

THE VILLAS AT
THE BROOKS

Smith County, Texas

DECLARATION OF CONDOMINIUM
FOR
THE VILLAS AT THE BROOKS CONDOMINIUM

TABLE OF CONTENTS

ARTICLE I DEFINITIONS.....1

ARTICLE II UNITS5

ARTICLE III LIMITED COMMON ELEMENTS7

ARTICLE IV ALLOCATED INTERESTS & EXPENSES7

ARTICLE V DEVELOPMENT8

ARTICLE VI CLUB MEMBERSHIP 10

ARTICLE VII COMMUNITY CONTROL PROGRAM..... 10

ARTICLE VIII PROPERTY RIGHTS..... 10

ARTICLE IX MAINTENANCE 13

ARTICLE X INSURANCE AND CASUALTY LOSSES 14

ARTICLE XI TAXES AND UTILITIES 17

ARTICLE XII CONDEMNATION 18

ARTICLE XIII ADMINISTRATION 20

ARTICLE XIV ASSESSMENTS FOR COMMON EXPENSES..... 21

ARTICLE XV CONDOMINIUM ASSOCIATION'S LIEN FOR ASSESSMENTS 24

ARTICLE XVI USE RESTRICTIONS 25

ARTICLE XVII RULE MAKING 28

ARTICLE XVIII AMENDMENT 28

ARTICLE XIX LIMITATION OF LIABILITY 29

ARTICLE XX MEDIATION AND ARBITRATION..... 30

ARTICLE XXI GENERAL PROVISIONS..... 31

DECLARATION OF CONDOMINIUM
FOR
THE VILLAS AT THE BROOKS

THIS DECLARATION OF CONDOMINIUM FOR THE VILLAS AT THE BROOKS CONDOMINIUM ("Declaration") is made on this _____ day of _____, 2020, by Shackelford Creek Land Company, LLC, a Texas limited liability company in its capacity as the Declarant of this Declaration.

WITNESSETH

WHEREAS, Declarant is the owner in fee simple of certain real property located in Smith County, Texas, as more particularly described as Lot 62-A, N.C.B. 1730-F, The Brooks at Cumberland Park, Phase 6, First Amendment of Lot 62, N.C.B. 1730-F, according to the map or plat thereof recorded in Cabinet F, Slide 145-D, Plat Records of Smith County, Texas, and Declarant desires to subject the Initial Property to the provisions of this Declaration and to provide a flexible and reasonable method for the administration and maintenance of the Initial Property.

NOW, THEREFORE, Declarant hereby declares that the Initial Property and any Additional Property made subject to this Declaration, together with all easements, rights, and appurtenances thereto, and any Improvements or Units constructed or to be constructed thereon (collectively, the "Property") shall be, except as otherwise provided in this Declaration, submitted to the condominium form of ownership and use pursuant to Chapter 82 of the Texas Property Code (as it exists on the date hereof and as it may hereafter be renumbered or amended from time to time) ("Condominium Act") and shall be held, transferred, sold; conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property, and which shall be binding on all parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each Owner thereof and where specifically provided herein, shall benefit such other parties or properties as Declarant shall now or hereafter determine. Without limiting the foregoing, no property, real, personal or mixed, not located within or upon the Property shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Condominium Association, the operation and effect of the Condominium Act, or any rules or regulations promulgated pursuant thereto, unless expressly provided. The name by which this condominium is to be identified is THE VILLAS AT THE BROOKS CONDOMINIUM.

ARTICLE I
DEFINITIONS

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) Intentionally deleted.

(b) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges made by the Declarant from time to time assessed against an Owner and a Unit in accordance with Article XIV of this Declaration for the purposes and in the manner herein provided.

(c) "Association" or "Condominium Association" shall mean and refer to THE VILLAS AT THE BROOKS CONDOMINIUM ASSOCIATION, INC., a Texas nonprofit corporation, its successors and assigns.

(d) "Board" or "Board of Directors" means the board of directors and the members of the board of directors, from time to time, of the Condominium Association.

(e) "Bylaws" mean the Bylaws of the Condominium Association, as amended from time to time.

(f) "Certificate of Formation" shall mean the Certificate of Formation of the Condominium Association filed with the Secretary of State of Texas, as amended from time to time.

(g) "Common Elements" means and includes all of the General Common Elements and the Limited Common Elements.

(k) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by the Condominium Association on behalf of the Units, together with all funds lawfully assessed for the creation or maintenance of reserves, if any, pursuant to the provisions of this Declaration.

(l) "Common Surplus" means the excess of all receipts or revenues of the Condominium Association collected on behalf of the Condominium, including, but not limited to, Assessments over the Common Expenses.

(m) "Community Control Program" shall mean any electronic surveillance and/or monitoring system, including, but not limited to, electronic gates, intended to control access, provide alarm service, and/or enhance the welfare of the Property. THE PROVISION OF A COMMUNITY CONTROL PROGRAM SYSTEM (INCLUDING ANY TYPE OF GATEHOUSE) SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN THE PROPERTY. DECLARANT, THE CONDOMINIUM ASSOCIATION AND THE MANAGING AGENT DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY COMMUNITY CONTROL PROGRAM SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE COMMUNITY CONTROL PROGRAM SYSTEM IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY OWNER AND THE OCCUPANT OF EACH UNIT ACKNOWLEDGES THAT DECLARANT, THE CONDOMINIUM ASSOCIATION, AND THE MANAGING AGENT, THEIR EMPLOYEES, AGENTS, MANAGERS, DIRECTORS, AND OFFICERS, ARE NOT INSURERS OF OWNERS OR UNITS, OR THE PERSONAL PROPERTY LOCATED WITHIN UNITS. DECLARANT, THE CONDOMINIUM ASSOCIATION AND THE MANAGING AGENT WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS.

(n) "Condominium" shall mean THE VILLAS AT THE BROOKS CONDOMINIUM, as created by this Declaration.

(o) "Condominium Documents" shall mean this Declaration, and Certificate of Formation and Bylaws of the Condominium Association, all as or now or hereafter amended, modified or supplemented.

(p) "Condominium Act" shall mean the Uniform Condominium Act (Chapter 82 of the Texas Property Code) as it exists on the date hereof and as it may be hereafter renumbered.

(q) "Declarant" shall mean and refer to Shackelford Creek Land Company, LLC, a Texas limited liability company, and the successors and assigns of either such entity.

(r) "Declaration" shall mean and refer to this Declaration of Condominium for The Villas at the Brooks Condominium, and all amendments and supplements thereof filed for record in the Public Records of Smith County, Texas.

(s) "General Common Elements" shall mean those Common Elements which are not Limited Common Elements. General Common Elements may be added to the Property by an amendment to this Declaration recorded in the Public Records of Smith County, Texas.

(t) "Improvement" shall mean all improvements erected or to be erected on the Property and all other property, real, personal or mixed, now or hereafter situated on or within the Property, but excluding all public or private (e.g. cable television and/or other receiving or transmitting lines, antennae or equipment, including, without limitation, all wires, cables and equipment comprising those systems) utility installations therein or thereon.

(u) "Limited Common Elements" mean those portions of the Common Elements the use of which is reserved for the exclusive use of a certain Unit or certain Units to the exclusion of other Units, as specified in this Declaration, and/or shown on the Plan attached hereto as Exhibit "A" and incorporated herein by this reference. References herein to Common Elements also shall include all Limited Common Elements unless the context shall otherwise require.

(v) "Managing Agent" shall have the meaning set forth in Article IX of this Declaration.

(w) "Mortgage" shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Unit.

(x) "Mortgagee" shall mean and refer to the holder of a Mortgage on a Unit.

(y) "Occupant" shall mean and refer to any Person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Unit, in accordance with this Declaration.

(z) "Owner" or "Unit Owner" or "Owner of a Unit" shall mean and refer to one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

(aa) "Person" shall mean and refer to a natural person, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof.

(bb) "Plan" shall mean the attached survey of the land and plot plan locating the Improvements thereon and identifying each Unit, the General Common Elements and the Limited Common Elements, and their relative locations and approximate dimensions, attached hereto as Exhibit "A". The locations, dimensions, descriptions, identification, and numbering of the respective Units shall be as described in Exhibit "A" and any subsequent amendments thereto.

(cc) "Plat" shall mean any plat of any portion of the Property, which is recorded in the Public Records of Smith County, Texas, as the same may be amended from time to time.

(dd) "Brooks HOA" shall mean The Brooks at Cumberland Park Homeowners' Association. The Brooks at Cumberland Park is located at 700 Marsh Farm Road, Tyler, Texas, 75703.

(ee) "Property" means all of the Initial Property and the land, Units, Common Elements, Improvements, and other property located thereon, together with all of the land, Units, Common Elements, Improvements.

(ff) "Repair or Reconstruction" as used in Article X, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty.

(gg) "Structure" means all foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods, and including any and all other structural components that support, uphold, or are a part of the Unit or other Improvements.

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

(ii) "Taking" means the taking or threat of taking of all or a portion of the Property for any public, or quasi-public, use by eminent domain proceedings or otherwise, by a governmental authority or by an action in the nature of eminent domain (whether permanent or temporary) of the sale or other transfer of the Property in lieu thereof.

(jj) "Turnover" or "Turnover Date" shall mean the first of the following to occur: (i) the date that is one hundred twenty (120) days after seventy-five percent (75%) of the maximum number of Units that may be created under this Declaration have been conveyed to Owners other than Declarant; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant.

(kk) "Unit" shall mean a physical part of the Condominium that is designated for separate ownership or occupancy, which is contained within the perimeter walls, floor, ceiling, windows, and doors of a Unit depicted on the Plans, and includes (a) the real property underneath the Unit; (b) the finish materials, fixtures, and appliances contained in the Unit; (c) all Systems which exclusively serve such Unit, but excludes (i) Systems which serve more than one Unit, and (ii) any portion of the Structure, all as subject to and further described in

Section 82.052 of the Act, and (d) any balcony or patio appurtenant to a Unit. The term Unit is intended to have the same meaning as the term "Unit" as used in the Condominium Act.

ARTICLE II **UNITS**

2.01 Division of Property. The Property is hereby divided into fee simple estates composed of separately designated Units and each Unit's undivided interest in and to the Common Elements. Each Unit, together with its undivided interest in the Common Elements, is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Declaration in the Condominium Records and shall continue until this Declaration is revoked or terminated in the manner provided in this Declaration.

2.02 Identification of Units. The number of Units in the Condominium shall be twenty-nine (29). The identification number for each Unit is shown on the Plans or Plat, or both, depicted in **Exhibit "A"**.

2.03 Common Elements Appurtenant. There shall pass with each Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time; (d) membership in the Condominium Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

2.04 Unit Boundaries. The boundaries of all Units are located as shown on the Plans and Plat. The boundaries of Units shall be the exterior surfaces of the perimeter walls, floors, roof, windows and doors, the real property underneath the Unit and Units shall include the portions of the Unit so described and the air space so encompassed, excepting the Common Elements. Included within the boundaries of each Unit, without limitation, shall be all foundations, roofs, shingles, covered entry features, porches, balconies, utility rooms, mechanical rooms, shutters, dormers, chimneys, air conditioning equipment, heat pumps, hot tubs or spas, utility and water pipes, lines, irrigation systems, other systems, fixtures, equipment (including air handlers and fan coil units) or appliances servicing only that Unit (whether or not within the boundaries of that Unit), including, without limitation, all water lines lying between the water meter and the Unit. Interior and exterior trim around windows and doors and insulated materials affixed to the interior and exterior surface of exterior walls of each Unit shall be part of such Unit and shall not be Common Elements. Visible and exposed plumbing fixtures, lines, downspouts, gutters and pipes shall be part of the Unit in which they are located and shall not be Common Elements.

