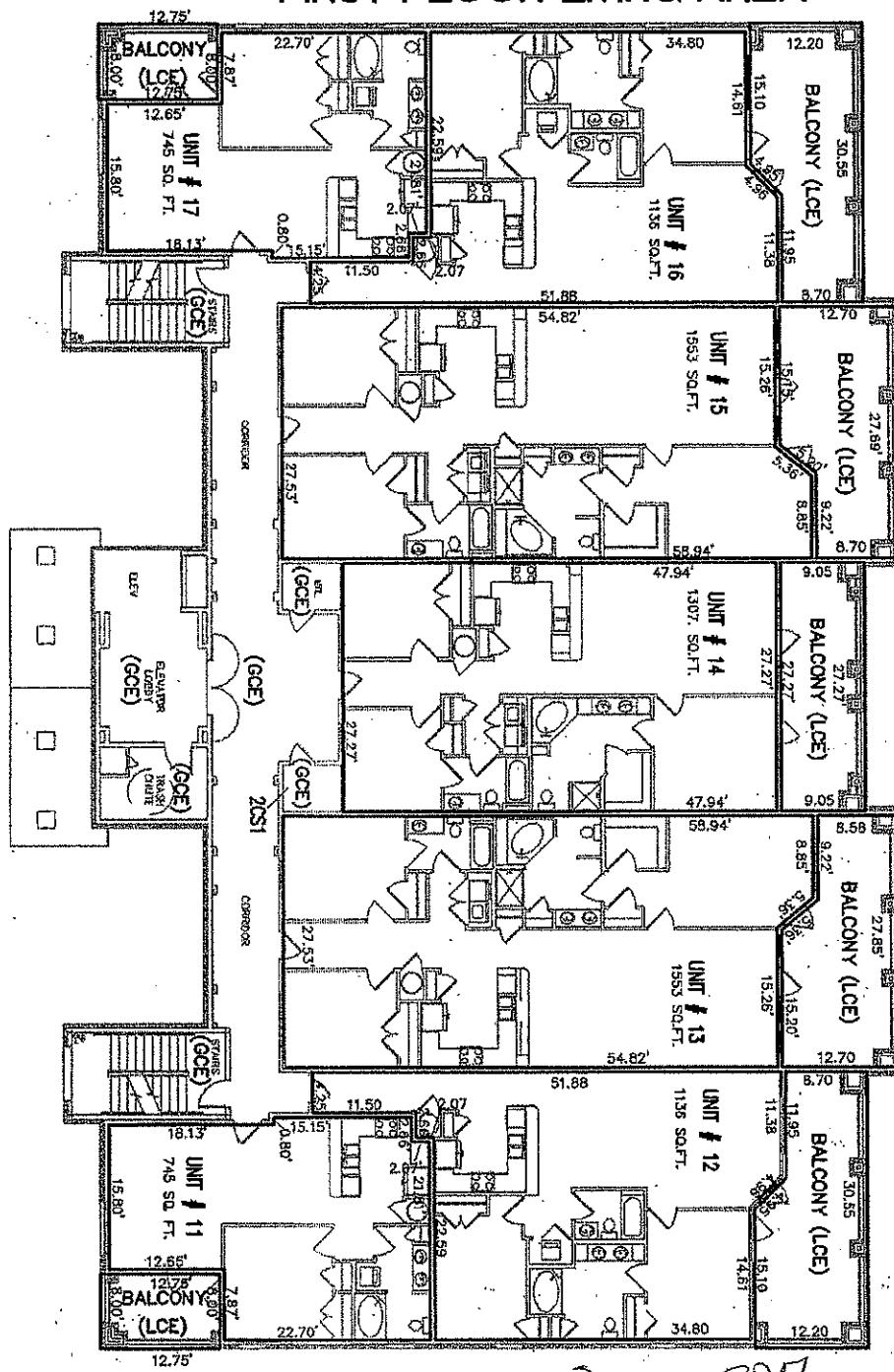


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 2  
FIRST FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

101 WEST BANK

Willis-Sherman Associates, Inc.

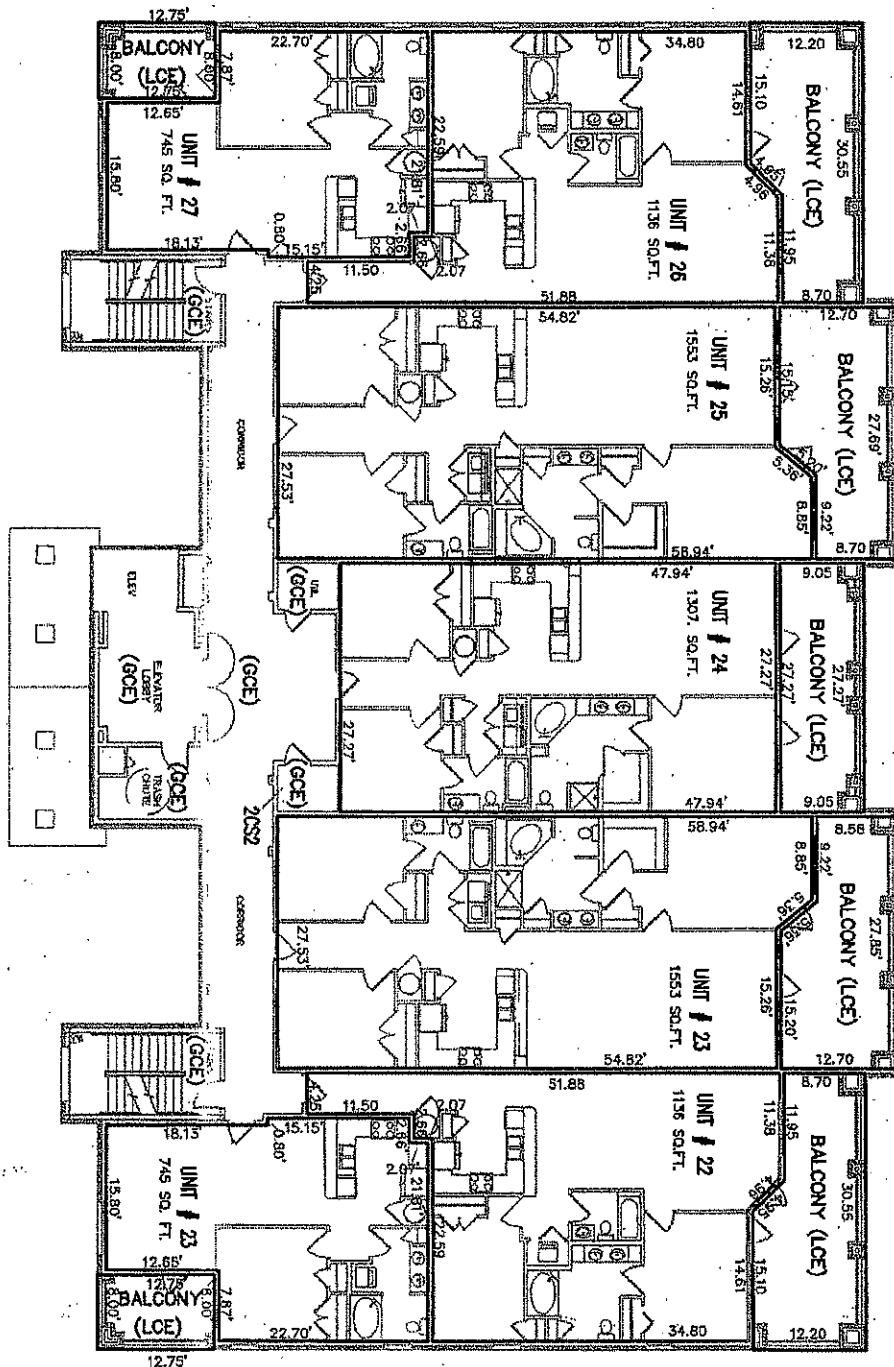


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 2  
SECOND FLOOR LIVING AREA

101 WEST BANK

(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT



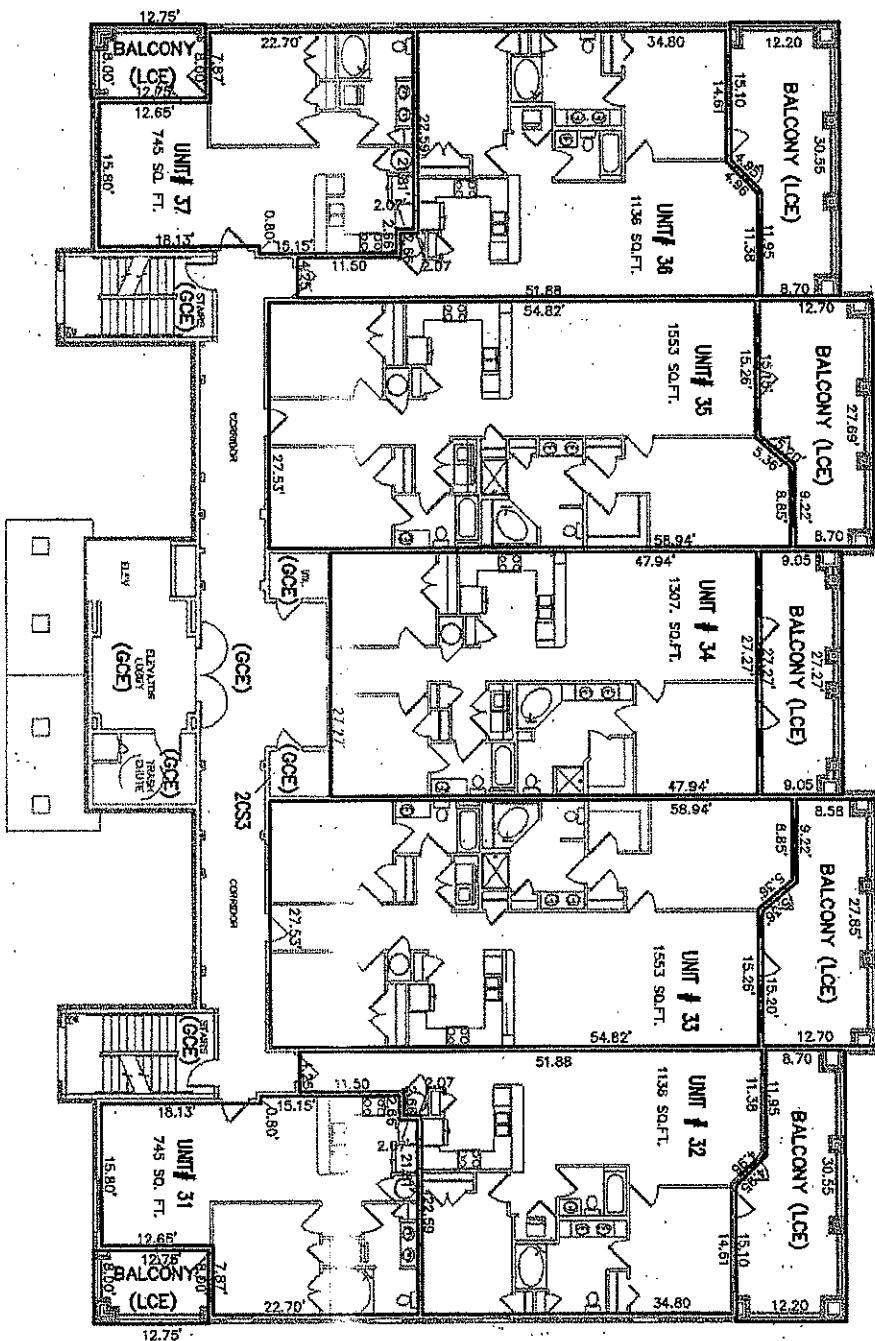
VOL. 3 PAGE 378

Willis-Sherman Associates, Inc.



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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 2  
THIRD FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

101 WEST BANK

VOL. 3 PAGE 379

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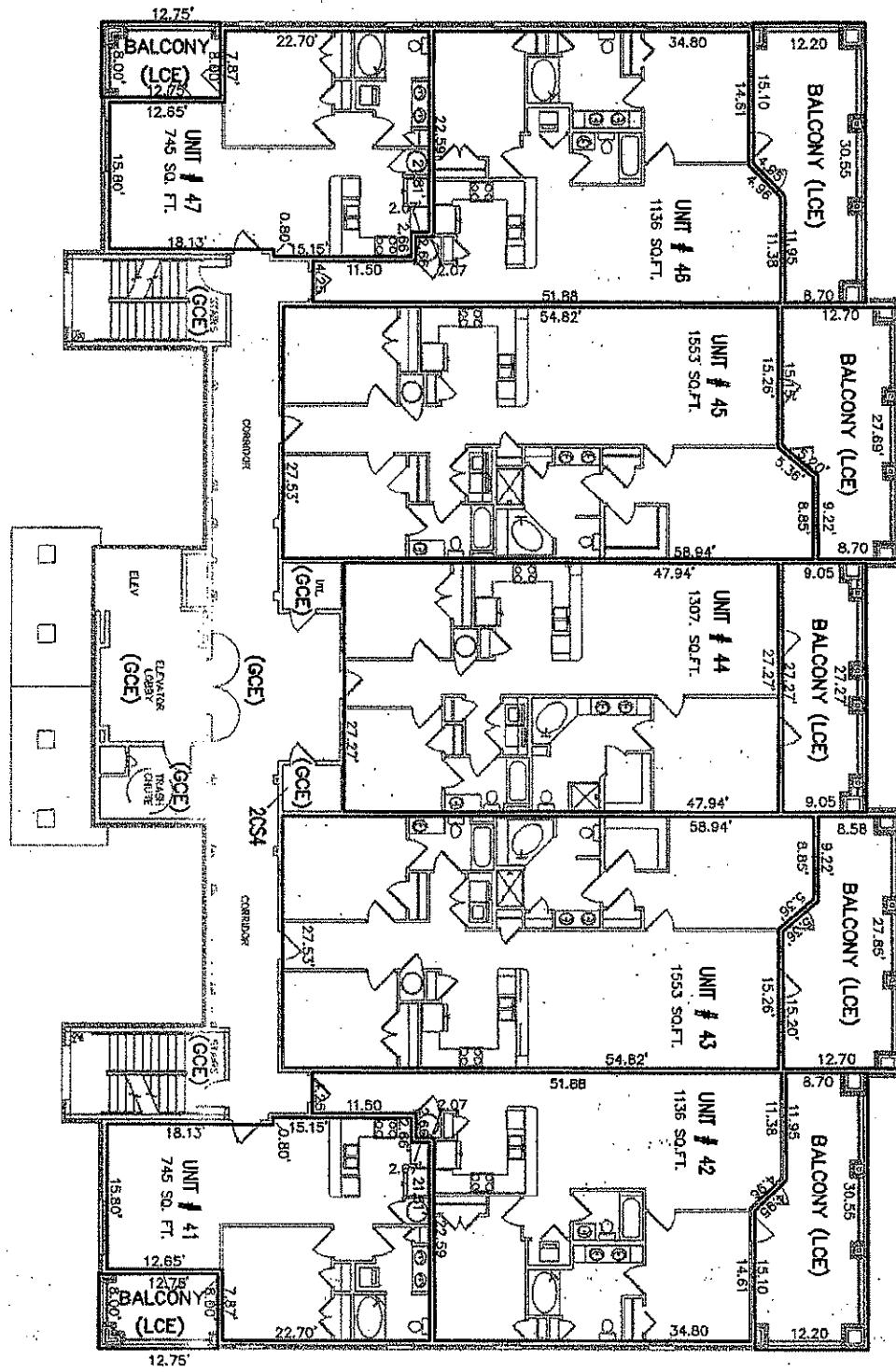


