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**AFTER RECORDING RETURN TO:**

Mitchell D. Savrick  
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The Overlook at Gaines Ranch  
4330 South Mopac, Suite 150  
Austin, Texas 78735

**COMMUNITY MANUAL**

**Consisting of:**  
**Initial Rules & Regulations**  
**Assessment Collection Policy**  
**Fining Policy**  
**Mold Policy**

**FOR OWNERS AND RESIDENTS OF**  
**CHESTNUT COMMONS, a CONDOMINIUM COMMUNITY**  
**located at 1601 Miriam**  
**in Austin, Travis County, Texas**

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

## **INITIAL RULES & REGULATIONS CHESTNUT COMMONS, A CONDOMINIUM**

These INITIAL RULES & REGULATIONS are established by Chestnut Plaza, Ltd., Declarant of Chestnut Commons, a Condominium, for the benefit of Chestnut Commons, HOA, Inc. (the "Association"). These Community Rules are the "Rules" defined in Article 1 of the Declaration of Chestnut Commons, a Condominium, recorded or to be recorded in the real property records of Travis County, Texas (the "Declaration").

These Rules are in addition to the provisions of the Declaration and Bylaws. By owning or occupying a Unit, each Owner and Resident agrees to abide by these Rules and to comply with the obligations of Owners and Residents under the Declaration and Bylaws of the Association.

Words and phrases defined in the Declaration have the same meaning when used in these Rules. In the event of a conflict between the Governing Documents, the hierarchy of authority is as follows: Declaration (highest), Bylaws, and these Rules (lowest). The Association's Board of Directors is empowered to interpret, enforce, amend, and repeal these Rules.

### **A. COMPLIANCE**

- A-1. Compliance. Each Owner will comply with the provisions of these Rules, the other Governing Documents, and policies adopted by the Board to supplement these Rules, as any of these may be revised from time to time. Each Owner, additionally, is responsible for compliance with the Governing Documents by the Residents of his Unit, and his or their respective relatives, invitees, tenants, agents, employees, or contractors. If a Rule requires or prohibits conduct by an "Owner" or "Resident," each of those terms are deemed to include the other, and applies to all persons for whom an Owner or Resident is responsible. Again, the Owner is ultimately responsible for compliance by all persons using or related to his Unit. An Owner should contact the Association if he has a question about these Rules.
- A-2. Additional Rules. Each Resident must comply with any rules and signs posted from time to time on the Property by the Association. Each Resident must comply with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of the Property.

- A-3. Right to Enforce. The Association has the right to enforce these Rules against any person on the Property.
- A-4. Variance. Circumstances may warrant waiver or variance of these Rules. To obtain a waiver or variance, an Owner must make written application to the Board. The Board's approval of a waiver or variance must be in writing, and may be conditioned.
- A-5. Limits. These Rules represent standards of conduct and maintenance in a high density community. It is understood that individuals may have different interpretations of and tolerances for these Rules. On lifestyle-related rules, such as the Community Etiquette rules below, the Association may refrain from acting on a perceived violation unless the Board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one Resident to enforce these Rules against another Resident. Residents are expected to deal directly and peaceably with each other about their differences.
- A-6. Filing Complaints. Because the Association is not staffed to monitor the Property for rules violations, the Association relies on Residents to identify and report violations of these Rules and to monitor compliance with these Rules by violators. The Association also relies on Residents to help keep each other informed about the Rules. Recognizing that a Resident may be reluctant to confront another Resident about a violation, the Association will work with the Resident to enforce the Rules. Generally, a complaint must be in writing and must be signed by a Resident or Owner who is willing to be identified as the complainant.