It is expressly agreed, and each and every purchaser of a Unit, his heirs, executors, administrators, assigns, successors and grantees hereby agree, that the square footage, size and dimensions of each Unit and any Limited Common Elements appurtenant thereto, as set out and shown on the Plans and Plat, are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit or any Limited Common Element actually contains the area, square footage or dimensions shown on the Plans and Plat. Each purchaser and Owner of a Unit or interest therein has had full opportunity (or will have had prior to closing on the purchase thereof) and is under a duty to inspect and examine the Unit and any appurtenant Limited Common Element purchased by him prior to his purchase thereof and agrees that the Unit, together with any Limited Common Element, is purchased as actually and physically existing. Each purchaser of a Unit hereby expressly waives any claim or demand which he may have against the Declarant or any other person whomsoever, on account of any difference, shortage or discrepancy between the Unit and any appurtenant Limited Common Element as actually and physically existing and as they are shown on the Plans and Plat. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of any Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be boundaries, regardless of settling, rising or lateral movement of the Unit and regardless of variances between the boundaries shown on the Plans and Plat.

2.05 Inseparability of Units; No Partition. Each Unit shall be inseparable and shall be acquired, owned, conveyed, transferred, leased, and encumbered only in its entirety. In no event shall a Unit be subject to physical partition and no Owner shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such Common Elements are allocated is void *ab initio*.

2.06 Permissible Ownership; Description.

(a) Ownership of Units. A Unit may be acquired and held by more than one Person in any form of ownership recognized by law, provided that at least one person 55 years of age or older must own and occupy each Unit within The Villas. In order to ensure compliance with these requirements, The Villas will be described to prospective residents as housing for persons who are 55 years of age or older. Advertising and other statements to the public regarding The Villas shall likewise refer to the community as housing for persons who are 55 years of age or older. The Villas shall at all times maintain verifiable records showing that occupied Units are occupied by at least one person who is 55 years of age or older.

Minors or other persons under the age of 25 and all other persons outside of family of the Unit Owner shall not occupy a Unit without prior request to and approval by the Condominium Association. Upon prior request and good cause shown, the Condominium Association may grant exceptions to the occupancy requirements. "To occupy" or "occupancy" under this Section means occupancy in excess of thirty (30) continuous days or sixty (60) days in any twelve (12) month period. Notwithstanding the foregoing, children or other relatives, guests, and friends under the age of 25 may temporarily visit a Unit as long as the child or other relative, guest or friend under the age of 25 does not occupy the Unit as defined above. The Condominium Association may promulgate reasonable rules to implement the foregoing requirements.

(b) Description of Units. Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease, or encumbrance of a Unit shall legally describe such Unit as follows: "Unit No. _____ of The Villas at the Brooks Condominium, located in Smith County, Texas" with further reference to the recording data for this Declaration (including the Plans and Plats and any amendments to the Declaration in the Condominium Records). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber, or otherwise deal with such Unit, and any such description shall be construed to include all incidents of ownership relating to a Unit.

(c) Residential Use Only. No part of any Unit shall be used for purposes other than residential purposes or other uses permitted by this Declaration. This restriction shall not be construed to prohibit a Unit Owner from (i) maintaining his personal professional library; (ii) keeping his personal business or professional records or accounts; or (iii) handling his personal business or professional telephone calls or correspondence.

2.07 Mortgage of Unit. An Owner shall be entitled from time to time to mortgage or encumber its Unit by creating a lien or liens covering such Unit under the provisions of a mortgage or deed of trust, but any lien created thereby shall be subject to the terms and provisions of this Declaration and any Mortgagee or other lienholder which acquires a Unit through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of this Declaration. An Owner that mortgages its Unit shall notify the Association, giving the name and address of said Owner's Mortgagee and the Association shall maintain such information.

2.08 Apertures and Attachments. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and

other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials. When there is a covered entry, porch, balcony, utility room, mechanical room, or other similar area attached to a Unit and serving only the Unit being bounded, and such area is not designated in Exhibit "A", as a Limited Common Element or General Common Element, such Unit's boundary shall be in the intersecting horizontal, vertical, and/or other planes which include the planes of the undecorated finished ceiling(s) and floor(s) and the undecorated finished interior of all such areas.

2.09 Garages. Any garage located within the exterior walls of a Unit shall be considered an inseparable part of the Unit at the time the Unit is purchased. The garage cannot be transferred, conveyed, or assigned by Owner to a third-party separate and apart from the Unit as a whole.

2.10 Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "A" shall control in determining the boundaries of a Unit, except that the provisions of Section 2.03 and Section 2.04 above shall control unless specifically depicted and labeled otherwise on such survey.

ARTICLE III LIMITED COMMON ELEMENTS

3.01 Limited Common Elements. The Limited Common Elements, the use of which shall be limited to those Owners to whom such use is assigned by means of this Declaration, amendments thereto, assignments executed by Declarant, the Condominium Association, or the Managing Agent, including, without limitation: any outdoor kitchen or yard (including the fence of a fenced in yard) appurtenant to a Unit, all other areas, if any, designated as Limited Common Elements on Exhibit "A" and any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one Unit shall be deemed a Limited Common Element of the Unit served. Owners are responsible for the maintenance of their flowerbeds which includes keeping the beds free from weeds and encroaching grass, removing dead plant material within 30 days and any seasonal color. Owners are required to have shrubbery along the front beds of the unit. Shrubby is to be maintained regularly so that shoots are trimmed back, shrubs are kept away from walkways, doorways, windows and address plates. Owners shall not plant or cut down any trees without the prior written permission of the Condominium Association, unless a tree must be removed because it poses an immediate threat of falling and injuring property or life. Owner shall remove any flowers or other plants, or structures placed on the Limited Common Elements at the request of the Condominium Association. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Condominium Association and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Element hereunder, the Owner of the Unit to which the Limited Common Element is appurtenant shall have the right, upon approval of the Association to alter same as if the Limited Common Element were part of the Owner's Unit.

ARTICLE IV ALLOCATED INTERESTS & EXPENSES

4.01 Percentage of Ownership of Common Elements and Surplus. The ownership and undivided shares of each respective Unit in the Common Elements, if any, and the Common Surplus shall be equal and based upon a fraction, the numerator shall be one, and the denominator shall equal the number of Units to which this Declaration applies at that time ("Allocated Interests"). Effective on the date of first filing this Declaration, the number of Units to which this Declaration applies shall be twenty-nine (29);

4.02 Liability for Common Expenses. Each Owner shall be liable for a share of the Common Expenses, such share being the same as the undivided share of the Common Elements, if any, attributable to the Unit owned by such Owner and the Common Surplus appurtenant to such Unit.

4.03 Voting Rights; Membership in the Condominium Association. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the Bylaws of the Condominium Association. Each Unit Owner shall be a member of the Condominium Association.

4.04 Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus that is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

ARTICLE V DEVELOPMENT

5.01 Plan of Development of Property. Declarant intends to construct twenty-nine (29) Units on the Initial Property. Declarant does not intend to build Additional Units after the completion of the initial twenty-nine (29) Units. Notwithstanding the foregoing, Declarant reserves the right to alter the foregoing plan of development with respect to the Initial Property including, but not limited to, changing the number of Units...

5.02 Rights of Declarant. Declarant shall have the right, but not the obligation to (i) make improvements and changes to any Units owned by Declarant (ii) make changes in the location of the boundaries of any Units; (iii) install and maintain any Improvements in and to the Common Elements; and (iv) install and provide for the maintenance of any water, sewer, drainage, irrigation or other utility systems and facilities. Prior to Turnover, Declarant shall have the right to add General Common Elements to the Property. Prior to Turnover, Declarant reserves the right to impose covenants, conditions, and restrictions on the Units, Common Elements, and other Improvements, that Declarant may from time to time own or develop within the Property shown and described on a Plat, which covenants, conditions, and restrictions shall be in addition to but not in abrogation or substitution of those imposed by this Declaration.

5.03 Special Rights of Declarant. The Declarant reserves the following Special Declarant Rights for the period beginning on the date hereof and ending upon the earlier to occur of (a) twenty (20) years hereafter or (b) in accordance with applicable law:

- (a) the right to complete or make improvements indicated on the Plans and Plat;
- (b) the right to maintain a sales and management office in a Unit or to construct a separate sales and management office;
- (c) the right to maintain signs on the Condominium to advertise the Condominium;
- (d) the right to grant, use, and maintain and to permit others to use, easements, including easements for ingress and egress, over, under and across any and all of the Property and/or Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration and for facilitating the maneuverability of residents of adjacent properties comprising the Brooks development;
- (e) the right to establish, vacate, relocate and use the easements as set forth in this Declaration; provided, however, that no modification of any Easement shall have the effect of altering or destroying a Unit or a Limited Common Element unless: (A) the location of such Easement is shown on the Plans and Plat, or (B) it is otherwise consented to by the

Owner of such Unit or by the Owner to whose Unit such Limited Common Element is appurtenant, as well as by the Mortgagee of any such Unit; and

(f) the right to include, in any instrument initially conveying a Unit, such additional reservations, exceptions and exclusions as it may deem consistent with and in the best interests of the Owners and the Association;

(g) appoint or remove any officer or member of the Board of Directors of the Association prior to Turnover, subject to applicable provisions of the Texas Property Code, including the statutory requirement that one-third (1/3) of the Board of Directors of the Association shall be appointed by Unit Owners other than the Declarant within one hundred twenty (120) days after fifty percent (50%) of the maximum number of Units that may be created under this Declaration have been conveyed to Owners other than Declarant;

(h) make the Condominium a part of a larger condominium or planned community;

(i) exercise any of the Development Rights reserved in Section 5.06 herein; and

(j) exercise any other development rights permitted to be exercised by Declarant under the Condominium Act.

5.05 Limitations on Special Declarant Rights. Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act.

5.06 Development Rights Reserved. The Declarant reserves certain development rights (the "Development Rights"). As used herein, the term Development Rights means a right or combination of rights to:

(a) create Units, Common Elements or Limited Common Elements within the Condominium;

(b) subdivide Units or convert Units into Common Elements;

(d) withdraw any real property from the Condominium; and

(e) exercise any other development rights permitted to be exercised by Declarant under the Condominium Act.

ARTICLE VI CLUB MEMBERSHIPS

6.02 Mandatory HOA Membership. As a condition of Unit ownership, each Owner shall be required to be a member of The Brooks at Cumberland Park Homeowners' Association, in addition to the Condominium Association. Unit Owners shall have access to the common elements of The Brooks at Cumberland Park, such as the pool, subject to the same restrictions, requirements, fees and dues structures and such other rules and regulations as are applicable to all other members of The Brooks HOA. These fees and dues are separate from the Assessments described in this declaration. All transfers are subject to the terms and conditions as promulgated by The Brooks HOA.

ARTICLE VII
COMMUNITY CONTROL PROGRAM

7.01 Community Control Program. Declarant shall have the right, but not the obligation, to install and/or contract for the installation of a Community Control Program for the Property. Declarant or its nominees, successors, assigns, affiliates, and licensees may install such a Community Control Program. Declarant reserves the right, at any time and in its sole discretion, to discontinue or terminate any Community Control Program prior to Turnover. In addition, all Owners specifically acknowledge that the Property may have a perimeter Community Control Program, such as perimeter fences (which may adjoin fences which are Limited Common Elements), walls, hedges, or the like on certain perimeter areas. Declarant and the Board shall not be held liable for any loss or damage by reason or failure to provide adequate Community Control Program or ineffectiveness of Community Control Program measures undertaken.

7.02 No Liability. NEITHER THE CONDOMINIUM ASSOCIATION, THE MANAGING AGENT, NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF THE HEALTH, SAFETY, WELFARE OR SECURITY OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTY NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, COMMUNITY CONTROL SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS, OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS LESSEES THAT THE ASSOCIATIONS, THEIR BOARD OF DIRECTORS AND COMMITTEES AND DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE VIII
PROPERTY RIGHTS

8.01 All Owners. Each Unit shall for all purposes constitute real property which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other property. Each Owner shall be entitled to the exclusive ownership of the Unit owned by such Owner, subject to the provisions of this Declaration. The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto, whether or not separately described all of the right and interest in and to the Common Elements as established hereunder. Units shall not be subdivided, and, except as provided in this Article VIII hereof, the boundaries between Units shall not be relocated, unless the relocation thereof is made with the consent of Declarant.

8.02 Owner's Easements of Enjoyment. Subject to the provisions of this Declaration and rules and regulations for use of the Property from time to time established by the Declarant, the Condominium Association and the Managing Agent, every Owner, his family, tenants, and guests shall have a nonexclusive right, privilege, and easement of use and enjoyment in and to the Common Elements which it is entitled to use for their intended purpose, such easement to be appurtenant to and to pass and run with title to each Unit, subject to the following provisions:

- (a) Easements, restrictions, reservations, conditions, limitations, and declarations of record, now or hereafter existing. A description of all recorded easements and licenses appurtenant to the Condominium is included in Exhibit "A".

