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CITYVIEW AT MCGOWEN
CONDOMINIUMS

DECLARATION OF CONDOMINIUM REGIME FOR
CITYVIEW AT MCGOWEN CONDOMINIUMS
(A Residential Condominium Project located in Harris County, Texas)

RP-2023-263374

7/14/2023 HCCPIRP1 250.00

FILED

7/14/2023 11:40 AM

Signature of Teneshia Hudspeth
COUNTY CLERK

Declarant: CITYVIEW AT MCGOWEN HOLDINGS, LLC, a Texas limited liability company

AUS 536392713v2

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COUNTY CLERK, HARRIS COUNTY, TEXAS
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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
OF CONDOMINIUM REGIME (A RESIDENTIAL CONDOMINIUM
PROJECT LOCATED IN HARRIS COUNTY, TEXAS)

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DECLARATION OF CONDOMINIUM REGIME FOR CITY VIEW AT MCGOWEN CONDOMINIUMS

CITYVIEW AT MCGOWEN HOLDINGS, LLC, a Texas limited liability company ("Declarant"), is the owner of that certain real property in Harris County, Texas more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, together with all improvements thereon and all easements, rights, and appurtenances thereto (collectively, the "Land"). The Land is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating City View at McGowen Condominiums.

NOW, THEREFORE, it is hereby declared that the Land will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Land, together with all improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

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

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

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

1.3. "Architectural Reviewer" means Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

1.4. "Assessment" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or Applicable Law, including but not limited to Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments as defined in Article 6 of this Declaration.

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1 DECLARATION OF CONDOMINIUM REGIME
CITYVIEW AT MCGOWEN CONDOMINIUMS

1.5. "Association" means Cityview at McGowen HOA, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of Units within the Regime. The term "Association" shall have the same meaning as the term "unit owners association" in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, the Act, and Applicable Law.

1.6. "Board" means the Board of Directors of the Association.

1.7. "Building" means the building(s) described on the Plat and Plans, now existing or hereafter placed on the Property.

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

1.9. "Certificate" means the Certificate of Formation of the Association filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

1.10. "Common Element" means all portions of the Property save and except the Units. All Common Elements are "General Common Elements" except if such Common Elements have been allocated as "Limited Common Elements" by this Declaration for the exclusive use of one or more but less than all of the Units.

1.11. "Community Manual" means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies governing the Association. The Community Manual may be amended, from time to time, by a Majority of the Board; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

1.12. "Declarant" means Cityview at McGowen Holdings, LLC, a Texas limited liability company. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Declaration.

1.13. "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration. The duration of Declarant Control Period is from the date this Declaration is Recorded for a maximum period not to exceed one hundred and twenty (120) days after title to seventy-five percent (75%) of the Units that may be created under this Declaration have been conveyed to Owners other than Declarant.

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CITYVIEW AT MCGOWEN CONDOMINIUMS

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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
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1.14. "Declaration" means this document, as it may be amended from time to time.

1.15. "Development Period" means the seven (7) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

During the Development Period, Appendix "A" has priority over the terms and provisions of this Declaration.

1.16. "Documents" mean, singly or collectively as the case may be, this Declaration, the Plat and Plans, attached hereto as Attachment 1, the Certificate, Bylaws, the Community Manual, the Rules of the Association, and the Community Manual, as each may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

The Documents are subject to amendment or modification from time to time. By acquiring a Unit in City View at McGowen Condominiums, you agree to comply with the terms and provisions of the Documents, as amended or modified.

1.17. "General Common Elements" mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment 1, attached hereto.

1.18. "Improvement" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, within the Property.

1.19. "Limited Common Elements", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", "Limited Common Elements", or "Limited Common Areas" on Attachment 1, attached hereto and as provided in Section 5.3 and Section 5.4 of this Declaration.

1.20. "Majority" means more than half.

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

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

1.23. "Occupant" means any Person, including any Owner, tenant or otherwise having a right to occupy or use all or any portion of a Unit for any period of time.

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

1.25. "Person" shall mean any individual or entity having the legal right to hold title to real property.

1.26. "Plat and Plans" means the plat and plans attached hereto as Attachment 1, as changed, modified, or amended in accordance with this Declaration.

1.27. "Property" means Lots 1 through 23, inclusive, and Reserve "A" in Block 1 of VIEWPOINT SQUARE REPLAT NO. 2, a subdivision of 0.8597 acres, according to the map or plat thereof recorded in Film Code No. 674645 of the Map Records of Harris County, Texas, more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, together with all improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.28. "Recorded, Recordation and Recording" means filing the referenced instrument or document in the Official Public Records of Harris County, Texas.

1.29. "Regime" means the Property, Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established by this Declaration.

1.30. "Rules" means rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules may be adopted by Declarant (as part of the Community Manual, or otherwise) for the benefit of the Association.

1.31. "Underwriting Lender" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), the Veterans Administration, or Government National Mortgage Association (Ginnie Mae), singularly or collectively. Use of the term "Underwriting Lender" in this Declaration, and the specific instructions listed in this definition, may not be construed as a limitation on an Owner's

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financing options or as a representation that the Property is approved by any specific institution.

1.32. "Unit" means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans attached hereto as Attachment 1, as further described in Section 5.2 of this Declaration.

ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

2.1. **Subject To Documents.** The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Appendix "A", attached hereto, which run with the Property, bind all Persons having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Additional Property.** Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association with the approval of Owners holding at least sixty-seven percent (67%) of the total votes in the Association, or, during the Development Period, unilaterally by Declarant as permitted in Appendix "A". Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime.

2.3. **Recorded Easements and Licenses.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of record, including those described in the attached Attachment 2, and as shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses the Owner's Unit and for which the Association does not have express responsibility.

ARTICLE 3 PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

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

3.2. **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the General Common Elements and to use of improvements therein, subject to the terms and provisions of the Documents.

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3.3. **Owner's Maintenance Easement.** Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Board and the consent of the Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Board and the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit must be approved in advance and in writing by the Board. The Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. The Board may require that the Owner abide by additional reasonable rules with respect to use and protection of Units and the Common Elements during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Board or the Owner of the damaged Unit.

Prior to commencing any work upon a Unit which requires access to, over or through the Common Elements or other Units, the Person performing such work must deliver to the Board, in form satisfactory to the Board:

- (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

3.4. **Owner's Encroachment Easement.** Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction,

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repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands. The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the Architectural Reviewer.

3.5. **Easement Of Cooperative Support.** Each Owner is granted an easement of cooperative support over each adjoining Unit and Limited Common Element assigned thereto (if any) as needed for the common benefit of the Property, or for the benefit of Units in a Building, or Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner: (i) acknowledges the necessity for cooperation in a condominium; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Unit and Limited Common Elements when needed by the Association to fulfill its duties; and (iv) agrees to refrain from actions that interfere with the Association's maintenance and operation of the Property.

3.6. **Association's Access Easement.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner's Unit and all Improvements thereon for the following purposes:

- (i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.
- (ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.
- (iii) To enforce the Documents.
- (iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.
- (v) To respond to emergencies.
- (vi) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.7. **Utility Easement.** Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant, during the Development Period, and the Association thereafter, may grant easements over and across the Units and Common Elements to the extent necessary or required to provide utilities to Units; provided, however, that such easements will not

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

NOTICE
PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED
"SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS
LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR
CERTAIN CONDITIONS AND ACTIVITIES.

3.8. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Occupant acknowledges and accepts that it is the sole responsibility of the Owner or Occupant to provide security for their own person and property, and each Owner and Occupant assumes all risks for loss or damage to same. Each Owner and Occupant further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Occupant relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. **Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.**

3.9. **Injury to Person or Property.** Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Occupant or their guests: (a) to supervise minor children or any other Person; (b) to fence or otherwise enclose any Limited Common Element, General Common Element, or other Improvement; or (c) to provide security or protection to any Owner, Occupant, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Unit, each Owner agrees that the limitations set forth in this section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. **Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents from any claim of damages, to Person or property arising out of an accident or injury in or about the Regime to the extent and only to the extent caused by the acts or omissions of such Owner,**

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his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance maintained by the Association at the time of such accident or injury.

3.10. **Easement to Inspect and Right To Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising the easement reserved hereunder, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a utility panel may be warranted by a change of circumstance, imprecise siting, or desire to comply more fully with Applicable Law. This Section may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant, and the Declarant's architect, engineer, other design professionals, builder, and general contractor an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Unit for the purposes contained in this Section.

3.11. **Parking.** Declarant reserves the right to designate and assign portions of the General Common Elements as parking for the exclusive use of any Owner. The assignment of parking spaces within the General Common Elements not specifically designated by the Declarant for the exclusive use of an Owner will be under the exclusive control and administration of the Declarant until the expiration or termination of the Development Period. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board, but subject to any assignment previously made by the Declarant. Any designation and assignment of General Common Elements as parking will be memorialized by a written "assignment of parking" executed by an authorized representative of the Declarant (or the Association upon expiration or termination of the Development Period) which shall identify the parking space(s) and the Unit assigned thereto. Any designation and assignment of General Common Elements as parking shall be made a part of the corporate records of the Association, will be considered an agreement between the Association and such Owner with regard to use of the parking spaces so assigned, and may not be terminated or modified without the consent of the Declarant (or a Majority of the Board if the Development Period has expired or been terminated) and the Owner of the Unit to which the parking space was assigned.

Notwithstanding anything to the contrary stated herein, with respect to any handicap parking spaces, such handicap parking spaces shall be assigned subject to the rights of the Declarant, during the Development Period, or the Association thereafter, to require the Owner to whose Unit such handicap parking space has been assigned (hereinafter, the "Original Assignee") to grant a license to use such handicap parking space to another Owner

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(hereinafter, the "Disabled Owner"), provided that: (i) the Disabled Owner (or Occupant) qualifies under Applicable Law to use a handicap parking space in public facilities; (ii) the Disabled Owner provides the Original Assignee with a license to use the Disabled Owner's parking space; and (iii) at such time as the Disabled Owner (or Occupant) no longer qualifies as provided in subsection (i) hereof, the license shall automatically expire and the Original Assignee and the Disabled Owner shall each use their respective, original, assigned parking spaces. Declarant and the Association hereby disclaim any representation or warranty regarding use of the handicap parking spaces in a manner that is contrary to, or in violation of, any applicable law, governmental ordinance, or permit applicable to the project.

ARTICLE 4 DISCLOSURES

This Article discloses selective features of the Regime that may not be obvious to potential Owners and Occupants. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

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

4.2. **Adjacent Thoroughfares.** The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

4.3. **Zoning.** No representations are made regarding the zoning of adjacent property. The zoning and use of adjacent property may change in the future.

4.4. **Outside Conditions.** Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Occupant may find objectionable, and it shall be the sole responsibility of an Owner or Occupant to become acquainted with neighborhood conditions that could affect the Property and Unit.

4.5. **Concrete.** Minor cracks in poured concrete, including foundations, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and movement of a Building.