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 2  
FOURTH FLOOR LIVING AREA

101 WEST BANK

(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT



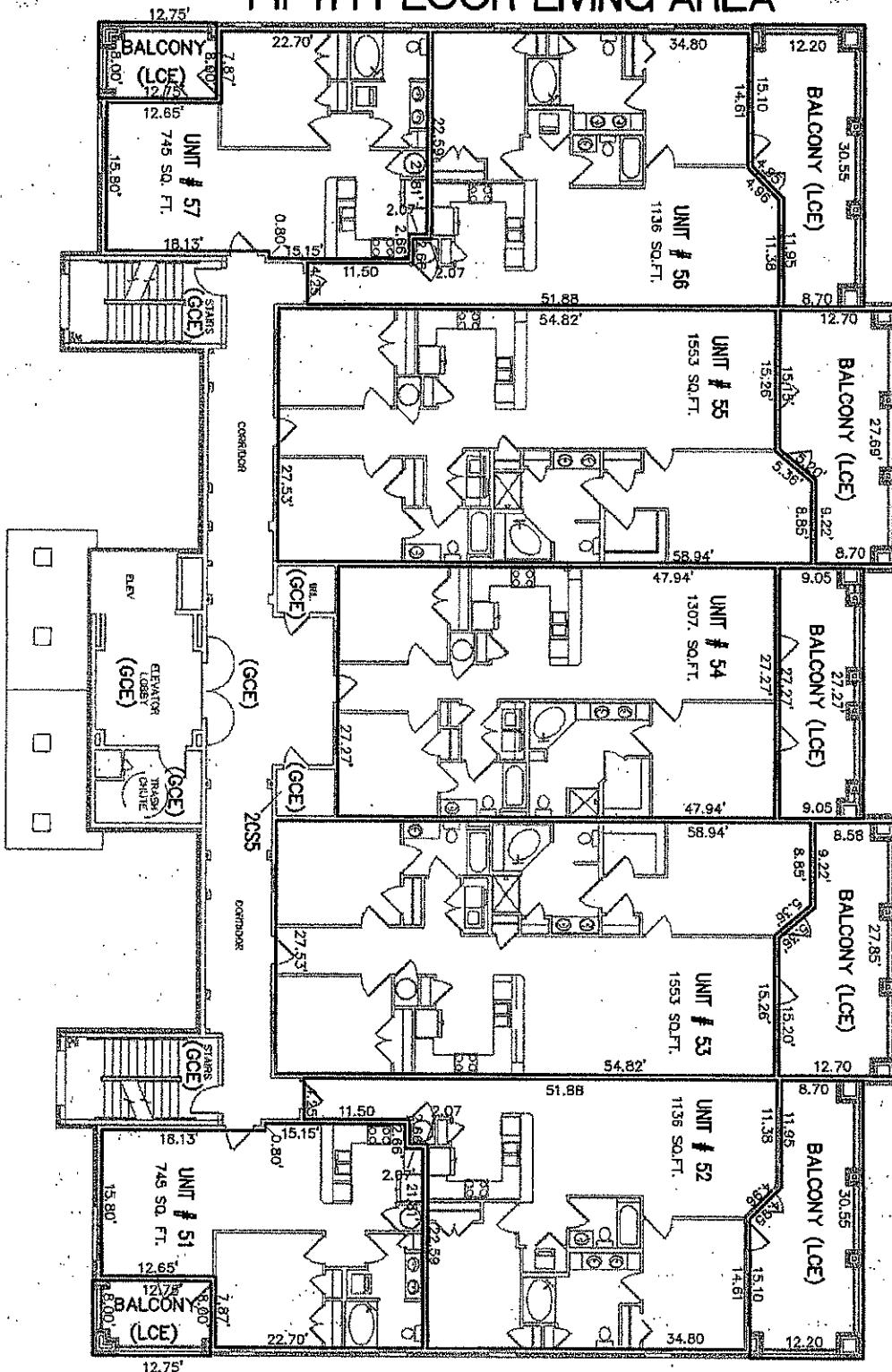
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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM

BUILDING 2  
FIFTH FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

101 WEST BANK

Willis-Sherman Associates, Inc.

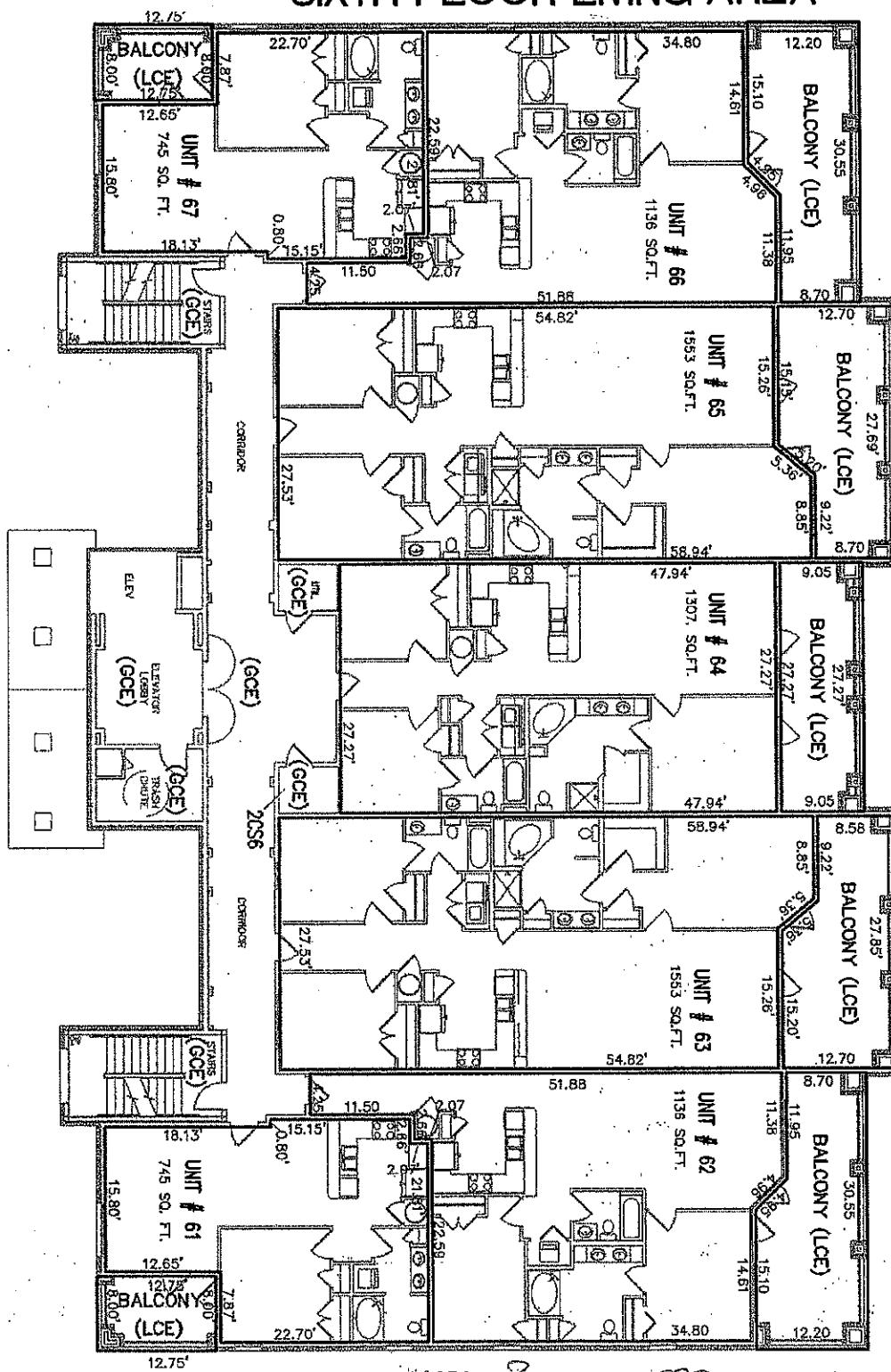


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 2  
SIXTH FLOOR LIVING AREA

101 WEST BANK

(GCE)—DENOTES GENERAL COMMON ELEMENT  
(LCE)—DENOTES LIMITED COMMON ELEMENT



Willis - Sherman Associates, Inc.



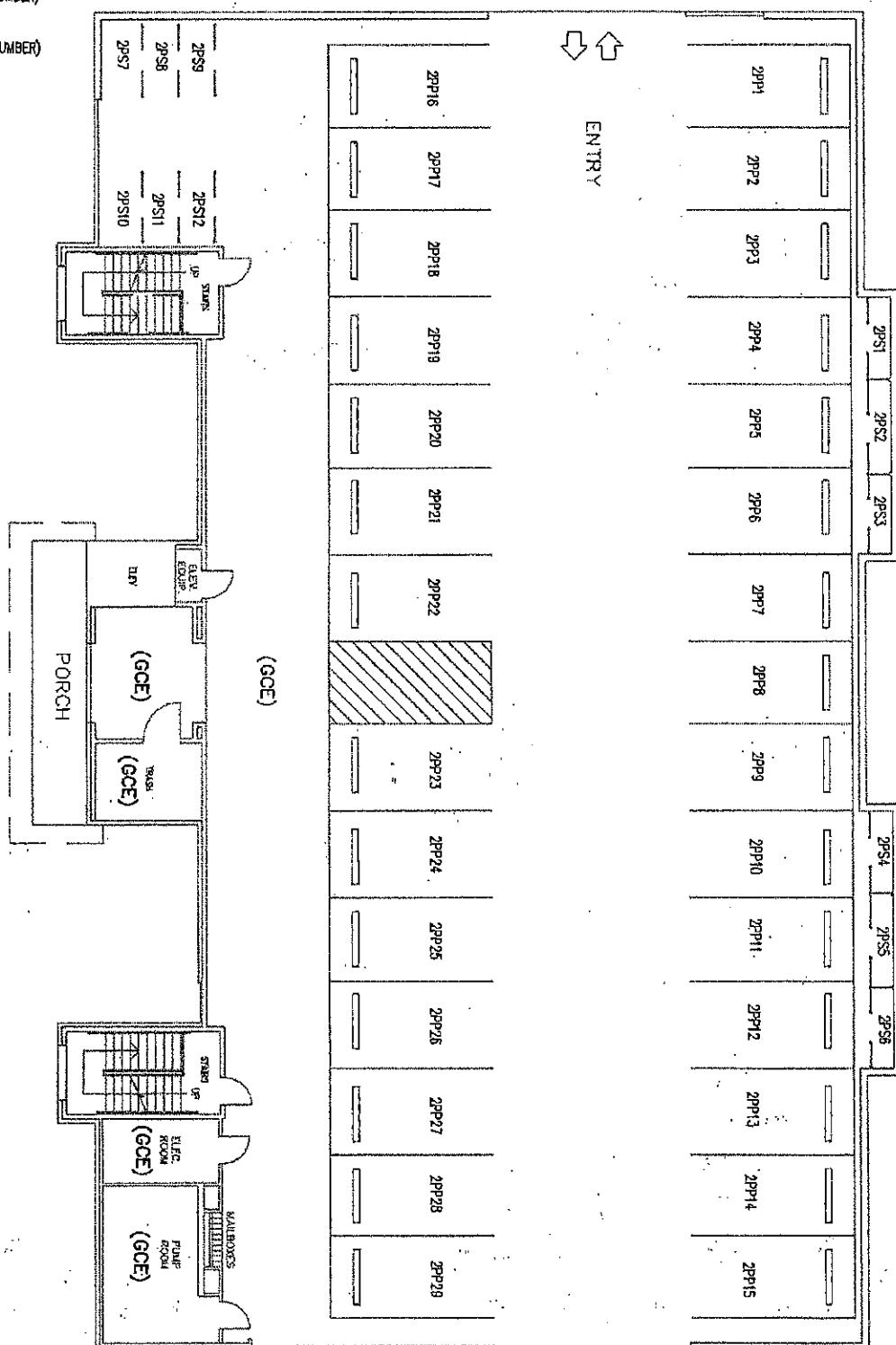
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(830) 693-3566 FAX (830) 693-5382

NOTES:

1. ALL PARKING AND STORAGE SPACES SHOWN HEREON ARE LIMITED COMMON ELEMENTS
2. TYPICAL PARKING SPACE LABEL DEFINITION:  
2 (BUILDING 2) P (PODIUM) P (PARKING) 1 (SPACE NUMBER)
3. TYPICAL STORAGE SPACE LABEL DEFINITION:  
2 (BUILDING 2) P (PODIUM) S (STORAGE) 1 (SPACE NUMBER)
4. TYPICAL PARKING SPACE DIMENSION = 9.0' X 18.0'
5. TYPICAL STORAGE SPACE DIMENSION  
2PS1 THRU 2PS5 = 2.5' X 9.5'  
2PS7 THRU 2PS12 = 4.0' X 8.0'

APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM

BUILDING 2  
PODIUM PARKING/STORAGE



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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM

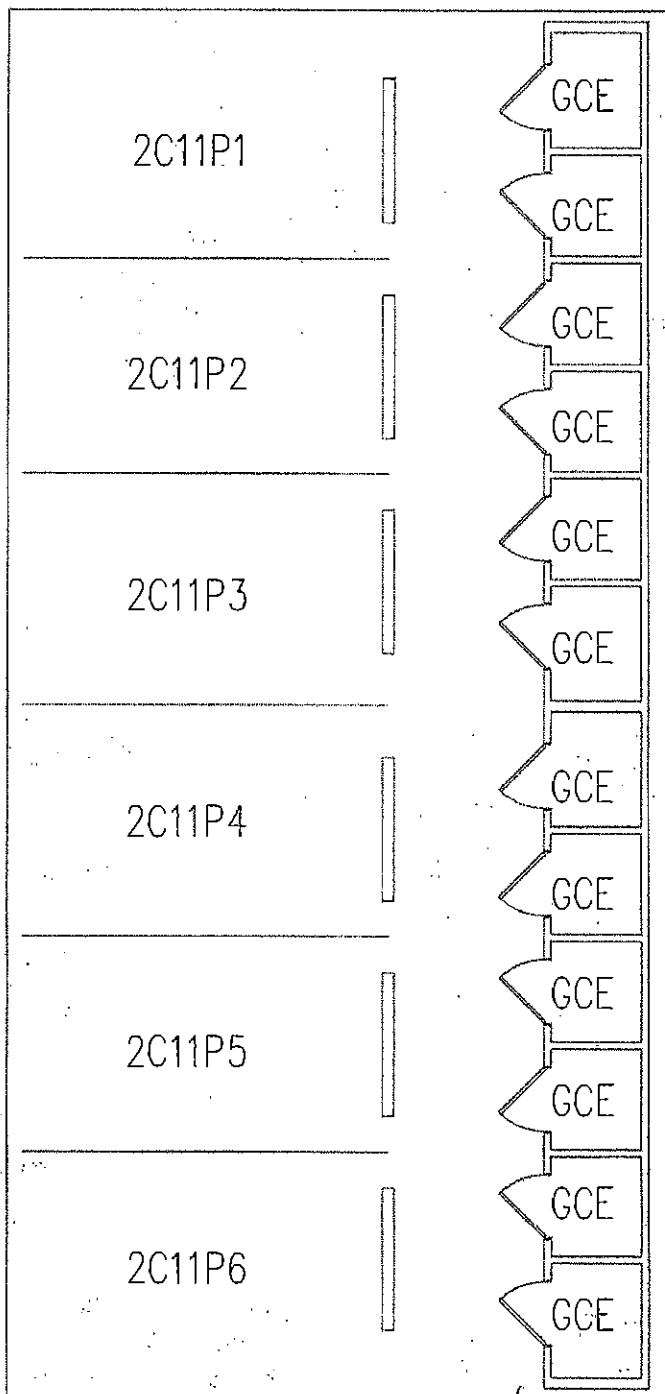
BUILDING 2

CARPORT C11 PARKING/STORAGE

NOTES:

1. ALL PARKING SPACES SHOWN HEREON ARE LIMITED COMMON ELEMENTS
2. ALL STORAGE SPACES SHOWN HEREON ARE GENERAL COMMON ELEMENTS
3. TYPICAL PARKING SPACE LABEL DEFINITION:  
2 (BUILDING 2) C11 (CARPORT TYPE) P (PARKING) 1 (SPACE NUMBER)
4. TYPICAL PARKING SPACE DIMENSION = 9.0' X 18.0'
5. TYPICAL STORAGE SPACE DIMENSION  
END STORAGE SPACES = 3.75' X 4.75'  
INTERIOR STORAGE SPACES = 3.75' X 4.25'

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VOL. 3 PAGE 384

Willis-Sherman Associates, Inc.