(b) The right of the Declarant or the Condominium Association to borrow money for any purpose deemed necessary by the Board and, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the General Common Elements; provided, however, that the lien and encumbrance of any such security instrument given by Declarant or the Condominium Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of the Condominium Association, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(c) The right of the Condominium Association or Managing Agent to suspend an Owner's rights hereunder or to impose fines in accordance with this Declaration, as amended from time to time.

(d) In case of any emergency originating in, or threatening the Property or any Unit, regardless of whether the Owner is present at the time of such emergency, the Condominium Association, the Managing Agent, or any other Person authorized by either, shall have the right to enter a Unit for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

(e) The rights and easements reserved to the Condominium Association and Managing Agent herein.

(f) The right of the Condominium Association to enter into any contribution and maintenance agreements, cost sharing agreements, easement agreements, and use agreements with third parties.

(g) The rights and easements reserved in this Declaration for the benefit of the Managing Agent, the Condominium Association, their directors, officers, agents, and employees.

(h) The rights and easements reserved in Section 8.07 hereof for the benefit of the Additional Property.

(i) The right of the Condominium Association, the Managing Agent and/or any governmental agency to enter any portion of the Property in order to comply with any applicable permits.

8.03 Common Elements Generally. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY HEREIN, THE DEFINITION OF "COMMON ELEMENTS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON ELEMENTS.

8.04 Rules Regarding Common Elements. In addition, the following provisions shall be applicable to the Common Elements.

(a) Ownership and Operation of Common Elements. The Common Elements shall be owned by the Unit Owners in undivided shares and shall be operated, maintained, and administered as Common Expenses for all purposes and uses reasonably

intended, as the Condominium Association or Managing Agent deem appropriate. The Condominium Association and the Managing Agent shall operate and administer the Common Elements without interference from any Owner or Mortgagee of a Unit or any other Person whatsoever. Owners shall have no right in or to any Common Elements referred to in this Declaration unless and until same are actually constructed and completed. The current conceptual plans and/or representation, if any, regarding the composition of the Common Elements are not a guarantee of the final composition of the Common Elements.

(b) Right to Allow Use. Declarant may enter into easement agreements or other use or possessory agreements whereby the Owners, the Condominium Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or nonexclusive basis, for certain specified purposes. The Condominium Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property.

(c) Obstruction of Common Elements. No portion of the Common Elements may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by the Condominium Association, the Managing Agent, and this Declaration. No long-term street parking, as determined by the Condominium Owner's Association, shall be allowed on the roads or other Common Elements. No parking of trailers, RVs or inoperable vehicles shall be allowed at any time on the roads or other Common Elements. Residents must park within a Unit's garage, and not on paved portions of the Unit's Limited Common Elements. Visitors may park short-term on the paved portion of the Limited Common Elements of the Unit which they are visiting. If a Unit Owner owns more cars than there are parking spaces in the garage, the Owner must get written approval from the Condominium Association to park on the paved portion of the Limited Common Elements.

8.05 Changes in Boundaries; Additions to Designated Common Elements. Declarant expressly reserves for itself and its affiliates, successors and assigns, the right to change and realign the boundaries of the designated Common Elements and any Units owned by Declarant, including the realignment of boundaries between adjacent Units owned by Declarant, and shall be evidenced by a revision of or an addition to the applicable Plat which shall be recorded in the Public Records of Smith County, Texas.

8.06 Easements for Utilities.

(a) There is hereby reserved for the benefit of the Condominium Association, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other Person, upon, over, under, and across (i) all of the Common Elements; and (ii) all land within easement areas shown on recorded subdivision plats for the purpose of installing, replacing, repairing, maintaining all utilities, including, but not limited to storm sewers and drainage systems and electrical, gas, telephone, cable television, water, sewer, advanced water treatment, and irrigation lines. Such easements may be granted or accepted by Declarant, its successors or assigns. To the extent practicable, all utility lines and facilities serving the Property and located therein shall be located underground. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Property so encumbered (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities; (ii) to cut and remove trees, bushes, or shrubbery; (iii) to grade, excavate, or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Easements are reserved under, through and over the Property as may be required from time to time for utility services and other services and drainage in order to serve the Association. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility services, or other service or drainage facilities or the use of these easements.

8.07 Easements for Additional Property. There is hereby reserved in Declarant, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) the installation, maintenance, repair, replacement, and use within the Property and those portions of the Units encumbered pursuant to Section 8.06, for utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water, sewer, and cable system lines; and (ii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time located thereon.

ARTICLE IX MAINTENANCE

The following maintenance provisions concerning Units within the Property are intended to describe those maintenance obligations of the Condominium Association (as delegated to a contractor or agent of the Condominium Association referred to herein as the "Managing Agent"), and of Owners.

9.01 Responsibilities of Owners.

(a) Except as provided in Section 9.02 below, all maintenance and repair of Units, including all porches, balconies, patios, terraces, fences or any other feature designated as Limited Common Elements appurtenant to the Unit (other than yard maintenance and general landscaping), shall, unless otherwise maintained or repaired pursuant to the insurance provided under Section 10.01 hereof, be the sole responsibility of the Owner of such Unit.

(b) Owner shall be responsible for repairing and remedying any instances of water damage or sightings of mold within the Unit.

(c) Owner shall be responsible for keeping the Unit in good repair, including, but not limited to keeping the Unit in clean and attractive condition. This includes, but is not limited to, pressure washing the Unit when necessary, removing fallen limbs or trees, keeping flower beds free of weeds, painting when the paint becomes worn, repairing the roof if any damage occurs, and keeping the Unit and Limited Common Elements free from trash and debris.

(d) As provided in Section 9.03 hereof, each Owner shall also be obligated to pay for the costs incurred by the Condominium Association and the Managing Agent for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. Owners shall not (i) decorate, change, or otherwise alter the appearance of any portion of the Limited Common Elements unless such decoration, change, or alteration is first approved, in writing, by the Managing Agent; or (ii) do any work which, in the reasonable opinion of the Managing Agent, would jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or hereditaments thereto, without in every such case obtaining the written approval of the Managing Agent.

(e) Except as provided in Section 9.02 below, all maintenance and repair of Units, including all porches, balconies, patios, terraces, fences or any other feature designated as Limited Common Elements appurtenant to the Unit (other than yard maintenance), shall, unless otherwise maintained or repaired

pursuant to the insurance provided under Section 10.01 hereof, be the sole responsibility of the Owner of such Unit.

(f) As provided in Section 9.03 hereof, each Owner shall also be obligated to pay for the costs incurred by the Condominium Association and the Managing Agent for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. Owners shall not (i) decorate, change, or otherwise alter the appearance of any portion of the Limited Common Elements unless such decoration, change, or alteration is first approved, in writing, by the Managing Agent; or (ii) do any work which, in the reasonable opinion of the Managing Agent, would jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or hereditaments thereto, without in every such case obtaining the written approval of the Managing Agent.

9.02 Condominium Association's Responsibility. Notwithstanding the foregoing, to the extent the Association has received insurance proceeds for any event described in this Section, the Association shall apply such proceeds to any repair or restoration of any such loss or damage, and any additional required funds for such repair or restoration, including the amount of any deductible, shall be paid as a Common Expense or collected through a Special Assessment pursuant to Section 10.07 if necessary. Neither the Condominium Association nor the Managing Agent shall be liable for injury or damage to any person or property: (A) caused by weather conditions or by any Owner or any other Person not acting as either an agent or employee of the Condominium Association or the Managing Agent, or (B) caused by any pipe, plumbing, drain, conduit, appliance, equipment, or utility line or facility, the responsibility for the maintenance of which is that of the Condominium Association or the Managing Agent, nor shall the Condominium Association or the Managing Agent be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Property. No diminution or abatement of Assessments, fees, or charges shall be claimed or allowed by reason of any alleged failure of the Condominium Association or the Managing Agent to take some action or to perform some function required to be taken or performed by the Condominium Association or the Managing Agent under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Condominium Association or the Managing Agent, or from any action taken by the Condominium Association or the Managing Agent to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments, fees, and charges being a separate and independent covenant on the part of each Owner. The Condominium Association shall maintain and repair the Common Elements (unless provided otherwise in the Condominium Documents) and shall provide all mowing and general landscaping services for all Limited Common Elements, the cost and expense of all of which shall constitute a Common Expense and payable as a portion of the Assessments against Owners. The Condominium Association and Managing Agent will not be responsible for any maintenance or repairs to the Units or Limited Common Elements, including but not limited to all pipes, plumbing, drains, conduits, appliances, equipment, or utility lines, except for the yard maintenance and general landscaping provided for herein. Nothing in this Declaration shall be deemed or construed as relieving any Owner from liability or responsibility for damage to Common Elements caused by the negligence or misconduct of an Owner or an Owner's occupants or invitees.

9.03. Failure of Owner's Obligations. In the event that the Condominium Association or the Managing Agent determines that: (1) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Condominium Association or the Managing Agent hereunder is caused through the willful or negligent act of an Owner, or his or her family, tenants, guests or invitees and is not covered and promptly paid for by insurance in whole or in part, then, in either event, the Managing Agent or Condominium Association, except in the event of an emergency situation, shall give such Owner written notice of the Managing Agent's or Condominium Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is

not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situation, or the failure of any Owner to comply with the provisions hereof after notice, the Managing Agent or Condominium Association may provide (but shall not have the obligation to so provide) any such maintenance, repair or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the Assessment to which such Owner and his or her Unit are subject. In the event that the Managing Agent undertakes such maintenance, cleaning, repair, or replacement, the applicable Owner shall promptly reimburse the Condominium Association for the costs and expenses of any nature. In the event the Managing Agent or the Condominium Association provides any of the forgoing maintenance, repair, or replacement, the Managing Agent or Condominium Association shall not be obligated to procure bids for such maintenance repair or replacement and the Managing Agent or Condominium Association, in its sole discretion, shall designate a contractor to perform such work. Damage to the interior of any Unit resulting from such maintenance, repair or replacement activities by the Association, whether by reason of an emergency or otherwise, shall constitute a Common Expense and be payable by the Association; provided, however, that if such maintenance, repairs or replacements are the result of the misuse or negligence of an Owner, or its guests or invitees, then such Owner shall be responsible and liable for all such damage. The cost of any maintenance, cleaning, repair or replacement pursuant to this Article IX shall be assessed against the Unit Owner as an Individual Assessment pursuant to Section 14.08 hereof.

ARTICLE X INSURANCE AND CASUALTY LOSSES

10.01 Insurance. Beginning not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Condominium Association shall maintain, to the extent reasonably available, the following insurance, which shall be a Common Expense:

(a) Property Insurance for Common Elements. In the event General Common Elements are added to the Property, property insurance on the insurable General Common Elements, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least eighty percent (80%) of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy.

(b) Liability Insurance. In the event General Common Elements are added to the Property, commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the General Common Elements. Such policy may insure against all damage or injury caused by the negligence of the Declarant, its directors and officers, any of its agents, or the Owners.

(c) Unavailability. If the insurance described in Section 10.01(a) and Section 10.01(b) is not reasonably available, the Condominium Association shall cause notice of that fact to be delivered or mailed to all Unit Owners and lienholders.

(d) Other Insurance. The Declarant or its duly authorized agents shall have the authority and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable laws; and (ii) such other types and amounts of insurance as may be determined by the Declarant to be necessary or desirable.

(e) Insurance Provisions. Insurance policies carried under Section 10.01(a), Section 10.01(b) and Section 10.01(c) shall contain the following provisions.