4.6. **Moisture.** The Unit may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold. **Mold and/or mildew can grow in any portion of the Property that is exposed to elevated levels of moisture.** (See Section 9.7 for certain duties of an Owner with respect to mold).

4.7. **Encroachments.** Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by such any such encroachments.

4.8. **Budgets.** Any budget prepared by or on behalf of the Association is based on estimated expenses only without consideration for the effects of inflation. The estimated expenses reflected on a budget may increase or decrease significantly when the actual expenses become known.

4.9. **Light and Views.** The natural light available to and views from a Unit can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**

4.10. **Schools.** No representations are being made regarding which schools may now or in the future serve the Unit.

4.11. **Sounds.** No representations are made that the Unit is or will be soundproof or that sound and/or vibrations may not be transmitted from one Unit to another or from the Common Elements (including, but not limited to, any amenity areas) to a Unit. Sound transmission and/or vibrations between Units and Common Elements is inherent in multi-family construction and is not a construction defect. The plumbing and concrete, tile, and hardwood surfaces and other uncovered surfaces within a Unit may transmit noise from one Unit to another.

4.12. **Urban Environment.** The Property is located in an urban environment. Land adjacent or near the Property may contain residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living.

4.13. **Unit Plans and Dimensions.** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Unit are merely approximations and do not necessarily reflect the actual as-built conditions of the same. If the Owner is concerned about any representations regarding room dimensions, Unit size and elevations, the Owner should conduct its own investigation of such matters prior to contracting for the purchase of a Unit.

4.14. **Water Runoff.** The Property may be subject to erosion and/or flooding during unusually infrequent or prolonged periods of rain. In addition, water may pond on various portions of the Property having impervious surfaces, such as the parking area, terraces, and balconies, as applicable.

4.15. **Unit Systems.** No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer. In addition, the performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room or Unit in relation to the sun.

4.16. **Upgrades.** The cost of upgrades may not necessarily result in a commensurate increase in the value of the Unit.

4.17. **Location of Utilities.** Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

4.18. **Wood.** Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination. Wood floors may require more maintenance than some man-made materials. Owners of Units with wood floors should educate themselves about wood floor care.

4.19. **Stone.** Veins and colors of any marble, slate or other stone in the Unit, if any, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure

proper maintenance of the marble, granite, slate and other stone and it is the Owner's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

4.20. **Chemicals.** The Building and Units contain products that have water, powders, solids and industrial chemicals used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner and/or Occupant to keep the Unit clean, dry, well ventilated and free of contamination.

4.21. **Paint.** Due to the large quantity of paint used in the Building and Units, Owner should be aware that slight variations in paint shade may exist. Due to the properties within today's paints, Owner should expect paint to yellow or fade with time. This is a normal occurrence and is neither a construction defect nor a warrantable item. Avoid washing or scrubbing painted walls. Lightly soiled areas may be cleaned using a sponge with water and lightly wiping over the soiled areas.

4.22. **Fixtures.** Certain materials used for fixtures in the Unit (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are subject to discoloration and/or corrosion over time. This is a normal occurrence and this is neither a construction defect nor a warrantable item.

4.23. **Marketing.** Declarant's use of a sales center and/or model Units or reference to other construction by Declarant is intended only to demonstrate the quality of possible finish details, the basic floor plans, and styles of Units available for purchase. The Unit may not conform to any model Unit in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model Unit is intended only to demonstrate the size and basic architectural features of the project. The project or an individual Unit, may not conform to the models displayed by Declarant. Declarant may have shown prospective purchasers model homes, floor plans, sketches, drawings, and scale models of Units or the project (collectively "Promotional Aids"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the project or a Unit. Declarant retains the right to obtain and use photography of the Property (including any Unit) for publication and advertising purposes.

4.24. **Parking Rules and Regulations.** The parking area and driveways located within the Regime will be operated and maintained by the Association. By acquiring a Unit in the Regime, each Owner acknowledges and agrees that use of the parking areas or driveways will be subject to all applicable Rules. The Association, acting through the Board, has the express

authority to adopt, amend, repeal, and enforce Rules for use of driveways and parking areas, including but not limited to:

- (i) Identification of vehicles used by Owners and Occupants and their guests.
- (ii) Designation of no-parking areas and loading/unloading zones.
- (iii) Limitations or prohibitions on driveway parking.
- (iv) Removal or prohibition of vehicles that violate applicable Rules.
- (v) Fines for violations of applicable Rules.

Location, alignment and striping of parking spaces assigned to the Unit may vary from the depiction on any parking plan shown to a prospective purchaser. Any parking plan prepared by the Declarant or the Association is approximate and may not precisely conform to as-built conditions. Trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles may not fit into parking spaces. Declarant makes no representations or warranties that any trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles will actually fit into any parking spaces, including any parking space(s) to be assigned to a Unit.

4.25. **Age of Regime.** Owner acknowledges that the Property was originally constructed in 1969 and, as such, portions of the Property may have experienced effects which are customary in buildings of such age. By way of example, and without limitation, Owner should expect that cracking or settling may have occurred in balconies, patios, decks, door jams, and windows. Owner hereby releases the Declarant from any and all claims, demands, debts, actions, causes of action, suits, personal injury, property damage, agreements, obligations, defenses, offsets and liabilities of any kind or character whatsoever known or unknown, suspected or unsuspected, in contract or in tort, at law or in equity, that Owner may hereafter have against the Declarant for or by reason of any matter, cause or thing whatsoever occurring in connection with those effects within the Property which may have occurred and are customary of buildings of the Property's age.

4.26. **"As-Is" Sale; Disclaimer of Warranties; Waiver.** BY ACCEPTING A DEED TO A UNIT, OWNER ACKNOWLEDGES AND AGREES THAT (I) THE ORIGINAL IMPROVEMENTS IN THE PROJECT WERE NOT CONSTRUCTED BY DECLARANT AND THAT THE PROJECT WAS ORIGINALLY CONSTRUCTED IN 1969, (II) THAT ANY STATUTES OF LIMITATION PERTAINING TO THE ORIGINAL CONSTRUCTION MAY HAVE ALREADY TOLLED; AND (III) ITEMS REPAIRED, REFURBISHED OR RECONSTRUCTED BY DECLARANT ARE NOT SUBJECT TO A CLAIM FOR AN ACTIONABLE DEFECT. BY ACCEPTING A DEED TO A UNIT, OWNER ACKNOWLEDGES AND UNDERSTANDS THAT DECLARANT IS SELLING THE PROPERTY TO OWNER IN "AS IS" CONDITION AS OF CLOSE OF ESCROW, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED.

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CONDOMINIUM RECORDS OF COUNTY CLERK

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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
OF CONDOMINIUM REGIME (A RESIDENTIAL CONDOMINIUM
PROJECT LOCATED IN HARRIS COUNTY, TEXAS)

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ARTICLE 5

UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

- 5.1. **Number of Units.** The Regime consists of twenty-three (23) Units.
- 5.2. **Unit Boundaries.** The boundaries and identifying number of each Unit are shown on the Plat and Plans attached as [Attachment 1](#). The boundaries are further described as follows:

5.2.1. **Horizontal (Upper and Lower) Boundaries.** The upper horizontal boundary of each Unit is the horizontal plane formed by the lowermost unfinished surface of the concrete or other material comprising the permanent ceiling (any dropped soffit areas and/or false ceiling is within the Unit) in the Unit. The lower horizontal boundary of each Unit is the horizontal plane formed by the uppermost surface of the unfinished concrete of the Unit. The actual concrete slab foundation is a General Common Element. Anything on or affixed to the top of the foundation is part of the Unit.

5.2.2. **Vertical (Perimeter) Boundaries.** The vertical or perimeter boundaries of each Unit are (i) for portions of the Unit which adjoin an exterior wall of the Building, the vertical plane created by those portions of the innermost surfaces of the exterior curtain wall of the Building which extend from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in [Section 5.2.1](#); (ii) for portions of the Unit which adjoin a window or exterior glass surface of the Building, the interior-facing surface of the window or other glass surface extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in [Section 5.2.1](#) (iii) for portions of the Unit which adjoin a wall separating the Unit from another Unit, the vertical plane created by the centerline of such wall, extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in [Section 5.2.1](#); (iv) for portions of the Unit which adjoin a Common Element corridor or hallway, the vertical plane created by the outermost unfinished surface of the Common Element corridor or hallway, extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in [Section 5.2.1](#); and (v) for portions of the Unit which adjoin any Common Element core components, e.g., the area including the central stairway or common entry and elevators on each floor, as depicted on the Plats and Plans, the vertical plane created by the outermost unfinished surface of the Common Element wall, extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in [Section 5.2.1](#).

5.2.3. **Balconies and Patios.** Any balcony or patio that is attached to a Unit and which is accessed via the Unit's living area is part of the Unit. The boundaries of the balcony or patio portion of a Unit are the outermost construction materials of the walls, floors, railings, and ceilings (if any) of the balcony or patio, including, for example, metal railings.

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5.2.4. **No Relation to Living Areas.** The space contained within the Unit's vertical and horizontal boundaries is not related to the size of the Unit's living areas. Similarly, the Units are initially marketed on the basis of representational floor plans, each of which is marked with an estimated size taken from architectural drawings. These marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries.

5.2.5. **Units Generally.** If the foregoing description of Unit boundaries is inconsistent with the Plat and Plans, then this [Section 5.2](#) will control. It is the express intent of the Declarant that the property described as being part of a Unit shall for all purposes herein be treated as and constitutes a lawfully described "Unit" as that term is defined in the Act. In the event that there is a final judicial determination by a court of competent jurisdiction that the boundaries of a Unit or any portion thereof are so indefinite and vague so as to not create a legally constituted "Unit" within the meaning of the Act, then that portion of the Unit that has not been adequately described shall be severed from the property deemed a part of the Unit (if the remainder of the Unit, excluding the severed portion thereof, constitutes a properly described "Unit" under the Act) and shall thereafter be deemed a Limited Common Elements reserved to the exclusive use of said Unit, subject to the rights and obligations of other Owners with respect to said property.

5.2.6. **What the Unit Includes.** Each Unit includes the spaces and improvements within the above-described vertical and horizontal boundaries, including without limitation, any windows, window screens and frames, exterior doors and door hardware. Each Unit also includes improvements, fixtures, and equipment serving the Unit exclusively, whether located inside or outside the Unit, whether or not attached to or contiguous with the Unit, including but not limited to, the following (if any): water heaters, air conditioners, utility meters, fuse boxes, electrical switches, wiring, pipes, ducts, conduits, smoke detectors, security systems, television antennas, lighting fixtures, telephone and electrical receptacles, and skylights. Except as specifically included above, each Unit excludes the spaces and improvements lying outside of the vertical and horizontal boundaries. Each Unit also excludes any chute, pipe, flue, duct, wire, or conduit running through a Unit for the purpose of furnishing utility and similar services to other Units and/or Common Elements.

