

Pursuant to the authority of Declarant to amend the Declaration under Suparts "g" and "i" of Sec. B.3.7 of Appendix B of the Declaration, Declarant hereby amends and entirely restates the Declaration of Cascada Condominium, recorded on September 8, 2005, as Document No. 2005167716, Official Public Records, Travis County, Texas.

**DECLARATION  
OF  
CASCADA  
CONDOMINIUM**

**Austin, Travis County, Texas**

Declarant

SDI 2005 - Manchaca, Ltd.

**DECLARATION  
OF  
CASCADA CONDOMINIUM**

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# DECLARATION OF CASCADA CONDOMINIUM

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This Declaration of Cascada Condominium is made by SDI 2005 - Manchaca, Ltd., a Texas limited partnership ("**Declarant**"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon. By recording this Declaration, Declarant submits the property described in Appendix A to the provisions of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Cascada Condominium.

Declarant desires to develop the real property with a townhouse-style development to be known as Cascada Condominium. Declarant further desires to provide for the preservation and maintenance of portions of Cascada, and to protect the value, desirability, and attractiveness of Cascada. 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.

## INTRODUCTION

This Introduction is provided to highlight some of the unique features of Cascada Condominium. Cascada is located on land that was platted by the City of Austin as "Manchaca Courtyard." Cascada consists of 44 units on which Declarant expects to construct 44 townhomes in nine buildings with four to six townhomes each.

**Q:** *Is it a townhome or a condominium?*

**A:** Both. *(How can that be?)*

Although all the land in Cascada is a common element of the condominium, each numbered unit consists of the surface of a piece of the land, as shown on the condominium plat at Appendix C, and all of the improvements in and on the piece of land. The entire townhome - inside and out, roof and foundation - is an improvement within the unit. The unit also consists of yards, driveways, and sidewalks located within the unit.

One purpose of the condominium regime is to provide for perpetual maintenance of the common elements, such as the interior street within Cascada. Another purpose of this condominium regime is to provide shared maintenance of certain portions of the individually owned yards and townhomes. The

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components of the condominium units that are maintained by the condominium association are referred to in this Declaration as "Areas of Common Responsibility." The community of owners may periodically change the designation of which components of their townhomes and yards are maintained by their association.

**At Cascada, you own the entire Townhome  
-- inside and out, and everything in between --  
including the roof and foundation.**

In summary, the homes in Cascada are condominium in ownership and townhome in style and structure. As individually-owned laterally-attached single-family homes, the term "townhome" is appropriate.

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

1.3. **"Areas of Common Responsibility"** means those portions of units and townhomes that are designated, from time to time, by the Association to be maintained, repaired, and replaced by the Association, as a common expense, as if the portions were common elements, as shown on the Maintenance Responsibility Chart attached to this Declaration as Appendix E.

1.4. **"Assessment"** means any charge levied against a unit or owner by the Association, pursuant to the Documents, the Act, or other public law, including but not limited to Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 5 of this Declaration.

1.5. **"Association"** means the association of owners of all units in the Property, initially organized as Cascada Homeowners 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.

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

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1.7. "**Builder**" means " a person or entity which purchases, or contracts to purchase, a unit from Declarant or from a Builder for the purpose of constructing a townhome for sale or under contract to an owner other than a Builder or Declarant.

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. On the date of this Declaration, all Common Elements are General Common Elements.

1.10. "**Declarant**" means SDI 2005 - Manchaca, Ltd., a Texas limited partnership, which is developing the Property, or the successors and assigns of SDI 2005 - Manchaca, Ltd., which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by SDI 2005 - Manchaca, Ltd., 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) 3 years from date this Declaration is recorded, or (2) 120 days after title to 75 percent of the units in the Property has been conveyed to owners other than Declarant or a Builder; or (3) when, in the sole opinion of Declarant, the Association is viable, self-supporting, and operational, as evidenced by a written notice executed by Declarant and recorded in the Real Property Records of Travis County, Texas.

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

1.13. "**Development Period**" means the 7-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to Appendix B hereto, including rights relating to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the property described in Appendix A. Declarant may terminate the Development Period at any time by recording a notice of termination.

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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.

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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 **Cascada Condominium**, which may also be referred to as **Cascada** or **Cascada Townhomes**. The Property is located entirely in the City of Austin, Travis County, Texas. The Property is located on land described in Appendix A to this Declaration, and includes every unit and common element thereon.

1.20. "**Resident**" means an occupant of a townhome, 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. "**Townhome**" means the attached single-family dwelling on each individually-owned unit. "**Townhome Building**" means the structure containing multiple townhomes. Generally, Cascada has 4 or 6 townhomes per townhome building. Although the townhomes are owned individually, some components may be maintained by the Association as Areas of Common Responsibility.

1.23. "**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 National Mortgage Association (Fannie Mae), Federal Housing Administration (HUD/FHA), 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.

1.24. "**Unit**" means a physical portion of the Property designated by this Declaration for separate ownership, 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 the Declaration and the jurisdiction of the Association on approval of owners representing

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at least two-thirds of the units in the Property, or, during the Development Period, by Declarant as permitted in Appendix B. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the Real Property Records of Travis County, Texas. If units are added to the Property, amendment of Appendix C is also required.

2.3. MERGER. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners representing at least two-thirds of the total allocated votes. 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 effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

**NOTICE**

This Declaration and the other Documents are subject to change from time to time. By owning a unit or occupying a townhome, you agree to remain in compliance with the published restrictions and rules as they change.

2.4. 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, regardless of what publicly recorded plats may show as potential uses (public or private) of adjoining land. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, the Builder, the Association, and their respective directors, officers, committees, agents, and employees have no control over the public or private uses of adjacent land, including without limitation, Manchaca Road.

2.5. RELATIONSHIP TO BARTON OAKS. Cascada is not part of Barton Oaks, a neighboring subdivision according to the plat recorded in Volume 19, Page 18, Plat Records, Travis County, Texas. Nevertheless, Cascada is on land that is subject to an agreement with the Barton Oaks Neighborhood Association, specifically the Restrictive Covenants, recorded on January 29, 2001, as Document No. 2001013911, Official Public Records, Travis County, Texas, which establish certain requirements for the Property.

2.6. PLAT DEDICATIONS, RECORDED EASEMENTS & RESTRICTIONS. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all instruments of record affecting the Property, including those described in the attached Appendix G, and also including the dedications, limitations, notes, easements, restrictions, and reservations shown or cited on the plat, such as the Aerial Electric Easement along Manchaca Road shown on the plat of Manchaca Courtyard, recorded on May 6, 2005, as Document No. 200500120, Official Public Records, Travis County, Texas, all of which are incorporated herein by reference. Each owner, by accepting an interest in or title to a unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances, and further agrees to maintain any easement that crosses his unit and for which the Association does not have express responsibility.

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**ARTICLE 3**  
**PROPERTY EASEMENTS AND RIGHTS**

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

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

3.3. OWNER'S MAINTENANCE EASEMENT. Every owner is granted an access easement over adjoining units, common elements, and Areas of Common Responsibility for the maintenance or reconstruction of his townhome and other improvements on his unit, provided exercise of the easement does not damage or materially interfere with the use of the adjoining townhome or common element. Requests for entry to an adjoining townhome, unit, or common element must be made to the owner of the adjoining unit, or the Association in the case of common elements, in advance for a time reasonably convenient for the adjoining owner, who may not unreasonably withhold consent. If an owner damages an adjoining townhome, Area of Common Responsibility, 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.

3.4. TOWNHOME EASEMENT. Every owner of a unit is granted a perpetual easement over, under, and through every other townhome in the same townhome building in which his townhome is located for the limited purpose of installing, maintaining, and replacing wires, cables, conduit, and pipes, that serve his townhome, but only to the extent that use of this easement is reasonable and necessary. In the event of dispute, the board is the arbiter of whether the anticipated use of this easement is reasonable and necessary. Reciprocally, the owner of a townhome that contains wire, cables, conduit, or pipes that serve one or more other townhomes has a duty to refrain from interfering with or damaging those items. This easement and reciprocal responsibility anticipates that the electrical meters for all the townhomes in one building may be grouped at one end of the building. It also anticipates that attic or roofline installations of wiring may be the most cost effective and least unsightly way of accommodating future needs for cable services.

3.5. ACCESS EASEMENT BETWEEN CERTAIN BUILDINGS. Whether or not it is shown on the condominium plat at Appendix D, the following units are burdened with a pedestrian access easement. By acquiring an interest in the following units, each owner thereof agrees to maintain and preserve the portion of access easement on his unit if the easement area ceases to be an Area of Common Responsibility.

- Unit 4, along its border with Unit 5
- Unit 8, along its border with Unit 9
- Units 26 & 31, along their respective borders with Units 25 & 30
- Units 36 & 42, along their respective borders with Units 35 & 41

3.6. DRAINAGE EASEMENT BEHIND UNITS 1 - 16. Whether or not it is shown on the condominium plat at Appendix D, the portions of Units 1 - 16 that are between the backsides of the

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townhome buildings and the parallel boundary of the Property are part of the surface water drainage system for Cascada. Accordingly, they are not private-use back yards. No person may fence, modify, deck, landscape, or otherwise use the continuous drainageway without the prior written approval of the board, which must consider the water drainage implications for the Property.

3.7. 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.