- (i) Each Unit Owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the Common Elements or membership in the Condominium Association.
- (ii) The insurer waives its right to subrogation under the policy against a Unit Owner.
- (iii) No action or omission of a Unit Owner, unless within the scope of the Unit Owner's authority on behalf of the Condominium Association, will void the policy or be a condition to recovery under the policy.
- (iv) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Condominium Association's policy provides primary insurance.
- (v) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Condominium Association and to any Mortgagee to which a mortgagee endorsement has been issued.
- (vi) All such insurance coverage obtained by the Condominium Association shall be written in the name of the Condominium Association as trustee for each of the Owners.
- (vii) All policies shall be written with a company licensed to do business in the State of Texas and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such report is available or, if not available, its equivalent rating or the best rating possible.
- (viii) All property insurance policies shall be for the benefit of the Owners and their Mortgagees as their interests may appear.
- (ix) In no event shall the insurance coverage obtained and maintained by the Declarant hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.
- (x) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Declarant, the Declarant's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees.
- (xi) All policies shall contain a provision that no policy may be canceled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Declarant or of its manager, without prior demand in writing delivered to the Declarant to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

10.02 Owner's Insurance. Each Owner, at his or her sole cost and expense, shall provide evidence of a homeowner's liability insurance policy covering his or her Unit, including, but not limited to, Limited Common Elements, and a personal property insurance covering his or her personal belongings located inside the Unit or Limited Common Elements, as well as all structural and non-structural interior walls and doors within or affording access to the Unit, as well as all appliances and decorative fixtures therein. Neither Declarant nor the

Condominium Association shall be responsible for any theft of or damage to personal belongings of Owner or other Person on the Property. Further, an insurance policy issued to the Condominium Association does not prevent a Unit Owner from obtaining insurance for the Owner's own benefit. Neither the Declarant nor the Condominium Association shall be responsible for providing public liability or property damage insurance for the Units, including, but not limited to, the Limited Common Elements.

10.03 Effect of Article. This Article X does not affect the right of a holder of a mortgage on a Unit to require a Unit Owner to acquire insurance in addition to that provided by the Condominium Association.

10.04 Right to Adjust. A claim for any loss covered by the policy under Section 10.01(a), Section 10.01(b), or Section 10.01(c) must be submitted by and adjusted with the Condominium Association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the Condominium Association for that purpose, if the designation of an insurance trustee is considered by the Board to be necessary or desirable, or otherwise to the Condominium Association, and not to any Unit Owner or lienholder. Notwithstanding the above, no mortgagee or other security holder of the Common Elements having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

10.05 Insurance Proceeds. The insurance trustee or the Condominium Association shall hold insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to Section 10.06, Section 10.07, and Section 10.08, the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

10.06 Damage or Destruction to Common Elements. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Elements covered by insurance written in the name of the Condominium Association, the Condominium Association or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance. The Condominium Association shall also obtain reliable and detailed estimates of the cost of Repair or Reconstruction of the damaged or destroyed property. Any portion of the Common Elements for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the Condominium Association unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) at least eighty percent (80%) of the Unit Owners, vote to not rebuild. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss. The cost of repair or replacement in excess of the insurance proceeds and reserves is a Common Expense. If the entire Common Element is not repaired or replaced, any insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.

10.07 Special Assessments. If the insurance proceeds, if any, for such damage or destruction of any Common Elements as described in Section 10.06 or any Unit(s) (including Limited Common Elements) as described in Section 10.08 are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Condominium Association may levy a Special Assessment against all Owners, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost of Repair or Reconstruction. Such a Special Assessment shall be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional assessments may be made at any time during or following the completion of any Repair or Reconstruction. Any and all sums paid to the Condominium Association under and by virtue of such assessments shall be held by and for the benefit of the Condominium Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Condominium Association in payment for such Repair or Reconstruction.

10.08 Damage or Destruction to Units. In the event a Unit is destroyed by or for any cause, the Condominium Association shall not be obligated to repair, restore, and rebuild the damage caused by such loss.

The Unit Owner is responsible for such repair, restoration and rebuilding of (a) all portions of the Owner's Unit, including, but not limited to, Limited Common Elements; (b) any areas that Owner has agreed in writing to operate, maintain, repair and replace; and (c) any equipment, facilities, utilities and other items with respect to which the Owner has exclusive rights. Such repair, restoration, and rebuilding to be undertaken immediately and completed within nine (9) months of the date of casualty. Such replacement Unit shall conform to the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration. If the Unit Owner fails within nine (9) months to repair, restore, and rebuild a Unit that conforms to the same condition as existed prior to such fire or casualty, the Condominium Association may, but is not obligated, to undertake repair, restoration, and rebuilding by and through any contractors, subcontractors, or any other agents of its choice. The cost of any such repair, restoration, and rebuilding shall be assessed against the Unit Owner as an Individual Assessment pursuant to Section 14.08 hereof.

ARTICLE XI TAXES AND UTILITIES

11.01 Taxes. Each Owner shall be responsible for and shall pay when due all taxes, assessments, and other governmental impositions lawfully levied or assessed with respect to such Owner's Unit. Any taxes, assessments, or other governmental impositions lawfully levied or assessed with respect to the Property not separately billed to the Owners shall constitute a Common Expense and be payable by the Association.

11.02 Utilities. Each Owner shall be responsible for and shall pay all electricity, water, gas and trash service charges relating to such services used in or serving only the Owner's Unit; to the extent such charges are separately metered or billed to a specific Unit. Any utility charges not so separately metered or billed to a specific Unit, including without limitation charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Association. Any "hook up" charges under any agreements benefiting the Unit, entered into or assumed by the Association or to which the Association or the Units are subject, and any other charges under such agreements which are not separately billed to the Unit Owners, and the cost of any utilities generated or provided by the Association to the Unit Owners, unless separately metered, shall constitute a Common Expense and be payable by the Association.

ARTICLE XII CONDEMNATION

12.01 General Provisions. If all or any part of the Property is subject to a Taking, the Association and each Owner affected thereby shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give such notice as the Association receives knowledge of such proceeding to all the Owners and to all the Mortgagees which have requested such notice; provided, however, that the failure of the Association to give such notice shall not prejudice the right of any Mortgagee to participate in such proceedings. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. Any restoration or repair of the Property following a partial Taking shall be performed in accordance with the provisions of this Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by all the Mortgagees.

12.02 Taking of All or Substantially All of One Unit. If a Unit (or a substantial part thereof such that the remnant may not practically or lawfully be used for any purpose permitted by this Declaration) is subject to a Taking, the Owner and any Mortgagee of such Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and, after payment thereof, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property. In such event, the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the

Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Unit remaining after part of a Unit is the subject of a Taking described in this Section 12.02 shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

12.03 Partial Taking of a Unit. If only a portion of a Unit is subject to a Taking, such that the remaining portion of such Unit can practically and lawfully be used for any purpose permitted by this Declaration, the Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and the Allocated Interest of the Unit subject to such Taking shall be reduced and the Allocated Interests of the other Units shall be increased in accordance with the portion of the Allocated Interest lost. The Owner of such Unit, at its sole cost and expense, shall promptly repair, restore, and rebuild the remaining portions of such Unit as nearly as possible to the condition which existed prior to such Taking.

12.04 Taking of Common Elements. If an action is brought to effect a Taking of all or any portion of the Common Elements together with or apart from any Unit, the Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case such decision shall be made by the affirmative vote or written consent of the Owners holding not less than 80% of the votes in the Association. With respect to any such Taking of the Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for a Taking of the Common Elements are determined, such damages or awards shall be held by the Association, acting as trustee for each Owner, and their Mortgagees, as their interests shall appear, and any amounts not used for repair or restoration of the remaining Common Elements, shall be divided among the Owners in proportion to each Owner's Allocated Interest before the Taking, except that such portion of any such award attributable to the condemnation of a Limited Common Element shall be divided among the Owners of the Units served by such Limited Common Elements, as such Owners' interests existed in the Limited Common Elements condemned. The Owners shall determine by the affirmative vote or written consent of the Owners holding not less than 80% of the votes in the Association either to rebuild or repair the remaining Common Elements or to take such other action as such Owners may deem appropriate. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and recorded in the Condominium Records.

12.05 Taking of Several Units. If an eminent domain proceeding results in the Taking of all or part of multiple Units, then the damage and awards for such Taking shall be determined and paid for each Unit as described in Sections 12.02 and Section 12.03 of this Declaration, and the following shall apply: (a) the Association shall determine which of the Units damaged by such Taking may be practically and lawfully used for any purpose permitted by this Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged; (b) if the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association, with the written consent of 51% of the Mortgagees, that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be practically and lawfully used for any purpose permitted by this Declaration as a condominium project in the manner provided in this Declaration, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all the remaining Owners, as tenants-in-common, in the percentage of the Allocated Interest of each Owner (after reallocation in accordance with the procedures described in Section 12.02 and Section 12.03 of this Declaration); and (c) if the Condominium is not so terminated,

then the damages and awards made with respect to each Unit which can be practically and lawfully used for any purpose permitted by this Declaration shall be applied to repair and reconstruct such Unit as provided in Section 12.03 of this Declaration. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Owners of those Units which are being repaired or reconstructed. With respect to those Units which may not be practically or lawfully used for any purpose permitted by this Declaration, after payment of the award, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property and the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Unit remaining after part of a Unit is the subject of a Taking, if the remnant of such Unit cannot be practically or lawfully used for any purpose permitted by this Declaration, shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property (other Than Units which can be practically and lawfully used for any purpose permitted by this Declaration) is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

12.06 Complete Taking of Property. If all of the Property is the subject of a Taking, all damages and awards shall be held by the Association, acting as trustee, for the accounts of all the Owners and their Mortgagees, as their interests shall appear, and shall be paid to or for the accounts of the Owners in proportion to their Allocated Interests and this Condominium shall terminate upon such payment.

12.07 Payment of Awards and Damages. Any damages or awards provided in this Article XII to be paid to or for the account of any Owner by the Association, acting as trustee, shall be applied first to the payment of any governmental impositions past due and unpaid with respect to that Unit; second, to any priority lien indebtedness on that Unit; third, to the payment of any Assessments charged to or made against the Unit and unpaid; and finally to the Owner.

12.08 Association as Attorney-in-Fact. Each Owner, by acceptance of a deed to a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as such Owner's true and lawful attorney-in-fact, for and in such Owner's name, place and stead, upon the condemnation of the Condominium, or any part thereof, or upon any determination by the Owners made pursuant to this Article XII, to take any and all actions, and to execute and deliver any and all instruments, as the Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article XII, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the Property as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article XII as aforesaid, and to execute and deliver all instruments necessary or incidental to any such actions.

ARTICLE XIII **ADMINISTRATION**

13.01 Duties and Powers. The Condominium Association may exercise any right or privilege given to it expressly by this Declaration, under the Bylaws, or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such duties may include, but shall not be limited to, arranging with governmental agencies, public or private utilities, or others, as a Common Expense or by billing directly to Units, to furnish trash collections, common area irrigation, sewer, and/or security service for the Common Elements.

13.02 Agreements. All agreements and actions lawfully authorized by the Condominium Association shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property; and in performing its responsibilities hereunder, the Condominium Association, shall have the authority to delegate to persons of its choice such duties of the Condominium Association as it may determine, including, without limitation the Managing Agent. In furtherance of the foregoing and not in limitation thereof, the Condominium Association may obtain and pay for the services of any Person to manage its responsibilities hereunder or any part thereof, to the extent it deems advisable, as well as such other personnel as the Condominium Association shall deem necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Condominium Association or by any Person with whom or with which it contracts. All costs and expenses incident to the employment of the Managing Agent or any other manager shall be a Common Expense. During the term of the management agreement with Managing Agent, the Managing Agent is hereby authorized by the Condominium Association to exercise all of the powers and shall be responsible for the performance of all the duties of the Condominium Association. The Managing Agent may be bonded in such a manner as the Condominium Association may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Condominium Association may hire and contract for, such legal, accounting, and other professional services as are necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration, or the rules and regulations.

13.03 Personal Property and Real Property for Common Use. The Condominium Association may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Condominium Association and the proceeds thereof, after deducting therefrom the costs incurred by the Condominium Association in acquiring or selling the same, shall be held by and for the benefit of the Owners. The shares of the Owners in the funds and assets cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Unit also transfers the rights that are appurtenant to such Unit.

ARTICLE XIV

ASSESSMENTS FOR COMMON EXPENSES

14.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Units, and maintaining the Property and improvements therein.