SIZE OF UNIT

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

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- 5.3. **Initial Designations Of Limited Common Elements.** The following portions of the Common Elements are Limited Common Elements assigned to the Units.

5.3.1. **Shown on Plats and Plans.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as [Attachment 1](#), by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.

5.3.2. **Appurtenant Areas.** Only to the extent they are not part of the Unit, any balcony or patio that is obviously intended for the sole and exclusive use of the Unit to which the area is appurtenant is deemed a Limited Common Element, whether or not the area is so designated on Plats and Plans.

5.4. **Subsequent Allocation Of Limited Common Elements.** A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration. Declarant has reserved the right as set forth in [Appendix "A"](#) of this Declaration, to create and assign Limited Common Elements within the Property.

5.5. **Common Interest Allocation.** The percentage of interest in the Common Elements (the "Common Interest Allocation") is allocated to each Unit is set forth on [Attachment 2](#). The Common Interest Allocation set forth on [Attachment 2](#) has been assigned to each Unit in accordance with a ratio of each unit's square footage compared to the total square footage. The same formula is to be used in the event the allocated interests are reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment is recorded in the Official Public Records of Harris County, Texas.

5.6. **Common Expense Liabilities.** The percentage of liability for common expenses allocated to each Unit and levied pursuant to Article 6 is equivalent to the Common Interest Allocation assigned to the Unit.

5.7. **Votes.** One (1) vote is allocated to each Unit. The one vote appurtenant to each Unit is weighted equally for all votes, regardless of the other allocations appurtenant to the Unit. In other words, the one vote appurtenant to each Unit is uniform and equal to the vote appurtenant to every other Unit.

ARTICLE 6 COVENANT FOR ASSESSMENTS

6.1. **Purpose of Assessments.** The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and

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Occupants, including but not limited to maintenance of the Regime, management and

(ix) Contributions to the reserves.

(x) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which, in the opinion of the Board, is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

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

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

6.5. **Supplemental Increases.** If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated common expenses of the Association for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Units in the same manner as Regular Assessments.

6.6. **Special Assessments.** The Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by Owners representing at least a Majority of the votes in the Association. Special Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.7. **Utility Assessments.** This Section applies to utilities serving the Units and consumed by the Owner and/or Occupants that are billed to the Association by the utility provider, and which may or may not be sub-metered by or through the Association. The Board may levy a Utility Assessment against each Unit. The Board may allocate the Association's utility charges among the Units by any conventional and reasonable method. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically

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operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

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

6.3. **Types of Assessments.** There are five (5) types of Assessments: Regular, Special, Utility, Individual, and Deficiency Assessments.

6.4. **Regular Assessments.**

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

- (i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, and Improvements, equipment, signage, and property owned by the Association.
- (ii) Maintenance examination and report, as described in Section 9.3.
- (iii) Utilities billed to the Association.
- (iv) Pest control and other services obtained by the Association.
- (v) Taxes on property owned by the Association and the Association's Income taxes.
- (vi) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (vii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (viii) Insurance premiums and deductibles.

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incurred in connection with utility or sub-metering services. The Board may, from time to time, change the method of utility allocation, provided the method of allocation is reasonable.

6.8. **Individual Assessments.** The Board may levy an Individual Assessment against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and copies of the Documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, Occupant, or their agents; (viii) Common Expenses that benefit fewer than all of the Units, which may be assessed according to benefit received as reasonably determined by the Board; (ix) fees or charges levied against the Association on a per-Unit basis; and (x) "pass through" expenses for services to Units provided through the Association and to be paid by each Unit according to benefit received as reasonably determined by the Board.

6.9. **Deficiency Assessments.** The Board may levy a Deficiency Assessment against all Units for the purpose of defraying, in whole or in part, the cost of maintenance, repair, and replacement, as necessary, performed by the Association or its permittees if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.10. **Working Capital Fund.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Unit to a subsequent Owner of the Unit), a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid from the transferee of the Unit to the Association for the Association's working capital fund. Each working capital contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay the operational expenses of the Association until the Declarant Control Period terminates. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital fund contribution attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

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6.11. **Due Date.** Regular Assessments are due annually, with monthly installments of the total annual Regular Assessments to be paid on the first calendar day of each month or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received on or before such date. Utility, Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Utility, Special, Individual, or Deficiency Assessment is given.

6.12. **Reserve Funds.** The Association may maintain reserves for operations at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements.

6.13. **Declarant's Right To Inspect And Correct Accounts.** For a period of ten (10) years after termination or expiration of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts established during the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to re-characterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This Section may not be construed to create a duty for Declarant or a right for the Association. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control and Development Periods.

6.14. **Association's Right To Borrow Money.** The Association is granted the right to borrow money, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

6.15. **Limitations of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to Applicable Law. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by

law in the State of Texas. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

7.5. **Power of Sale.** By accepting an interest in, or title to a Unit, each Owner grants to the Association a private power of non-judicial sale in connection with its Assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. Any such appointment must be in writing and may be in the form of a resolution duly adopted by the Board.

7.6. **Foreclosure of Lien.** The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay all costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at a foreclosure sale initiated by it and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 8 EFFECT OF NONPAYMENT OF ASSESSMENTS

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

8.2. **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

8.3. **Late Fees.** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board.

8.4. **Collection Expenses.** The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

8.5. **Acceleration.** If an Owner defaults in paying any Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

8.6. **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

8.7. **Notice to Mortgagee.** The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in the payment of Assessments.

8.8. **Application of Payments.** The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, and (lastly) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the Owner attaches conditions or directions contrary to the Association's policy for applying payments. The policies of the Association may provide that endorsement and deposit of a payment does not constitute acceptance, and that acceptance occurs when payment is posted to the Owner's account.

ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS

9.1. **Overview.** Generally, the Association maintains the Common Elements, and the Owner maintains the Owner's Unit. If any Owner fails to maintain its Unit, the Association may perform the work at the Owner's expense. The respective maintenance obligations of the Association and each Owner are set forth in this Article 9 and are summarized on Attachment 4; however, to the extent of any conflict between the provisions of this Article 9 and the summary set forth on Attachment 4, the provisions of this Article 9 will control.

9.2. **Association Maintains.** Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Units or Common Elements:

- (i) the General Common Elements and Limited Common Elements serving more than one Unit;
- (ii) glass in all windows and doors within a Building, including those serving a Unit exclusively; provided, however, that expenses associated with maintenance, repair and replacement of glass surfaces of windows or doors serving a Unit exclusively are the responsibility of the Unit's Owner,

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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
OF CONDOMINIUM REGIME (A RESIDENTIAL CONDOMINIUM
PROJECT LOCATED IN HARRIS COUNTY, TEXAS)

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Applicable Law, the excess amount will be applied to the reduction of applicable Assessments, or reimbursed to the Owner if those Assessments are paid in full.

6.16. **Audited Financial Statements.** The Association shall have an audited financial statement for the preceding full fiscal year of the Association prepared and made available within one hundred and twenty (120) days after the Association's fiscal year-end.

ARTICLE 7 ASSESSMENT LIEN

7.1. **Assessment Lien.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that title to such Owner's Unit may be subject to the continuing lien for Assessments attributable to a period prior to the date the Owner purchased its Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments.

7.2. **Superiority of Assessment Lien.** The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a Recorded deed of trust lien securing a loan for construction of Improvements upon the original Unit; (iii) a deed of trust or vendor's lien Recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to any Recorded assignment of the rights to insurance proceeds on the Unit unless the assignment is part of a superior deed of trust lien.

7.3. **Effect of Mortgage's Foreclosure.** Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale. Any first mortgagee who obtains title to a Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid Assessments or charges accrued before acquisition of title to the Unit by the mortgagee. If the Association's lien includes costs of collecting unpaid Assessments, the mortgagee will be liable for any fees or costs related to the collection of the unpaid Assessments.

7.4. **Notice and Release of Notice.** The lien established hereby for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, in the exercise of its lien rights, the Association may, at its option, cause a notice of the lien to be Recorded. Each lien filed by the Association must be prepared and filed by an attorney licensed to practice

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which shall be due and payable as an Individual Assessment to the Association upon demand;

- (iii) any real and personal property owned by the Association but which is not a Common Element; and
- (iv) any area, item, easement or service the maintenance of which is assigned to the Association by this Declaration or by the plat.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is assumed by an Owner and such assumption is approved by the Board; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with any such assumption as provided in (ii) or (iii), the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant and the Owner and Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. If the Association assigns any portion of its maintenance responsibilities to an Owner as permitted by the Documents, the Association will perform any such assigned obligations if not timely performed by the Owner.

The Association shall not be liable for injury or damage to Person or property caused by the elements or by the Owner or Occupant of any Unit or any other Person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Occupant of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner or Occupant of any Unit for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Elements or any Unit. The Association shall not be liable to any Owner or Occupant, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the

- (iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.
- (iv) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.
- (v) To be responsible for such Owner's own willful or negligent acts and those of the Owner or Occupant's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

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

9.6. **Sheetrock.** Notwithstanding anything to the contrary in the Documents, the Association is not responsible for the repair and replacement of sheetrock in any Unit, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability of insurance. This provision is provided for the benefit of the Association and is warranted by the difficulty of scheduling interior sheetrock work and the possibility that the Owner may not be satisfied with the quality or appearance of spot repairs. If the Association receives insurance proceeds for sheetrock damage to a Unit and chooses to not perform the repairs, the Owner of the damaged Unit is entitled to the proceeds in exchange for written confirmation of the damage and a release from future claims for such damage.

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

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

responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

9.3. Inspection Obligations.

9.3.1. **Contract for Services.** In addition to the Association's maintenance obligations set forth in this Declaration, the Association may contract with or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Regime.

9.3.2. **Schedule of Inspections.** Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements is attached to this Declaration as Attachment 5. The inspectors shall provide written reports to their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

9.3.3. **Notice to Declarant.** During the Development Period, the Association shall, if requested by Declarant, deliver to the Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

9.3.4. **Limitation.** The provisions of this Section shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

9.4. **Owner Responsibility.** Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

- (i) To maintain, repair, and replace the Owner's Unit and any and all Limited Common Elements exclusively serving the Owner's Unit, except for components expressly assigned to the Association by this Declaration.
- (ii) The routine cleaning of any balcony and/or patio of the Owner's Unit, if any, keeping same in a neat, clean, odorless, orderly, and attractive condition.

- (i) regularly inspecting the Unit for evidence of water leaks or penetrations or other conditions which may lead to mold growth;
- (ii) repairing promptly any water leaks, breaks, or malfunctions of any kind in the Unit that may cause damage to another Unit or Common Element;
- (iii) regularly inspecting the entire Unit for visible surface mold and promptly removing same using appropriate procedures; and
- (iv) reporting promptly to the Association any water leak, penetration, break, or malfunction in any portion of the Unit or any adjacent Common Elements for which the Association may have maintenance responsibility.

