

SIXTEENTH AMENDMENT TO DECLARATION OF CONDOMINIUM REGIME FOR BRODIE HEIGHTS CONDOMINIUMS

This Sixteenth Amendment to Declaration of Condominium Regime for Brodie Heights Condominiums (the "Amendment") is made CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership ("Declarant"), and is as follows:

RECITALS:

A. The Brodie Heights Condominiums, a condominium regime (the "Regime"), located in Travis County, Texas, was established pursuant to that certain Declaration of Condominium Regime for Brodie Heights Condominiums, recorded as Document No. 2007122559 in the Official Public Records of Travis County, Texas, as amended (as amended, the "Declaration").

B. Pursuant to *Provision A.3.10* of Appendix "A" to the Declaration, Declarant may amend the Declaration unilaterally and without the consent of other Owners or any mortgagee 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.

NOW THEREFORE, Declarant hereby amends and modifies the Declaration as follows:

1. **Article 18.** *Article 18* of the Declaration is hereby deleted in its entirety and replaced with the following.

**ARTICLE 18
MORTGAGEE PROTECTION**

18.1. Introduction. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. A provision of the Documents requiring the approval of a specified percentage of Mortgagees will be based on the number of Units subject to mortgages held by Mortgagees. For example, "51 percent of Mortgagees" means Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Mortgagees.

18.2. Notice of Mortgagee. As provided in this *Article 18*, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in *Section 18.8*, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in *Section 18.9* or the termination of this Declaration as described in *Section 18.4*. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require.

In the event an Owner fails to provide the Association with the information required by this Section 18.2 after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

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

18.4. Termination. Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant during the Development Period; and (iii) sixty-seven percent (67%) of Mortgagees.

18.5. Implied Approval. The approval of a Mortgagee is implied when the Mortgagee fails to respond within sixty (60) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

18.6. Other Mortgagee Rights.

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

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

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

18.6.4. 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. Any right of first refusal imposed by the Association with

respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien..

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

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

18.8. Notice of Actions. The Association will use its best efforts to send timely written notice to Mortgagees of the following actions:

- (i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit.
- (ii) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the mortgaged Unit.
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.
- (v) Any proposed amendment of a material nature, as provided in this Article.
- (vi) Any proposed termination of the condominium status of the Property.

18.9. Amendments of a Material Nature. A Document amendment of a material nature must be approved by owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT PROVIDED IN APPENDIX "A" ATTACHED HERETO.** A change to any of the provisions governing the following would be considered

material:

- (i) Voting rights.
- (ii) Assessment liens or the priority of assessment liens.
- (iii) Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- (iv) Responsibility for maintenance and repairs.
- (v) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A", by agreement between Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).
- (vi) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Mortgagees holding mortgages against the Unit or Units need approve the action.
- (vii) Convertibility of Units into Common Elements or Common Elements into Units.
- (viii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.
- (ix) Property or fidelity insurance requirements.
- (x) Imposition of any restrictions on the leasing of Units.
- (xi) Imposition of any restrictions on Owners' right to sell or transfer their Units.
- (xii) Restoration or repair of the Property, in a manner other than that specified in the Documents, after hazard damage or partial condemnation.
- (xiii) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

2. **Eligible Mortgagee.** The use of the defined term "Eligible Mortgagee" contained in the Documents is hereby deleted in its entirety and replaced the term "Mortgagee" as defined in the Declaration.

3. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written, and are hereby ratified and confirmed.

EXECUTED to be effective as of the 13 day of September, 2010.

DECLARANT:

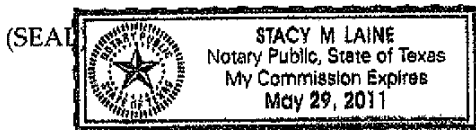
CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership

By: CHTEX of Texas, Inc., a Delaware corporation, its General Partner

By: [Signature]
Printed Name: Richard Maier
Title: Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 13 day of September, 2010 by Richard Maier, Vice President of CHTEX of Texas, Inc., a Delaware corporation, General Partner of Continental Homes of Texas, L.P., a Texas limited partnership, on behalf of said corporation and partnership.



[Signature]
Notary Public Signature

AFTER RECORDING RETURN TO:

**Robert D. Burton, Esq.
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**Armbrust
& Brown
PLLC**

Master Planned Community &
Condominium Practice Group

**SIXTEENTH AMENDMENT TO
DECLARATION OF CONDOMINIUM REGIME FOR
BRODIE HEIGHTS CONDOMINIUMS**

A residential condominium community located in Travis County, Texas

**Cross Reference to Declaration of Condominium Regime for Brodie Heights Condominiums recorded
as Document No. 2007122559 in the Official Public Records of Travis County, Texas, as amended.**



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

September 13 2010 04:07 PM

FEE: \$ 40.00 2010134244