14.02 Payments by Declarant. Until the Condominium Association makes a Common Expense Assessment, the Declarant shall pay all the expenses of the Condominium as the expenses accrue. From the date of the initial Assessment until Turnover, or three years from Declarant's first conveyance of a Unit, whichever is earlier, Declarant shall have the option, in its sole discretion, to (i) pay Assessments on the Units as to which it is the Owner, or, (ii) fund any deficit in the Common Expenses of the Association by virtue of paying the difference between the Annual Assessment and the total of the Assessments paid by Unit Owners other than Declarant.

14.03 Initial Road Maintenance Assessment. Upon the sale of a Unit an initial road maintenance assessment, such amount to be set by the Condominium Association, will be made payable to the Association. The fee will be paid by the Buyer unless the Seller agrees otherwise. This Assessment will not be applicable to a sale by the Declarant. The total amount of such funds and interest accrued thereon, if any, shall be a used to maintain, repair, and rebuild the roads on the Property. Notwithstanding anything herein to the contrary, Declarant shall have the option to waive contributions to the Initial Road Maintenance Assessment.

14.04 Computation of Annual Assessments. It shall be the duty of the Condominium Association to annually, at least thirty (30) days prior to an annual meeting, prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Property. The Condominium Association shall cause a copy of the budget and the proposed

total of the Annual Assessments to be levied against Units for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The budget and the Annual Assessments shall become effective unless disapproved at the meeting by a vote of a majority of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Condominium Association fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and Annual Assessments in effect for the then current year shall be increased in proportion by the greater of either ten (10%) percent of the budget and assessments for the previous year or by the percentage increase, if any, over the previous year's Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967=100), or its successor index, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. Commencing on the first day of the period covered by the annual budget, and until the adoption of the next annual budget, the Assessments shall be allocated so that each Owner shall pay his pro rata portion of Annual Assessments, Special Assessments, and reserves, if any, based upon a fraction, the numerator of which is the total number of Units owned by such Owner and the denominator of which is the total number of Units in the Property conveyed to Owners. Except as hereinafter specified to the contrary, Annual Assessments, Special Assessments and reserves, if any, shall be allocated equally to each Unit. Each Owner shall be assessed for each Unit purchased.

14.06 Types of Common Expenses. The Common Expenses to be funded by the Annual Assessments may include, but shall not be limited to, the following:

- (a) administration fees and expenses of administration, including legal and accounting fees;
- (b) charges for common services, for the Units and Owners, whether or not the Unit Owner elects to use the service, including front and back lawn maintenance including mowing, edging, and blowing off paved areas, and exterior pest control;
- (c) the cost of any policies of insurance purchased for the benefit and protection of all the Owners and Units as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Condominium Association determines to be in the interests of the Owners;
- (d) the expenses of maintenance, operation, and repair of facilities serving the Property, the maintenance, operation, and repair of which the Condominium Association or the Managing Agent from time to time determines to be in the best interest of the Owners;
- (e) the cost of operating and monitoring, and maintaining the Community Control System, if any, within the Property including, without limitation, any gates used to enter the Villas at the Brooks, alarm systems, fences, walls, hedges, or the like;
- (f) such other expenses as may be determined from time to time by the Condominium Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Units;
- (g) damages to the Property in excess of insurance coverage;
- (h) all reserves, if any, established by the Condominium Association, regardless of when reserve funds are expended;
- (i) all costs and expenses relating to Assessments and other maintenance expenses attributable to any Units acquired by the Condominium Association;

(j) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure;

(k) all other expenses that may be duly incurred by the Condominium Association and Managing Agent from time to time in operating, protecting, managing, maintaining and conserving the Property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration, the Certificate of Formation, or the Bylaws;

(l) any and all expenses that may be duly incurred by the Condominium Association and Managing Agent in compliance with any contribution and maintenance agreements, cost sharing agreements, easement agreements, and use agreements by and between the Condominium Association and a third party; and

(m) any and all assessments, charges, and/or sums payable to the Condominium Association pursuant to, and in accordance with the Declaration.

14.06 Deficit. In the event Common Expenses as estimated in the budget for a particular fiscal year are, after the actual Common Expenses for that period are known, less than the actual Common Expenses, then the difference shall, at the election of the Condominium Association: (i) be added to the calculation of Annual Assessments for the next ensuing fiscal year; or (ii) be immediately collected from the Owners as a Special Assessment. The Condominium Association shall have the unequivocal right to specially assess Owners retroactively on January 1st of any year for any shortfall in Annual Assessments, which Special Assessment shall relate back to the date that the Annual Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment except to the extent specifically provided herein). All surplus funds, if any, shall be applied to reduce Common Expenses.

14.07 Special Assessments. In addition to the Annual Assessments authorized above, the Condominium Association may levy, in any assessment year, Special Assessments for Common Expenses, applicable to that year only. The Declarant may make such Special Assessments payable in installments over a period which may, in the Condominium Association's discretion, extend in excess of the fiscal year in which adopted. Such Special Assessments are to be prorated among the Units as provided with respect to Annual Assessments.

14.08 Individual Assessments. Any expenses occasioned by the conduct of less than all of the Owners, or by the family, tenants, agents, guests, or invitees of any such Owner shall be specially assessed against such Owners and their respective Units. The Individual Assessments provided for in this Section 14.07 shall be levied by the Condominium Association and the amount and due date of such Individual Assessment so levied shall be as specified by the Condominium Association.

14.09 Designation. The designation of Assessment type shall be made by the Condominium Association.

14.10 Date of Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence as to each Unit on the date on which such Unit is conveyed to a Person other than Declarant and shall be due and payable in such manner and on such schedule as the Condominium Association may provide. Except as provided in Section 15.02 herein, Declarant shall be responsible for the payment of Annual, Individual, and Special Assessments on Units which it owns. Annual Assessments and any outstanding Special Assessments shall be adjusted for such Unit according to the number of months then remaining in the year.

14.11 Reserves. The Condominium Association may, but is not obligated to, annually prepare a reserve budget which shall take into account the number and nature of significant replaceable assets, the estimated useful life of each asset and the estimated, repair and replacement cost. If a reserve budget is established, the Declarant shall set the required reserve contribution. The reserve contribution required shall be fixed by the Condominium Association and included within and distributed with the budget and Common

Expenses. The reserve budget may, if funded, be used by the Condominium Association to fund capital replacements, capital additions, and capital repairs.

IF RESERVES ARE ESTABLISHED, NEITHER THE CONDOMINIUM ASSOCIATION NOR DECLARANT SHALL BE UNDER ANY OBLIGATION TO FUND OR PAY RESERVE CONTRIBUTIONS. NOTHING IN THIS SECTION OR THIS DECLARATION SHALL REQUIRE THE CONDOMINIUM ASSOCIATION TO COLLECT OR ASSESS FOR CAPITAL RESERVES. IF RESERVES ARE COLLECTED, NO REPRESENTATION IS MADE THAT THE AMOUNTS COLLECTED WILL BE SUFFICIENT FOR ANY OR ALL CAPITAL REPLACEMENTS OR REPAIRS, AND IT IS LIKELY THAT SPECIAL ASSESSMENTS MAY BE NECESSARY. IF ANY CLAIM IS MADE AGAINST THE CONDOMINIUM ASSOCIATION FOR COMMON AREA CONDITIONS, ANY RESERVES SHALL BE APPLIED TO REMEDY ANY CONDOMINIUM ASSOCIATION OR DIRECTOR LIABILITY.

14.12 No Obligation to Fund Reserves. Notwithstanding anything to the contrary in this Declaration, Declarant shall have no obligation to fund capital replacements, capital repairs, capital additions, or reserves of any kind. Any capital replacements, capital repairs, or additions shall be funded through reserves that may be collected or Special Assessments.

14.13 Assessments on Additional Property. Upon the addition of the Additional Property or any portion thereof to the Property, the Units being added to the Property shall thenceforth pay Assessments that are equal to those imposed upon Units previously in the Property. In such event, the budget shall be accordingly revised by the Condominium Association, without the necessity of approval by the Owners, to include Common Expenses and Assessments related to such additional Units.

14.14 Notice of Meeting. Written notice of the annual meeting of the Condominium Association with the Owners, as well as any other meeting called for the purpose of taking any action, shall be sent to all Owners not less than fifteen (15) days or more than forty-five (45) days in advance of such meetings.

ARTICLE XV

CONDOMINIUM ASSOCIATION'S LIEN FOR ASSESSMENTS

15.01 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Condominium Association: (a) an "Initial Assessment" to be established and collected as provided in Section 14.03 hereof, (b) "Annual Assessments" to be established and collected as provided in Section 14.04 hereof, (c) "Special Assessments" to be established and collected as provided in Section 14.07 hereof, (d) "Individual Assessments" against any particular Unit which are established as provided in Section 14.08 hereof, including, but not limited to, fines as may be imposed against such Unit in accordance with this Article XV and XVII. Any such Assessments, together with late charges, accrue simple interest at the rate of ten percent (10%) per annum or the maximum interest rate allowed by the laws of the State of Texas, whichever is lower, and court costs and attorneys' fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the Unit, the Owner of which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he is the Owner of a Unit, and his grantee shall take title to such Unit subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefore; provided, however, the lien for unpaid Assessments shall not apply to the holder of any first priority Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a Unit through foreclosure or through conveyance of a deed in lieu of foreclosure or to any purchaser of such Unit at such foreclosure sale. In the event of co-ownership of any Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Condominium Association, provided that unless otherwise provided by the Condominium Association, the Annual Assessments shall be paid at the beginning of each month

as established, or may be paid for an entire calendar year in one payment, in accordance with the policies and procedures established by the Condominium Association.

15.02 Requirement to Pay Assessments. No Person may waive or otherwise exempt himself from liability for Assessments, including, by way of illustration and not limitation, by non-use of Common Elements or abandonment of his Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Person liable for the payment of Assessments, and the Condominium Association has the right to require an unconditional personal continuing guarantee from a principal of an entity that owns a Unit. Assessments will be due and payable during any period of suspension of use of all or portions of the Common Elements. The Owner of any Unit subject to Assessment, by acceptance of a deed therefore whether or not it shall be expressed in any such deed, shall be deemed to covenant and agree to pay the Assessments and such obligations shall be binding on all subsequent purchasers of such Unit. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged act or omission of Declarant, the Condominium Association or the Managing Agent to take some action or perform some function required to be taken or performed by Declarant, the Condominium Association or the Managing Agent, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Declarant, the Condominium Association or the Managing Agent, or from any action taken by Declarant in connection with the development of the Property or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

15.03 Superiority of Liens. Such liens shall be superior to all other liens and encumbrances on such Unit except only for: (i) liens of ad valorem taxes and other governmental assessments or charges against the Unit unless otherwise provided in the Texas Tax Code, Section 32.05; and (ii) liens for all sums unpaid on a Mortgage or on any Mortgage to Declarant, or its affiliates, successors, or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments and charges to the lien of such Mortgages shall only apply to such assessments and charges that have become due and payable prior to a foreclosure or conveyance in lieu of foreclosure. All other persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments and charges as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

15.04 Effect of Nonpayment; Remedies of the Condominium Association. Any Assessments or charge of an Owner or any portions thereof which are not paid when due shall be delinquent. Any Assessment or charge delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Condominium Association from time to time and shall also commence to accrue simple interest at the rate of ten percent (10%) per annum or the maximum interest rate allowed by the laws of the State of Texas, whichever is lower. A lien and equitable charge as herein provided for each Assessment or charge shall attach simultaneously as the same shall become due and payable, and if an Assessment or charge has not been paid within thirty (30) days, the entire unpaid balance of the Assessment or charge may be accelerated at the option of the Condominium Association and be declared due and payable in full. The continuing lien and equitable charge of such Assessment or charge shall include the late charge established by the Condominium Association, interest on the principal amount due at the rate of ten percent (10%) per annum or the maximum interest rate allowed by the laws of the State of Texas, whichever is lower, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the Assessment or charge remains unpaid after sixty (60) days from the original due date, the Condominium Association may institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Condominium Association, and each Owner, by his acceptance of a deed or other conveyance to a Unit vests in the Condominium Association and its agents the right and power to bring all actions against them personally for the collection of such assessments and charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, including non-judicial foreclosure pursuant to Chapter 51 of the Texas Property Code, as may be amended from time to time; and such Owner hereby expressly grants to the Condominium Association the right of private power

of sale in connection with such lien. The Condominium Association shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same.