9.7.2. **Insurance.** Many insurance policies do not cover damages related to mold. The Association is not required to maintain insurance coverage applicable to mold damage with respect to any Unit, and may not have obtained such coverage. Accordingly, an Owner who wants insurance coverage with respect to mold and mold-related damages is advised to separately purchase such insurance coverage.

9.8. **Balconies and Patios.** Except for routine cleaning, which is the Owner's responsibility pursuant to Section 9.4, the Association is responsible for the maintenance, repair, and replacement of balconies and patios (if any) which are part of a Unit. If the outside components of the Unit are most easily accessed through the Unit, the Owner will cooperate in providing access to the outside components for the Association's agents and contractors. If requested by the Association, the Owner will remove all personal property from the outside components of his Unit to facilitate the required maintenance, repair, or replacement. The Owner is liable to the Association for any additional expense incurred by the Association due to an Owner's failure or refusal to cooperate with reasonable requests for access or removal. This section may not be construed to prevent an Owner at the Owner's sole expense, without right of reimbursement from the Association, from maintaining, repairing, and replacing components of the Unit's balcony or patio (if any), subject to compliance with Article 10 below.

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

9.10. **Owner's Default in Maintenance.** If the Board determines that an Owner has failed to properly discharge such Owner's obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which will be considered an Individual Assessment against the Owner and the Owner's Unit. In case of an emergency,

however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

**ARTICLE 10
ARCHITECTURAL COVENANTS AND CONTROL**

10.1. **Purpose.** Because the Units are part of a single, unified community, the Architectural Reviewer has the right to regulate the appearance of all Improvements in order to preserve and enhance the Property's value and architectural harmony. The Architectural Reviewer has the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation. During the Development Period, the primary purpose of this Article is to reserve and preserve Declarant's right of architectural control. Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property and all architectural modifications made thereto that are made by the Declarant or its Permittees shall not be subject to approval pursuant to this Article.

10.2. **Architectural Reviewer.** Until expiration or termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. Upon expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board or a committee appointed by the Board.

10.3. Architectural Control by Declarant:

10.3.1. **Declarant as Architectural Reviewer.** During the Development Period, the Architectural Reviewer shall mean Declarant or its designee, and neither the Association or the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of any improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this Article.

10.3.2. **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property do not impair Declarant's ability to market Units in the Regime. Accordingly, each Owner agrees that during the Development Period, no Improvements will be started or progressed without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

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OFFICE OF
TENESHA HUDSPETH
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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
OF CONDOMINIUM REGIME (A RESIDENTIAL CONDOMINIUM
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10.3.3. **Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its rights as Architectural Reviewer to the Board or a committee appointed by the Board comprised of Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral right of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

10.4. **Architectural Control by Association.** Upon Declarant's delegation, in writing, of all or a portion of its reserved rights as Architectural Reviewer to the Board, or upon the expiration or termination of the Development Period, the Association will assume jurisdiction over architectural control and will have the powers of the Architectural Reviewer hereunder and the Board, or a committee appointed by the Board, is the Architectural Reviewer and shall exercise all architectural control over the Property.

10.5. **Limits on Liability.** Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents will have any liability for decisions made as Architectural Reviewer in good faith, and which are not arbitrary or capricious. Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to the Board; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws. Approval of a modification or improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

10.6. **Prohibition of Construction, Alteration and Improvement.** Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property.

YOU CANNOT CHANGE THE EXTERIOR OF ANY IMPROVEMENTS WITHIN YOUR UNIT UNLESS YOU HAVE THE SIGNED CONSENT OF THE ARCHITECTURAL REVIEWER.

10.7. **No Deemed or Verbal Approval.** Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by the Declarant, Declarant's representative or designee or the Association, an Association director or officer, a member or chair of the Declarant or Board-appointed architectural control committee, the Association's manager, or any other representative of the Association. To be

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valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Architectural Reviewer's actual receipt of the Owner's application, the application is deemed denied. Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded, with the cost of Recordation borne by the Owner. Architectural Reviewer approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer's approval or, if no commencement date is stated, within ninety (90) days after the date of Architectural Reviewer approval.

10.8. **Application.** To request Architectural Reviewer approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

10.9. **Owner's Duties.** If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the Improvement, provided:

- (i) The Owner complies with Section 3.3.
- (ii) The Owner must adhere strictly to the plans and specifications which accompanied his application.
- (iii) The Owner must initiate and complete the Improvement in a timely manner.
- (iv) If the approved application is for work that requires a building permit from the city, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the city's requirements. Alternatively, approval by the city does not ensure Architectural Reviewer approval.

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**ARTICLE 11
USE RESTRICTIONS**

11.1. **Variance.** The use of the Regime is subject to the restrictions contained in this Article, and subject to Rules. The Declarant may grant a variance or waiver of a restriction or Rule during the Development Period. The Board, with the Declarant's written consent during the Development Period, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by the Declarant and/or a Majority of the Board, as applicable. The grant of a variance shall not constitute a waiver or estoppel of the right to deny a variance in other circumstances.

11.2. **Declarant Privileges.** In connection with the development and marketing of Units, Declarant has reserved a number of rights and privileges to use the Regime in ways that are not available to other Owners or Occupants. Declarant's exercise of a right that appears to violate the Documents does not constitute waiver or abandonment of applicable provision of the Documents.

11.3. **Association's Right to Promulgate Rules and Amend Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through a Majority of the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

EVERY OCCUPANT IS EXPECTED TO COMPLY WITH RULES ADOPTED BY THE BOARD OF DIRECTORS.

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

- (i) Use of Common Elements.
- (ii) Hazardous, illegal, or annoying materials or activities on the Property.
- (iii) The use of Property-wide services provided through the Association.
- (iv) The consumption of utilities billed to the Association.
- (v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.

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- (vi) The occupancy and leasing of Units.
- (vii) Animals.
- (viii) Vehicles.
- (ix) Disposition of trash and control of vermin, termites, and pests.
- (x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

11.5. Animals - Household Pets. No animal, bird, fish, reptile, or insect of any kind, may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy quotas, there shall be allowed no more than two cats, or two dogs, or one cat and one dog may be maintained in each Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules. Notwithstanding the foregoing, prior to the installation of a fish tank exceeding fifty five (55) gallons, an Owner must deliver plans for such tank to the Architectural Reviewer for its written approval. The Architectural Reviewer may require a review by a structural engineer at the sole expense of the Owner prior to the approval or disapproval of such plans.

11.6. Annoyance. No Unit or Limited Common Element may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the desirability of the Property; (iii) may endanger the health or safety of Occupants; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

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

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

11.9. Driveways. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

11.10. Landscaping. No person may perform landscaping, planting, or gardening anywhere upon the Property without the Board's prior written authorization.

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OFFICE OF
TENEISHA HUDSPETH
COUNTY CLERK, HARRIS COUNTY, TEXAS
CONDOMINIUM RECORDS OF COUNTY CLERK

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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
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11.11. Noise And Odor. A Occupant must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Occupants of neighboring Units. The Rules may limit, discourage, or prohibit noise-producing activities and items in the Units and on the Common Element.

11.12. Weight and Sound Restriction. In addition to and without limiting the provisions set forth in Article 10 of this Declaration, an Owner or other Person authorized by such Owner: (i) shall not install any hard and/or heavy surface floor coverings including, without limitation, tile, marble, stone, wood and the like unless approved by the Architectural Reviewer; and (ii) must insure a sound control underlayment system is used, which system must be approved in writing by the Architectural Reviewer prior to installation. Installation of such sound control underlayment system shall include provisions for a perimeter insulation material which will ensure that impact noises are not transmitted into a space below, either directly through the floor or by flanking through the surrounding walls. Each Owner hereby acknowledges and agrees that sound transmission is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. The Declarant makes no representation or warranty as to the level of sound transmission between and among Units in the other portions of the Regime, and each Owner hereby waives and expressly releases Declarant from any such warranty and claim for loss or damages resulting from sound transmission.

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

11.14. Residential Use. The use of a Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit an Occupant from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a residential dwelling; (ii) the uses conform to Applicable Law; (iii) there is no external evidence of the use; (iv) the use does not entail visits to the Unit by employees or the public; and (v) the uses do not interfere with the use and enjoyment of other Units. Other than the air conditioned part of a Unit, no thing or structure on the Property may be occupied as residence at any time by any Person.

11.15. Signs. No sign of any kind, including signs advertising Units for sale, for rent or for lease, may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Units unless approved in advance by the Architectural Reviewer. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Architectural

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Reviewer may, but is not required to, authorize a sign, and such authorization may specify the location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway which the Architectural Reviewer or Board deems to be unsightly or inappropriate. The Association may effect the immediate removal of any sign or object that violates this Section or which the Architectural Reviewer or Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal. As provided in Appendix A, Declarant has reserved the right to maintain signs and other items on the Unit for the purpose of promoting, identifying and marketing the Property and off-site developments of Declarant or its assigns.

Notwithstanding the foregoing, a religious item on the entry door or door frame of a Unit (which may not extend beyond the outer edge of the door frame) is permitted, provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches.

11.16. Solar Device. No solar device may be installed on any portion of the Common Elements without the advance written approval of the Architectural Reviewer.

11.17. Energy Efficient Roofing. The roof components of each building located in the Regime are Common Elements and the Owner of a Unit is not authorized to cause to be constructed or replaced any improvements (including roofing) on Common Elements without the advance written consent of the Architectural Reviewer.

11.18. Rainwater Harvesting Systems. No rain barrel may be installed on any portion of the Common Elements without the advance written approval of the Architectural Reviewer.

11.19. Flag Display and Flagpole Installation. No flag or flagpole may be installed on any portion of the Common Elements without the advance written approval of the Architectural Reviewer.

11.20. Structural Integrity. No person may directly or indirectly impair the structural soundness or integrity of a Building or other Unit, nor do any work or modification that will impair an easement or real property right.

11.21. Antenna. Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an "Antenna/Dish"), shall be erected, maintained, or placed on a Unit without the prior written approval of the Board.

11.21.1. Dishes Over One Meter Prohibited. Unless otherwise approved by the Board, an Antenna/Dish which is over one meter in diameter is prohibited within the Regime.

11.21.2. Notification. An Owner or Occupant who wishes to install an Antenna/Dish one meter or less in diameter (a "Permitted Antenna") must submit a

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written notice to the Board or its designee, which notice must include the Owner or Occupant's installation plans for the satellite dish.