#### **B. OBLIGATIONS OF OWNERS AND RESIDENTS**

- B-1. Safety. Each Resident is solely responsible for his own safety and for the safety, well-being, and supervision of his guests and any person on the Property to whom the Resident has a duty of care, control, or custody.
- B-2. Damage. An Owner is responsible for any loss or damage he causes to his Unit, other Units, the personal property of other Residents or their guests, or to the Common Elements and Improvements.
- B-3. Association Does Not Insure. The Association does not insure the Units or Garage LCE. A person assumes full risk and sole responsibility for placing his personal property in or on the Property. Each Resident is solely responsible for insuring his personal property in the Unit, the Garage LCE and on the Property, including his furnishings and vehicles. THE ASSOCIATION STRONGLY RECOMMENDS THAT ALL OWNERS AND RESIDENTS PURCHASE AND MAINTAIN INSURANCE ON THEIR PERSONAL BELONGINGS.

- B-4. Risk Management. An Owner may not permit anything to be done or kept in his Unit or the Common Elements that is illegal or that may result in the cancellation of insurance on the Property.
- B-5. Reimbursement for Enforcement. An Owner must promptly reimburse the Association for any expense incurred by the Association to enforce the Governing Documents against the Owner, his Unit, or persons for whom the Owner is responsible.
- B-6. Reimbursement for Damage. An Owner must promptly reimburse the Association for the cost of damage to the Property caused by the negligent or willful conduct of the Owner or persons for whom the Owner is responsible.
- B-7. No Garage Sales. Without the Board's prior written permission, no person may conduct on the Property a sale or activity that is advertised or attractive to the public, such as garage sales, car sales, or estate sales. This section does not apply to marketing the sale or rental of a Unit, unless combined with a prohibited activity.
- B-8. Supervision of Minors. For their own well-being and protection, persons who are legally incompetent or younger than eighteen (18) years must be under the general control and supervision of their parents or guardians at all times while on the Property. Persons who are below the chronological or mental age of thirteen (13) years must at all times be in the actual company of a person at least thirteen (13) years old who is responsible for their well being. A person under thirteen (13) years may not be left unattended in a Unit at any time. After nightfall, unless accompanied by a parent or guardian, persons under eighteen (18) years may not be on the General Common Elements.

### C. OCCUPANCY STANDARDS

- C-1. Units. The Board may adopt reasonable rules regarding the occupancy of Units and the total number of occupants permitted in each Unit on the basis of the square footage of the Unit and the fair use of the Common Elements. A person may not occupy a Unit if the person constitutes a direct threat to the health and safety of other persons or if the person's occupancy would result in substantial damage to the property of others. Notwithstanding the foregoing, no rule shall interfere with the freedom of the Owners to determine the composition of their households or be more restrictive than any standard permitted by the U.S. Department of Housing and Urban Development.
- C-2. Leases. A Unit may be not be leased for hotel or transient purposes. Less than the entire Unit may not be leased. Each lease must be in writing. At the Association's request, an Owner must give the Board a copy of each lease and lease renewal.