3.8. SHARED DRIVEWAY EASEMENT. This Section applies to any unit on which (1) the driveway is designed to be used by the owners and residents of adjoining townhomes, or (2) a portion of the private driveway to a townhome crosses the unit of the other townhome. Each owner, by accepting an interest in or title to a unit, whether or not it is so expressed in the instrument of conveyance or on the plat, grants to the owner and residents of the other unit an easement across, over, under, and through the unit for the maintenance, continued existence, and use of the driveway for vehicular ingress and egress and, if appropriate, parking.

3.9. OWNER'S ENCROACHMENT EASEMENT. Every owner is granted an easement for the existence and continuance of any encroachment by his townhome 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.

3.10. 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.
- 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.

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3.10.2. No Trespass. In exercising this easement on an owner's unit, the Association is not liable to the owner for trespass.

3.10.3. Limitations. If the exercise of this easement requires entry onto an owner's unit, the entry will be during reasonable hours and after notice to the owner. This Subsection does not apply to situations that - at time of entry - are deemed to be emergencies that may result in imminent damage to or loss of life or property.

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

**PLEASE PAY PARTICULAR HEED TO THE SECURITY SECTION**

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, Builder, 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, Builder, the Association, and their respective directors, officers, 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, Builder, 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. EASEMENT TO INSPECT & RIGHT TO CORRECT. For a period of 10 years after expiration of the Development Period, Declarant reserves for itself and the Builder, and for their respective architects, engineers, other design professionals, builders, and general contractors the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant or Builder, as applicable, 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 utility meter may be warranted by a change of circumstance, imprecise siting of the original meter, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, Builder, or the Association, and may not be amended without Declarant's written

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and acknowledged consent. In support of this reservation, each owner, by accepting an interest in or title to a unit, hereby grants to Declarant and to each Builder 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.

#### **ARTICLE 4 UNITS & ALLOCATIONS**

4.1. **UNIT BOUNDARIES.** The boundaries and identifying number of each unit are shown on the Plat and Plans attached as Appendix D. The boundaries of each unit are further described as follows. The lower boundary of the unit is the horizontal plane represented by the finished grade of the unit after construction of the townhome within the dimensions shown on Appendix D. The upper boundary of the unit is a horizontal plane parallel to and 100 feet above the lower boundary. The lateral boundary that runs through the townhome building is the plane represented by the midpoint in the party wall between 2 townhomes. The other lateral boundaries of the unit are perpendicular to the lower and upper horizontal planes, extending upward 100 feet above the surface of the land.

#### ***Not a Typical "Condo"***

Although the Cascada unit looks and acts more like a platted townhouse lot than a traditional "air space" condominium unit, the unit is **NEITHER** a traditional platted lot **NOR** a metes and bounds conveyance of land. Instead, each unit is the surface of a designated piece of land, and everything above the surface for 100 feet, and anything below the surface that serves or supports the above-surface improvements.

4.1.1. **Garages.** The garage that is attached to the living area of a townhome is part of the unit.

4.1.2. **Courtyards and Balconies.** Any balcony or courtyard that is attached to the living area of a townhome is part of the unit.

4.1.3. **What the Unit Includes.** Each unit includes the spaces and improvements within the above-described vertical and horizontal boundaries, including without limitation the townhome, landscaping, driveways, sidewalks, fences, yards, utility lines and meters. In addition to the improvements within the above-described unit, each unit also includes improvements, fixtures, and equipment serving the townhome or unit exclusively, whether located within, outside, or below the unit, whether or not attached to or contiguous with the townhome, including but not limited to any below-grade foundation, piers, retaining walls, fence, or other structural supports; plumbing, sewerage, and utility lines, pipes, drains, and conduits; landscape irrigation and subterranean components of plant material, including roots of trees on the unit; and any other below-grade item that serves or supports the townhome or unit exclusively.

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

4.1.5. **Townhome Size.** The space contained within the vertical and horizontal boundaries of the unit is not related to the size of the townhome. The townhomes may be

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marketed on the basis of a limited number of representational floorplans, each of which may be 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 a townhome. The size of a townhome 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 townhome's outer walls. The townhome's partition wall cavities and/or its perimeter wall cavities may or may not be included. The townhome's garage, attic, and/or front porch may or may not be included.

4.2. ALLOCATION OF INTERESTS. The table showing the identifying number and allocated interests of each unit is attached as Appendix C. The same formulas are to be used in reallocating interests if units are added to the Property. The date on which the amendment creating additional units is recorded in the Real Property Records of Travis County, Texas, is the effective date for assigning allocated interests to those units. The interests allocated to each unit are calculated by the following formulas.

4.2.1. Common Element Interests. The share of undivided interest in the common elements allocated to each unit is uniform for all units, regardless of the unit's size, value, or location. Each unit's fractional share is 1/44th, which is calculated by dividing one by the total number of units in the Property.

4.2.2. Common Expense Liabilities. The percentage of liability for common expenses allocated to each unit is uniform for all units, regardless of the unit's size, value, or location. Each unit's fractional share is 1/44th, which is calculated by dividing one by the total number of units in the Property.

4.2.3. Votes. Each unit has one vote, the weight of which is uniform or equal for all units, regardless of the other allocations appurtenant to the unit.

4.3. OWNERSHIP v. MAINTENANCE. Traditionally, the owner of real estate is solely responsible for maintaining and insuring his property. In the condominium context, those three attributes - ownership, maintenance, and insurance - can be treated separately and allocated differently. At *Cascada*, the ownership of the unit is determined by this Article and the plats and plans in Appendix D of this Declaration. Even though an owner owns his townhome and unit, this Declaration assigns some of the insurance responsibility to the Association. Similarly, although the owner owns his townhome and unit, this Declaration assigns some of the maintenance responsibilities to the Association. Whatever the Association does not insure or maintain becomes the responsibility of the owner.

## **ARTICLE 5**

### **COVENANT FOR ASSESSMENTS**

5.1. 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.

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5.2. 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 common services, 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.

5.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of owners representing at least 80 percent of the votes in the Association. 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 representing at least a majority of the votes in the Association 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 a revised budget is approved by the board.

**IF YOU OWN A CASCADA UNIT, YOU MUST  
PAY ASSESSMENTS TO THE ASSOCIATION.**

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

5.5. REGULAR ASSESSMENTS.

5.5.1. 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. Maintenance, repair, and replacement, as necessary, of the Area of Common Responsibility.
- c. Utilities billed to the Association.
- d. Services obtained by the Association and available to all units.
- e. Taxes on property owned by the Association and the Association's income taxes.
- f. Management, legal, accounting, auditing, and professional fees for services to the Association.

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- g. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- h. Insurance premiums and deductibles.
- i. Contributions to the reserve funds.
- j. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

5.5.2. 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.

5.5.3. 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.

5.5.4. 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.

5.6. SPECIAL ASSESSMENTS. In addition to regular 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 do not require the approval of the owners, except that special assessments for the following purposes must be approved by at least a majority of the votes in the Association: (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.

5.7. UTILITY ASSESSMENTS. This Section applies to utilities serving the individual townhomes and consumed by the residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to regular assessments, the board may levy a utility assessment against each unit. If the townhomes are submetered for consumption of a utility, the utility assessment will be based on the submeter reading. If the townhomes are not submetered, 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

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share of the utilities for the common elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all units.

5.8. INDIVIDUAL ASSESSMENTS. In addition to regular and special assessments, the board may levy an individual assessment against a unit and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his unit into compliance with the Documents; fines for violations of the Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; submetered utilities serving the unit; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the units, which may be assessed according to benefit received; fees or charges levied against 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.

5.9. 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.

5.10. 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.

5.11. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and may fund reserves out of regular assessments.

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

5.11.2. Replacement & Repair Reserves. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the common elements and the Area of Common Responsibility.

5.12. 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 recharacterize 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

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and records that is independent of Declarant's rights during the Declarant Control and Development Periods.

5.13. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of owners representing at least a majority of the votes in the Association 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.

5.14. 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 6 ASSESSMENT LIEN**

6.1. ASSESSMENT LIEN. Each owner, by accepting an interest in or title to a unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the unit and is secured by a continuing lien 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.

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.

6.2. 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 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, an FHA-insured mortgage, or a VA-guaranteed mortgage.

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6.3. 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 of a superior lien 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.

6.4. 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 Travis 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.

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

6.6. FORECLOSURE OF LIEN. The assessment lien may be enforced by judicial or nonjudicial foreclosure. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in 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 7**

### **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 the 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.

7.1. 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.

7.2. LATE FEES. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time.

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7.3. COLLECTION EXPENSES. The owner of a unit against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

7.4. 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.

7.5. SUSPENSION OF USE AND VOTE. 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 owner's 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 a member's right to vote, the suspended member may nevertheless participate as a member for the following activities: (1) be counted towards a quorum, (2) attend meetings of the Association, (3) participate in discussion at Association meetings, (4) be counted as a petitioner for a special meeting of the Association, and (5) 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.

7.6. 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.

7.7. 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.

7.8. 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.

7.9. APPLICATION OF PAYMENTS. The Association may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment or payment 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.

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**ARTICLE 8**  
**MAINTENANCE AND REPAIR OBLIGATIONS**

8.1. OVERVIEW. Generally, the Association maintains the common elements, and the owner maintains his unit and townhome. If an owner fails to maintain his unit, the Association may perform the work at the owner's expense. Interestingly, this Declaration permits owners to delegate some of their responsibilities to the Association. For example, during one 20-year span the owners may want the Association to handle the periodic repainting of exterior trim on all the townhomes, which otherwise is the responsibility of each unit owner. During the next 20 years, the owners may prefer to handle repainting on an individual basis. They have that option under this Declaration's concept of "Areas of Common Responsibility," as described below.