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

11.21.4. Permitted Installation Locations. An Owner or Occupant may erect a Permitted Antenna (after written notification has been provided to the Board or its designee) if the Owner or Occupant has an exclusive use area in which to install the antenna. An "exclusive use area" of a Unit is an area in which only the Owner or Occupant may enter and use to the exclusion of all other Owners and Occupants. Unless otherwise approved by the Board or its designee, the Permitted Antenna must be entirely within the exclusive use area of the Owner's Unit. For example, if a Permitted Antenna is erected on a balcony, the Permitted Antenna may not protrude or extend outside of a balcony. **UNLESS EXPRESSLY APPROVED IN ADVANCE AND IN WRITING BY THE BOARD, NO OWNER MAY INSTALL OR ERRECT A SATELLITE DISH ON THE EXTERIOR WALL OF ANY UNIT OR THE BUILDING.**

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

11.21.5. Cable Conduit. The Property is designed with a conduit for use with cable television lines. Each Owner may use the conduit for its intended purpose and for no other purpose. The draping of cable wires on the exteriors of buildings, or the installation of additional conduits are prohibited without the Board's prior written consent.

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

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

11.23. **Window Treatments.** The color and condition of all window panes, window screens, and window treatments must conform to the Building standard as established from time to time by the Board. All window treatments within the Unit that are visible from the street or another Unit must be maintained in good condition and must not detract from the appearance of the Property. The Board may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the Board determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The Board may prohibit the use of certain colors or materials for window treatments.

11.24. **Door Locks.** Owners must allow representatives of the Association and other emergency personnel access to their Units in case of emergencies. In the case of any emergency originating in, or threatening, any Unit, regardless of whether the Owner is present at the time of such emergency, the Board, the manager or any other person authorized by the Board or Manager shall have the right to enter into such Unit for the purpose of remedying or abating the cause of such emergency and such right of entry shall be immediate.

11.25. **No Piercing of Walls.** In addition to and without limiting the provisions set forth in Article 10 of this Declaration, an Owner or other Person authorized by such Owner shall not pierce any of the Unit walls with any type of nail, screw, drill bit or other similar item in excess of 3/4 inch in length without first obtaining the consent of the Architectural Reviewer as set forth in Article 10.

11.26. **Balconies and Patios.** No linens, cloths, clothing, towels, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, or other articles, shall be stored, shaken or hung from or on any of the windows, doors, decks or balconies or other portions of the Regime. The Board will have the authority to require an Owner or Occupant to remove any article from a window, door, balcony, or patio, if in the sole and exclusive discretion of the Board, the article is unsightly, offensive, or constitutes an annoyance.

11.27. **Wireless Internet Systems.** A wireless Internet communication network ("WiFi System") may be installed or otherwise used in a Unit provided precautions are taken to insure

12.2.2. **Assignment of Rents.** If the Owner fails to pay any Assessment or any other charge against the Unit for a period of more than thirty (30) days after it is due and payable, then the Owner hereby consents to the assignment of any rent received from the tenant during the period of delinquency, and, upon request by the Board, tenant shall pay directly to the Association all unpaid Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by tenant. The tenant need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by tenant shall reduce, by the same amount, tenant's obligation to make monthly rental payments to the Owner.

12.2.3. **Violation Constitutes Default.** Failure by the tenant or the tenant's guests to comply with the Documents or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of such violation, the Owner will promptly obtain compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or Applicable Law for the default, including eviction of the tenant.

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

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

12.3. **Exemption.** A Mortgagee that acquires title to the Unit by foreclosure of its deed of trust lien or by deed in lieu of foreclosure of its lien is exempt from the effect of this Article.

ARTICLE 13 ASSOCIATION OPERATIONS

13.1. **Board.** Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the

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COUNTY CLERK, HARRIS COUNTY, TEXAS
CONDOMINIUM RECORDS OF COUNTY CLERK

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against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Regime. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems within the Regime. The Association may require that any WiFi System found to cause such problems be terminated. The Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi Systems in the Regime, nor shall Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Regime.

ARTICLE 12 UNIT LEASING

12.1. **Lease Conditions.** The leasing of Units is subject to the following conditions: (i) unless otherwise approved in advance by the Board, no Unit may be rented for transient, "Airbnb" or hotel purposes or for a period less than one year; (ii) unless otherwise permitted by the Rules, not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Documents; (iv) an Owner is responsible for providing the Owner's tenant with copies of the Documents and notifying the tenant of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

12.2. **Provisions Incorporated By Reference Into Lease.** Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the tenant, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

12.2.1. **Compliance with Documents.** The tenant shall comply with all provisions of the Documents and shall control the conduct of all other Occupants and guests of the leased Unit, as applicable, in order to ensure such compliance. The Owner shall cause all Occupants of the Owner's Unit to comply with the Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the tenant or Occupant violates the Documents or a Rule for which a fine is imposed, notice of the violation shall be given to the Owner and the tenant, and such fine may be assessed against the Owner or the tenant. Unpaid fines shall constitute a lien against the Unit.

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"Association" may be construed to mean "the Association acting through a Majority of its Board of Directors."

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

13.3. **Name.** A name is not the defining feature of the Association. Although the initial name of the Association is Cityview at McGowen HOA, Inc., the Association may operate under any name that is approved by the Board and: (i) filed with the Harris County Clerk as an assumed name, or (ii) filed with the Secretary of State of Texas as the name of the filing entity. The Association may also change its name by amending the Documents, except in the event the corporate charter has been revoked and the name, "City View at McGowen HOA Community, Inc.", is no longer available. In such event, the Board will cause a notice to be Recorded stating the current name of the Association. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration. The name "City View at McGowen Condominiums" is not a trade name.

13.4. **Duration.** The Association was formed on as of the date the Certificate was filed with the Secretary of State of Texas. The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

13.5. **Governance.** The Association will be governed by a board of directors elected by the Members. Unless the Bylaws or Certificate provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners representing at least a Majority of the total votes in the Association, or at a meeting by Owners' representing at least a Majority of the votes in the Association that are represented at the meeting.

13.6. **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners of at least sixty-seven percent (67%) of the total votes in the Association. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within

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the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

13.7. **Membership.** Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Unit is owned by more than one person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit.

13.8. **Manager.** The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Attachment 6. The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its officers, directors, members, employees, and agents that are not justified by the needs of the Association. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

13.9. **Books and Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of Applicable Law.

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

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

13.11.1. **Information.** Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information

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CONDOMINIUM RECORDS OF COUNTY CLERK

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required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the Recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address, phone number, and driver's license number, if any; (iii) any Mortgagee's name, address, and loan number; (iv) the name and phone number of any Occupant other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

13.11.2. **Pay Assessments.** Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay Regular Assessments without demand by the Association.

13.11.3. **Compliance with Documents.** Each Owner will comply with the Documents as amended from time to time.

13.11.4. **Reimburse for Damages.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, an Occupant of the Owner's Unit, or the Owner or Occupant's family, guests, employees, contractors, agents, or invitees.

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

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

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

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

13.12.3. **Other Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior

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

13.12.4. **Exclusions.** The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's Assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (iii) transfer to, from, or by the Association; or (iv) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (v) a disposition by a government or governmental agency. The requirements of this Section do not apply to the initial conveyance of a Unit from the Declarant to a third-party.

ARTICLE 14 ENFORCING THE DOCUMENTS

14.1. **Notice And Hearing.** Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine — unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another Person or by a written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with the requirements of Applicable Law.

14.2. **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following rights to enforce the Documents:

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

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

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

14.2.4. **Self-Help.** The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Unit without judicial proceedings.

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

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

14.4. **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

14.5. **Recovery of Costs.** The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to

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enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE 15 INSURANCE

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

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

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

15.1.3. **Requirements.** The cost of insurance coverage and bonds maintained by the Association is a common expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be prejudiced by the act or omission of any Owner or Occupant who is not under the Association's control.

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

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

15.1.6. **Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an Underwriting Lender. In the event of an insured loss, the deductible is treated as a common expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Occupant or their invitee, then the Board may levy an Individual Assessment against the Owner and the Owner's Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with Section 14.1 of this Declaration.

15.2. **Property Insurance.** The Association will obtain property insurance in accordance with Section 82.111(a) of the Act. The insurance must be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard.

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

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

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

15.3. **Liability Insurance.** The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Occupant within his Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. The amount of coverage should be at least that required by an Underwriting Lender, to the extent reasonably available. The purpose of this requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

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

15.5. **Fidelity Coverage.** The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, in the Association's custody while the policy is in force; or (ii) an amount equal to 3 months of Regular Assessments on all Units. A management agent that handles Association funds should be covered by a separate fidelity insurance policy with the same coverages. If the Property has more than twenty (20) Units, the Association must maintain fidelity coverage to the extent reasonably available.

15.6. **Directors and Officers Liability.** The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

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

15.8. **Owner's Responsibility for Insurance.**

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

15.8.2. **HO-6 Policy.** Notwithstanding any provision in this Declaration to the contrary, if required by any Underwriting Lender, each Owner of a Unit will be required to procure insurance covering the interior of the Unit, including replacement of interior

improvements and betterment coverage to insure improvements the Owner may make to the Unit, commonly referred to as HO-6 insurance.

15.8.3. **Owners' Responsibilities.** The Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to his Unit, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Unit for purposes of insurance appraisal. Each Owner, at such Owner's expense, will maintain any insurance coverages required by the Association pursuant to this Article.

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

ARTICLE 16 RECONSTRUCTION OR REPAIR AFTER LOSS

16.1. **Subject To Act.** The Association's response to damage or destruction of the Property will be governed by Section 82.111(i) of the Act. The following provisions apply to the extent the Act is silent.

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

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

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

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

actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board in the Board's sole and absolute discretion.

16.3. Costs And Plans.

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

16.3.2. Plans and Specifications. Unless otherwise approved by the Board, Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Unless otherwise approved by the Board, Units will be repaired and restored substantially in accordance with original construction plans and specifications, unless the Association insures betterments and Improvements made by Owners, in which case the Units will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either Common Elements or Units must be approved by the Board and by certain Mortgagees if so required by the Mortgagee Protection article of this Declaration.

16.4. Owner's Duty to Repair.

16.4.1. Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Unit not covered by the Association's blanket insurance policy, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.

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

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

16.5. Owner's Liability For Insurance Deductible. If repair or restoration of Common Elements or Units is required as a result of an insured loss, the Board may levy an Individual

address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this Section 18.2 after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

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

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

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

18.6. Other Mortgagee Rights.

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

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

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

18.6.4. Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

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

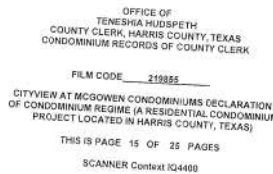
18.7. Insurance Policies. If an Underwriting Lender that holds a mortgage on a Unit or desires to finance a Unit has requirements for insurance of condominiums, the Association must try to obtain and maintain the required coverage, to the extent reasonably available, and must try to comply with any notifications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

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

- (i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit.
- (ii) Any sixty (6) day delinquency in the payment of assessments or charges owed by the Owner of the mortgaged Unit.
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.
- (v) Any proposed amendment of a material nature, as provided in this Article.
- (vi) Any proposed termination of the condominium status of the Property.

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

- (i) Voting rights.
- (ii) Assessment liens or the priority of assessment liens.
- (iii) Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- (iv) Responsibility for maintenance and repairs.



Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 17 TERMINATION AND CONDEMNATION

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

17.2. Termination. Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and Section 18.4 below.

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

ARTICLE 18 MORTGAGEE PROTECTION

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

18.2. Notice of Mortgagee. As provided in this Article 18, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in Section 18.8, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in Section 18.9 or the termination of this Declaration as described in Section 18.4. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and

- (v) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A", by agreement between Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).
- (vi) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Mortgagees holding mortgages against the Unit or Units need approve the action.
- (vii) Convertibility of Units into Common Elements or Common Elements into Units.
- (viii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.
- (ix) Property or fidelity insurance requirements.
- (x) Imposition of any restrictions on the leasing of Units.
- (xi) Imposition of any restrictions on Owners' right to sell or transfer their Units.

- (iii) Claims relating to the design or construction of the Property, Units, or any Improvement made by or on behalf of the Declarant, or its permitted assigns.

20.1.2. "Claimant" means any Party having a Claim against any other Party.

20.1.3. "Respondent" means any Party against which a Claim has been asserted by a Claimant.

20.2. **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in Section 20.7 below, a Claim will be resolved by binding arbitration.

20.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not to do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in Section 20.4 below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with Section 20.4, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 20.4 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 20.5 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 20.5 is required without regard to the monetary amount of the Claim.

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

20.5. **Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such

other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this Section 20.5.

20.6. **Termination Of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

20.7. **Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 20.7. This section may not be amended without the prior writ-ten approval of the Declarant and Owners holding a Majority of the votes in the Association.

20.7.1. **Governing Rules.** If a Claim has not been resolved after Mediation as required by Section 20.5, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 20.7 and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Harris County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section 20.7, this Section 20.7 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

**ARTICLE 19
AMENDMENTS**

19.1. **Consents Required.** As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and Recorded with such amendment.

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

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OFFICE OF
TENZISHA HUDSPETH
COUNTY CLERK, HARRIS COUNTY, TEXAS
CONDOMINIUM RECORDS OF COUNTY CLERK

FILM CODE 218938

CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
OF CONDOMINIUM REGIME (A RESIDENTIAL CONDOMINIUM
PROJECT LOCATED IN HARRIS COUNTY, TEXAS)

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19.3. **Effective.** To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Property, the name of the Association, and the Recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Mortgagees; provided, however, this subsection (ii) will not apply for amendments which may be unilaterally prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration or Appendix "A"; and (iii) Recorded.

19.4. **Declarant Provisions.** An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because Appendix "A" of this Declaration is destined to become obsolete, beginning seven (7) years after the date this Declaration is first Recorded, the Board may restate, re-record, or publish this Declaration without Appendix "A". The automatic expiration and subsequent deletion of Appendix "A" does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

**ARTICLE 20
DISPUTE RESOLUTION**

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

20.1.1. "Claim" means:

- (i) Claims relating to the rights and/or duties of Declarant, or its permitted assigns, under the Documents or the Act.
- (ii) Claims relating to the acts or omissions of the Declarant during its control and administration of the Association, any claim asserted against the Architectural Reviewer if the claim relates to any act or omission of the Architectural Reviewer while controlled by the Declarant, and any claims asserted against a Person appointed by the Declarant to serve as a Board member or officer of the Association, or to discharge any of the rights of the Architectural Reviewer.

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- (i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
- (iii) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

20.7.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 20.7 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

20.7.3. Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 20.7.

20.7.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this Section 20.7; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

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20.7.5. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Harris County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

20.8. Allocation Of Costs. Except as otherwise provided in this Article, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

20.9. General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

20.10. Period of Limitation.

20.10.1. For Actions by an Owner or Occupant of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of a Unit, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years and one (1) day from the date Declarant conveyed the Unit to the original Owner unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Unit to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Unit, unless the basis of the Claim was intentional fraud or willful

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misconduct, in which case, the applicable law governing the limitation period and period of repose shall apply to the Claim.

20.10.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years from the date Declarant substantially completed the Common Elements unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, two (2) years and one (1) day after the Declarant Control Period, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period and period of repose shall apply to the Claim.

20.11. Approval & Settlement. Notwithstanding any provision in this Article to the contrary, the initiation of binding arbitration for a Claim as required by this Article is subject to the following conditions:

20.11.1. Owner Acceptance. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section 20.11 and Article 20.

20.11.2. Owner Approval. The Association may not initiate binding arbitration or any judicial proceeding without the prior approval of Owners holding at least a Majority of the votes in the Association.

20.11.3. Funding Arbitration and Litigation. The Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this Article 20 or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

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

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This Section 20.11 may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding a Majority of the votes in the Association.

Notwithstanding the foregoing, this Article 20 does not apply to Declarant's Mortgagee, Equity Secured Capital, LP, and its successors or assigns.

**ARTICLE 21
GENERAL PROVISIONS**

21.1. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by electronic mail, personally or by mail. Such notice shall be deemed delivered at the time of personal or electronic delivery, and if delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Person to the Association.

21.2. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

21.3. Duration. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by Applicable Law.

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

21.5. Construction. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof. Throughout this Declaration there appears text enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions of this Declaration. In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of the Declaration will control.

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21.6. **Declarant as Attorney in Fact and Proxy.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to Appendix "A" and elsewhere in this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit within the Regime, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit in the Regime, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to Appendix "A" or elsewhere in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage against a Unit in the Regime, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit in the Regime, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to Appendix "A" or elsewhere in this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to Appendix "A" or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Non-profit Corporation Act the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant pursuant to Appendix "A" or elsewhere in this Declaration on the date Declarant no longer has the right to exercise such rights. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

EXECUTED on this 10 day of July, 2023.

DECLARANT:

CITYVIEW AT MCGOWEN HOLDINGS, LLC, a Texas limited liability company


By: Stallion Capital Management, LLC, its Manager

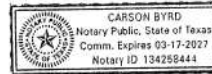
By: 
Vincent Balagia, Manager

THE STATE OF TEXAS §
COUNTY OF ~~Williamson~~ §

This instrument was acknowledged before me this 10 day of July, 2023 by Vincent Balagia, Manager of Stallion Capital Management, Manager of Cityview at McGowen Holdings, LLC, a Texas limited liability company on behalf of said limited liability company.

(SEAL)


Notary Public Signature



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21.7. **Appendix/ Attachments.** The following appendixes, attachments and exhibits are attached to this Declaration and are incorporated herein by reference:

Exhibit "A"	Description of Property
Attachment 1	Plats and Plans
Attachment 2	Encumbrances
Attachment 3	Schedule of Allocated Interests
Attachment 4	Maintenance Responsibility Chart
Attachment 5	Guide to Association's Examination of Common Elements
Attachment 6	Guide to Association's Major Management and Governance Functions
Attachment 7	Tax Certificate
Appendix "A"	Declarant Representations and Reservations

[SIGNATURE PAGE FOLLOWS]

EXHIBIT "A"

Description of Property

Tract 1:

Lots 1 through 23, inclusive, in Block 1 of VIEWPOINT SQUARE REPLAT NO. 2, a subdivision of 0.8597 acres, according to the map or plat thereof recorded in Film Code No. 674645 of the Map Records of Harris County, Texas.

Tract 2:

All of Reserve "A" (1,437.5 sq. feet, more or less), in Block 1 of VIEWPOINT SQUARE REPLAT NO. 2, according to the map or plat thereof recorded in Film Code No. 674645 of the Map Records of Harris County, Texas.

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DECLARATION OF CONDOMINIUM REGIME
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ATTACHMENT 1

[CONDOMINIUM PLATS AND PLANS]

The plats and plans, attached hereto as Attachment 1 contains the information required by the Texas Uniform Condominium Act.

Printed Name: _____
 RPLS or License No. _____

BOUNDARIES OF UNIT

The legal boundaries of each Unit are established by the Declarant and the plats and plans attached hereto. However, each Owner acknowledges that the Unit may be measured and depicted in a manner which differs from the legal boundaries of a Unit. For example, the Unit may be measured or depicted differently for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Unit's legal boundaries. The Unit's partition wall cavities and/or its perimeter wall cavities may or may not be included.