#### **D. GENERAL USE AND MAINTENANCE OF UNIT**

- D-1. **Residential Use.** Each Unit must be used solely for residential use, and may not be used for commercial or business purposes, except as permitted in the Declaration. This restriction does not prohibit a Resident from using his Unit for personal, business, or professional pursuits, provided that: (a) the nonresidential use is incidental to the Unit's residential use; (b) the use conforms to applicable laws and ordinances; (c) there is no external evidence of the nonresidential use; and (d) the nonresidential use does not entail visits to the Unit by the public, employees, suppliers, or clients.
- D-2. **Annoyance.** A Resident may not use his Unit in a way that: (a) annoys Residents of neighboring Units; (b) reduces the desirability of the Property as a residential community; (c) endangers the health or safety of other Residents; or (d) violates any law or any provision of the Governing Documents.
- D-3. **Maintenance.** An Owner, at his expense, will maintain his Unit and keep it in good repair.
- D-4. **Patio/Balcony.** A Resident will maintain his patio or balcony in a clean manner. A patio/balcony may not be enclosed or used for storage purposes without the prior written approval of the Board. If the Board determines that a patio/balcony is unsightly, the Board may give the Owner notice of the problem and a reasonable time period in which to correct it, after which the Board may take corrective action at the Owner's expense.
- D-5. **Glass.** Each Owner, at his expense, must promptly repair and replace any broken or cracked glass in his Unit's windows and doors, regardless of the source of the damage. Replacement glass must conform to the standard for the Property.
- D-6. **Combustibles.** A Resident may not store or maintain, anywhere on the Property -- including within a Unit -- explosives or materials capable of spontaneous combustion.
- D-7. **Utilities.** Each Resident will try to conserve the use of utilities furnished through the Association, including water consumption within his Unit. Each Owner, at his expense, will maintain, repair and replace the water heating and air heating cooling equipment/systems serving his Unit.
- D-8. **Emergencies.** In case of continuous water overflow, a Resident should immediately turn off the water and turn the shut-off valves behind the toilet or under the sink.
- D-9. **Cable.** A Resident who subscribes directly to cable service is solely responsible for maintaining that subscription and the appurtenant equipment. A Resident who obtains cable service through the Association is responsible for the proper use, maintenance,

and return of cable connections or equipment. No additional exterior cable lines may be connected to the Unit except in the cable conduit maintained by the Association. No holes or protrusions may be made in any exterior surface of the Property. Wires may not be draped, hung, or strung on the building or the grounds. The Owner of the Unit to which cable service is provided is responsible to the Association for any damage to the Property caused by the cable installer or servicer.

- D-10. Frozen Water Pipes. Some Units are constructed with water lines in exterior walls. It is the duty of every Owner and Resident of such a Unit to protect the water lines from freezing during winter months. During periods of anticipated below freezing temperatures, water lines in exterior walls should be allowed to drip continuously, and cabinets enclosing plumbing lines should be left ajar. Dishwashers on exterior walls should not be used during and immediately after periods of extreme cold. Failure by an Owner or Resident to monitor the local weather and take appropriate precautions may be deemed negligence.
- D-11. Reporting Malfunctions. A Resident will immediately report to the Board his discovery of any leak, break, or malfunction in any portion of the Property which the Association has a duty to maintain. A Resident who fails to promptly report a problem may be deemed negligent, in which case the Owner may be liable for any additional damage caused by the delay.

#### **E. GENERAL USE & MAINTENANCE OF COMMON ELEMENTS**

- E-1. Intended Use. Every area and facility in the Property may be used only for its intended and obvious use. For example, sidewalks and driveways are used exclusively for purposes of access, not for social congregation or recreation.
- E-2. Grounds. Unless the Board designates otherwise, Residents may not use or abuse the landscaped areas, lawns, beds, and plant materials on the Common Elements.
- E-3. Abandoned Items. No item or object of any type may be stored, placed, or maintained anywhere on the General Common Elements, except by the Board or with the Board's prior written consent. Items of personal property found on General Common Elements are deemed abandoned and may be disposed of by the Board.
- E-4. Fires. There may not be any exterior fires on the Property.
- E-5. Fire Safety Equipment. No person may use, misuse, cover disconnect, tamper with or modify the fire safety equipment of the Property or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

- E-6. Yard LCE. The use of a yard area appurtenant to a Unit as a Limited Common Element is subject to the following: The Board may specify types of plant material that may be installed or permitted to remain, and may require the removal of certain plants. An Owner may not change the established drainage pattern without the Board's prior approval. The Association will maintain the Yard LCE. The Association will maintain the ground cover and shrubs, mow, edge and weed the Yard LCE. If an Owner, with the Board's approval, encloses a yard area, the Owner must include gate access at all times to allow the Board to perform maintenance and repair obligations. An Owner must keep the yard area clean, free of debris, and attractive.