8.2. ASSOCIATION MAINTAINS. The Association's maintenance duties will be discharged when and how the board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on units or common elements.

- a. The common elements.
- b. The Areas of Common Responsibility, if any.
- c. Any real and personal property owned by the Association but which is not a common element, such as a unit owned by the Association.
- d. Any property adjacent to Cascada if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- e. Any area, item, easement, or service - the maintenance of which is assigned to the Association by this Declaration or by the plat.

8.3. AREA OF COMMON RESPONSIBILITY. The Association, acting through its members only, has the right but not the duty to designate, from time to time, portions of units or townhomes as Areas of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. A designation applies to every unit having the designated feature. The cost of maintaining components of units or townhomes as Areas of Common Responsibility is added to the annual budget and assessed uniformly against all units as a regular assessment, unless owners of at least a majority of the units decide to assess the costs as individual assessments.

8.3.1. Change in Designation. The Association may, from time to time, change or eliminate the designation of components of units or townhomes as Areas of Common Responsibility. Any such change must be approved by owners of a majority of the units or by owners of two-thirds of the units represented at a meeting of the Association called for the purpose of changing the Area of Common Responsibility. Although the Maintenance Responsibility Chart is attached to this Declaration as Appendix E, it may be amended, restated, and published as a separate instrument. The authority for amending it is contained in this Section. Any amended or restated Maintenance Responsibility Chart must be (1) published and distributed to an owner of each unit, (2) reflected in the Association's annual budget and reserve funds, and (3) recorded in the Real Property Records of Travis County, Texas.

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8.3.2. Initial Designation. On the date of this Declaration, the initial designation of components of units and townhomes as Areas of Common Responsibility is shown on Appendix E of this Declaration.

8.4. OWNER RESPONSIBILITY. This Declaration contemplates that the Association will maintain some significant components of the townhome buildings. Every owner is responsible for the maintenance, repair, and replacement of every portion of his unit, and all improvements thereon, including the townhome, **that is not maintained by the Association as an Area of Common Responsibility**. Owner's responsibility is at all times subject to the Association's architectural control of the Property.

8.4.1. General Duties. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the architectural control requirements of Article 9 and the use restrictions of Article 10.

- a. To maintain, repair, and replace his townhome and unit, except for the Area of Common Responsibility.
- b. The routine cleaning of any courtyard, porch, balcony, driveway, and sidewalk of his townhome.
- 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 or the property of another owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

**• CHECK THE CURRENT MAINTENANCE RESPONSIBILITY CHART •  
IF IT'S *NOT* AN AREA OF COMMON RESPONSIBILITY,  
THEN IT'S THE OWNER'S INDIVIDUAL RESPONSIBILITY.**

8.5. WHAT IF . . . ? The following subsections apply to an owner and his unit **only if and only to the extent** the below-described component is not an Area of Common Responsibility.

8.5.1. Yard Maintenance. "Yards" means all parts of the unit other than the townhome building, including fenced and unfenced portions of the unit. All yards must be maintained at a level, to a standard, and with an appearance that is commensurate with the neighborhood. The unfenced yards must be maintained as a single shared component of the townhome building to preserve a uniform appearance of grounds for the townhome building. The fenced yards on a unit

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must be maintained by the unit owner, at the owner's sole expense. Specifically, the owners must:

- a. Maintain an attractive ground cover or lawn on all yards visible from a street.
- b. Edge the street curbs and sidewalks at regular intervals.
- c. Mow the lawns and grounds at regular intervals.
- d. Prevent lawn weeds or grass from exceeding 6 inches in height.
- e. Not plant vegetable gardens that are visible from a street.
- f. Maintain an attractive appearance for shrubs and trees visible from a street.

8.5.2. Townhome Foundation. The foundation of each townhome building must be maintained, repaired, and replaced as a single shared component of the townhomes in the townhome building. Accordingly, the cost of foundation work will be shared evenly by the owners in the building.

8.5.3. Townhome Roofs. The roof of each townhome building must be maintained, repaired, and replaced as a single shared component of the townhomes in the building. Accordingly, the cost of roof work will be shared evenly by the owners in the building.

8.5.4. Townhome Drainage. The surface water drainage system around a townhome building must be maintained, repaired, and replaced as a single shared component of the townhomes in the building. The surface water drainage system includes, without limitation, gutters, downspouts, swales, and french drains, if any.

8.6. OWNER COOPERATION REQUIRED. When dwellings are attached, there are certain components that may require maintenance and repair in a cooperative manner. Shared or continuous roofs, shared foundations, termite treatment and pest control in party walls, and surface water drainage from townhome to townhome are examples of components that may warrant cooperative efforts. Each owner will endeavor to cooperate with the other owners in the townhome building to effect the purposes and intent of this Article.

8.6.1. Applicability. Generally, each owner is solely responsible for maintenance of his townhome and unit, except those components that are maintained by the Association as Areas of Common Responsibility. **This Section applies if** maintenance is the owner's responsibility and if a particular condition affects more than one townhome and/or if a particular repair or act of maintenance requires the participation of owners of more than one unit.

8.6.2. Mutual Agreement. The scope of work, cost of the repair, and the choice of contractor will be decided by and divided between the owners of the townhomes in the townhome building based on any mutually agreeable allocation. If the owners agree on everything except the allocation of costs, the expense will be shared evenly and the owner of each unit will pay an equal share.

8.6.3. Association as Intermediary. If the owners of townhomes that share a townhome building cannot cooperate, any owner may ask the Association to perform the required repairs and to levy individual assessments for reimbursement of the work. The Association may, but is not required, to respond affirmatively to such a request. The Association may perform an independent inspection and evaluation of the condition and may rely on its findings in any action taken by the Association.

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8.6.4. Owner Goes It Alone. If an owner fails or refuses to pay his share of costs of repair, the other owner or owners in the townhome building may pay the entire cost while reserving a right to reimbursement. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title. The owner advancing monies has a right to (1) request reimbursement from the Association, which may pay the money and seek reimbursement from the nonpaying owner by levying an individual assessment against the unit and owner; or (2) file a claim of lien for the monies advanced in the Real Property Records of Travis County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien.

8.6.5. Dispute Resolution. If the owners and the Association disagree about the scope of work, the nature or time of the repair, the choice of contractor, or any other aspect of the task that one owner considers essential, the Dispute Resolution Article of this Declaration will apply. However, if the condition of the townhome requires prompt attention to prevent further deterioration or damage, nothing in this Article may be construed to prevent an owner from taking recommended and necessary action to protect the owner's property.

8.7. UNIFORMITY v. CHANGE. Unless the Property was designed for diversity and exterior expressions of individuality, all townhomes will be maintained with an eye towards uniformity and architectural harmony. This Section is necessitated by periods during which the Association may be lax about enforcing architectural uniformity, or during periods in which the Area of Common Responsibility is limited.

- a. The exterior of each townhome must be maintained and repaired in a manner that is consistent for the entire townhome building.
- b. If an owner desires to change a component of the exterior, such as replacing aluminum windows with wood windows, the decision to change a standard component of the townhome building must be approved by the owners of more than half the townhomes in the townhome building, in addition to the board. Thereafter, the new building standard will apply to repairs or replacement of the component, as needed, on other townhomes in the building.
- c. Unless a change of component has been approved, repairs, replacement, and additions to the exteriors of the townhomes must conform to the original construction. For example, if the building was constructed with bronze colored window frames, replacement windows with white frames may not be used unless white frames have been approved as the new standard for the townhome building. Similarly, the stucco on one townhome may not be replaced with wood, while another is replaced with brick, and a third is replaced with a vinyl product.
- d. Ideally, all the townhome buildings in the Property will have the same architectural requirements, without building-to-building individuality. Nothing in this Section may be construed to prevent the Association from requiring uniform architectural standards for the entire Property. This Section may not be construed as authority for one building to "do its own thing."

8.8. 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

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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.

8.9. WARRANTY CLAIMS. If the owner is the beneficiary of a warranty against major structural defects of the Area of Common Responsibility, the owner may NOT appoint the Association or its officers and directors as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to the Area of Common Responsibility. This prohibition is warranted by the possibility that the Association may become a party to this dispute because of its duty to maintain the Area of Common Responsibility.

8.10. CONCRETE. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways, and courtyard 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. Such minor cracking is typically an aesthetic consideration without structural significance. The Association is not required to repair non-structural cracks in concrete components of the Area of Common Responsibility.

8.11. SHEETROCK. Notwithstanding anything to the contrary in the Documents, the Association is not responsible for the repair and replacement of sheetrock in any townhome, 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 townhome and chooses to not perform the repairs, the owner of the damaged townhome is entitled to the proceeds in exchange for identification of the damage and a release from future claims for the same damage.

8.12. 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.

8.12.1. 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 townhome for evidence of water leaks or penetrations or other conditions which may lead to mold growth.
- (2) repairing promptly any water leaks, breaks or malfunctions of any kind in his townhome that may cause damage to another townhome or an Area of Common Responsibility.

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- (3) regularly inspecting his entire townhome 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 townhome for which the Association may have maintenance responsibility.