15.05 Cumulative Rights. The preceding remedies are in addition to and not in substitution for all other rights and remedies which the Condominium Association may have under the Condominium Instruments and applicable law, including without limitation, pre-judgment and post-judgment garnishment of rents, bank accounts and other debts, judicial or non-judicial foreclosure of the Condominium Association's assessment lien or pursuit of a personal judgment against the delinquent owner.

15.06 Certificate. The Condominium Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Condominium Association, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by the Condominium Association setting forth whether the Assessments and charges for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate shall be conclusive evidence binding all but such Owner of payment of any Assessments and charges stated therein to have been paid.

ARTICLE XVI USE RESTRICTIONS

16.01 Use of Common Elements. Owners shall not make any structural additions or alterations (except the erection or removal of non-support carrying interior partitions located wholly within Units). The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited, and which are incident to the use and occupancy of Units. No Owner shall obstruct the ingress or egress to the other Units, or the Limited Common Elements. No Owner shall allow anything to remain in or on the Limited Common Elements which would be unsightly or hazardous. No Owner shall allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefore, and each Unit and the Limited Common Elements shall at all times be kept in a clean and sanitary condition. Local recycling programs shall be enforced. Garbage shall be disposed of through the kitchen garbage disposal so far as possible and the remainder, along with bottles, cans and other trash shall be placed in waterproof bags or similar containers before being placed in the appropriate receptacles. No Owner shall make use of the Limited Common Elements in such a manner as to abridge the equal rights of the other Unit Owners entitled to their use and enjoyment.

16.02 Nuisances. No portion of the Units or Limited Common Elements shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious or unsightly to the eye; nor shall any substance, thing, or material be kept on any portion of the Units or the Limited Common Elements appurtenant thereto that will emit foul or obnoxious odors or cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No noxious or offensive activity shall be carried on in any Units, Limited Common Elements or other portions of the Property, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner. The Board shall have the right to determine if any equipment, fixture, improvement, materials, or activity producing such noise or odor constitutes a nuisance. In particular, no Unit Owner shall play (or permit to be played in its Unit or in the Limited Common Elements) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit Owners or Occupants. No vocal or instrumental practice is permitted during the hours from 10:00 p.m. through 9:00 a.m. Additionally, there shall not be maintained therein any plants, animals, devices or things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Units, or any other portions of the Property. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted within the Property. No activity specifically permitted by this Declaration shall be deemed a nuisance.

16.03 Air Conditioning Units. No window or wall mounted air conditioning units which are visible from outside of the Unit may be installed in any Unit.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DECLARATION, EACH OWNER, AND THEIR RESIDENTS, GUESTS AND INVITEES WITHIN THE PROPERTY ACKNOWLEDGE AND AGREE THAT PERMITTED USES OF AIR CONDITIONING UNITS INHERENTLY INVOLVE SOME LEVEL OF NOISE AND THAT SUCH NOISE, IF ANY, SHALL NOT BE DEEMED TO CONSTITUTE A NUISANCE IN ANY MANNER.

16.04 Leases. The purpose and objective of this Section is to maintain a first class community with the residents, lessees and guests living in compatible coexistence with other financially responsible persons who are of like mind and acceptable both in character and comportment. This objective is considered to be both important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each Owner. Therefore, other than those leases entered into by Declarant, the leasing of the Units by Owners shall be subject to the following provisions:

(a) Any and all lease agreements between an Owner and a lessee of such Owner shall (i) be in writing; (ii) be for residential purposes, (iii) be for not less than the entire Unit, (iv) be for a minimum of twelve (12) months; (v) comply with all governmental laws, rules, ordinances and regulations; and (vi) otherwise be in compliance with the rules and regulations as may be promulgated and published from time to time by the Managing Agent or the Board of Directors. For purposes of clarity, nightly room rentals and related services for all or any part of a Unit, such as AirB&B and VRBO are strictly prohibited, and a Unit may not be leased or conveyed pursuant to a time-sharing arrangement. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, and the rules and regulations adopted hereunder. All Limited Common Elements appurtenant to a Unit may be leased only in connection with the lease of such Unit. The Owner shall provide the Condominium Association with an executed copy of each lease and shall be submitted to the Condominium Association promptly following execution.

(b) Any lessee of a Unit must adhere to all provisions of this Declaration, the Certificate of Formation, the Bylaws, the rules and regulations of the Condominium Association, and the Managing Agent, together with all exhibits and appurtenances thereto, and any other applicable provisions of any other agreement, document or instrument governing the Condominium or administered by the Condominium Association or any other applicable governmental law, rule or regulation. Owners wishing to lease their Units shall be jointly and severally liable to the Condominium Association with the lessees of their Unit for any amount which is required by the Condominium Association to affect such repairs or to pay any claim for injury or damage to property caused by or which is the responsibility of such lessee. All leases must provide that the lessee shall be subject in all respects to the terms and provisions of Declaration, and shall provide that the Condominium Association shall have the right (i) to terminate the lease upon default by the tenant in observing any of the provisions of the Declaration of Condominium, the Certificate of Formation or Bylaws, the rules and regulations of the Condominium Association or any other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Condominium Association, and (ii) to collect all rental payments due to the Owner and to apply same against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments.

16.05 Lighting. Except for seasonal decorative lights, which may be displayed between Thanksgiving Day and January 10 only and in compliance with any regulations of the Condominium Association promulgated with respect thereto, the use and nature of all exterior lights and exterior-electrical outlets must be first approved in writing by the Condominium Association.

16.06 Use of Balconies, Patios, and Porches. No grills, fire pits, or electric, gas, charcoal, or other fire-based cooking device are permitted to be used on any balcony, porch, patio, or other Limited Common Element of a Unit unless approved in writing by the Condominium Association. No whirlpools or hot tubs are permitted on the balcony, patio, porch, or other Limited Common Element of a Unit unless approved in writing by the Condominium Association.

16.07 Hazardous Substances. No flammable, combustible, or explosive fluids, chemicals or other substances may be kept in any Unit or Limited Common Elements except such as are generally used for normal household purposes. No electric, gas, charcoal or other cooking device intended for outside use is permitted within the Unit, and is not permitted on the front lawn or entryway of the Unit. Said cooking devices are only permitted in a fenced-in backyard.

16.08 Fireplaces. No alterations, modifications, or enhancements of the fireplaces within a Unit, nor any other change of any nature that would affect the fireplace's compliance with applicable fire and safety codes and ordinances are permitted.

16.09 Subdivisions. No Owner shall divide or subdivide a Unit for purpose of sale.

16.10 Relief by Condominium Association. The Condominium Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article XVI for good cause shown as determined by the Condominium Association in its sole discretion.

16.11 Effect on Declarant. Subject to the following exceptions, the restrictions and limitations set forth in this Article XVI shall not apply to Declarant or to Units owned by Declarant. Declarant shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Condominium Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to Declarant's construction, maintenance and marketing activities.

ARTICLE XVII RULE MAKING

17.01 Rules and Regulations. Subject to the provisions hereof, the Condominium Association or the Managing Agent may establish reasonable rules and regulations concerning the use of Units, the Common Elements and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Condominium Association or the Managing Agent.

17.02 Authority and Enforcement. Upon the violation of this Declaration, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments or charges, the Condominium Association shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Unit, the Owners, Occupants, or guests that are guilty of such violation; or (ii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the Common Elements, and the Condominium Association shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days. The fines levied and assessed as provided for in this Section 17.02 herein shall be a lien upon the applicable Unit in the same manner as that provided for in Section 15.01 herein. The effect of the non-

payment of such fines and the remedies of the Condominium Association to enforce collection thereof shall be the same as those provisions provided for in Section 15.04 herein.

ARTICLE XVIII
AMENDMENTS

18.01 Amendments by Declarant. This Declaration, including the Plans and Plat, may be amended only by vote or agreement of Unit Owners (including Declarant, while it holds title to a Unit) to which at least sixty-seven percent (67%) of the votes in the Condominium Association are allocated. While Declarant controls at least sixty-seven percent (67%) of the votes in the Condominium Association, Declarant may amend this Declaration without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his Unit or the Common Elements as set forth in this Declaration or adversely affects the title to any Unit, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 18.01 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required. Each Owner, by acceptance of a deed or other conveyance to a Unit agrees to be bound by such amendments as are permitted by this Section 18.01 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Property (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to any Units subject to this Declaration, (c) or if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on a Unit, or other improvements subject to this Declaration.

18.02 Particular Amendments. Section 18.01 herein shall not apply to amendments to this Declaration by the Declarant in connection with the addition of the Additional Property to the Property as provided in Section 5.02, or the exercise of rights of the Declarant pursuant to Section 5.04 or Section 5.06, or any amendment rights provided to Declarant in Texas Property Code Section 82.067(b) or Section 82.067(f).

18.03 Amendments by Condominium Association and Unit Owners. Nothing herein or in Section 18.01 shall prohibit amendments to this Declaration by the Condominium Association, or the Unit Owners, as provided in Texas Property Code Sections 82.067(b) & 82.067(h).

18.04 Effective Date of Amendment. An amendment to this Declaration is effective only when made by an instrument in writing filed and upon the date when it is recorded in the Public Records of Smith County, Texas or at such later date as shall be specified in the amendment itself.

ARTICLE XIX
LIMITATION OF LIABILITY

19.01 Limitation of Liability of Officers and Directors of the Condominium Association. No officer or director of the Condominium Association shall be liable to any Owner of any Unit or any Occupant, for any claims, actions, demands, costs, expenses (including attorney's fees), damages or liability, of any kind or nature, except as otherwise expressly set forth in the Bylaws and such officers and directors shall be indemnified in accordance with the provisions of the Condominium Documents.

19.02 Limitation of Liability of Condominium Association. The Condominium Association shall not be liable: (i) for injury or damage to any person or property caused by the Common Elements or by an Owner or Occupant, or any other Person, or resulting from any utility, rain, snow, or ice, which may leak or flow from or over any portion of the Common Elements, or from any pipe, drain, conduit, appliance, or equipment which the Condominium Association is responsible to maintain under this Declaration; (ii) to any Owner or Occupant for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements, or (iii) to any Owner or Occupant for any damage or injury caused in whole or in part by the failure of the Condominium Association to discharge its responsibilities under this Section 19.02.

19.03 Right of Action by Owners: Limitation of Liability of Officers and Directors of Condominium Association. Owners, acting collectively or individually, shall have the right to maintain actions against the Condominium Association for its willful failure to perform its duties and responsibilities hereunder; provided, however, no other action may be brought against the Condominium Association or its affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties, and assigns by the Owners. The Condominium Association shall not have the power to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in the name or on behalf of any Owner or with respect to any portion of the Condominium except the Common Elements. Subject to the Condominium Association's obligations under the Declaration, each Owner hereby releases, acquits, and forever discharges the Condominium Association, and its affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties, and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorney's fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Units or the Common Elements. This release shall release and forever discharge the Condominium Association and its affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties, and assigns from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

19.04 GENERAL INDEMNITY OF DECLARANT AND CONDOMINIUM ASSOCIATION. THE OWNERS AND OCCUPANTS, INDIVIDUALLY AND COLLECTIVELY, EXPRESSLY AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS DECLARANT, THE CONDOMINIUM ASSOCIATION, THE BOARD, AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (EACH AN "INDEMNIFIED PARTY"), INDIVIDUALLY AND COLLECTIVELY, FROM ANY AND ALL CLAIMS BY ANY PERSON ARISING OR RESULTING FROM, SUSTAINED OR INCURRED BY ANY INDEMNIFIED PARTY, OR WHICH CAN OR MAY ARISE, RESULT, BE SUSTAINED OR INCURRED, OR WHICH CAN OR MAY ARISE, RESULT, BE SUSTAINED OR INCURRED IN CONNECTION WITH (I) THE EXERCISE OR FAILURE TO EXERCISE OR THE USE OR MISUSE OF ANY OF SUCH PERSON'S RESPECTIVE RIGHTS OR OBLIGATIONS CONTAINED IN THE CONDOMINIUM DOCUMENTS; (II) THE BREACH BY AN OWNER OR OWNERS OF ANY PROVISION OF THIS DECLARATION; (III) ANY HAZARDOUS SUBSTANCE, ON, IN, UNDER, OR IN THE AIR ABOVE, ALL OR ANY PART OF THE PROPERTY; OR (IV) THE NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT, OR CRIMINAL MISCONDUCT OF AN OWNER OR OWNERS.