#### **F. COMMUNITY ETIQUETTE**

- F-1. Courtesy. Each Resident will endeavor to use his Unit and the Common Elements in a manner calculated to respect the rights and privileges of other Residents of the Property.
- F-2. Annoyance. A Resident will avoid doing or permitting anything to be done that will annoy, harass, embarrass, or inconvenience other Residents or their guests, or the Association's employees and agents.
- F-3. Noise and Odors. Each Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb Residents of other Units. The Units are not soundproofed and noise transmission will occur.
- F-4. Reception Interference. Each Resident will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, or electronic reception on the Property.
- F-5. Parties. In planning private social functions at the Property, a Resident should be aware of the potential consequences on the Property's parking resources and on the sensibilities of other Residents. A Resident intending to use his Unit for a party or other activity that may be expected to produce a higher-than-customary level or duration of noise or other disturbance will make a diligent effort to give Residents of adjoining Units timely prior notice of the event, as a courtesy. If the event is expected to attract 20 or more guests to the Property, the Resident will also give the Board timely prior written notice of the event.

#### **G. ARCHITECTURAL CONTROL**

- G-1. Exteriors. Without the written approval of the Board or appointed Architectural Review and Covenants Committee ("ARCC"), whichever is applicable, an Owner or Resident may NOT change, remodel, decorate, destroy, or improve the exterior of a Unit, nor do anything to change the appearance of the Property, including without limitation the

entry door, front porch, patio or balcony, windows, garage doors, and driveway appurtenant to the Unit.

G-2. Protrusions. An Owner or Resident may not cause anything to protrude or project through the boundaries of the Unit, such as the foundation, roof, or an exterior wall of a Unit. Examples of protrusions may entail protruding wires or conduits, exterior horns, lights, speakers or aerials.

G-3. Balconies and Porches. Because balconies, decks and front porches are distinctive architectural features of the Property, an Owner or Resident may not change the appearance or condition of the balcony or porch portion of his Unit in any manner, without the prior authorization of the ARCC. Prohibited activities include the following:

- a. Painting or staining any part of the porch or balcony;
- b. Hanging items from the trellis, arbor, walls, roof or railing or failing to remove hanging items that the ARCC has determined to be unattractive, such as windchimes, windsocks, birdfeeders, rope lights and hanging baskets;
- c. Maintaining anything on the balcony or porch that the ARCC determines to be unattractive, such as umbrellas, items of storage, bicycles and oversize or inappropriate furniture;
- d. Barbeque grills may not be kept – even temporarily on front porches or balconies; and
- e. Enclosing or covering of the balcony or porch in any manner.

G-4. Prohibited Acts. A person may not, without the prior written approval of the Board:

- a. Post signs, notices, or advertisements on the Common Elements or in a Unit if the sign is visible from outside the Unit (specifically including lease, rental and realtor signs);
- b. Place or hang an object in, on, from, or above any window, interior window sill, balcony or patio that, in the sole opinion of the Board, detracts from the appearance of the Property;
- c. Hang, shake, or otherwise display linen, clothing, towels, rugs, shoes, mops, bedding, or other similar items from windows, doors, balconies, patios, or fences;