8.12.2. 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 townhome. 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.

8.13. PARTY WALLS. A townhome wall located on or near the dividing line between 2 units and intended to benefit both units constitutes a Party Wall and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

8.13.1. Encroachments & Easement. If the Party Wall is on one unit or another due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each townhome sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each unit is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

8.13.2. Right to Repair. If the Party Wall is damaged or destroyed from any cause, the owner of either unit may repair or rebuild the Party Wall to its previous condition, and the owners of both units, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

8.13.3. Maintenance Costs. The owners of adjoining units share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an owner is responsible for damage to or destruction of the Party Wall, that owner will bear the entire cost of repair, reconstruction, or replacement. If an owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Travis County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

8.13.4. Alterations. The owner of a unit sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining townhome. Unless both owners reach a mutual decision to the contrary, the Party Wall will always remain in the same location as where initially erected.

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8.14. 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 9**

### **ARCHITECTURAL COVENANTS AND CONTROL**

9.1. PURPOSE. Because the units are part of a single, unified 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 to the Property, 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.

9.2. EXERCISE OF ARCHITECTURAL CONTROL. During the Development Period, Declarant or its delegatee is the sole architectural authority for the Property, pursuant to the architectural control provisions in Appendix B. After the Development Period, the board or a committee appointed by the board exercises architectural control over the Property. Whomever exercises architectural control pursuant to this Declaration is hereafter referred to as the "**Architectural Reviewer**."

**DON'T MAKE CHANGES (*no matter how pretty*) TO THE PROPERTY  
UNLESS YOU HAVE WRITTEN ARCHITECTURAL APPROVAL**

9.3. 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 its 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. Approval of a modification or improvement by the Architectural Reviewer 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.

9.4. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. Without the Architectural Reviewer's prior written approval, a person may not commence or continue any construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction and property use that may adversely affect the general value or appearance of the Property.

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9.5. ARCHITECTURAL APPROVAL. To request architectural approval, an owner must make written application and submit to the Architectural Reviewer TWO 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 may retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction and property use that may alter or adversely affect the value, use, or appearance of the Property.

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

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

9.5.2. 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 or of the Association be deemed, implied, or presumed.**

9.5.3. No Approval Required. Approval is not required for an owner to remodel or repaint the interior of a townhome, provided the work (1) does not impair the structural soundness of the townhome building, (2) is not visible from the street, another unit, or a common element, and (3) does not adversely affect the common elements or another unit.

9.5.4. Building Permit. If the application is for work that requires a building permit from a governmental body, approval by the Architectural Reviewer 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 approval by the Architectural Reviewer.

9.5.5. 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.

9.5.6. 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.

9.6. OWNER'S DUTIES. If the Architectural Reviewer approves an owner's application, the owner may proceed with the improvement, provided the owner adheres strictly to the plans and

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specifications which accompanied his application, and the owner initiates and completes the improvement in a timely manner.

9.7. CONTROL FOR VARIANCES. This Section of the Declaration may not be amended without the approval of owners of at least 85 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 will so notify the board which, in turn, 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.

## **ARTICLE 10** **USE RESTRICTIONS**

10.1. 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.

10.2. 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.

10.3. RULES AND REGULATIONS. In addition to the restrictions contained in this Article, each unit is owned and each townhome is 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 and leasing 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.

10.4. AGES OF RESIDENTS. No person under the age of 18 years may occupy a townhome 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 townhome.

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10.5. 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.

10.6. ANNOYANCE. No unit 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; (4) may result in the cancellation of insurance on any portion of the Property, or (5) will violate any law. The board has the sole authority to determine what constitutes an annoyance.

10.7. APPEARANCE. Both the exterior and interior of the units and townhomes 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.

***Sorry, but . . . that cute balcony is not yours to decorate.***

10.8. BALCONIES. As initially designed, some townhomes have front covered balconies which are a distinct architectural feature of Cascada. Accordingly, the Association has the right to regulate every aspect of their use, appearance, and maintenance, including, without limitation, decorations, furniture, plants and planters. No person may decorate, modify, or "improve" a balcony without the prior authorization of the board.

10.9. COURTYARDS. This Section applies to an entry courtyard that is visible from the interior street by virtue of see-through or open-picket fencing or gate. An owner will use and maintain his courtyard in a neat and attractive manner that is consistent with the neighborhood. If the board perceives that the appearance of courtyards detracts from the overall appearance of the Property, the board may limit the colors, numbers, sizes, or types of furnishings, plantings, and other items kept in the courtyard. A courtyard may not be used for storage.

10.10. 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.

10.11. 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.

10.12. DRIVEWAYS & PARKING. **Residents are expected to park their vehicles in their garages, and use the driveways in front of their garages for visitor or overflow parking.** Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their

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ongoing use as routes of vehicular or pedestrian access. Private driveways may not be used for storage, including the storage of vehicles, boats, or trailers.

**THANK YOU FOR GARAGING YOUR WHEELS.**

10.13. GARAGES. Some townhomes have one-car garages, others have two-car garages. The original garage area of a townhome may not be enclosed or used for any purpose that prevents the parking of the number of operable vehicles therein for which the garage is designed. The automatic garage door opener is to be maintained by the owner. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

10.14. LANDSCAPING. No person may perform landscaping, planting, or gardening anywhere on the Property without the board's prior written authorization.

10.15. 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 townhomes. The Rules may limit, discourage, or prohibit noise-producing activities and items in the townhomes and on the Area of Common Responsibility, such as security devices and windchimes.

**NOT SOUNDPROOFED**

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

10.16. OCCUPANCY - NUMBERS. The board may adopt Rules regarding the occupancy of townhomes. If the Rules fail to establish occupancy standards, no more than 2 persons per bedroom may occupy a townhome, 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 townhome) permitted by the U. S. Department of Housing and Urban Development. Other than the living area of the townhome, no other part of a unit, such as the garage, may be occupied as a residence at any time by any person.

10.17. OCCUPANCY - TYPES. A person may not occupy a townhome 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. This Section does not and may not be construed to create a duty for the Association or a selling owner to investigate or screen purchasers or prospective purchasers of townhomes. By owning or occupying a townhome, each person acknowledges that Cascada is subject to local, state, and federal fair housing laws and ordinances. Accordingly, this Section may not be used to discriminate against classes or categories of people.

10.18. 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 townhome 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

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to the unit by employees or the public, and (5) the uses do not interfere with residents' use and enjoyment of neighboring units.

10.19. SIGNS. No signs, including signs advertising the units for sale or lease, or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the units without written authorization of the board. After the Development Period, the board may authorize the use of signs on a case by case basis, specifying the location, nature, dimensions, number, and time period of any advertising sign. 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. During the Development Period, the Declarant - thereafter, the Association - may effect the immediate removal of any sign or object that violates this Section or which is deemed inconsistent with Property standards without liability for trespass or any other liability connected with the removal.

10.20. SPECIFIC USES. Sidewalks and driveways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access. The front yards may not be used for any purpose that has not been authorized in writing by the board.

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

***Yes, there are lots of Rules!***  
EVERY RESIDENT OF CASCADA  
IS EXPECTED TO COMPLY WITH THESE RULES  
AND WITH PUBLISHED RULES ADOPTED BY THE BOARD.

10.22. 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. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another townhome are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "**Antenna**") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the owner may install the Antenna in the least conspicuous location on the townhome where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

10.22.1. Owner Responsibility. The installation of an Antenna on the Area of Common Responsibility automatically subjects the owner of the townhome to which the Antenna is affixed to this Section, regardless of who installs the Antenna and regardless of whether the owner has

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actual notice of the installation. The owner is solely responsible for (1) the cost of maintaining, repairing, replacing, and removing, as necessary, the Antenna, and (2) the cost of repairing the Area of Common Responsibility if such repairs are necessitated by the Antenna or its installation, maintenance, repair, or replacement, irrespective of whether the repairs are undertaken by the owner or the Association. If required by the Association, the owner will remove the Antenna, as necessary, to permit the Association to maintain, repair, or replace the Area of Common Responsibility as the Association, in its sole discretion, deems necessary or desirable.

10.22.2. Interference. An Antenna or the use of an Antenna may not interfere with satellite or broadcast reception to other townhomes or the common elements, or otherwise be a nuisance to residents of other townhomes or to the Association. The board of directors may determine what constitutes a nuisance to the Association.

10.22.3. Risk. An Antenna on the Area of Common Responsibility exists at the sole risk of the owner and/or occupant of the townhome to which the Antenna is attached. The Association does not insure the Antenna and is not liable to the owner or any other person for any loss or damage to the Antenna from any cause. The 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.

10.23. TRASH. Each resident will endeavor to keep the Property clean and will dispose of all refuse in receptacles designated specifically by the Association or by the city for that purpose. Trash must be placed entirely within the designated receptacle. The board may adopt, amend, and repeal rules regulating the disposal and removal of trash from the Property. If the rules fail to establish hours for curbside trash containers, the container may be in the designated area from dusk on the evening before trash pick-up day until dusk on the day of trash pick-up. At all other times, trash containers must be kept inside the garage and may not be visible from a street or another townhome.

10.24. VARIATIONS. Nothing in this Declaration may be construed to prevent the board from (1) establishing standards for one townhome building that are different from the standards for other townhome buildings, or (2) approving a system of controlled individualization of townhome exteriors.

10.25. 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 which 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.