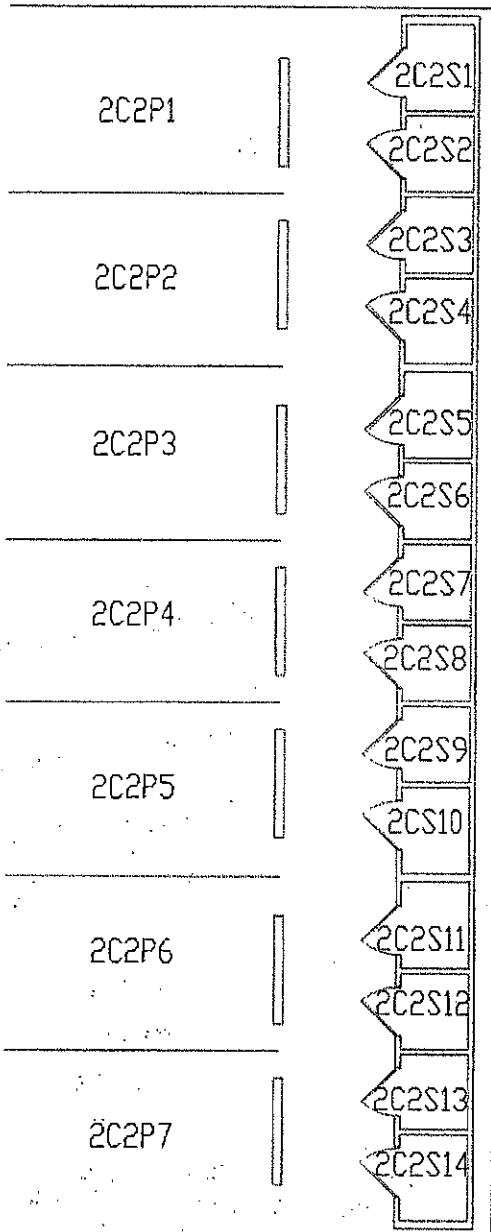
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NOTES:

1. ALL PARKING AND STORAGE SPACES SHOWN HEREON ARE LIMITED COMMON ELEMENTS
2. TYPICAL PARKING SPACE LABEL DEFINITION:  
2 (BUILDING 2) C2 (CARPORT TYPE) P (PARKING) 1 (SPACE NUMBER)
3. TYPICAL STORAGE SPACE LABEL DEFINITION:  
2 (BUILDING 2) C2 (CARPORT TYPE) S (STORAGE) 1 (SPACE NUMBER)
4. TYPICAL PARKING SPACE DIMENSION = 9.0' X 18.0'
5. TYPICAL STORAGE SPACE DIMENSION  
2C2S1 AND 2C2S14 = 3.75' X 4.75'  
2C2S2 THRU 2C2S13 = 3.75' X 4.25'

APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 2  
CARPORT C2 PARKING/STORAGE

101  
WEST  
BANK



**APPENDIX "D"**  
**THE WATERS AT**  
**HORSESHOE BAY**  
**RESORT CONDOMINIUM**  
**BUILDING 3**

Willis-Sherman Associates, Inc.

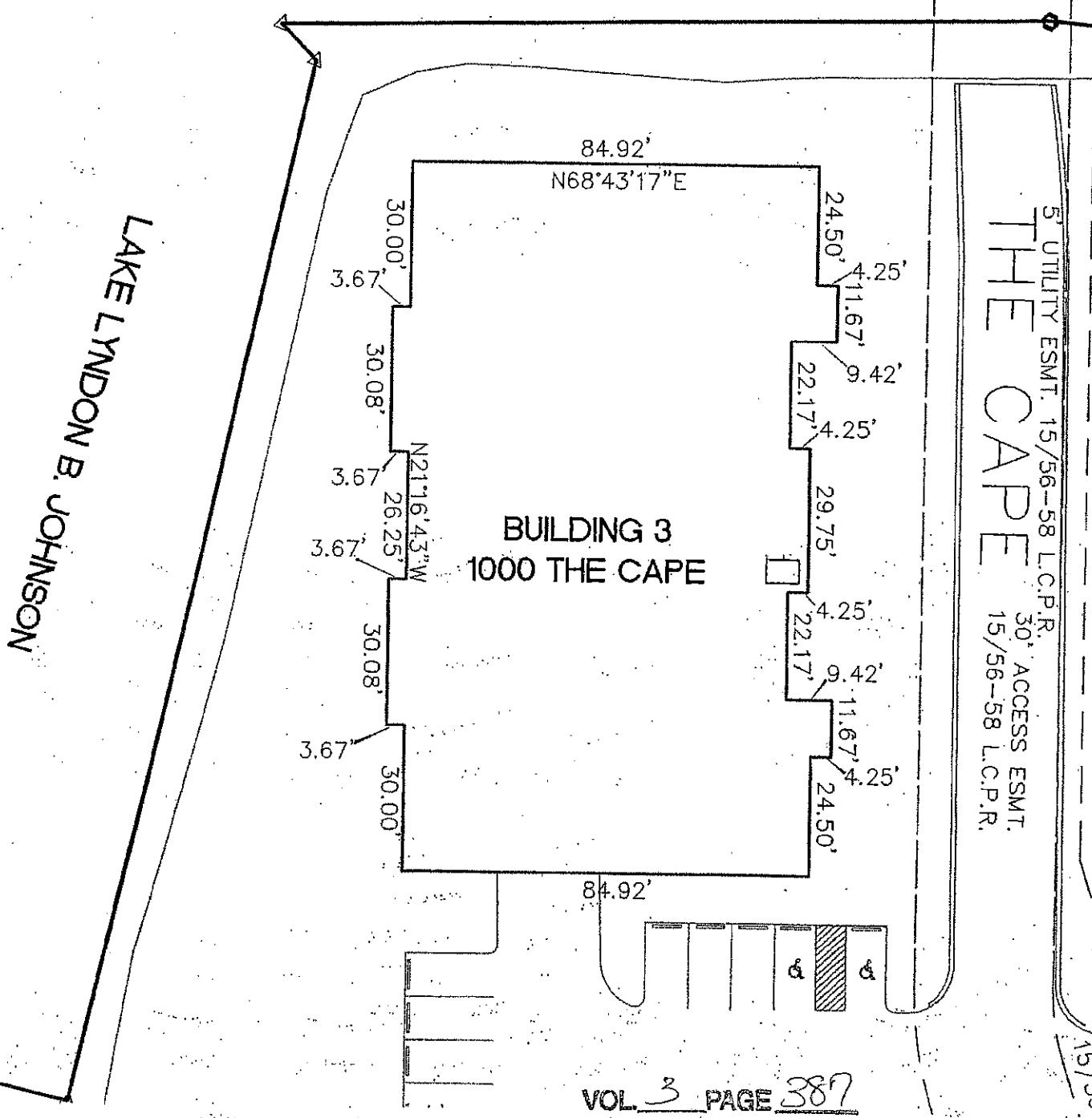


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## APPENDIX "D"

### THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM

#### BUILDING 3



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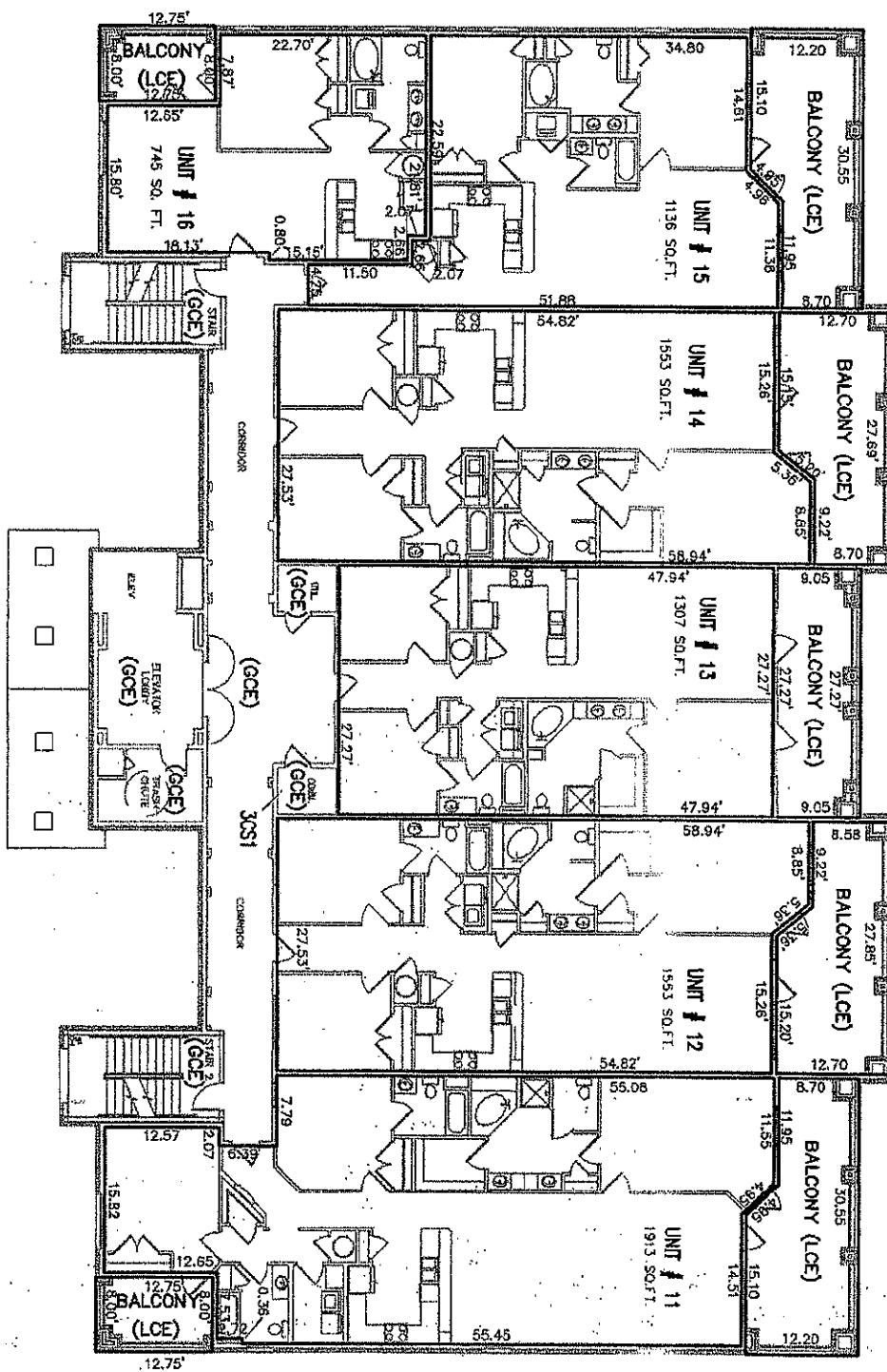


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 3  
FIRST FLOOR LIVING AREA

1000 THE CAPE

(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT



Willis - Sherman Associates, Inc.

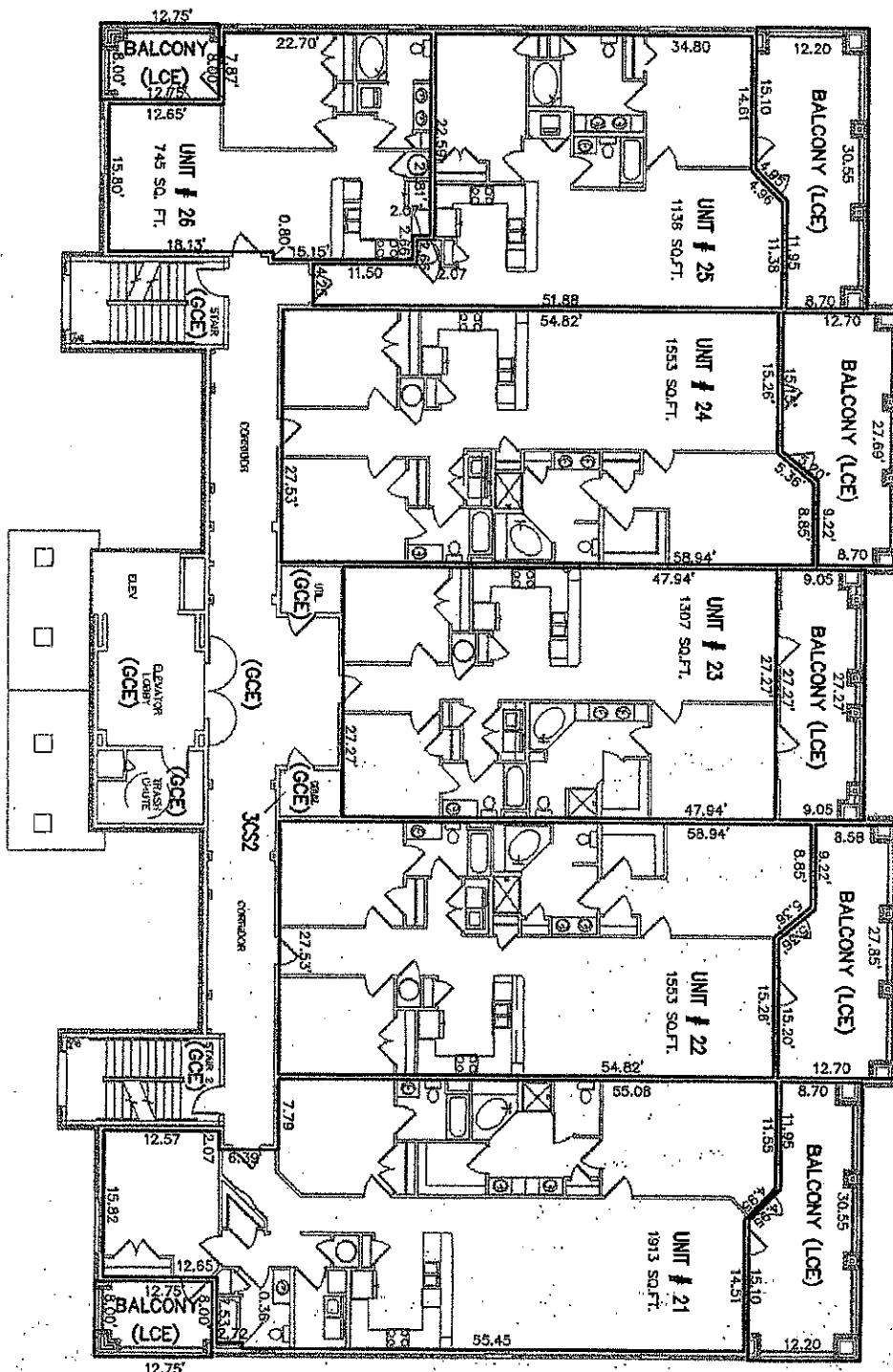


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 3  
SECOND FLOOR LIVING AREA

# 1000 THE CAPE

(GCE)–DENOTES GENERAL COMMON ELEMENT  
(LOE)–DENOTES LIMITED COMMON ELEMENT



Willis - Sherman Associates, Inc.