SEE NEXT PAGE FOR ORIGINAL CERTIFICATION

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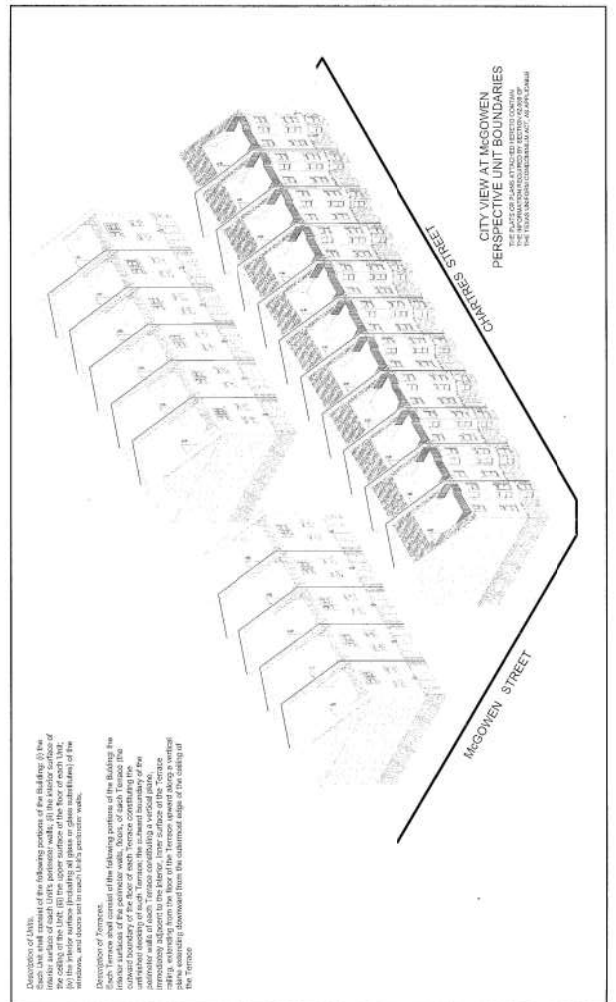
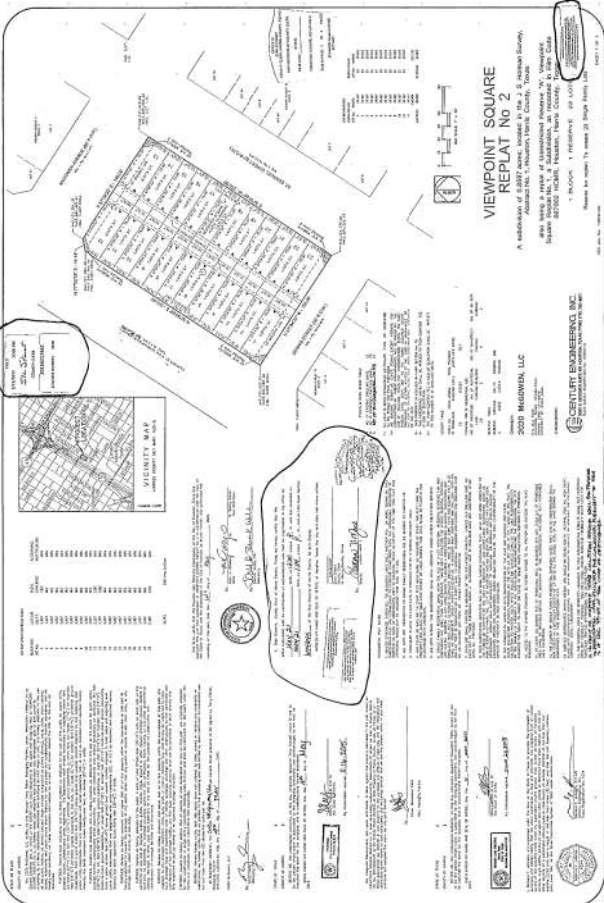
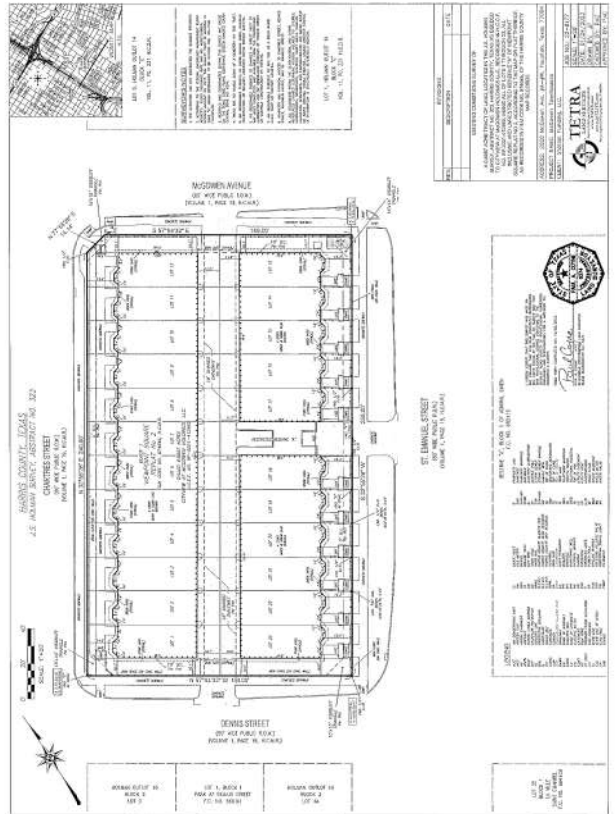
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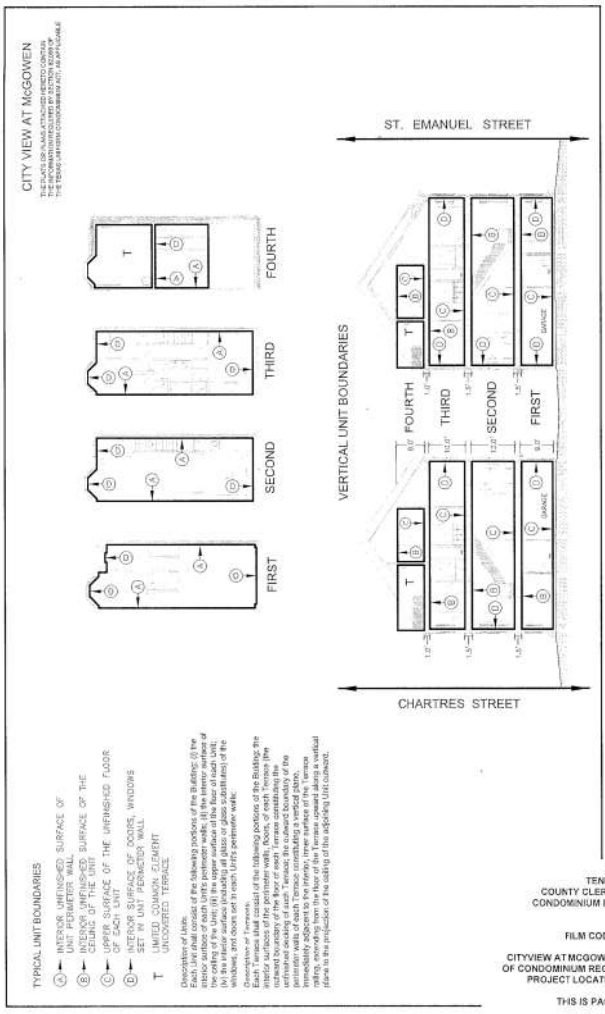
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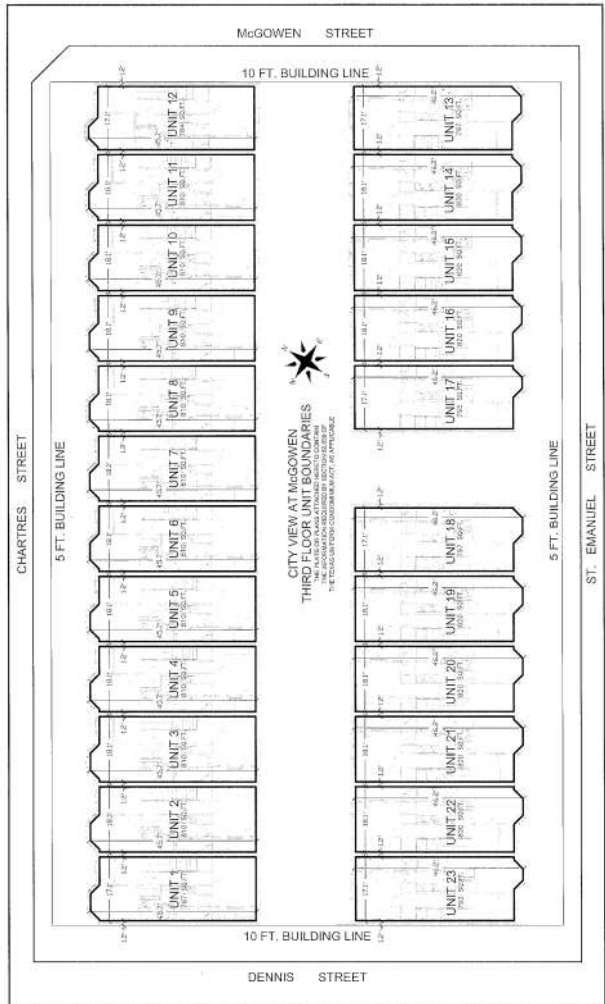
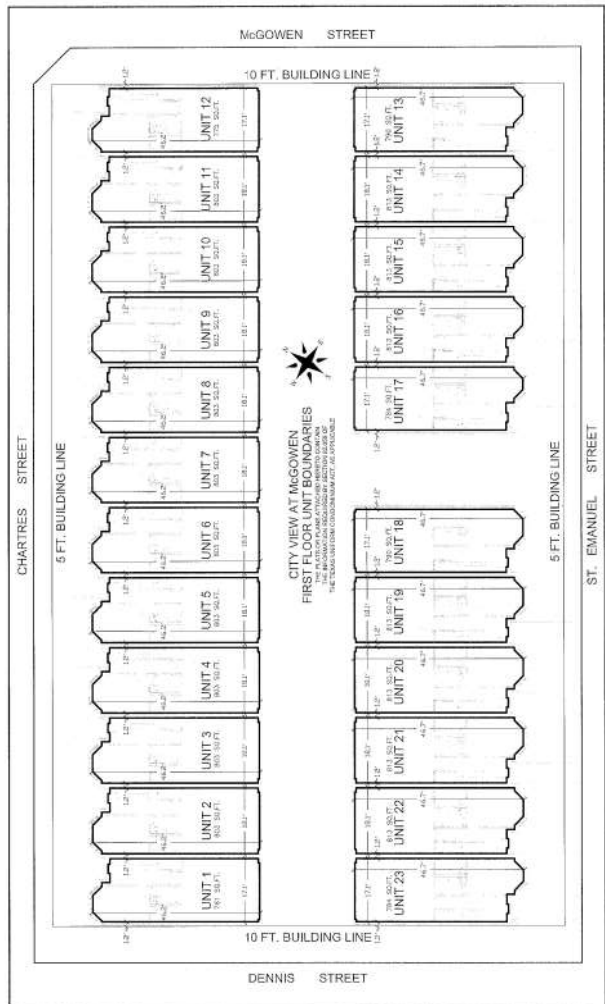
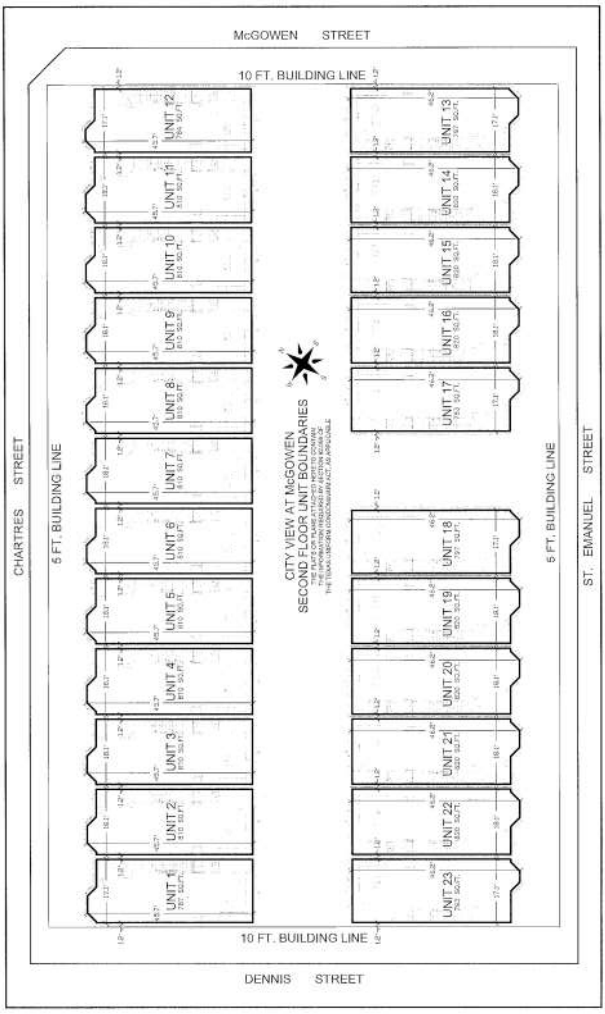


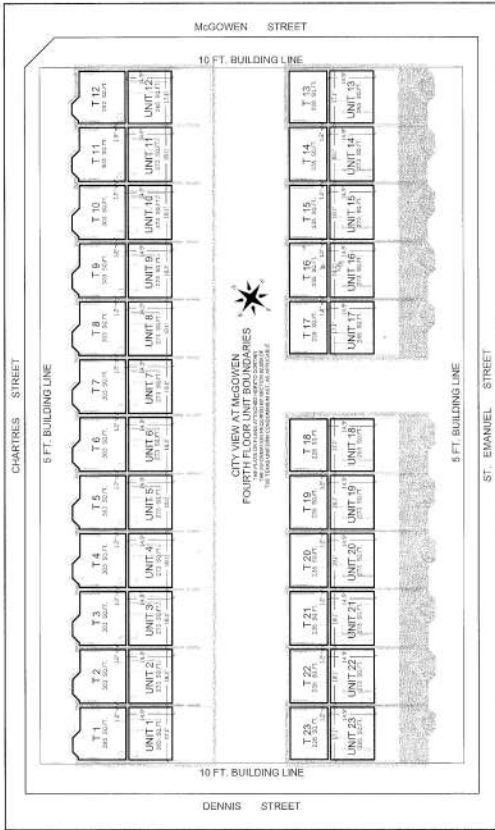


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ATTACHMENT 2
[ENCUMBRANCES]

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ATTACHMENT 3

COMMON INTEREST ALLOCATION

The Percentage of Common Interest and Share of Common Expense Liability for each Unit is noted on the Plans. Each Unit is allocated one (1) vote.