***Word to the Wise***  
*Get architectural approval before you invest in window coverings.*

10.26. WINDOW TREATMENTS. Each townhome building in Cascada is designed to have a uniform window appearance. Therefore, the color and condition of all windows panes, window screens, and window treatments must conform to the building standard. All window treatments within the

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townhome, that are visible from the street or another townhome, must be maintained in good condition and must not detract from the appearance of the Property. All window treatments within a townhome building must be uniform, although styles of window treatments may vary from townhome building to townhome building. The board may require an owner to change or remove a window treatment, window film, window screen, or window decoration that the board determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The board may prohibit the use of certain colors or materials for window treatments. **If the Rules fail to establish a different standard, all window treatments - as seen from the street - must be white in color and the style must be 2-inch Venetian horizontal blinds.**

## **ARTICLE 11 TOWNHOME LEASING**

11.1. LEASE CONDITIONS. An owner may lease the townhome on his unit, subject to the following conditions: (1) no townhome may be rented for transient or hotel purposes or for a period less than 30 days; (2) no townhome may be subdivided for rent purposes, and not less than an entire townhome may be leased; (3) whether or not it is so stated in a lease, every lease is subject to the Documents; (4) all leases must be in writing and must be made subject to the Documents; (5) an owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto; and (6) each tenant is subject to and must comply with all provisions of the Documents, federal and State laws, and local ordinances.

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

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

11.3.1. 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.

11.3.2. 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.

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11.3.3. Association Not Liable for Damages. The owner of a leased townhome 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.

11.4. MORTGAGEES & DECLARANT EXEMPT. A Mortgagee acquiring possession of or title to a unit by exercise of its rights under a deed of trust is exempt from the effect of this Article. This exemption does not pass to the Mortgagee's successors and assigns. During the Development Period, Declarant is exempt from the effect of this Article.

## **ARTICLE 12 ASSOCIATION OPERATIONS**

12.1. THE ASSOCIATION. The existence and legitimacy of the Association are derived from this Declaration and the Bylaws of the Association.

12.1.1. Duties. 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.

**EVERY OWNER OF A CASCADA TOWNHOME AUTOMATICALLY  
JOINS A MANDATORY MEMBERSHIP ASSOCIATION.**

12.1.2. Association Name. Although the initial name of the Association is Cascada Homeowners Association, the Association may operate under any name that is approved by the board and (1) registered by the board with the County Clerk of Travis County, Texas, as an assumed name, or (2) filed by the Association with the Secretary of State as the name of the filing entity. The Association may also change its name by amending the Documents. Another legal entity with the same name as the Association, or with a name based on the name of the Property is not the Association, which derives its authority from this Declaration.

12.1.3. Duration. The Association comes into existence on the later to occur of the two following events: (1) the issuance of its corporate charter, or (2) the date on which a deed to a unit with a completed townhome is recorded in the Real Property Records of Travis County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as the Declaration is effective against all or party of the Property.

12.2. 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

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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."

12.3. DECISION-MAKING. Any decision or act of the Association may be made by or at the direction of the board, unless the Documents reserve the decision or act to the members, the Declarant, or any other person or group. Unless the Documents or applicable law provide otherwise, any action requiring approval of the members may be approved (1) at a meeting by owners of at least a majority of the units that are represented at the meeting, provided notice of the meeting was given to an owner of each unit, or (2) in writing by owners of at least a majority of all units, provided the opportunity to approve or disapprove was given to an owner of each unit.

12.4. MANAGER. The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding a delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

12.5. 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.

12.6. COMMUNICATIONS. This Declaration is drafted in an era of rapidly changing communication technologies. Declarant does not intend to limit the methods by which the Association, owners, and residents communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Documents or applicable law to make information available to owners of all units, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted via technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is used by owners of at least 85 percent of the units. Also, the Association may employ multiple methods of communicating with owners and residents.

12.7. MANAGER. The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding any delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

12.8. 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.

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12.9. 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 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.

12.10. HOA SALE FEES. HOA Sale Fees generally fall into two types of categories - **budget enhancing fees**, such as contributions to the reserve or operating funds of the Association, and **administrative fees**, such as fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing. HOA Sale Fees may be charged by the Association or by the Association's manager or managing agent (collectively, "**manager**"), provided there is no duplication of fees by type or amount. This Section does not obligate the Association or its manager to levy HOA Sale Fees. The number, types, and amounts of HOA Sale Fees charged by a manager for the benefit of the manager (and for the accounts of the Association) (1) must have the prior written approval of the Association's board, (2) are not subject to the Association's assessment lien, (3) should not exceed what is customary in amount, kind, and number for the local marketplace, and (4) are not payable by the Association unless the management contract so stipulates. The board may, from time to time, adopt, amend, publish, and record a Notice of HOA Sale Fees. The initial Notice of HOA Sale Fees will be included in the Community Manual adopted by the Declarant for Cascada.

12.11. OBLIGATIONS OF OWNERS. Without limiting the obligations of owners under the Documents, each owner has the following obligations:

12.11.1. 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.

12.11.2. Transfers. Each owner will pay the applicable HOA Sale Fees.

12.11.3. Comply. Each owner will comply with the Documents as amended from time to time.

12.11.4. Reimburse. Each owner will pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's unit, or the owner or resident's family, guests, employees, contractors, agents, or invitees.

12.11.5. 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.

12.12. NEW TOWNHOME SALES. The sale by Declarant or a Builder to a homeowner of a unit that is improved with a newly constructed townhome is considered a "New Townhome Sale" for purposes of this Declaration. New Townhome Sales are not resales. The obligations for HOA Sale Fees for New Townhome Sales are described on Appendix I of this Declaration.

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12.13. TOWNHOME RESALES. For purposes of this Declaration, a "resale" is every sale or conveyance of a unit (or of an interest in a unit) that is improved with a townhome, other than the initial sale by Declarant or Builder of the unit with the newly constructed townhome to the initial homeowner. This Section applies to every resale of a townhome.

12.13.1. Resale Certificate. An owner intending to sell his unit will notify the Association and will request a condominium resale certificate from the Association.

12.13.2. 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.

12.13.3. HOA Sale Fees. At time of transfer, the HOA Sale Fees described on Appendix I of this Declaration are due and payable by buyer and/or seller

12.13.4. 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.

12.13.5. 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: (1) the initial conveyance from Declarant; (2) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (3) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (4) transfer to, from, or by the Association; (5) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent; (6) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (7) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (8) a disposition by a government or governmental agency.

### **ARTICLE 13** **ENFORCING THE DOCUMENTS**

13.1. 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:

13.1.1. 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.

13.1.2. 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.

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13.1.3. 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.

13.1.4. Public Notice. After giving the owner at least 15 days' prior notice of its intent to do so, the Association may record a notice of violation in the Real Property Records of Travis County, Texas, describing the unit as to which the violation exists, the nature of the violation, and the provision of the Documents that is being violated. If the violation 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.

13.1.5. 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 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 (1) in the case of emergencies, (2) to remove violative signs, (3) to remove violative debris, or (4) 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. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction in a unit without judicial proceedings. 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.

13.2. 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.

13.3. 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.

13.4. 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

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party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

13.5. NOTICE AND HEARING. Before levying a fine for violation of the Documents, 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, such as Section 82.102 of the Act. 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 Act's requirements.

## **ARTICLE 14** **INSURANCE**

14.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the board will make every reasonable effort to comply. 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. 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. Additionally:

14.1.1. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

14.1.2. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

14.2. FINISH-OUT. This Article refers to the "finish-out" of a townhome, without defining the term. The components of the townhome that comprise "finish-out" will be determined by the board in consultation with insurance professionals. From time to time, the board may adopt, publish, and record a Notice of Finish-Out that identifies specific components of townhomes that are the insurance responsibility of the owners. A change in the designation of components does not become effective as to the owners' obligations until 60 days after the Notice is published to the owners, so that owners have time to change their coverages, if necessary. The initial Notice of Finish Out is attached to this Declaration as Appendix F.

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14.3. INSURANCE RATIONALE. A townhome development provides many complex issues and opportunities for insurance. There are valid reasons for having the Association insure the individually owned townhomes, and valid reasons why the individual owners should insure their own townhomes. This Article allocates insurance responsibilities between the Association and the owners based on the following rationale. The Association insures the townhome buildings to the extent necessary (1) to preserve the appearance of the Property, (2) to maintain the structural integrity of the townhome building and the townhomes therein, (3) to maintain systems that serve multiple townhomes in a townhome building, (4) to maintain the perimeter shells of the townhomes, and (5) to rebuild the townhome but for the "finish-out." **The owner insures the "finish out" of his townhome and any feature not covered by the Association.** In the event of a conflict or gap between the liabilities and policies of the Association and the owner, the Association's liabilities and policies will control.

14.4. PROPERTY INSURANCE BY ASSOCIATION. To the extent it is reasonably available, the Association will obtain property insurance for all improvements insurable by the Association. 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. In insuring the Property, the Association may be guided by types of policies and coverages customarily available for similar types of properties. As used in this Article, "**Building Standard**" refers to the typical townhome for the Property, as originally constructed, and as modified over time by changes in replacement materials and systems that are typical for the market and era.