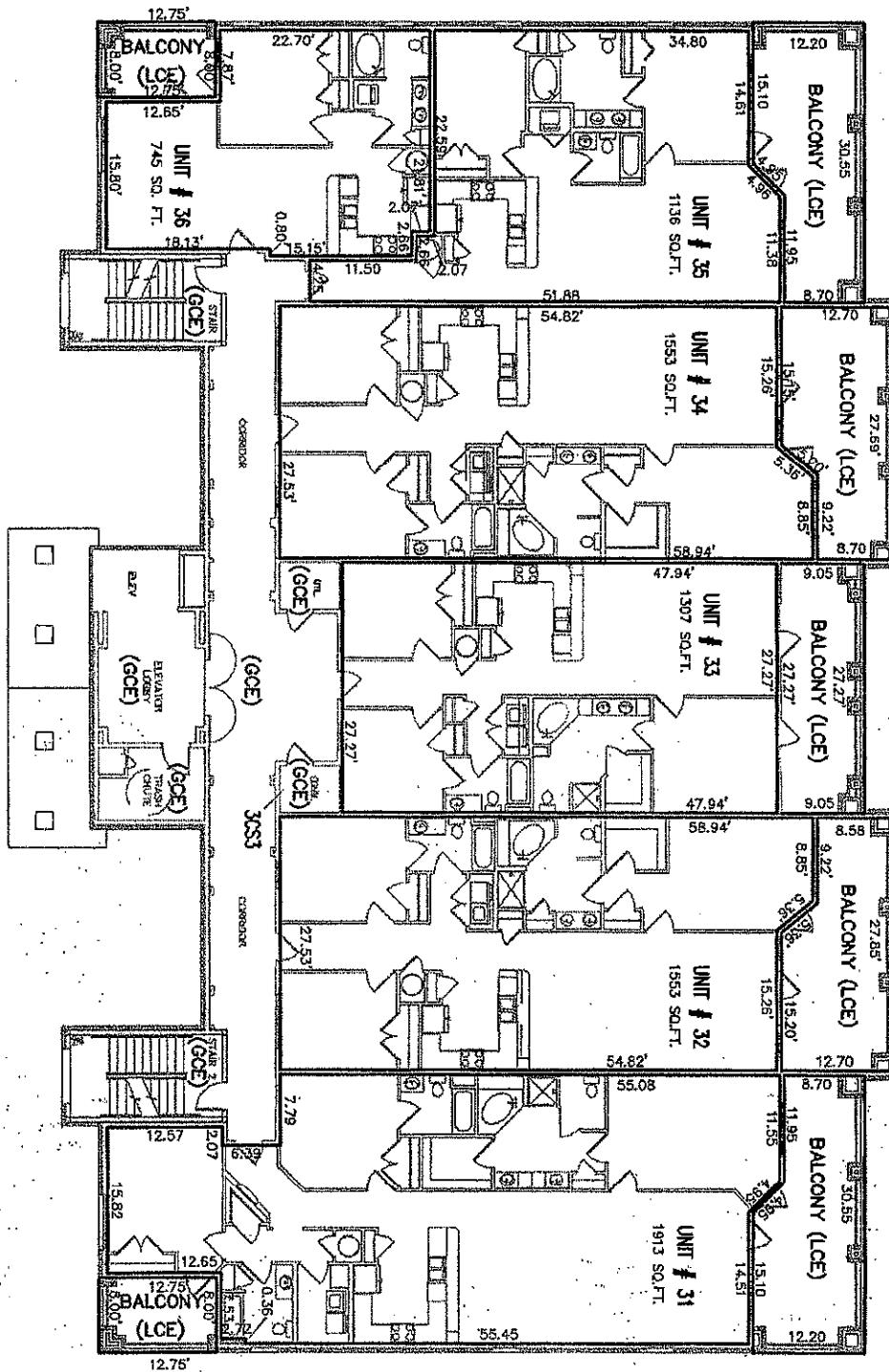
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FAX (830) 693-5362

APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 3  
THIRD FLOOR LIVING AREA

1000 THE CAPE

(GCE)—DENOTES GENERAL COMMON ELEMENT  
(LCE)—DENOTES LIMITED COMMON ELEMENT



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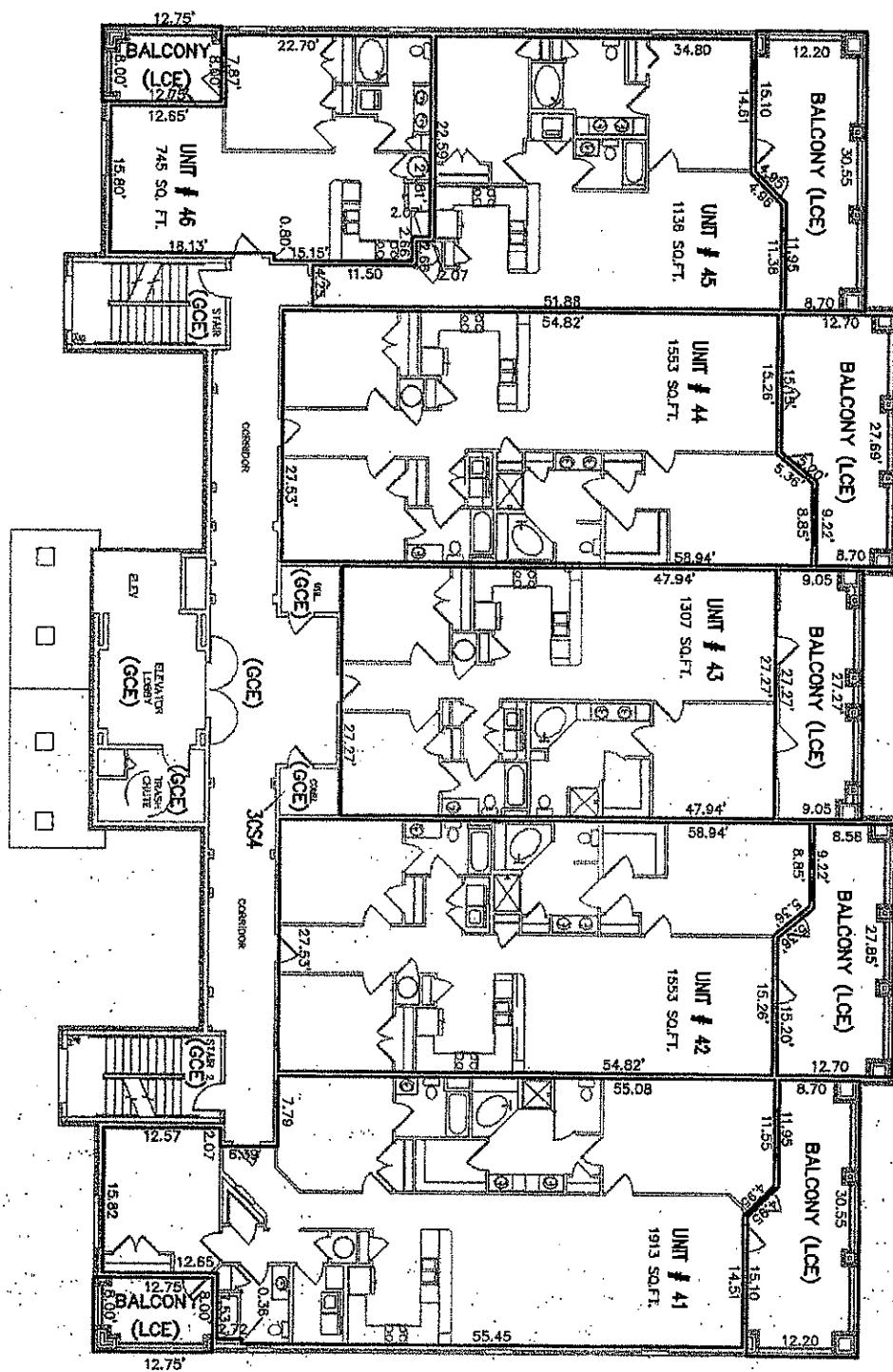


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 3  
FOURTH FLOOR LIVING AREA

(GCE)---DENOTES GENERAL COMMON ELEMENT  
(LCE)---DENOTES LIMITED COMMON ELEMENT

THE  
CAPTAIN



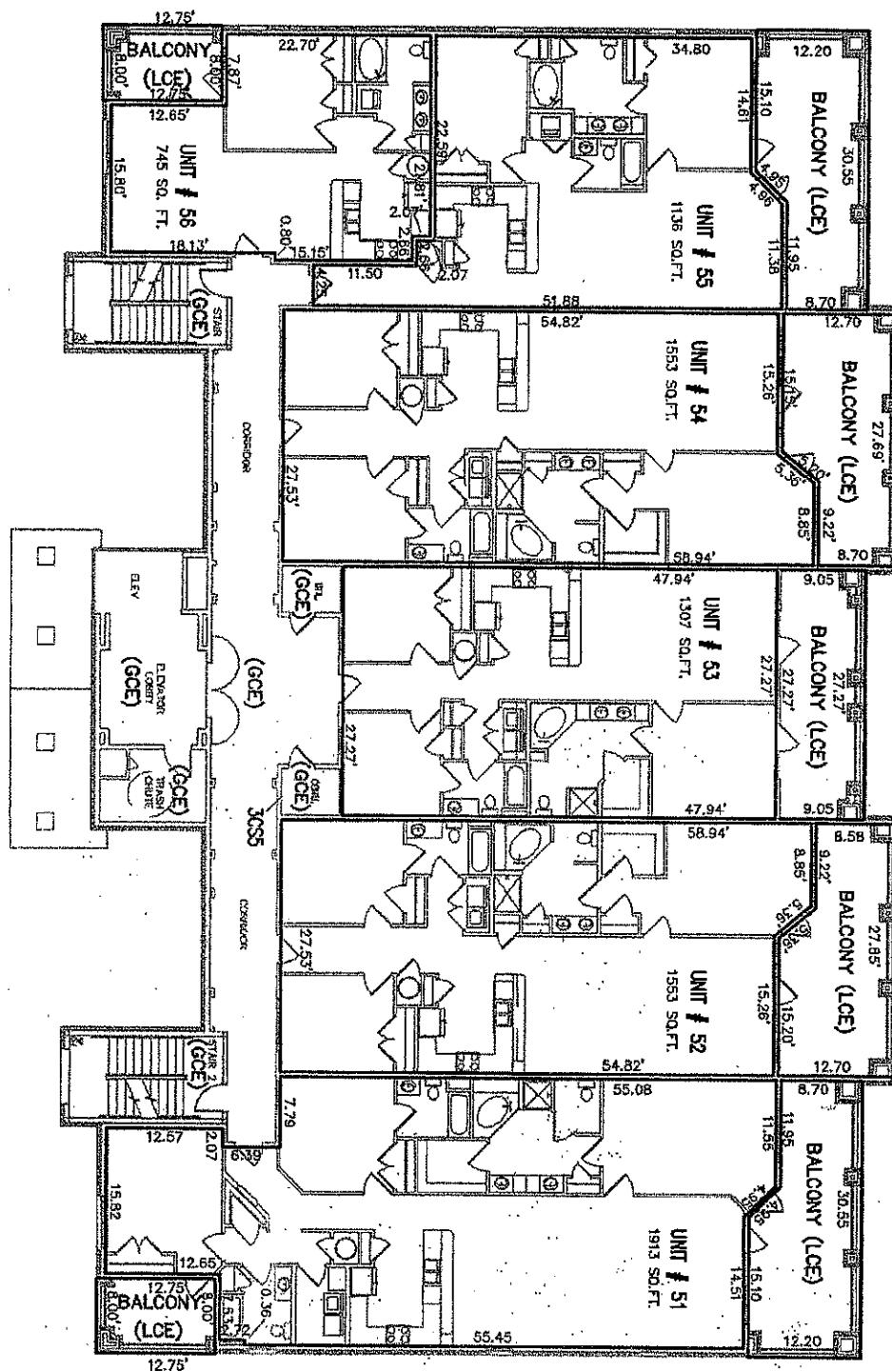
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## APPENDIX "D"

# THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM BUILDING 3 FIFTH FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