ARTICLE XX MEDIATION AND ARBITRATION

20.01 Mediation. The party seeking relief (the "Plaintiff") shall notify in writing the party against whom such relief is sought (the "Defendant"), describe the nature of such claim, the provision of this Agreement which is alleged to have been violated by the Defendant, and the material facts surrounding such claim. Such mediation shall occur within forty-five (45) days of Defendant's receipt of the notice of claim. The parties shall use their best efforts to agree on a mediator. If the parties are unable to agree on a mediator, a mediator shall be appointed

by the then presiding judge of the United States District Court of the Tyler Division of the Eastern District of Texas. Within thirty (30) days of the appointment of the foregoing described mediator, the Plaintiff and Defendant shall hold a mediation hearing before such mediator at such time and place as the Plaintiff and Defendant may agree. Any findings or awards of the mediator shall be final and binding upon the Owners involved in the Dispute and such Owner's Mortgagees and non-appealable judgment thereon may be entered by any court having jurisdiction. The costs of the mediation shall be divided equally between the parties, except that each party shall bear its own attorney's fees and costs.

20.04 "Dispute." Any claim, grievance or other dispute arising out of or relating to: (i) the interpretation, application or enforcement of the Condominium Documents; (ii) any conflict or dispute arising between or among two or more Owners; (iii) the proper party to bear a maintenance cost or expense or a capital expenditure or the proper amount of the expense, fee or Assessment to be charged or collected; (iv) the rights, obligations and duties of any Owner under the Condominium Documents; (v) the authority of the Condominium Association or Declarant under any legal requirement or under the Condominium Documents to: (a) require any Owner to take any action or not to take any action involving such Owner's Unit; or (b) alter, subtract from or add to the Common Elements or the Condominium; (vi) the interpretation or enforcement of any warranty; or (vii) the failure of the Condominium Association, in accordance with legal requirements and the Condominium Documents to: (w) properly conduct elections; (x) give adequate notice of meetings or actions; (y) properly conduct meetings; or (z) allow inspection of books or records. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to arbitration pursuant to this Article XX: (i) any suit by the Condominium Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Condominium Association's ability to enforce the provisions of the Condominium Documents; (ii) any suit between Owners that does not include Declarant and the Condominium Association if such suit asserts a dispute that would constitute a cause of action independent of the Condominium Documents; (iii) any disagreement that primarily involves title to any Unit or the Common Elements; or (iv) any suit in which the applicable statute of limitations would expire within one hundred eighty (180) days of the giving of notice as provided in this Article XX unless the Persons against whom the Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with this Article XX.

ARTICLE XXI

GENERAL PROVISIONS

21.01 Enforcement. Each Owner shall comply strictly with the rules and regulations adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Unit, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Common Elements, or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by the Condominium Association, or, in a proper case, by an aggrieved Owner. Should the Condominium Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorney's fees, shall be paid by the violating Owner. Inasmuch as the rules and regulations are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Condominium Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of the Condominium Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the

Condominium Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any Person of the provisions of this Declaration, or any rules and regulations however long continued.

21.02 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of the Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial thirty (30) year period or the last year of any ten (10) year renewal period, eighty percent (80%) of the Owners vote in favor of terminating this Declaration at the end of the then current term. In the event that the Owners vote to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Public Records of Smith County, Texas, such instrument to contain a certificate wherein the Condominium Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance, therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

21.03 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Condominium Association will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Public Records of Smith County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Texas.

21.04 Usury. It is the intent of Declarant, the Condominium Association, and the Owners that the Condominium Documents be in strict compliance with applicable usury laws of the State of Texas. In furtherance thereof, said parties stipulate and agree that none of the terms and provisions contained in the Condominium Documents shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable laws of the State of Texas. The Owners or other parties now or hereafter becoming liable for payment of sums owing under the terms of the Condominium Documents shall never be liable for unearned interest at a rate in excess of the maximum interest that may be lawfully charged under applicable laws of the State of Texas, and the provisions of this section shall control over all other provisions of the Condominium Documents in conflict herewith. In the event that the Declarant, the Condominium Association or any of its designated agents shall collect monies which are deemed to constitute interest at a rate in excess of that permitted to be charged by applicable laws of the State of Texas, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Owner or other party so paying said monies upon such determination.

21.05 Fair Housing. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's unit to any person on the basis of race, color, sex, religion, familial status, ancestry, or national origin.

21.06 Reasonable Accommodations. Notwithstanding any other rule, regulation, or restriction, the Board and the Declarant shall make reasonable accommodations in the rules, regulations, or restrictions if

such accommodations may be necessary or appropriate to afford a person with a disability an equal opportunity to use and enjoy the Condominium.

21.07 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

21.08 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

21.09 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property Owner or third party shall have any right, title or interest whatsoever in the Property, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining Owner or third party.

21.10 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Unit, the Owner must promptly furnish to the Managing Agent in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

21.11 Condominium Information; Resale Certificate. In accordance with Texas Property Code Section 207.003, not later than the tenth (10) business day after the date a written request for condominium information is received from an Owner or the Owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of an Owner or purchaser, and the evidence of the requestor's authority to order a resale certificate under Section 207.003(a-1) of the Texas Property Code is received and verified, the Condominium Association shall deliver to the Owner or the Owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent, the following information:

- (a) A current copy of the Declaration, including all amendments, and any other restrictions applying to the Condominium;
- (b) A current copy of the Bylaws and rules and regulations of the Condominium Association;
- (c) A resale certificate prepared not earlier than the sixtieth (60th) day before the certificate is delivered that complies with Texas Property Code Section 207.003(b), as such section may be amended or renumbered from time to time.

The Condominium Association may charge a reasonable fee to assemble, copy, and deliver the information and may charge a reasonable fee to prepare and deliver an update of a resale certificate.

21.12 No Trespass. Whenever the Condominium Association, and its respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Property, the entering thereon and the taking of such action shall not be deemed to be trespass.

21.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated by such Owners. All notices to Declarant shall be sent of delivered to Declarant at 2329 Oak Alley, Suite 1, Tyler, Texas 75703, or to such other address as the Declarant may from time to time notify the Owners. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Declarant.

EXECUTED this 17th day of November, 2020.

DECLARANT


SHACKELFORD CREEK LAND COMPANY, LLC, a Texas limited liability company

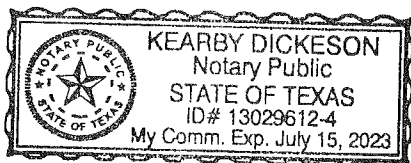
By: 
LENARD MCMILLIN, Manager

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the 17th day of November, 2020, by LENARD MCMILLIN as Manager, on behalf of SHACKELFORD CREEK LAND COMPANY, LLC, a Texas limited liability company.



NOTARY PUBLIC - STATE OF TEXAS



Consent of Lienholder

By its execution hereof, the undersigned mortgagee hereby ratifies the terms of this Declaration and subordinates its liens, rights and interests, including those created by its mortgages or deeds of trust in or against the property, to the terms and conditions of the Declaration.

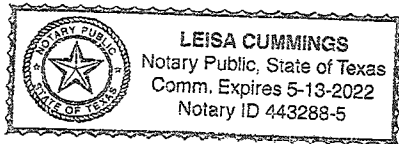
BTH BANK, NATIONAL ASSOCIATION

By: 
Print Name: Matt Pollard
Title: Vice President

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the 17th day of November, 2020, by Matt Pollard as VP, on behalf of BTH BANK, National Association.




NOTARY PUBLIC - STATE OF TEXAS

Consent of The Brooks at Cumberland Park Homeowner's Association

The Brooks at Cumberland Park Homeowner's Association a Texas nonprofit corporation, hereby consents to this Declaration and specifically to the use of HOA amenities by Unit Owners and the obligation of each Unit Owner to comply with the restrictions, requirements, fees and dues structures and such other rules and regulations as are applicable to all other members of the HOA.

THE BROOKS AT CUMBERLAND PARK HOMEOWNER'S ASSOCIATION, a Texas nonprofit corporation

By: *Lenard M. Millin*
LENARD MCMILLIN, President

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the 17th day of November, 2020, by LENARD MCMILLIN as PRESIDENT on behalf of THE BROOKS AT CUMBERLAND PARK HOMEOWNER'S ASSOCIATION, a Texas nonprofit corporation.

Kearby Dickeson
NOTARY PUBLIC - STATE OF TEXAS

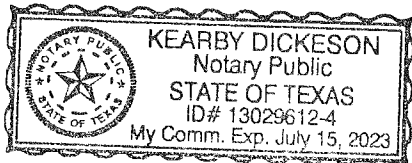
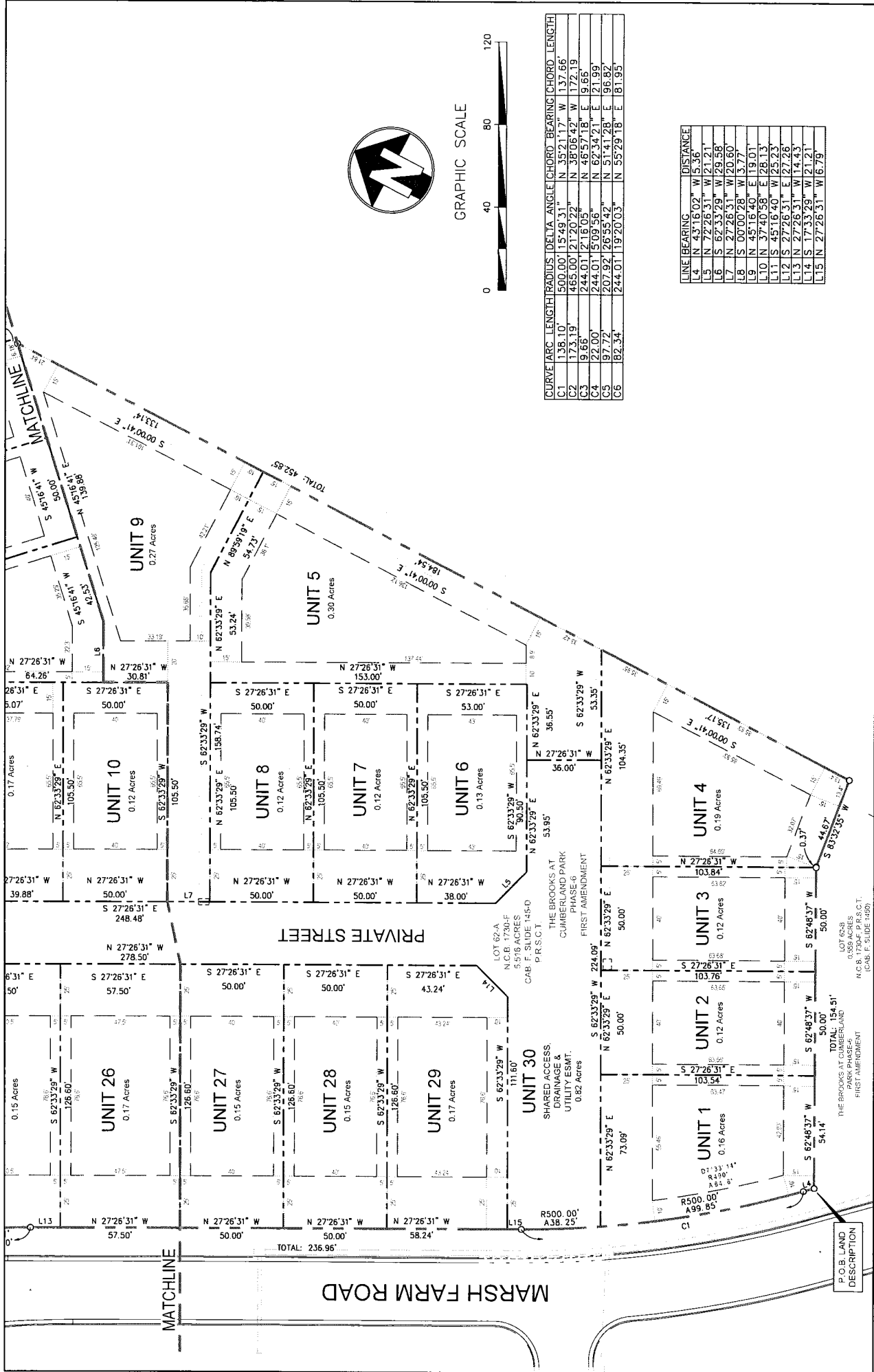