14.4.1. Common Elements. The Association will insure, as a common expense:

- a. Insurable improvements on the common elements.
- b. Insurable improvements in the Area of Common Responsibility.
- c. The improvements on any unit owned by the Association.
- d. Insurable property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

14.4.2. Townhomes Partially Insured by Association. In addition to insuring the property owned or maintained by the Association, the Association will maintain property insurance on all components of the townhomes and townhome buildings, at least to the Building Standard, **except for the components designated as "finish out."**

14.4.3. Not Insured by Association. Except for the components that are expressly the duty of the Association, no other component of a townhome or townhome building must be insured by the Association as a common expense. Also, 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 townhome and on the Property, including furnishings and vehicles.** **The Association strongly recommends that each owner and resident purchase and maintain insurance on his personal belongings.**

14.5. PROPERTY INSURANCE BY OWNER. **The owner of each townhome must obtain and maintain a homeowners insurance policy on the "finish out" of the townhome,** at least to the Building Standard, according to the Notice of Finish-Out adopted and published by the Association,

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

acting through its board of directors. The initial Notice of Finish-Out is published as Appendix F of this Declaration.

**YOU MUST INSURE THE "GUTS" OF YOUR TOWNHOME.**

14.6. VARIATIONS IN PROPERTY INSURANCE. Notwithstanding the foregoing rationale and allocation of insurance responsibilities, the Association's coverage decisions will be guided by types of policies and coverages customarily available for similar types of properties. The Association, acting through its board, is hereby authorized to obtain and maintain property insurance for components of the townhomes that are designated by this Article as the sole responsibility of the owner if such an insurance purchase by the Association is in the best collective interests of the Cascada owners and if the Association gives the owners at least 30 days prior written notice of the change of coverage.

14.6.1. Board Determination to Reduce Risks. Notwithstanding the requirements of this Article, the board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by owners if the insurance is deemed necessary or desirable by the board **to reduce potential risks to the Association or other owners.** If an owner fails to maintain required insurance, the board may obtain it on behalf of the owner who will be obligated for the cost as an individual assessment.

14.6.2. Overlapping Coverages. If at the time of a loss under a policy maintained by the Association, there is other insurance in the name of the townhome owner covering the same property covered by the Association's policy, the owner's policy provides primary insurance, and the Association's policy provides excess coverage, if needed.

14.6.3. Gap Construction. If it is not clear to the Association whether a particular component of the Property is required by this Article to be insured by the owner or by the Association, the component is hereby deemed to be the responsibility of the Association.

14.6.4. Betterments and Improvements. If the Association provides property insurance on the entire individual townhome, the owner will give the Association a written report of all structural changes, additions, betterments, or improvements to his townhome, 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 townhome for purposes of insurance appraisal.

14.7. LIABILITY INSURANCE BY ASSOCIATION. 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. 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. If available, the Association may obtain liability insurance over the Area of Common Responsibility for bodily injury and property damage resulting from the maintenance of the Area of Common Responsibility.

14.8. LIABILITY INSURANCE BY OWNER. Notwithstanding anything to the contrary in this Declaration, to the extent permitted by applicable law, each owner is liable for damage to the Property

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caused by the owner or by persons for whom the owner is responsible. **Each owner is hereby required to obtain and maintain general liability insurance** to cover this liability as well as occurrences within his townhome, in amounts sufficient to cover the owner's liability for damage to the property of others in the Property and to the Area of Common Responsibility, whether such damage is caused wilfully and intentionally, or by omission or negligence.

**YOU MUST MAINTAIN GENERAL LIABILITY INSURANCE  
— IN CASE "STUFF" HAPPENS.**

14.9. **DIRECTORS & OFFICERS LIABILITY.** To the extent it is reasonably available, the Association will 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.

14.10. **OTHER COVERAGES.** The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an owner.

14.11. **OWNER'S GENERAL RESPONSIBILITY FOR INSURANCE.** Each owner, at his expense, will maintain all insurance coverages required of owners by the Association pursuant to this Article. Each owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an owner fails to maintain required insurance, or to provide the Association with proof of same, the board may obtain insurance on behalf of the owner who will be obligated for the cost as an individual assessment. The board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by owners if the insurance is deemed necessary or desirable by the board to reduce potential risks to the Association or other owners. **Each owner and resident is solely responsible for insuring his personal property in his townhome and on his unit, including furnishings, vehicles, and stored items.** If the Association is unable or unwilling to insure the components of the townhome building described in Section 14.4 above as the Association's responsibility to insure, then each owner will obtain and maintain property insurance on all insurable improvements on his unit, 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.

## **ARTICLE 15** **RECONSTRUCTION OR REPAIR AFTER LOSS**

15.1. **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.

15.2. **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

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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.

15.2.1. 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.

15.2.2. 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.

15.2.3. 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.

### 15.3. COSTS AND PLANS.

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

15.3.2. 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 representing at least two-thirds of the votes in the Association and by certain mortgagees if so required by the Mortgagee Protection article of this Declaration.

### 15.4. OWNER'S DUTY TO REPAIR.

15.4.1. 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.

15.4.2. 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.

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15.4.3. Failure to Repair. If an owner fails to repair or restore damage as required by this Section, the Association may effect the necessary repairs and levy an individual assessment against the owner and unit for the cost thereof, after giving an owner of the unit reasonable notice of the Association's intent to do so.

15.5. 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 16**

### **TERMINATION AND CONDEMNATION**

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

16.2. 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:

16.2.1. Substantial Taking. In the event of substantially total damage, destruction, or condemnation of the Property, an amendment to terminate must be approved by owners representing at least 75 percent of the votes in the Association and by certain mortgagees pursuant to the Mortgagee Protection article of this Declaration.

16.2.2. Total Taking. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners or mortgagees.

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

16.3. 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.

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**ARTICLE 17**  
**MORTGAGEE PROTECTION**

17.1. **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.

17.1.1. **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.

17.1.2. **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 board 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.

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

17.3. **TERMINATION.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by owners representing at least 75 percent of the votes in the Association, and by at least 51 percent of Eligible Mortgagees. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least 67 percent of Eligible Mortgagees.

17.4. **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 was delivered by certified or registered mail, return receipt requested.

17.5. **OTHER MORTGAGEE RIGHTS.**

17.5.1. **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.

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

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

17.5.4. 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.

17.5.5. 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.

17.6. 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.

17.7. NOTICE OF ACTIONS. The Association will use its best 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.

17.8. AMENDMENTS OF A MATERIAL NATURE. A Document amendment of a material nature must be approved by owners representing at least 75 percent of the votes in the Association, and by at least 51 percent of Eligible Mortgagees. This approval requirement does not apply to amendments effected by the exercise of a Development Right provided in Appendix B hereto. A change to any of the provisions 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.

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- c. Reductions in reserves for maintenance, repair, and replacement of common elements.
- d. Responsibility for maintenance and repairs.
- e. Reallocation of interests in the general or limited common elements, or rights to their use; except that when limited common elements are reallocated by agreement between owners, only those owners and only the Eligible Mortgagees holding mortgages against those units need approve the action.
- f. Redefinitions of boundaries of units, except that when boundaries of only adjoining units are involved, or a unit is being subdivided, then only those owners and the Eligible Mortgagees holding mortgages against the unit or units need approve the action.
- g. 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. Restoration or repair of the Property, in a manner other than that specified in the Documents, after hazard damage or partial condemnation.
- m. Any provision that expressly benefits mortgage holders, insurers, or guarantors.

## **ARTICLE 18** **AMENDMENTS**

18.1. 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 75 percent of the votes in the Association.

18.2. 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.

18.3. 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 Travis County, Texas.

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18.4. DECLARANT PROVISIONS. During the Declarant Control and Development Periods, 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.

## **ARTICLE 19** **DISPUTE RESOLUTION**

19.1. 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:

19.1.1. "**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.

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

19.1.3. "**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 any Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- 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

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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.

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

19.2. **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.**

**☺ YOU CATCH MORE FLIES WITH HONEY THAN WITH VINEGAR ☺**

19.3. **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.

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

19.5. **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.

19.6. **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.

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19.7. 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.

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

19.9. 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.



19.10. 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.

19.10.1. 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.

19.10.2. Higher Approval of Certain Suits. Also, the Association may not initiate any judicial or administrative proceeding against Declarant, Builder, Association officers and directors, or the managing agent of the Association without the approval of owners representing at least 75 percent of the units.

19.10.3. 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

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

19.10.4. 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.

19.11. CONSTRUCTION-RELATED DISPUTES. In addition to the above procedures, a claim relating to an alleged construction defect may be governed by Texas statutes relating to residential construction, such as:

19.11.1. RCLA. Under Chapter 27 of the Texas Property Code, the Residential Construction Liability Act, if an owner has a complaint concerning an alleged construction defect, and if the alleged defect has not been corrected through normal warranty service, the owner must provide the notice required by Chapter 27 of the Texas Property Code to the Builder or contractor by certified mail, return receipt requested, not later than the 60th day before the date owner files suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the alleged construction defect. If requested by the Builder or contractor, the owner must provide the Builder or contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

19.11.2. TRCCA. Under Chapters 401 et. seq. of the Texas Property Code, the Texas Residential Construction Commission Act (TRCCA), alleged construction defects in units constructed as townhouses, duplexes, and detached single family houses are subject to the policies and procedures of the TRCCA. The Commission maintains a website with information for home owners.