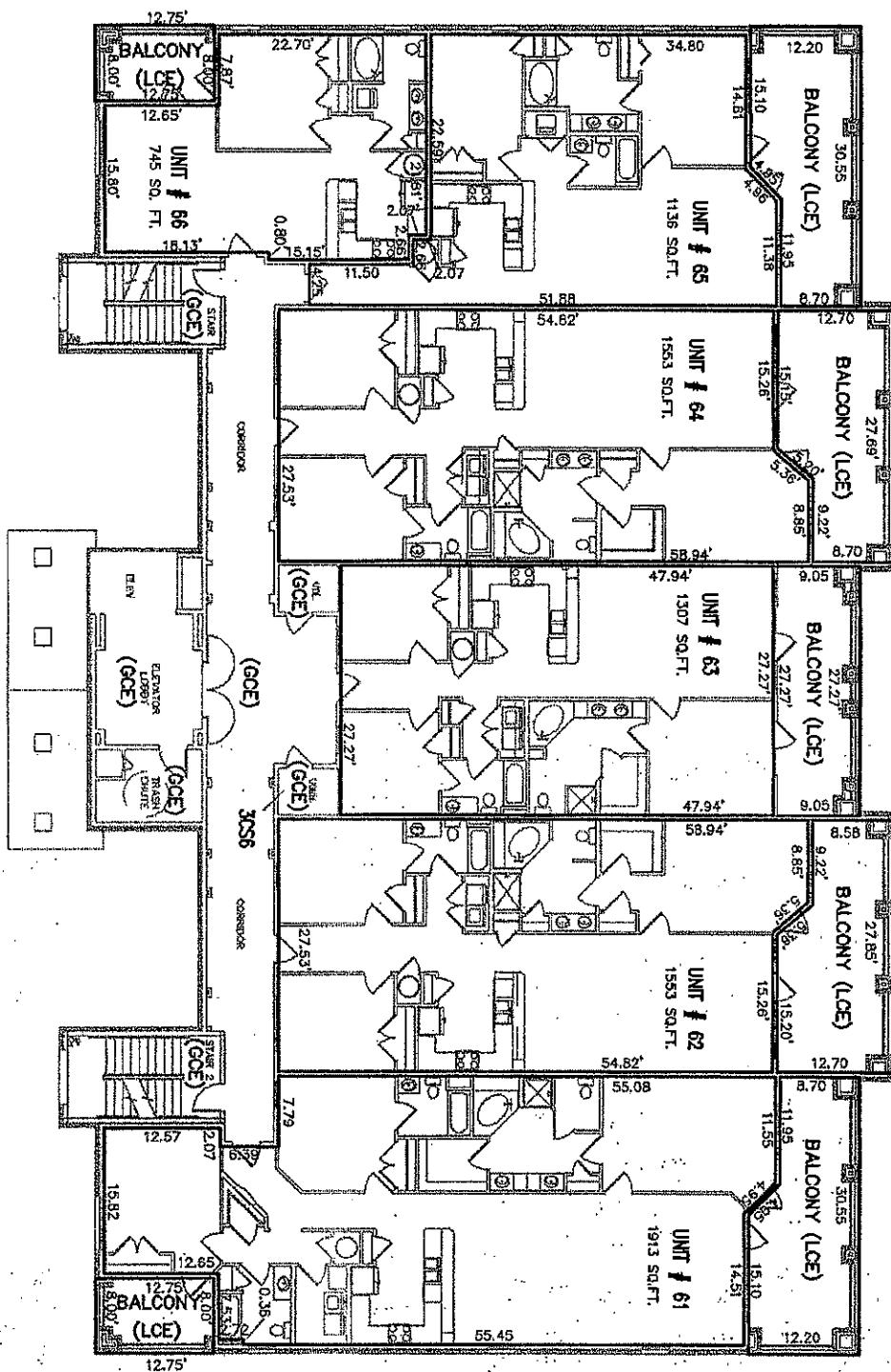
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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 3  
SIXTH FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

1000 THE CAPE

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NOTES:

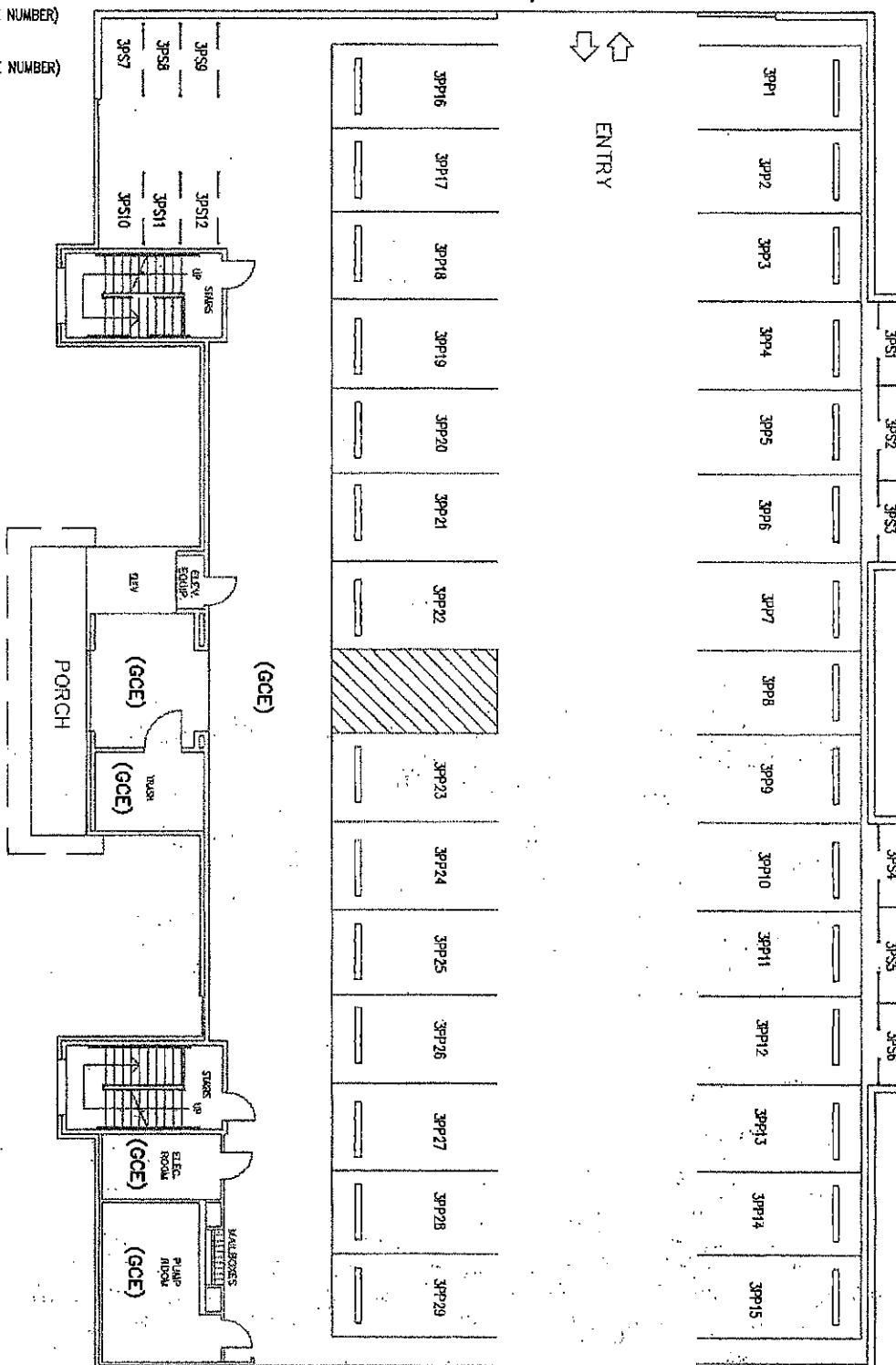
1. ALL PARKING AND STORAGE SPACES SHOWN HEREON ARE LIMITED COMMON ELEMENTS
2. TYPICAL PARKING SPACE LABEL DEFINITION:  
3 (BUILDING 3) P (PODIUM) P (PARKING) 1 (SPACE NUMBER)
3. TYPICAL STORAGE SPACE LABEL DEFINITION:  
3 (BUILDING 3) P (PODIUM) S (STORAGE) 1 (SPACE NUMBER)
4. TYPICAL PARKING SPACE DIMENSION = 9.0' X 18.0'
5. TYPICAL STORAGE SPACE DIMENSION:  
3PS1 THRU 3PS8 = 2.5' X 9.5'  
3PS7 THRU 3PS12 = 4.0' X 8.0'

1000 THE CAPE

APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM

BUILDING 3

PODIUM PARKING/STORAGE



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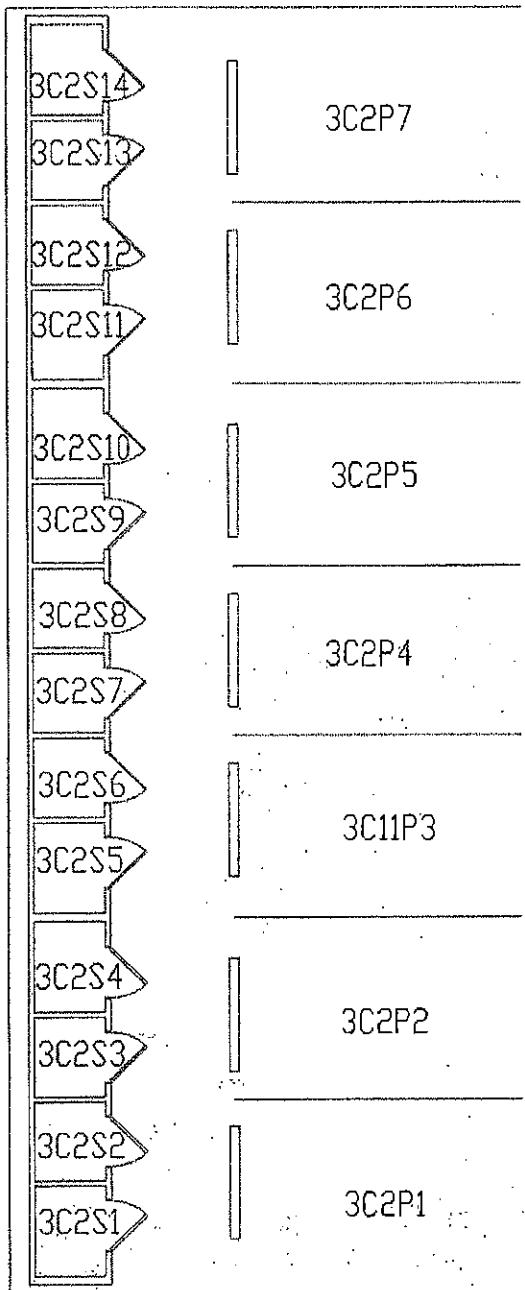


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 3  
CARPORT C2 PARKING/STORAGE

NOTES:

1. ALL PARKING AND STORAGE SPACES SHOWN HEREON ARE LIMITED COMMON ELEMENTS
2. TYPICAL PARKING SPACE LABEL DEFINITION:  
3 (BUILDING 3) C2 (CARPORT TYPE) P (PARKING) 1 (SPACE NUMBER)
3. TYPICAL STORAGE SPACE LABEL DEFINITION:  
3 (BUILDING 3) C2 (CARPORT TYPE) S (STORAGE) 1 (SPACE NUMBER)
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5. TYPICAL STORAGE SPACE DIMENSION  
3C2S1 AND 3C2S14 = 3.75' X 4.75'  
3C2S2 THRU 3C2S13 = 3.75' X 4.25'



VOL. 3 PAGE 395

**APPENDIX "D"**  
**THE WATERS AT**  
**HORSESHOE BAY**  
**RESORT CONDOMINIUM**  
**BUILDING 4**

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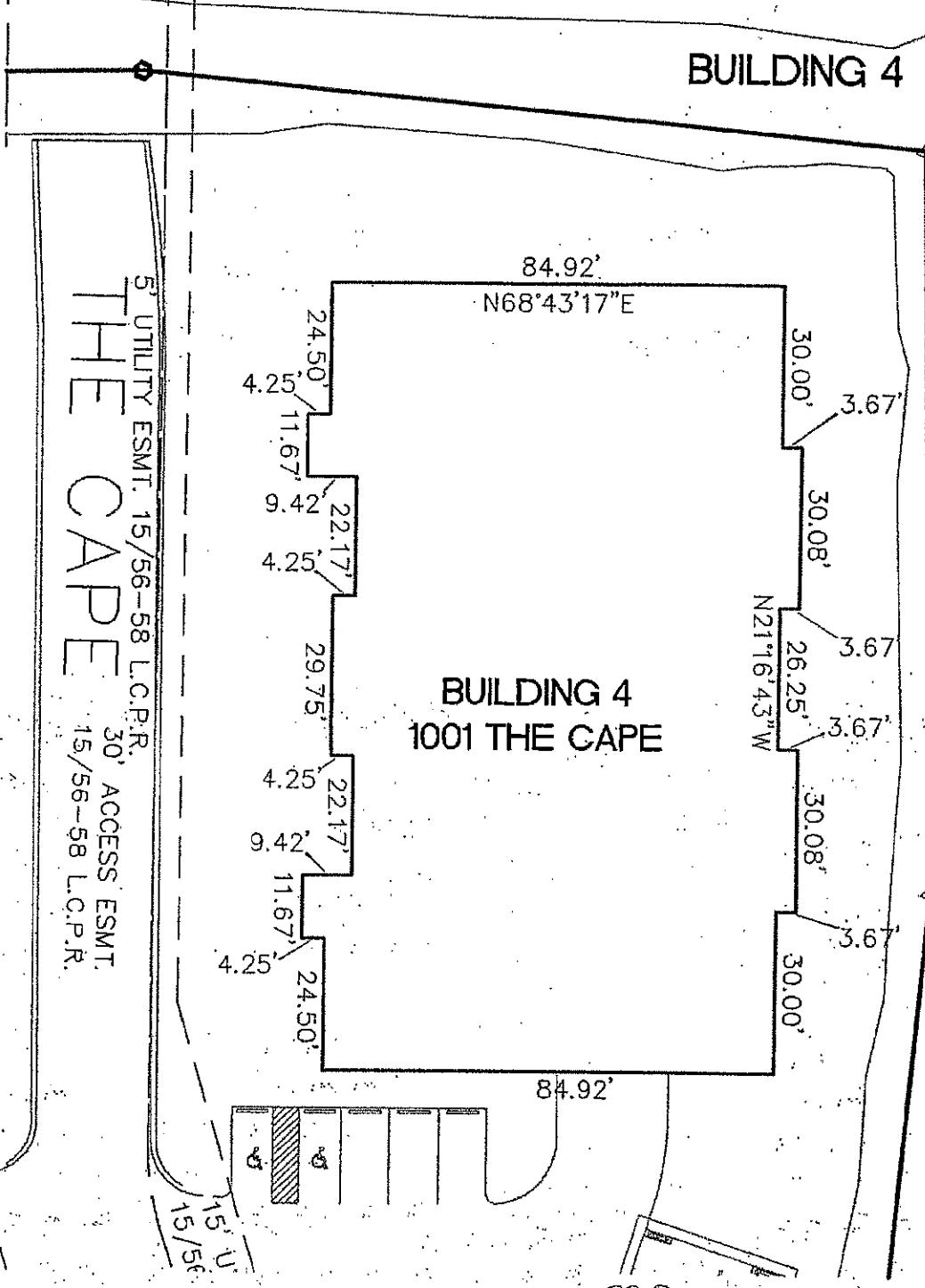
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## APPENDIX "D"

# THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM

## BUILDING 4

## LAKE LYNDON B. JOHNSON



5 UTILITY ESMT. 15/56-58 L.C.P.R.  
THE CAPE 30' ACCESS ESMT. 15/56-58 L.C.P.R.

BUILDING 4  
1001 THE CAPE

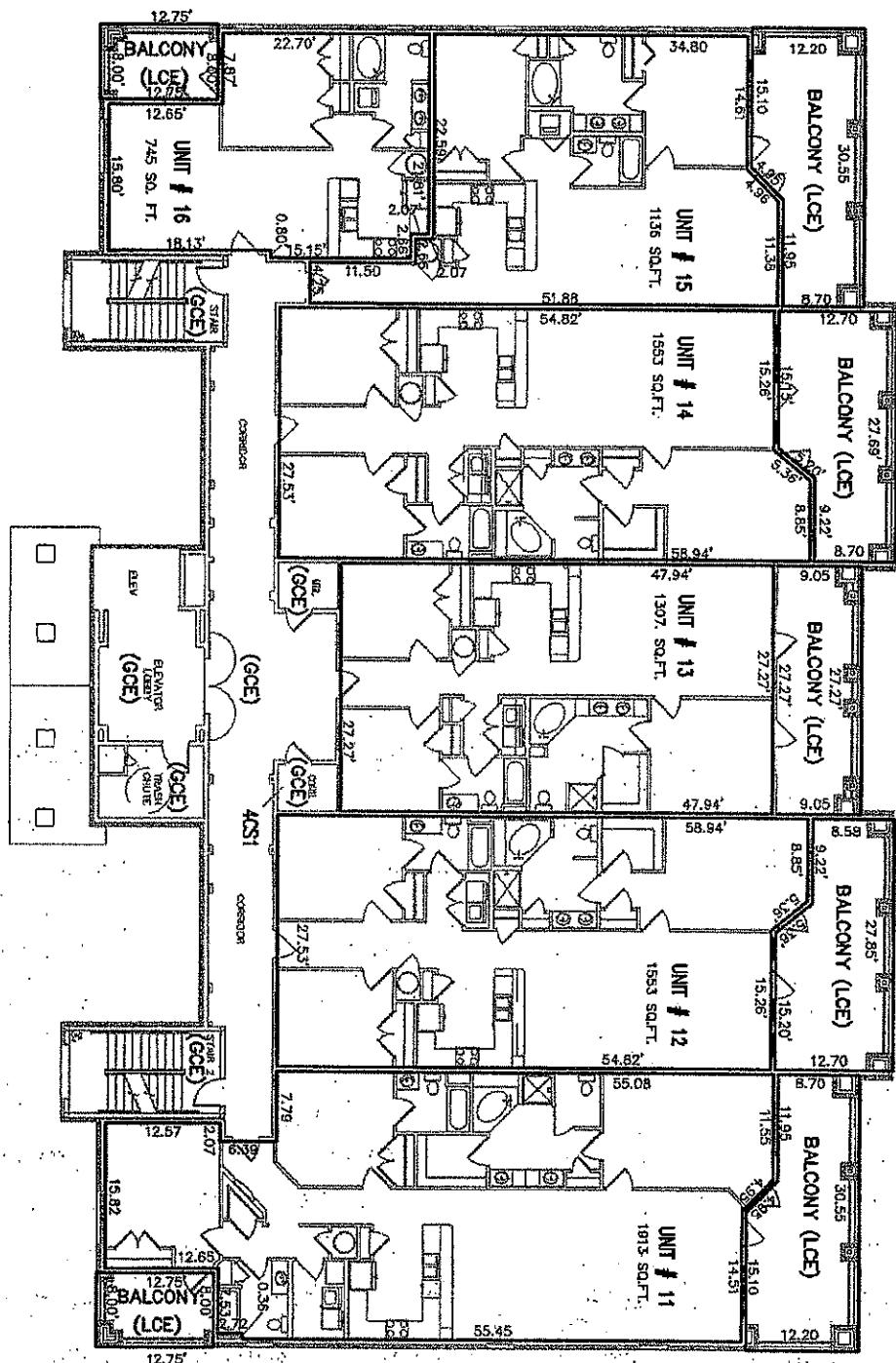
VOL. 3 PAGE 397

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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4  
FIRST FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

1001 THE CAPE

VOL. 3 PAGE 398

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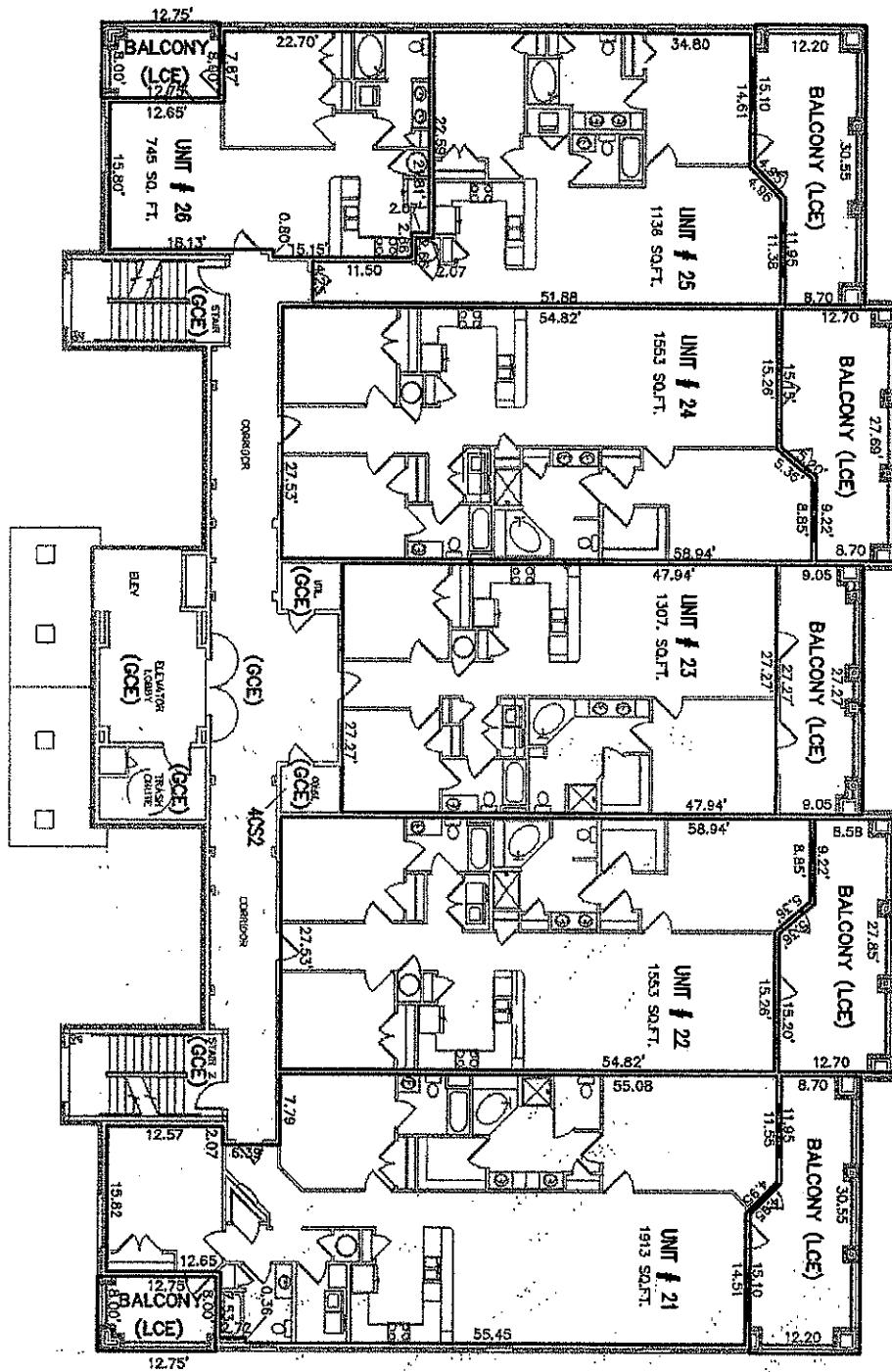


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APPENDIX 'D'  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4  
SECOND FLOOR LIVING AREA

1001 THE CAPE

(GCE)—DENOTES GENERAL COMMON ELEMENT  
(LCE)—DENOTES LIMITED COMMON ELEMENT



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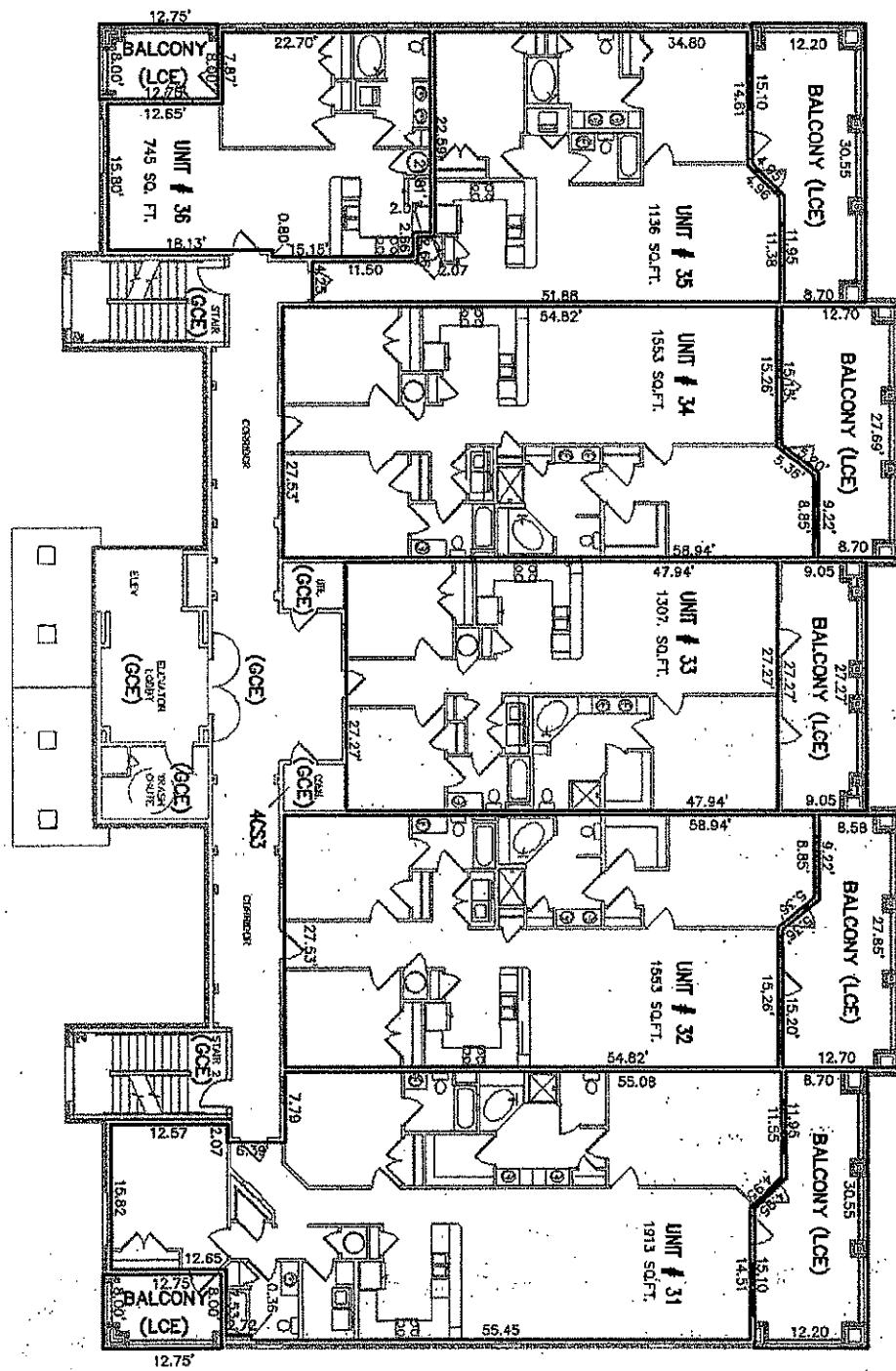


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4  
THIRD FLOOR LIVING AREA

1001 THE CAYDE

(GCE) - DENOTES GENERAL COMMON ELEMENT.  
(LCE) - DENOTES LIMITED COMMON ELEMENT.



VOL 3 PAGE 400

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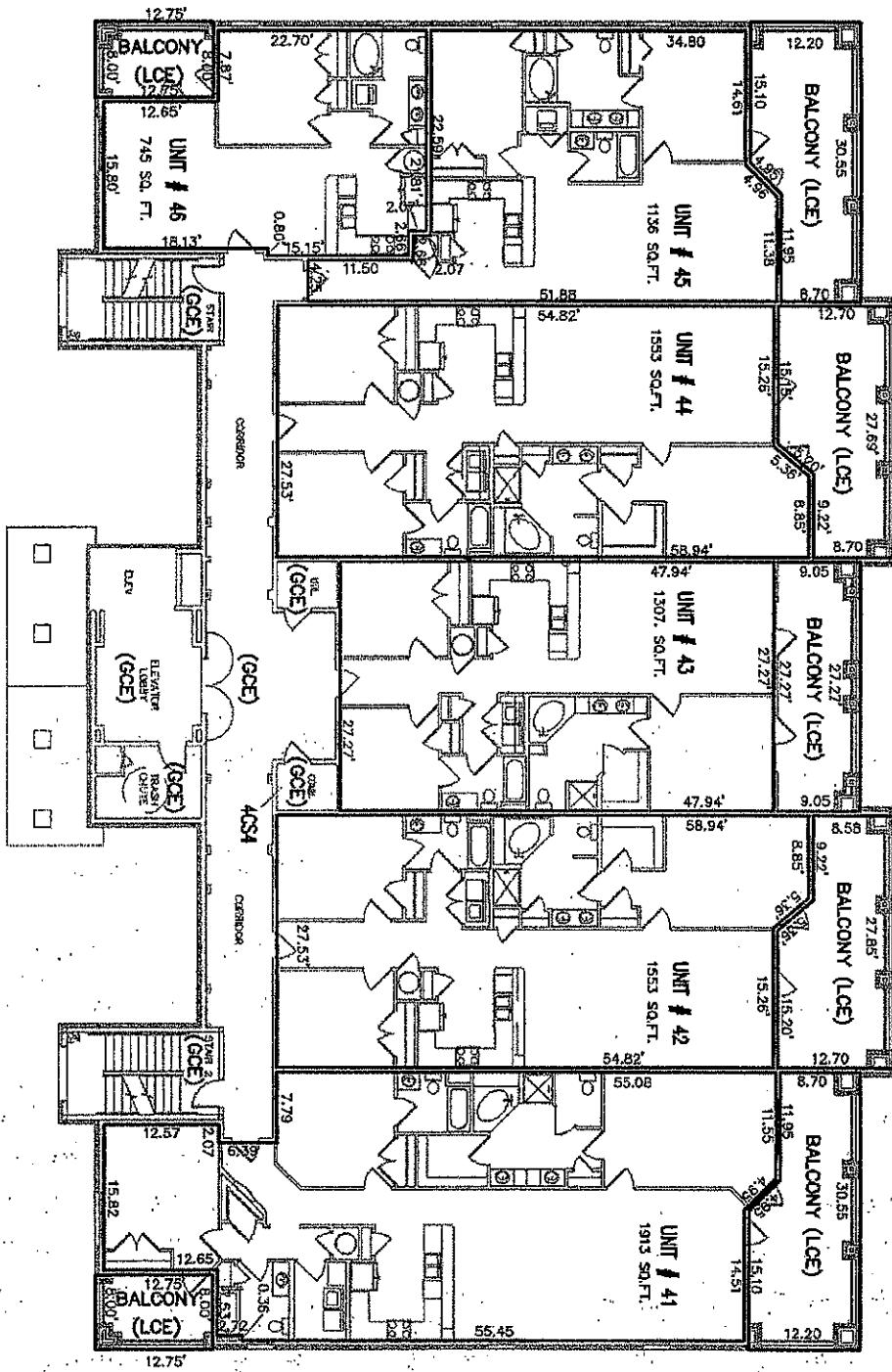


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4  
FOURTH FLOOR LIVING AREA

1001 THE CAPE

(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT



VOL. 3 PAGE 401

Willis-Sherman Associates, Inc.