EXHIBIT "A"

PLANS AND PLAT

- 1. Recorded Plat of Initial Property recorded at Cabinet F Slide 145-D, Official Public Records, Smith County, Texas.**
- 2. The Villas at the Brooks Condominiums, consisting of 29 Units which MUST BE BUILT.**

]



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	138.10'	500.00'	15.49 31"	N 352.17 7"	W 137.66'
C2	138.19'	165.00'	21.20 2"	N 38.09 42"	W 172.19'
C3	9.68 19'	244.01'	12.16 05"	N 46.53 16"	E 19.66'
C4	25.90'	244.01'	15.09 56"	N 62.34 21"	E 21.99'
C5	97.72'	207.92'	26.55 42"	N 51.4 28"	E 196.82'
C6	182.34'	244.01'	119.20 03"	N 5529 18"	E 181.95'

LINE BEARING	DISTANCE
L4	N 43°16'02" W 5.36'
L5	N 72°26'31" W 21.21'
L6	S 62°33'29" W 25.58'
L7	N 27°26'31" W 20.60'
L8	S 00°00'28" W 3.77'
L9	N 45°16'40" E 19.01'
L10	N 37°40'58" E 28.13'
L11	S 45°16'40" W 25.23'
L12	S 27°26'31" E 27.26'
L13	N 27°26'31" W 14.43'
L14	S 17°33'29" W 21.21'
L15	N 27°26'31" W 6.79'

P.O.B. LAND DESCRIPTION

LOT 62-B
0.1559 ACRES
M.C.F. SUBD. 1454-D
FIRST IMPROVEMENT

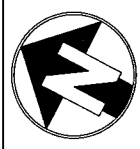
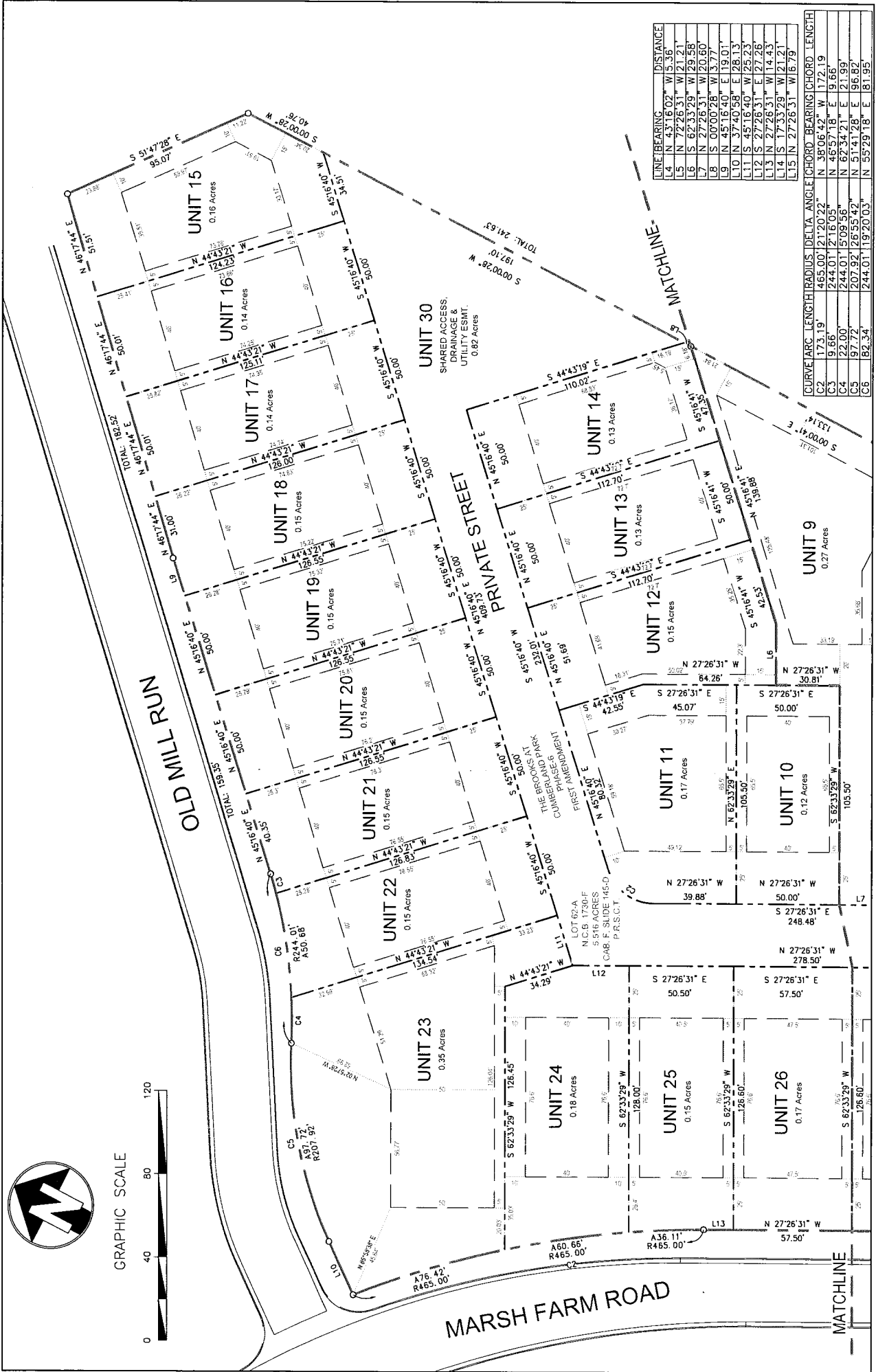
LOT 62-A
N.I.C.F. 1454-D
5.48 ACRES
M.C.F. SUBD. 1454-D
P.R.S. C.T.

THE BROOKS AT CUMBERLAND PARK PHASE 6G FIRST IMPROVEMENT

THE BROOKS AT CUMBERLAND PARK PHASE 6A FIRST IMPROVEMENT

TOTAL: 236.96'

TOTAL: 154.51'



GRAPHIC SCALE



MARSH FARM ROAD

MATCHLINE

Legal Description
Lot 62-A, N.C.B. 1730-F
The Brooks at Cumberland Park - Phase 6
First Amendment
City of Tyler
Smith County, Texas

ALL THAT CERTAIN lot, tract, or parcel of land situated within the Thomas Blackwell Survey Abstract 112 and the Benjamin Fry Survey Abstract 355, Smith County, Texas and being all of Lot 62-A, N.C.B. 1730-F as shown on the plat of The Brooks at Cumberland Park, Phase 6, First Amendment, recorded in Cabinet F, Slide 145-D in the Plat Records of Smith County, Texas and being more completely described as follows:

BEGINNING at a 1/2 inch iron rod set capped "Summit Surveying" at the southwest corner of said Lot 62-A and the northwest corner of Lot 62-B and being in the northeast right of way line of Marsh Farm Road;

THENCE along the west line of said Lot 62-A and said northeast right of way as follows:

North 43 deg. 16 min. 02 sec. West, a distance of 5.36 feet to a 1/2 inch iron rod set capped "Summit Surveying" and being the beginning of a curve to the right,

Along said curve to the right having a Delta of 15 deg. 49 min. 31 sec., a Radius of 500.00 feet, an Arc distance of 138.10 feet and a Chord which bears North 35 deg. 21 min. 17 sec. West a distance of 137.66 feet to a 1/2 inch iron rod set capped "Summit Surveying" at the end of said curve,

North 27 deg. 26 min. 31 sec. West, a distance of 236.96 feet to a 1/2 inch iron rod set capped "Summit Surveying" and being the beginning of a curve to the left, and,

Along said curve to the left having a Delta of 21 deg. 20 min. 22 sec., a Radius of 465.00 feet, an Arc distance of 173.19 feet and a Chord which bears North 38 deg. 06 min. 42 sec. West a distance of 172.19 feet to a 1/2 inch iron rod set capped "Summit Surveying" for the northwest corner of said Lot 62-A and being at the intersection with the south right of way line of Old Mill Run,

THENCE along the northwest line of said Lot 62-A and said south right of way line as follows:

North 37 deg. 40 min. 58 sec. East, a distance of 28.13 feet to a 1/2 inch iron rod set capped "Summit Surveying" at the beginning of a curve to the right,

Along said curve to the right having a Delta of 26 deg. 55 min. 42 sec., a Radius of 207.92 feet, an Arc distance of 97.72 feet and a Chord which bears North 51 deg. 41 min. 28 sec. East a distance of 96.82 feet to a 1/2 inch iron rod set capped "Summit Surveying" and being the point of a reverse curve to the left,

Along said curve to the left having a Delta of 19 deg. 20 min. 03 sec., a Radius of 244.01 feet, an Arc distance of 82.34 feet and a Chord which bears North 55 deg. 29 min. 18 sec. East a distance of 81.95 feet to a 1/2 inch iron rod set capped "Summit Surveying" at the end of said curve,

North 45 deg. 16min. 40 sec. East, a distance of 159.35 feet to a 1/2 inch iron rod set capped "Summit Surveying" and,

North 46 deg. 17 min. 44 sec. East, a distance of 182.52 feet to a 1/2 inch iron rod found for the north corner of said Lot 62-A,

THENCE South 51 deg. 47 min. 28 sec. East along the northeast line of said Lot 62-A, a distance of 95.07 feet to a 1/2 inch iron rod found for the northeast corner of said Lot 62-A and being a northwest corner of Lot 7, N.C.B. 1730-F as shown on a plat of The Brooks at Cumberland Park, Phase 2, recorded in Cabinet D, Slide 275-B in said Plat Records;

THENCE South 00 deg. 00 min. 28 sec. West along the east line of said Lot 62-A and the west line of Lots 7,8 and 9 of said Phase 2, a distance of 241.63 feet to a 1/2 inch iron rod found for an angle break in said east line and being the northwest corner of said Lot 9 and the northwest corner of Lot 10, N.C.B. 1730-F as shown on a plat of The Brooks at Cumberland Park, Phase 5, recorded in Cabinet F, Slide 29-A in said Plat Records;

THENCE South 00 deg. 00 min.41 sec. East continuing along said east line and the west line of Lots 10,11 and 12 of said Phase 5 and the west line of Lots 13-A, 50, 49-A and 48-A as shown on a plat of The Brooks at Cumberland Park, Phase 5, First Amendment, recorded in Cabinet F, Slide 55-B in said Plat Records, a distance of 452.85 feet to a 1/2 inch iron rod set capped "Summit Surveying" for the southeast corner of said Lot 62-A and the northeast corner of said Lot 62-B;

THENCE South 83 deg. 32 min. 35 sec. West along the south line of said Lot 62-A and the north line of said Lot 62-B. a distance of 44.67 feet to a 1/2 inch iron rod set capped "Summit Surveying" for an angle break in said line,

THENCE South 62 deg. 48 min. 37 sec. West continuing along said south line and said north line, a distance of 154.51 feet to the **PLACE OF BEGINNING** containing 5.516 acres (240,275 square feet) of land.

The intent of the above description is to describe the same land as shown as Lot 62-A, N.C.B. 1730-F on the plat of The Brooks at Cumberland Park Phase 6, First Amendment, recorded in Cabinet F, Slide 145-D in the Plat Records of Smith County, Texas.

**Smith County
Karen Phillips
Smith County Clerk**

Document Number: 202001044134

eRecording - Real Property

DECLARATION

Recorded On: November 19, 2020 12:13 PM

Number of Pages: 45

Billable Pages: 44

" Examined and Charged as Follows: "

Total Recording: \$198.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 202001044134
Receipt Number: 20201119000091
Recorded Date/Time: November 19, 2020 12:13 PM
User: Alma D

Record and Return To:

Simplifile



**STATE OF TEXAS
COUNTY OF SMITH**

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Smith County, Texas.

Karen Phillips
Smith County Clerk
Smith County, TX