## **ARTICLE 20 GENERAL PROVISIONS**

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

20.2. HIGHER AUTHORITY. The 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.

**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.*

20.3. NOTICE. Any demand or written notice required or permitted by this Declaration may be given personally, by mail, by fax, or by any other method or combination of methods permitted by applicable law, such as the Texas Nonprofit Corporation Act. If mailed, the notice is deemed delivered

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when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent to the address of the owner's unit. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

20.4. LIBERAL CONSTRUCTION. The terms and provision of each 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 first to give effect to Declarant's intent to protect Declarant's interests in the Property, and second in favor of the operation of the Association and its enforcement of the Documents, regardless which party seeks enforcement.

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

20.6. CAPTIONS. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

20.7. INTERPRETATION. Whenever used in 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.

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

20.9. PREPARER. This Declaration was prepared in the law offices of Sharon Reuler of SettlePou, 3333 Lee Parkway, Eighth Floor, Dallas, Texas 75219.

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

- A - Description of Subject Land
- B - Declarant Representations & Reservations
- C - Schedule of Allocated Interests
- D - Plats and Plans
- E - Maintenance Responsibility Chart
- F - Notice of Finish-Out
- G - Easements and Licenses
- H - HOA Sale Fees
- I - Consent to Declaration

*(Executed on next page.)*

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

Cascada Condominium

**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. 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.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of owners and mortgagees. 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.2. DECLARANT CONTROL PERIOD RESERVATIONS & LIMITATIONS.** For the benefit and protection of owners and mortgagees, and for the purpose of ensuring a complete and orderly buildout and sellout of the Property, Declarant will retain control of the Association, subject to the following:

B.2.1. 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 to owners other than Declarant or a Builder, at least one-third of the board must be elected by owners other than Declarant.

B.2.2. Organizational Meeting. Before the end of the Declarant Control Period or within 120 days after the conveyance of 75 percent of the units to owners other than Declarant or a Builder, 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.2.3. 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.
- 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's 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's 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 or a Builder 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. 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 RIGHTS, REPRESENTATIONS & RESERVATIONS. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

B.3.1. General Representations. The Property is not subject to expansion by phasing. The Property described in the initial Appendix A is not subject to a right of withdrawal of real property by Declarant. No part of the Property is a leasehold condominium, as defined by the Act. None of the improvements in the Property are conversion buildings as defined by the Act.

B.3.2. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of units, buildings, and common elements.

B.3.3. Transfer Fees. During the Development Period, Declarant may not be required to pay transfer-related and resale certificate fees.

B.3.4. Fines and Penalties. During the Development Period, neither Declarant or Builder nor units owned by Declarant or Builder are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

B.3.5. 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 or a Builder.

B.3.6. 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.3.7. 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.

- 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 amend the Maintenance Responsibility Chart.
- g. To amend the Notice of Finish-Out.
- h. 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.
- i. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- j. To change the name or entity of Declarant.
- k. For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

B.4. ARCHITECTURAL CONTROL DURING DEVELOPMENT PERIOD. During the Development Period, Declarant has the absolute right and power of architectural control over the Property.

B.4.1. 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 Property enhance Declarant's reputation as a condominium developer and do not impair Declarant's ability to market its property. Accordingly, each owner agrees that - during the Development Period - no structural or visible improvements will be started or progressed in or on the Property, including 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.

B.4.2. 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) a Builder, (2) a modifications or architectural committee appointed by Declarant or by the board, (3) a modifications or architectural committee elected by the owners, or (4) 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.

B.5. 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 or a Builder as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or other projects of Declarant or Declarant affiliates.
- 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.

***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/or other projects of Declarant or Declarant affiliates, 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.6. 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 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.
- d. 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.

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 12 months after the end of the Development Period by paying the Association \$4,000.

**HOME BUYERS !**

Even after all the units are sold, the developer may use Cascada to help market another project. It won't last forever - 12 months max.

B.8. ACTIONS REQUIRING FHA/VA APPROVAL. During the Development Period, the following actions require the prior written approval of the U.S. Department of Housing and Urban Development ("**HUD/FHA**") or the U.S. Department of Veterans Affairs ("**VA**") only if HUD/FHA insures or VA guarantees a mortgage on a unit: (1) annexation of additional property to the Property, except for annexation by Declarant pursuant to a plan of development previously approved by HUD/FHA or VA; (2) merger or consolidation with another property owners association; (3) mortgaging of common elements; (4) dedication of common elements to a public entity; (5) amendment of a material nature to any Document; or (6) dissolution or amendment of the articles of incorporation. The approval of HUD/FHA or VA, as the case may be, is implied when it fails to respond within 30 days after receiving written request for approval of a proposed action, provided the request was delivered by certified or registered mail, return receipt requested.

B.9. HOME BUYER'S CONTRIBUTIONS 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 all units. 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

**APPENDIX E**

**MAINTENANCE RESPONSIBILITY CHART**

"all aspects" includes maintenance, repair, and replacement, as needed  
 "CE" means Common Element

<b>COMPONENT OF PROPERTY</b>	<b>ASSOCIATION RESPONSIBILITY ----- AREA OF COMMON RESPONSIBILITY</b>	<b>OWNER RESPONSIBILITY (subject to Association's architectural controls)</b>
Control access gate at street entrance. (CE)	All aspects.	None.
Water detention pond. (CE)	All aspects.	None.
Fences, screening walls, and retaining walls around perimeter of property. (CE)	All aspects.	None.
Interior asphalt street. (CE)	All aspects.	None.
Street lights. (CE)	All aspects.	None.
Sidewalks.	All aspects of sidewalks on common elements. (CE)	All aspects of sidewalks on unit.
Mailboxes & exterior street addresses or unit numbers.	All aspects.	None.
Trash receptacles.	Community dumpster, if any. (CE)	Bags or individual wheeled cans, if used.
Courtyards/Fenced yards.	None.	All aspects.
Grounds - outside courtyards/fenced yards.	All aspects, including irrigation - on CE and units.	None.
Roofs.	Felt, shingles, and metal flashing, only.	All other aspects, except those noted for Association, including decking & roof trusses.
Gutters and downspouts.	All aspects.	None.
Roof-mounted attachments.	None.	All aspects.

<b>COMPONENT OF PROPERTY</b>	<b>ASSOCIATION RESPONSIBILITY ----- AREA OF COMMON RESPONSIBILITY</b>	<b>OWNER RESPONSIBILITY (subject to Association's architectural controls)</b>
Exterior vertical walls of buildings, other exterior features of buildings not specifically listed in chart.	Periodic re-painting or re-staining of painted or stained surfaces.	All other aspects, except those noted for Association, including stone, stucco, fascia board, wall studs, and insulation.
Building foundations, patio slabs, and A/C slabs.	None.	All aspects.
Concrete driveways.	None.	All aspects.
Exterior light fixtures on buildings.	None.	All aspects.
Garages.	Roofs and exterior vertical walls, as described above.	All other aspects, except those noted for Association.
Fireplaces & chimneys.	None.	All aspects, including firebox, chimney cap, flue & damper, periodical flue cleaning.
Skylights.	None.	All aspects, if any.
Attics.	None.	All aspects.
Insulation & weatherstripping.	None.	All aspects.
Townhome interior, including improvements, fixtures, partition walls and floors within unit.	None.	All aspects.
Sheetrock in unit (walls and ceilings) & treatments on walls.	None.	All aspects.
Exterior doors of units.	None.	All aspects.
Windows of units.	Exterior caulking in connection with periodic exterior painting or staining.	All other aspects, except those noted for Association, including window frames, screens, locks, glass panes, glazing, and caulking.



COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY ----- AREA OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY (subject to Association's architectural controls)
Water, wastewater, electrical lines & systems.	All aspects of common lines & systems, none for those serving units.	All aspects of lines, pipes, fixtures, and appliances serving only that unit.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms smoke/heat detectors, monitoring equipment.	None.	All aspects.
Cable for television or internet	Standards for location and appearance of cable and/or conduit.	All other aspects.
Television antennas & satellite dishes.	None.	All aspects.

NOTE 1: The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement to have such a component. A skylight is an example of a component that may or may not be on a building.

NOTE 2: If the owner is responsible for a component of the building that is shared with the other townhomes in the building, such as roof trusses and the foundation, the responsibility is shared. If the owners of the townhomes in the building cannot agree on an equitable division of the costs based on the circumstances, the expenses will be divided evenly among the townhomes in the building. If the owners of the townhomes in a building cannot agree on any aspect of maintenance that requires their joint participation, the matter will be decided by a 3-person ad hoc committee appointed by the board.

NOTE 3: If an owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the owner.

NOTE 4: This Maintenance Responsibility Chart may be revised by the Association, with the approval of owners representing at least a majority of the units in the Property. A revised Chart must be recorded in the Real Property Records of Travis County, Texas.