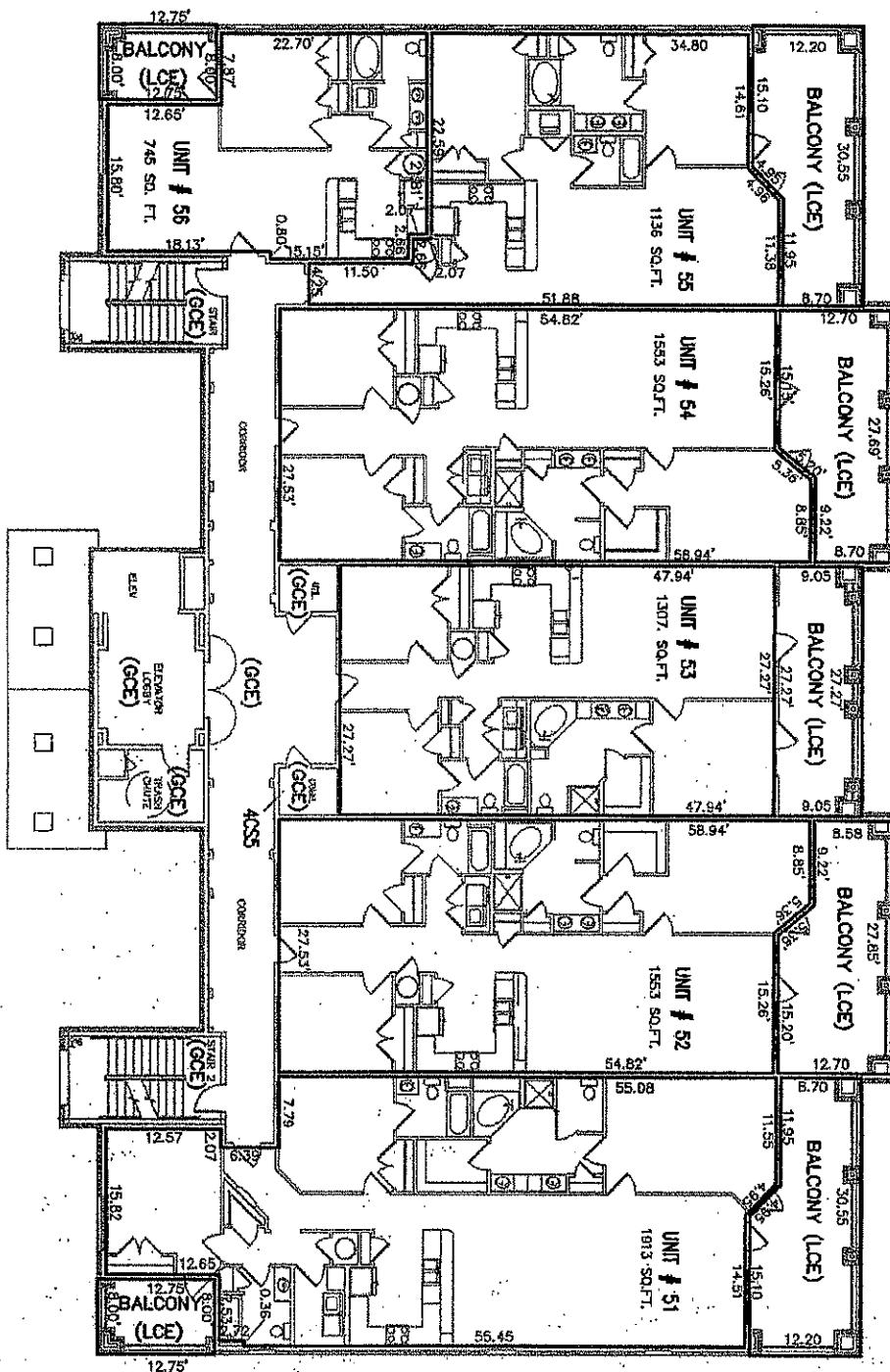


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4  
FIFTH FLOOR LIVING AREA

1001 THE CADE

(GCE)—DENOTES GENERAL COMMON ELEMENT  
(LOE)—DENOTES LIMITED COMMON ELEMENT

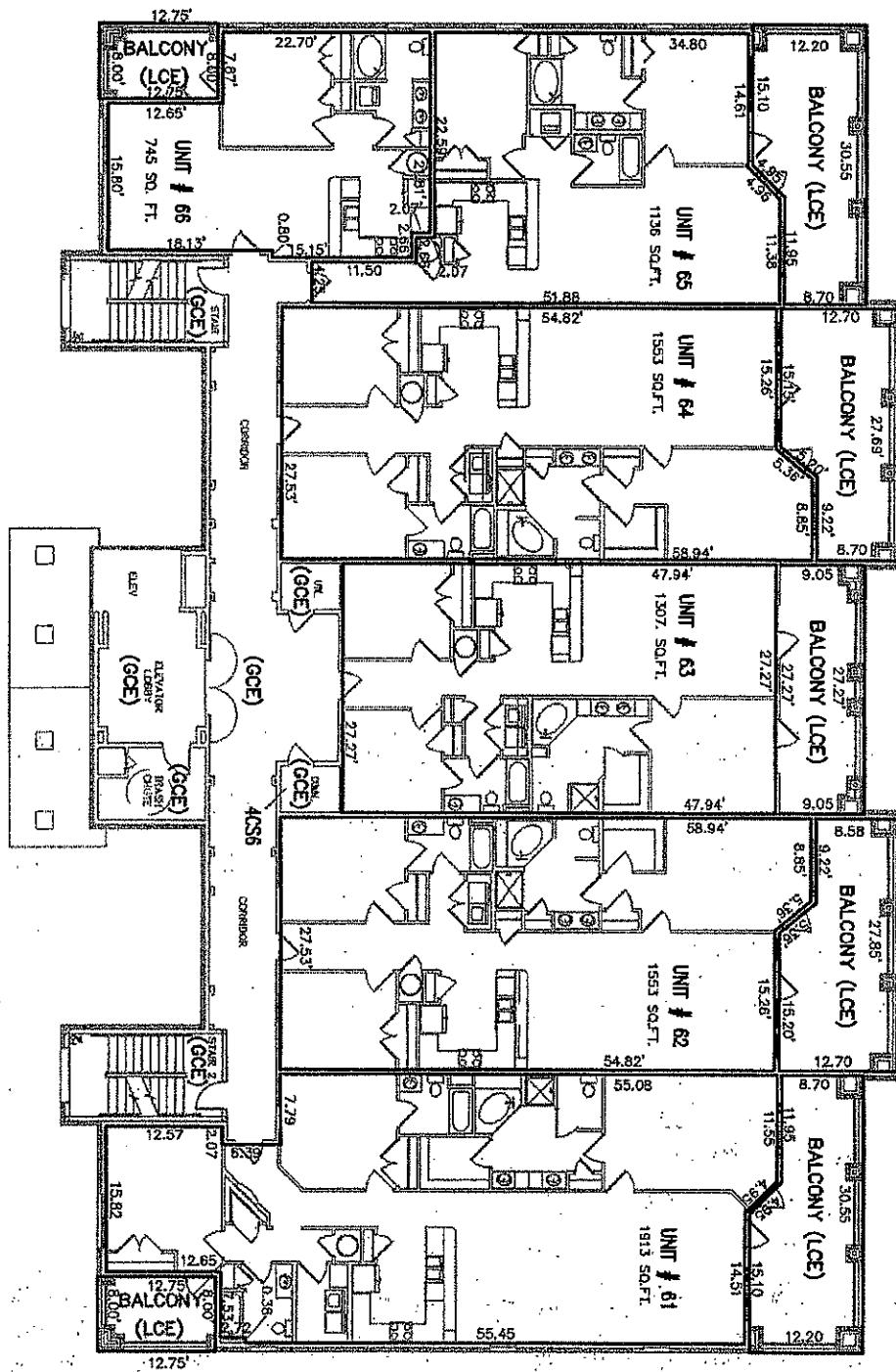


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APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4  
SIXTH FLOOR LIVING AREA



(GCE) - DENOTES GENERAL COMMON ELEMENT  
(LCE) - DENOTES LIMITED COMMON ELEMENT

1001 THE CAPE

VOL. 3 PAGE 403

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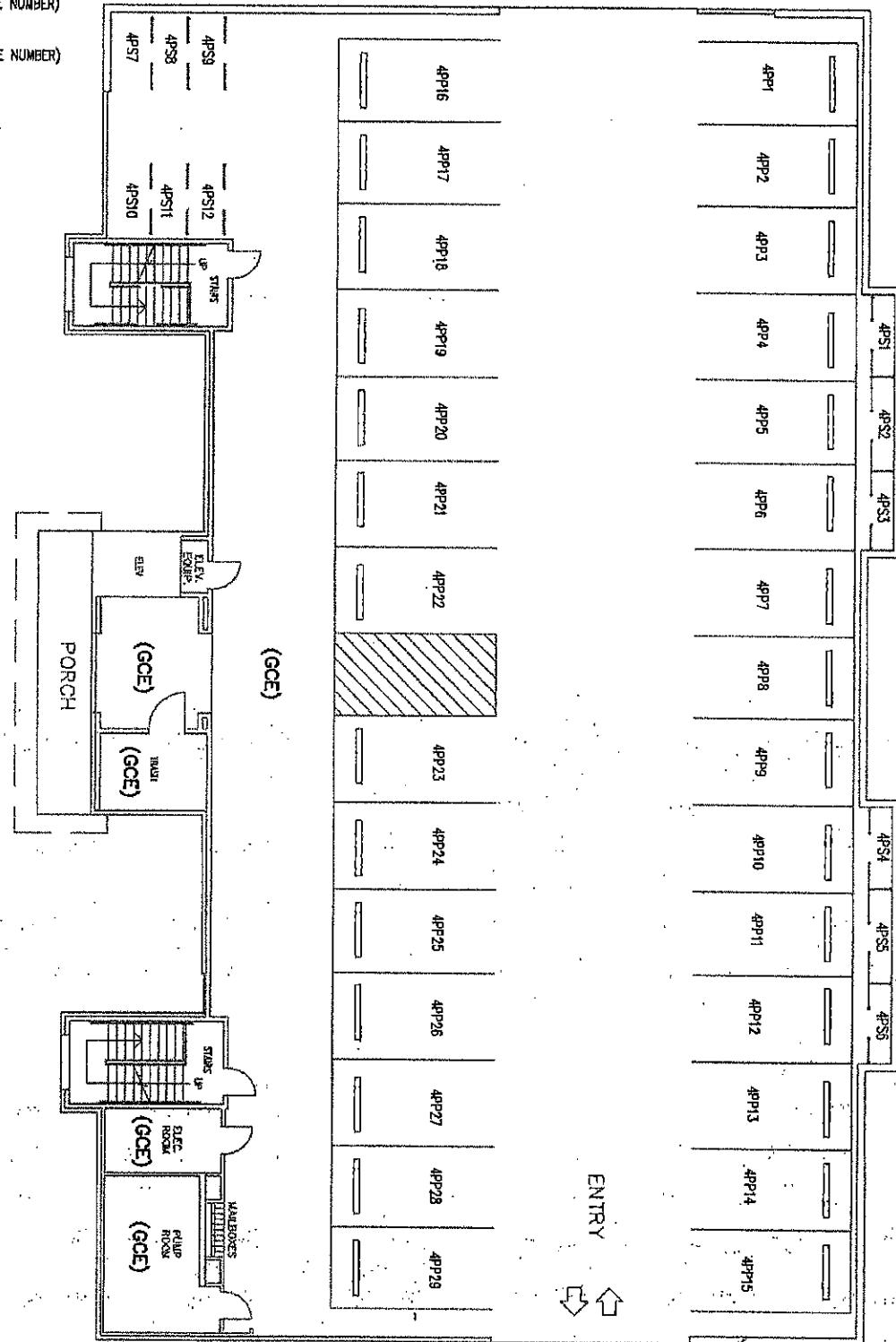
NOTES:

1. ALL PARKING AND STORAGE SPACES SHOWN HEREON ARE LIMITED COMMON ELEMENTS
2. TYPICAL PARKING SPACE LABEL DEFINITION:  
4 (BUILDING 4) P (PODIUM) P (PARKING) 1 (SPACE NUMBER)
3. TYPICAL STORAGE SPACE LABEL DEFINITION:  
4 (BUILDING 4) P (PODIUM) S (STORAGE) 1 (SPACE NUMBER)
4. TYPICAL PARKING SPACE DIMENSION = 9.0' X 18.0'
5. TYPICAL STORAGE SPACE DIMENSION  
4PS1 THRU 4PS6 = 2.5' X 9.5'  
4PS7 THRU 4PS12 = 4.0' X 8.0'

APPENDIX "D"  
THE WATERS AT  
HORSESHOE BAY  
RESORT CONDOMINIUM  
BUILDING 4

PODIUM PARKING/STORAGE

1001 THE CAPE



**APPENDIX E**  
**EASEMENTS AND LICENSES**

**THE WATERS AT HORSESHOE BAY RESORT CONDOMINIUM**

E.1. The lien of taxes for the year of Closing not yet due and payable.

E.2. Easement, Covenant and Declaration of Restrictions dated March 15, 1990, recorded in Volume 368, Page 60, Deed Records; and its Amendment recorded in Volume 665, Page 331, Official Public Records of Real Property, Llano County, Texas, relocated pursuant to recordation of Horseshoe Bay Plat No. 64.3 in Plat Book 15, Pages 56 - 58 and removal of the existing pavement. Assigned to Centex Homes by Assignment of Easement executed by Horseshoe Bay Resort, Ltd. dated September 19, 2005 and recorded in Volume 1328, Page 386, Official Public Records of Real Property, Llano County, Texas.

E.3. Declaration of Restriction dated March 1, 1990, recorded in Volume 367, Page 508, Deed Records, Llano County, Texas, and Supplement To Declaration Of Restriction dated October 1, 1992, recorded in Volume 464, Page 84, Official Public Records of Real Property, Llano County, Texas.

E.4. Easement for flowage and inundation granted to LCRA by instrument recorded in Volume 80, Page 496, Deed Records of Llano County, Texas, as noted on survey dated June 30, 2005, prepared by Donald Sherman, R.P.L.S. No. 1877, Willis Sherman Associates, Inc. Job Nos. 11637GRID, 11638GRID and 11639GRID.

E.5. Reservation of one half of all mines of oil, gas and other minerals in, on or under or that may be produced from the herein described property, together with all rights relating thereto, express or implied, reserved by Marie Lupton, et al, in instrument recorded in Volume 171, Page 288, and Volume 176, Page 91, Deed Records of Llano County, Texas.

E.6. Easement granted to Pedernales Electric Cooperative by instruments recorded in Volume 179, Page 675, and Volume 190, Page 161 and Page 166 all in Llano County Deed Records, as noted on survey dated June 30, 2005, prepared by Donald Sherman, R.P.L.S. No. 1877, Willis Sherman Associates, Inc. Job Nos. 11637GRID, 11638GRID and 11639GRID.

E.7. One half royalty interest in and to all oil, gas and other minerals in, on, under or that may be produced from the herein described property, together with all rights relating thereto, express or implied, reserved by Lake LBJ Improvement Corp., in instrument of record in Volume 176, Page 122, Llano County Deed Records.

E.8. Subject to Lake LBJ Municipal Utility District by instrument of record in Volume 180, Page 129, and its Amendment of record in Volume 219, Page 183, both in Deed Records of Llano County, Texas, and Amendment recorded in Volume 3, Page 661, Water Records, Llano County, Texas; and subject to Schedule of Services and Rates recorded in Volume 3, Page 677, Water Records, Llano County, Texas.