THE COMMON INTEREST ALLOCATION ASSIGNED TO A PARTICULAR UNIT WILL DECREASE IF ADDITIONAL UNITS ARE CREATED AND ADDED TO THE REGIME BY THE DECLARANT.

CITY VIEW AT MCGOWEN

Allocated Interests Per Unit in Common Elements and Common Expenses

Unit	Size of Unit (Sq.Ft.)	Votes per Unit	Undivided Interest in Common Elements and Common Expenses (%)
1	2,508	1	4.16210
2	2,652	1	4.40108
3	2,652	1	4.40108
4	2,652	1	4.40108
5	2,652	1	4.40108
6	2,652	1	4.40108
7	2,652	1	4.40108
8	2,652	1	4.40108
9	2,652	1	4.40108
10	2,652	1	4.40108
11	2,652	1	4.40108
12	2,505	1	4.15712
13	2,499	1	4.14717
14	2,679	1	4.44588
15	2,679	1	4.44588
16	2,679	1	4.44588
17	2,487	1	4.12725
18	2,499	1	4.14717
19	2,679	1	4.44588
20	2,679	1	4.44588
21	2,679	1	4.44588
22	2,679	1	4.44588
23	2,487	1	4.12725
TOTAL UNITS	TOTAL Sq. Ft.	TOTAL VOTES	TOTAL OWNERSHIP INTEREST (%)
23	60,258	23	100.0000

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CITYVIEW AT MCGOWEN CONDOMINIUMS

ATTACHMENT 4

MAINTENANCE RESPONSIBILITY CHART

"All aspects" includes maintenance, repair, and replacement, as needed.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Fences, screening walls, and retaining walls around perimeter of property.	All aspects.	None.
Exterior lighting.	All aspects.	None.
Sidewalks.	All aspects.	None.
Mailboxes & exterior street addresses or Unit numbers.	All aspects.	None.
Exterior Landscaping.	All aspects.	None.
Roofs and roof facilities.	All aspects.	None.
Exterior Building components.	All aspects.	None.
Building Foundation.	All aspects.	None.
Unit interior, including improvements, fixtures, partition walls and floors within Unit.	None.	All aspects.
Sheetrock within Unit & treatments on walls.	None.	All aspects.
Exterior Unit doors.	All aspects; provided, however, that the costs associated with maintenance, repair or replacement of an exterior door serving a Unit exclusively, is payable by the Unit Owner as an Individual Assessment.	None.

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ATTACHMENT 5

GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose of maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The examination is required by Section 9.3 of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by Section 6.12 of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caonline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

In developing a plan, the age and condition of Common Elements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Common Elements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:
 - Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve

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COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Windows.	All aspects; provided, however, that the costs associated with maintenance, repair or replacement of a window serving a Unit exclusively, is payable by the Unit Owner as an Individual Assessment	None.
Water, wastewater, electrical lines & systems.	All aspects of common lines & systems serving more than one Unit, none for those serving an individual unit.	All aspects of lines, pipes, fixtures, and appliances serving only that Owner's Unit.
HVAC System	All aspects if serving more than one Unit, otherwise,	All aspects for those exclusively serving an individual Unit.
Intrusion alarms smoke/heat detectors, monitoring equipment.	None for those exclusively serving an individual Unit.	All aspects for those exclusively serving an individual Unit.

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

NOTE 2: If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner.

NOTE 3: Set forth above is a summary of the maintenance obligations imposed upon the Association and the Owners generally as described more fully in this Declaration. Please note that the information set forth in this Attachment 4 is a summary only and is not intended to modify any of the provisions of this Declaration. Accordingly, in the event of a conflict between the summary set forth in this Attachment 4 and any provision set forth in the Declaration above, the provision set forth in the Declaration above will control.

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account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

- Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40 to 50% results in an 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See "Measuring the Adequacy of Reserves", *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09 and 1.4%.

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc.), a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in Section 9.3 of the Declaration, the Board must reevaluate its funding level each year based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to, roofing, electrical systems, plumbing, information technology equipment, floor coverings, air conditioning systems, heating and hot water equipment, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

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ATTACHMENT 6

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

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

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	Performed by Association officers or directors	Delegated to Association employee or agent
<p>FINANCIAL MANAGEMENT</p> <p>To adopt annual budget and levy assessments, per Declaration.</p> <p>Prepare annual operating budget, periodic operating statements, and year-end statement.</p> <p>Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule for 5, 10, and 20-year periods. Annually update same.</p> <p>Collect assessments and maintain Association accounts.</p> <p>Pay Association's expenses and taxes.</p> <p>Obtain annual audit and income tax filing.</p> <p>Maintain fidelity bond on whomever handles Association funds.</p> <p>Report annually to members on financial status of Association.</p>		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	Performed by Association officers or directors	Delegated to Association employee or agent
<p>OVERALL FUNCTIONS</p> <p>Promote harmonious relationships within the community. Protect and enhance property values in the community. Encourage compliance with governing documents and Applicable Laws and ordinances.</p> <p>Act as liaison between the community of owners and governmental, taxing, or regulatory bodies.</p> <p>Protect the Association and the property from loss and damage by lawsuit or otherwise.</p>		

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CITYVIEW AT MCGOWEN CONDOMINIUMS DECLARATION
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ATTACHMENT 7
[TAX CERTIFICATE]

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	Performed by Association officers or directors	Delegated to Association employee or agent
<p>PHYSICAL MANAGEMENT</p> <p>Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility.</p> <p>Contract for services, as needed to operate or maintain the property.</p> <p>Prepare specifications and call for bids as major projects.</p> <p>Coordinate and supervise work on the property, as warranted.</p>		
<p>ADMINISTRATIVE MANAGEMENT</p> <p>Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the association.</p> <p>Conduct hearings with owners to resolve disputes or to enforce the governing documents.</p> <p>Obtain and supervise personnel and/or contracts needed to fulfill Association's functions.</p> <p>Schedule Association meetings and give owners timely notice of same.</p> <p>Schedule board meetings and give directors timely notice of same.</p> <p>Enforce the governing documents.</p> <p>Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area.</p> <p>Maintain Association books, records, and files.</p> <p>Maintain Association's corporate charter and registered agent & address.</p>		

APPENDIX "A"

DECLARANT RESERVATIONS

A.1. General Provisions.

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

A.1.2. General Reservation and Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this Appendix "A" and any other Document, this Appendix "A" controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

A.1.2. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "Development Period", as specifically defined in the Section 1.15 of the Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recording of a notice of termination. Declarant Control Period is defined in Section 1.13 of the Declaration.

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

A.2.1. Appointment of Board and Officers. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or Owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitations: (i) within one hundred and twenty (120) days after fifty percent (50%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third of the Board must be elected by the Owners other than Declarant; and (ii) within one hundred and twenty (120) days after seventy-five percent (75%) of the total number of Units that may be created have been

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conveyed to Owners other than Declarant, all Board members must be elected by all Owners, including the Declarant.

A.2.2. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments, Declarant at Declarant's option may support the Association's budget by either of the following methods: (i) Declarant will pay Regular Assessments on each Declarant owned Unit in the same manner as any Owner; or (ii) Declarant will assume responsibility for the difference between the Association's actual operational expenses as they are paid and the Regular Assessments received from Owners other than Declarant. On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant owned Unit.

A.2.3. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association working capital or reserve funds to pay operational expenses of the Association.

A.2.4. Common Elements. At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of conveyance. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

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

A.3.1. Annexation. The Property is subject to expansion by phasing for up to seven (7) years from the date this Declaration is recorded. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by recording an amendment or supplement to this Declaration, executed by Declarant, in the Official Public Records of Harris County, Texas.

A.3.2. Creation of Units. The Property contains twenty-three (23) Units.

A.3.3. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, configurations, materials, and appearances of Units, and Common Elements.

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A.3.4. Architectural Control. Declarant has the absolute right of architectural control.

A.3.5. Transfer Fees; Fines and Penalties. Declarant will not pay transfer-related and resale certificate fees. Declarant will not pay to the Association any late fees, fines, administrative charges, or any other charge that may be considered a penalty.

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

A.3.7. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Regime; (ii) to create Units, General Common Elements, and Limited Common Elements within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.8. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any mortgagee, for the following purposes:

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (ii) To correct any defects in the execution of this Declaration or the other Documents.
- (iii) To add real property to the Property, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.

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- (v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.
- (vi) To withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights" in the exercise of statutory Development Rights.
- (vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (viii) To change the name or entity of Declarant.
- (ix) For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

A.4. Special Declarant Rights. Declarant reserves the following rights during the Development Period:

- (i) The right to complete or make Improvements indicated on the Plat and Plans.
- (ii) The right to exercise any Development Right permitted by the Act and this Declaration.
- (iii) The right to make the Property part of a larger condominium or planned community.
- (iv) The right to use Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and off-site developments of Declarant or its assignee. During the Development Period, Declarant is exempt from Article 12 of the Declaration.
- (v) For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Occupants. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and broker parties – at the Property to promote the sale of Units.
- (vi) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for

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purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.

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

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DECLARATION OF CONDOMINIUM REGIME
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ANY PROVISION HEREIN WHICH RESTRICTS THE
RIGHT OF ANY PERSON TO ACQUIRE, OWN, USE,
ENJOY, OR CONVEY REAL PROPERTY BECAUSE OF COLOR OR RACE
IS HEREBY HEREBY REPEALED AS ILLEGAL UNDER
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FEDERAL LAW

JUL 14 2023

THE STATE OF TEXAS
COUNTY OF HARRIS

CLERK OF COUNTY CLERK'S OFFICE
HARRIS COUNTY, TEXAS



Tenesha Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM

As this instrument was recorded, the recorder was
not provided with a photograph of the instrument
for reproduction because of size, etc. As a result,
additional units changed were prepared at the time the
instrument was filed and recorded.