## APPENDIX F

### NOTICE OF FINISH-OUT

As described in Section 14.2 of the Declaration of Cascada Condominium, this Notice of Finish-Out identifies the particular components of the townhome for which the townhome owner has the primary insurance responsibility. All other components of the townhome are to be insured by the Association. The following components of a townhome at Cascada Condominiums (1) are not insured by the Association and (2) are the sole responsibility of the townhome owner to insure:

#### **TOWNHOME COMPONENTS TO BE INSURED BY UNIT OWNER**

1. All personal property contents of the townhome, such as furnishings.
2. Upgrades, betterments and improvements that exceed the Building Standard for Cascada, whether purchased and installed during new construction by the initial owner or thereafter by a current or previous owner.
3. All decorative treatments, such as window coverings, wallpaper, paneling, ceramic wall tile.
4. Countertops, cabinets, and built-ins.
5. Interior doors and trim.
6. Mirrors and shower doors.
7. Interior paint on sheetrock walls (tape, bedding and standard texture by Association).
8. All hardware in the townhome such as door handles and cabinet pulls.
9. All plumbing fixtures and equipment such as hot water heaters, sinks, tubs, shower pans, and toilets, and related hardware and trim (rough plumbing to the wall or floor stub-out by Association).
10. All electrical fixtures including switches, plugs, plates, and fixture installation (rough electric wiring to the junction box by Association).
11. HVAC (heating and air-conditioning equipment), including condensers, air handlers, exhaust fans, vent registers, and thermostats (rough mechanical including duct work, piping, and electrical by Association).
12. All appliances whether built-in or movable.

**This Notice of Finish-Out may be amended and restated, from time to time, by the Board of Directors of the Cascada Homeowners Association. To be effective, a Notice of Finish-Out that changes the covered components of the townhome must be recorded in the Official Public Records of Travis County, Texas, and must be given to an owner of each townhome at least 60 days before the effective date of the change.**

*[End of Appendix F]*

**APPENDIX G**  
**EASEMENTS AND LICENSES**

Cascada Condominium

A description of and the recording data for recorded easements, licenses, restrictions, liens, leases, or encumbrances appurtenant to or included in the Property or to which any portion of the Property is or may become subject by reservation in this Declaration, include the following:

1. Utility easement in an unnamed instrument, recorded on July 29, 1930, in Volume 455, Page 179, Deed Records, Travis County, Texas.
2. Utility easement in an unnamed instrument, recorded on May 25, 1938, in Volume 586, Page 607, Deed Records, Travis County, Texas.
3. Boundary Line Agreement, recorded on January 12, 1990, in Volume 11102, Page 0817, Real Property Records, Travis County, Texas.
4. Restrictive Covenants, recorded on January 29, 2001, as Document No. 2001013911, Official Public Records, Travis County, Texas.
5. Street Deed, recorded on February 6, 2001, as Document No. 2001018795, Official Public Records, Travis County, Texas.
6. Any and all easements, conditions, and notes shown on the Final Plat, Manchaca Courtyard, recorded on May 6, 2005, as Document No. 200500120, Official Public Records, Travis County, Texas.
7. Deed of Trust, Security Agreement, and Financing Statement, recorded on April 6, 2005, as Document No. 2005059434, Official Public Records, Travis County, Texas, as further secured by (1) the Assignment of Leases and Rents, recorded on April 6, 2005, as Document No. 2005059435, Official Public Records, Travis County, Texas, and (2) the UCC Financing Statement, recorded on April 6, 2005, as Document No. 2005059436, Official Public Records, Travis County, Texas, having been filed in the Office of the Secretary of State of Texas on April 22, 2005, as Instrument No. 05-0012830312.

**APPENDIX H**  
**HOA SALE FEES**

**THE COSTS OF BUYING & SELLING TOWNHOMES IN CASCADA**

H.1. GENERAL PROVISIONS. This Appendix addresses the expenses, fees, charges, and contributions (hereafter, collectively, the "**HOA Sale Fees**") that are capable of arising at the time of a home's sale or purchase other than - and excluding- buyer's prepaid and/or pro-rata assessments.

H.1.1. Nonrefundable. The HOA Sale Fees described in this Appendix are not refundable and may not be regarded as a prepayment of or credit against assessments. Although the fees are nonrefundable by the Association or the Association's manager, as applicable, this provision may not be construed to prevent a selling owner from negotiating with its buyer for repayment of HOA Sale Fees paid by the seller.

H.1.2. Types. HOA Sale Fees generally fall into two types of categories - budget enhancing fees, such as contributions to the reserve or operating funds of the Association, and administrative fees, such as fees for resale certificates, estoppel certificates, copies of governing documents, compliance inspections, ownership record changes, and priority processing.

H.1.3. Manager's Fees. HOA Sale Fees may be charged by the Association's manager or managing agent (collectively, "**manager**"), pursuant to a contract between the Association and the manager, and provided there is no duplication of fees by type or amount with fees charged by the Association. This Appendix does not obligate the manager to levy HOA Sale Fees. The number, types, and amounts of HOA Sale Fees charged by a manager (1) must have the prior written approval of the board, (2) are not subject to the Association's assessment lien, (3) should not exceed what is customary in amount, kind, and number for the local marketplace, and (4) are not payable by the Association unless the management contract so stipulates.

H.1.4. Who Pays? This Appendix purposefully does not state the party who is required to pay the HOA Sale Fees, which may be paid by either the seller or the buyer, per their negotiations. HOA Sale Fees are typically collected at closing. If the HOA Sale Fees are not collected at closing, the buyer remains liable to the Association or to the manager, as applicable, for the fee until paid. POA Sales Fees may not be avoided by effecting the transfer without the services of a title company.

H.1.5. Waiver. The Association and its manager may waive some or all HOA Sale Fees on a transfer by transfer basis, without waiving the right to charge such fees on future transfers.

H.1.6. Exclusions. The following transfers are not subject to or liable for HOA Sale Fees: (1) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (2) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (3) transfer to, from, or by the Association; (4) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent; (5) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (6) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (7) a disposition by a government or governmental agency.

H.1.7. Amendment. This Appendix may be amended and restated by the board without a vote of the owners, provided that during the Development Period any amendment of this Appendix must have the written and acknowledged consent of Declarant. Any amendment and

restatement of this Appendix must be recorded in the Real Property Records of Travis County, Texas, and may be recorded independently of this Declaration.

H.2. THE BUILDER OF A NEW HOME. This Section applies only to unit sales from Declarant to a Builder during the Development Period. The obligation, if any, of a Builder to the Association, the Declarant, or the manager for HOA Sale Fees is determined by private contract between Declarant and the Builder. Declarant may, but is not required, to publicly record a memorandum of such obligation. Any other unit sales, such as from Builder to Builder, are subject to the same requirements as "The Initial Buyer of a New Townhome."

H.3. THE INITIAL BUYER OF A NEW TOWNHOME. Every transfer of a new townhome by the Declarant or a Builder is liable for the following HOA Sale Fees, if any, in effect at the time of purchase. If the HOA Sale Fees are not collected from the buyer at time of closing, the Declarant and Builders are not thereafter liable for them, and the home buyer remains liable to the Association or to its manager, as applicable, until the fee is received.

- a. To the Association, a one-time contribution in the amount of the equivalent of two months of regular monthly assessments for the Association's reserve funds.
- b. To the Association's manager, its customary HOA Sale Fees.

**REMINDER**

The HOA Sale Fees discussed in this Appendix do **not** address the home buyer's obligation to the Association for regularly occurring assessments, which may be prepaid and/or prorated at closing.

H.4. THE BUYER OF A RESALE TOWNHOME. Every transfer of a used townhome (a "resale") by an owner other than the Declarant or a Builder is liable for the following HOA Sale Fees, if any, in effect at the time of purchase.

- a. To the Association, a one-time contribution to the Association's reserve funds, in the amount of the equivalent of one month of regular monthly assessments.
- b. To the Association's manager, its customary HOA Sale Fees.

*(End of Appendix H)*

APPENDIX I

**LIENHOLDER CONSENT TO DECLARATION**

Texas Capital Bank, N. A., is a national banking association whose address is 114 W. Seventh Street, Suite 300, Austin, Texas 78701.

Texas Capital Bank, N. A., holds a promissory note signed by SDI 2005 - Manchaca, Ltd. The promissory note is secured by a deed of trust lien against the real property described in Appendix A of this Declaration. The lien is contained in the Deed of Trust, Security Agreement, and Financing Statement, recorded on April 6, 2005, as Document No. 2005059434, Official Public Records, Travis County, Texas, as further secured by the Assignment of Leases and Rents, recorded on April 6, 2005, as Document No. 2005059435, Official Public Records, Travis County, Texas, and by the UCC Financing Statement, recorded on April 6, 2005, as Document No. 2005059436, Official Public Records, Travis County, Texas, and filed in the Office of the Secretary of State of Texas on April 22, 2005, as Instrument No. 05-0012830312.

By signing this instrument, Texas Capital Bank, N. A., consents to the recording of the Declaration of Cascada Condominium, which will not be extinguished by foreclosure of any lien assigned to or for the benefit of Texas Capital Bank, N. A., or its successors and assigns.

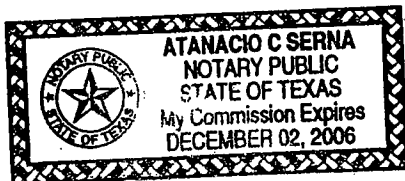
SIGNED on the 25 day of January 2006.

TEXAS CAPITAL BANK, N. A., a national association

By: [Signature]  
Printed Name: DOUGLAS COTNER  
Title: SENIOR VICE PRESIDENT

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25 day of January 2006 by Douglas Cotner, Senior Vice President of Texas Capital Bank, N. A., a national banking association, on behalf of the national banking association.



[Signature]  
Notary Public, The State of Texas

**AFTER RECORDING, PLEASE RETURN TO:**  
Ms. Sharon Reuler • SETTLEPOU ▸ Attorneys  
3333 Lee Parkway, Eighth Floor  
Dallas, Texas 75219