E.9. Contract between Lower Colorado River Authority, Wayne, Hurd and Hurd Properties, Inc., set out in Assignments recorded in Volume 319, Page 126 and Memorandum of Contract recorded in Volume 319, Page 137, Deed Records, Llano County, Texas, and unrecorded First Amendment To Contract; and Agreement executed by and between Wayne Hurd, Hurd Properties, Inc., Lake Lyndon B. Johnson Improvement Corporation, Assignors, and Lower Colorado River Authority, notice of which is given by Assignment to Hurd Investments Corporation, Lake LBJ Investment Corp., Norman C. Hurd, Individually and as Trustee #1 recorded in Volume 319, Page 154, Deed Records, Llano County, Texas.

E.10. Amenities Use Agreement dated July 15, 1987, filed for record in Volume 340, Page 171, Volume 340, Page 186, Volume 340, Page 201, of the Deed Records of Llano County, Texas.

E.11. Mineral Reservations, Easements, etc., set out in deed recorded in Volume 1265, Page 852, Official Public Records of Real Property, Llano County, Texas. **VOL. 3 PAGE 405**

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

E.12. Redesignation And Withdrawal of Property From Horseshoe Bay Subdivision recorded in Volume 1291, Page 92, Official Public Records of Real Property, Llano County, Texas.

E.13. Agreement Establishing Rights, Uses And Restrictions executed by and between Horseshoe Bay Resort, Ltd., and High Circle North Hotel Associates, Ltd., recorded in Volume 1216, Page 127, Official Public Records of Real Property, Llano County, Texas.

E.14. Building setback lines and easements as shown on Horseshoe Bay Plat No. 64.3 recorded in Volume 15, Pages 56 58, Plat Records, Llano County, Texas, as set out on one or more of the surveys dated June 30, 2005, prepared by Donald Sherman, R.P.L.S. No. 1877, Willis Sherman Associates, Inc. Job Nos. 11637GRID, 11638GRID and 11639GRID:

E.15. Access Easement and Agreement by and between Centex Homes, a Nevada general partnership d/b/a Centex Destination Properties, and Horseshoe Bay Resort, LTD, dated September 19, 2005, recorded in Volume 1328, Page 400, Official Public Records of Real Property of Llano County, Texas.

E.16. Pedestrian Access Easement and Agreement by and between Centex Homes, a Nevada general partnership d/b/a Centex Destination Properties, and Terraflin, Ltd., dated September 19, 2005, recorded in Volume 1328, Page 412, Official Public Records of Real Property of Llano County, Texas.

E.17. Underground electric distribution easement granted in Replacement Utility Easement by Terraflin, Ltd. to Pedernales Electric Cooperative, Inc. dated September 19, 2005, filed September 20, 2005 and recorded in Volume 1328, Page 336, Official Public Records of Llano County, Texas.

E.18. Underground electric distribution easement granted in Replacement Utility Easement by Horseshoe Bay Resort, Ltd. to Pedernales Electric Cooperative, Inc. dated September 19, 2005, filed September 20, 2005 and recorded in Volume 1328, Page 344, Official Public Records of Llano County, Texas.

E.19. Replacement Utility Easement by and between Centex Homes, a Nevada general partnership d/b/a Centex Destination Properties, and Pedernales Electric Cooperative, Inc. dated April 14, 2006, filed April 20, 2006 and recorded in Volume 1360, Page 932, Official Public Records of Llano County, Texas.

VOL. 3 PAGE 406

*During the Development Period, Appendix B has priority over the main body of this Declaration.*

**APPENDIX F**  
**ASSIGNMENT OF PARKING SPACES AND STORAGE UNITS- BUILDING 2**

THE WATERS AT HORSESHOE BAY  
 RESORT CONDOMINIUM

PHASE ONE

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 17          | 2C11P1               | N/A                 |
| 16          | 2PP1                 | N/A                 |
| 15          | 2PP2                 | 2C2S8               |
| 14          | 2PP8                 | 2C2S9               |
| 13          | 2PP9                 | 2C2S10              |
| 12          | 2C2P1                | N/A                 |
| 11          | 2C2P2                | N/A                 |
| 27          | 2C11P2               | N/A                 |
| 26          | 2PP15                | N/A                 |
| 25          | 2PP16                | 2C2S12              |
| 24          | 2PP22                | 2C2S13              |
| 23          | 2PP23                | 2C2S14              |
| 22          | 2PP29                | N/A                 |
| 21          | 2C11P3               | N/A                 |

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 37          | 2C2P3                | N/A                 |
| 36          | 2PP3                 | 2C2S3               |
| 35          | 2PP4                 | 2C2S1               |
| 34          | 2PP5                 | 2C2S2               |
| 33          | 2PP6                 | 2PS10               |
| 32          | 2PP7                 | 2C2S11              |
| 31          | 2C11P4               | N/A                 |
| 47          | 2C2P5                | N/A                 |
| 46          | 2PP10                | 2PS8                |
| 45          | 2PP11                | 2PS7                |
| 44          | 2PP12                | 2PS12               |
| 43          | 2PP13                | 2PS6                |
| 42          | 2PP14                | 2C2S4               |
| 41          | 2C2P4                | N/A                 |

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 57          | 2C11P5               | N/A                 |
| 56          | 2PP28                | 2C2S5               |
| 55          | 2PP27                | 2PS5                |
| 54          | 2PP26                | 2PS9                |
| 53          | 2PP18                | 2C2S7               |
| 52          | 2PP24                | 2C2S6               |
| 51          | 2C11P6               | N/A                 |
| 67          | 2C2P6                | N/A                 |
| 66          | 2PP21                | 2PS11               |
| 65          | 2PP20                | 2PS1                |
| 64          | 2PP25                | 2PS2                |
| 63          | 2PP19                | 2PS3                |
| 62          | 2PP17                | 2PS4                |
| 61          | 2C2P7                | N/A                 |

VOL. 3 PAGE 467

During the Development Period, Appendix B has priority over the main body of this Declaration.

**APPENDIX F**  
**ASSIGNMENT OF PARKING SPACES AND STORAGE UNITS- BUILDING 3**

**THE WATERS AT HORSESHOE BAY  
 RESORT CONDOMINIUM**

**PHASE ONE**

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 16          | 3CP1                 | N/A                 |
| 15          | 3CP7                 | N/A                 |
| 14          | 3PP15                | 3CS14               |
| 13          | 3PP1                 | 3CS13               |
| 12          | 3PP14                | 3CS12               |
| 11          | 3PP25                | 3PS10               |
| 26          | 3CP2                 | N/A                 |
| 25          | 3PP2                 | N/A                 |
| 24          | 3PP13                | 3CS11               |
| 23          | 3PP3                 | 3CS10               |
| 22          | 3PP12                | 3CS9                |
| 21          | 3PP20                | SPS11               |

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 36          | 3CP3                 | N/A                 |
| 35          | 3PP4                 | N/A                 |
| 34          | 3PP11                | 3CS8                |
| 33          | 3PP5                 | 3PS7                |
| 32          | 3PP10                | 3PS6                |
| 31          | 3PP24                | 3PS12               |
| 46          | 3CP4                 | N/A                 |
| 45          | 3PP6                 | N/A                 |
| 44          | 3PP9                 | 3CS5                |
| 43          | 3PP7                 | 3CS4                |
| 42          | 3PP8                 | 3CS3                |
| 41          | 3PP21                | 3CS7                |

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 56          | 3CP5                 | N/A                 |
| 55          | 3PP29                | 3CS2                |
| 54          | 3PP16                | 3CS6                |
| 53          | 3PP28                | 3CS1                |
| 52          | 3PP17                | 3PS5                |
| 51          | 3PP23                | 3PS8                |
| 66          | 3CP6                 | N/A                 |
| 65          | 3PP27                | 3PS4                |
| 64          | 3PP18                | 3PS3                |
| 63          | 3PP26                | 3PS2                |
| 62          | 3PP19                | 3PS1                |
| 61          | 3PP22                | 3PS9                |

**VOL. 3 PAGE 408**

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**APPENDIX F**  
**ASSIGNMENT OF PARKING SPACES AND STORAGE UNITS- BUILDING 4**

**THE WATERS AT HORSESHOE BAY  
 RESORT CONDOMINIUM**

**PHASE ONE**

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 16          | 4CP1                 | N/A                 |
| 15          | 4CP7                 | N/A                 |
| 14          | 4PP15                | 4CS14               |
| 13          | 4PP1                 | 4CS13               |
| 12          | 4PP14                | 4CS12               |
| 11          | 4PP25                | 4PS10               |
| 26          | 4CP2                 | N/A                 |
| 25          | 4PP2                 | N/A                 |
| 24          | 4PP13                | 4CS11               |
| 23          | 4PP3                 | 4CS10               |
| 22          | 4PP12                | 4CS9                |
| 21          | 4PP20                | 4PS11               |

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 36          | 4CP3                 | N/A                 |
| 35          | 4PP4                 | N/A                 |
| 34          | 4PP11                | 4CS8                |
| 33          | 4PP5                 | 4CS7                |
| 32          | 4PP10                | 4CS6                |
| 31          | 4PP24                | 4PS12               |
| 46          | 4CP4                 | N/A                 |
| 45          | 4PP6                 | N/A                 |
| 44          | 4PP9                 | 4CS5                |
| 43          | 4PP7                 | 4CS4                |
| 42          | 4PP8                 | 4PS3                |
| 41          | 4PP21                | 4PS7                |

| <b>Unit</b> | <b>Parking Space</b> | <b>Storage Unit</b> |
|-------------|----------------------|---------------------|
| 56          | 4CP5                 | N/A                 |
| 55          | 4PP29                | 4CS2                |
| 54          | 4PP16                | 4PS6                |
| 53          | 4PP28                | 4CS1                |
| 52          | 4PP17                | 4PS5                |
| 51          | 4PP23                | 4PS8                |
| 66          | 4CP6                 | N/A                 |
| 65          | 4PP27                | 4PS4                |
| 64          | 4PP18                | 4CS3                |
| 63          | 4PP26                | 4PS2                |
| 62          | 4PP19                | 4PS1                |
| 61          | 4PP22                | 4PS9                |

**VOL. 3 PAGE 409**

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**APPENDIX G**  
**GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS**

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Association's Board of Directors may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Association and/or the Board should not use this Guide without taking account of applicable changes in law and practices.

| <b>MAJOR MANAGEMENT &amp; GOVERNANCE FUNCTIONS</b>                                                                                                                                                                                                                                       | <b>Performed by HOA officers or directors</b> | <b>Delegated to HOA employee or agent</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------|
| <b>FINANCIAL MANAGEMENT</b>                                                                                                                                                                                                                                                              |                                               |                                           |
| To adopt annual budget and levy assessments, per Declaration.                                                                                                                                                                                                                            | X                                             |                                           |
| Prepare annual operating budget, periodic operating statements, and year-end statement.                                                                                                                                                                                                  |                                               | X                                         |
| Identify components of the property the HOA is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule for 5, 10, and 20-year periods. Annually update the same. |                                               | X                                         |
| Collect assessments and maintain HOA accounts.                                                                                                                                                                                                                                           |                                               | X                                         |
| Pay HOA's expenses and taxes.                                                                                                                                                                                                                                                            |                                               | X                                         |
| Obtain annual audit and income tax filing.                                                                                                                                                                                                                                               |                                               | X                                         |
| Maintain fidelity bond on whomever handles HOA funds.                                                                                                                                                                                                                                    | X                                             | X                                         |
| Report annually to members on financial status of HOA.                                                                                                                                                                                                                                   |                                               | X                                         |
| <b>PHYSICAL MANAGEMENT</b>                                                                                                                                                                                                                                                               |                                               |                                           |
| Inspect, maintain, repair, and replace, as needed, all components of the property for which the HOA has maintenance responsibility.                                                                                                                                                      |                                               | X                                         |
| Contract for services, as needed to operate or maintain the property.                                                                                                                                                                                                                    |                                               | X                                         |
| Prepare specifications and call for bids for major projects.                                                                                                                                                                                                                             |                                               | X                                         |
| Coordinate and supervise work on the property, as warranted.                                                                                                                                                                                                                             |                                               | X                                         |
| <b>ADMINISTRATIVE MANAGEMENT</b>                                                                                                                                                                                                                                                         |                                               |                                           |
| <b>VOL. 3 PAGE 410</b>                                                                                                                                                                                                                                                                   |                                               |                                           |

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| MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS                                                                                                                      | Performed by HOA officers or directors | Delegated to HOA employee or agent |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------------|
| Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the HOA.                                              |                                        | X                                  |
| Conduct hearings with owners to resolve disputes or to enforce the governing documents.                                                                      | X                                      |                                    |
| Obtain and supervise personnel and/or contracts needed to fulfill HOA's functions.                                                                           |                                        | X                                  |
| Schedule HOA meetings and give owners timely notice of same.                                                                                                 |                                        | X                                  |
| Schedule board meetings, and give directors timely notice of same.                                                                                           |                                        | X                                  |
| Enforce the governing documents.                                                                                                                             | X                                      | X                                  |
| Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area. |                                        | X                                  |
| Maintain HOA books, records, and files.                                                                                                                      |                                        | X                                  |
| Maintain HOA's corporate charter and registered agent & address.                                                                                             | X                                      |                                    |
| <b>OVERALL FUNCTIONS</b>                                                                                                                                     |                                        |                                    |
| Promote harmonious relationships within the community.                                                                                                       |                                        | X                                  |
| Protect and enhance property values in the community.                                                                                                        |                                        | X                                  |
| Encourage compliance with governing documents and applicable laws and ordinances.                                                                            |                                        | X                                  |
| Act as liaison between the community of owners and governmental, taxing, or regulatory bodies.                                                               |                                        | X                                  |
| Protect the HOA and the property from loss and damage by lawsuit or otherwise.                                                                               | X                                      | X                                  |

VOL. 3 PAGE 411

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APPENDIX H  
DESCRIPTION OF LAND SUBJECT TO ANNEXATION AS ADDITIONAL PHASES

**THE WATERS AT HORSESHOE BAY**

During the Development Period, Declarant may -- but is not required to -- annex any real property any portion of which is contiguous with, adjacent to, or within one mile of any real property that is subject to this Declaration.

FILED FOR RECORD  
AT 10:45 AM

DEC 13 2006

BETTE SUE HOY CO. CLERK  
LLANO CO, TEXAS  
BY Deputy <sup>00</sup>  
Commerce 4060

VOL. 3 PAGE 412

*During the Development Period, Appendix B has priority over the main body of this Declaration.*



THE STATE OF TEXAS\*\*\*\*COUNTY OF LLANO  
I, HEREBY CERTIFY THAT THE INSTRUMENT WAS  
FILED ON THE DATE AND TIME STAMPED HEREON BY  
ME AND WAS DULY RECORDED IN VOL. 3  
PAGE 314-412, OF THE CONDOMINIUM  
RECORDS OF LLANO COUNTY, TEXAS ON THIS THE  
13 DAY OF DEC, 2006.

*Bette Sue Hoy*

BETTE SUE HOY, COUNTY CLERK  
LLANO COUNTY, TEXAS