- d. Erect or install exterior horns, lights, speakers, or aerials, or cause anything to protrude through an exterior wall or roof;
  - e. Place decorations on exterior walls, doors, and fences, or on the General Common Elements;
  - f. Enclose or cover a patio, deck, or yard area; and
  - g. Install or construct a storage shed or any other improvement in a yard area if visible from another Unit, a Common Element, or a street.
- G-5. Hot Tubs. A hot tub, Jacuzzi, sprinkler or mist system, fountain, or any other plumbed or liquid-based device may not be installed in a Unit or any Common Element during the Declarant Control Period. This prohibition does not apply to replacements of customary kitchen and bathroom appliances and fixtures. This prohibition expressly applies to roofs, decks, and balconies.
- G-6. Satellite Dishes. Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Without the prior written consent of the Board or ARCC, no person may install the following equipment on the Common Elements or the exterior of buildings if it would be visible from a street: an antenna, microwave or satellite dish, receiving or transmitting tower; provided, however, that (a) reception-only TV antennas, (b) direct broadcast satellites (DBS) that are one meter or less in diameter, and (c) multipoint distribution service (MDS) antennas that are one meter or less in diameter may be installed, subject to paragraph 21, the "Satellite Dish/Antenna" policy set forth in the Condominium Declarations.
- G-7. Window Treatments. An Owner MAY install window treatments inside his Unit, provided: (1) the window treatments, including drapes, blinds, shades, or shutters, must appear to be clear, white or beige when viewed from outside the Unit; (2) Aluminum foil and reflective window treatments are expressly prohibited; and (3) window treatments must be maintained in good condition, and must be removed or replaced if they become stained, torn, damaged, or otherwise unsightly in the opinion of the Board.
- G-8. Window Mullions. Mullions originally installed in the windows to create a "pane" effect may not be removed except temporarily for cleaning or repair.
- G-9. Changes to Glass. The Property is designed to have a single uniform glass appearance for windows and lighting. Therefore, the color, tint, screening and condition of all glass panes must conform to the building standard. An Owner or Resident may not install film or tint glass that changes the appearance of the glass.

- G-10. Grills. Owners must comply with all city ordinances including city fire codes when using any type of grill on the Property.
- G-11. Board Approval. To obtain the Board's written consent for an alteration or modification, an Owner must comply with the architectural control and limitation on work requirements of the Declaration. An applicant may not rely on verbal assurances of an Association manager, director, or officer.

## **H. VEHICLE RESTRICTIONS**

- H-1. Permitted Vehicles. To be permitted on the Property, a vehicle must be operable, and must display a current license tag and inspection sticker. For purposes of these Rules, vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. The following are not permitted on the Property without the Board's consent: trailers, boats, other watercraft, campers, recreational vehicles, buses, large commercial trucks or other mobile storage units, and industrial vehicles. Motorcycles, motorbikes or other motorized vehicles may not be operated on the Property except to provide transportation to and from a Unit.
- H-2. Speed. A speed limit of ten (10) miles per hour will be observed, unless posted differently.
- H-3. Repairs and Car Washing. Repairs, restoration, or maintenance (including oil changes) of vehicles is prohibited on driveways, the private streets, and in off-street parking areas, except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility. Car washing shall be permitted, provided that any water used for washing is not permitted to continuously run.
- H-4. Nuisances. Each vehicle must be muffled and must be maintained and operated to minimize noise, odor, and oil emissions. The use of car horns on the Property is discouraged. No vehicle may be kept on the Property if the Board deems it to be unsightly, inoperable, inappropriate, or otherwise violative of these Rules.
- H-5. Private Fire Lanes/Obstructions. No parking is permitted along the private street, except in designated off-street parking areas. All streets in the Property are private fire lanes and utility easements on which parking of vehicles is prohibited at all times. No vehicle may be parked in a manner that impedes or prevents ready access to the Property, driveways, or parking spaces. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard. No vehicle may be parked, even temporarily, in spaces reserved for others, in fire lanes, or in any area designated as "No Parking."

- H-6. Garages & Driveways. Because of the shortage of visitor parking it is imperative that each Resident use their garage for the parking of vehicles. A Resident may use his garage solely for the parking of operable vehicles. No garage may be enclosed or used for any purpose that prevents the parking of the maximum number of vehicles for which it was constructed. Any automatic garage door opener is to be maintained by the Owner. Garage doors must be kept closed at all times, except when entering or exiting. Driveways may not be used for storage of vehicles or other items. A car should not be parked overnight on a driveway unless one car is parked in the garage.
- H-7. Visitor Spaces. The use of unassigned and visitor parking spaces, if any, must be rotated, may not be used for storage of vehicles and may not be used consistently by the same driver of a vehicle. The Board may designate some of the unassigned off-street parking spaces, if any, as "visitor spaces" for use, exclusively by guests of Residents.
- H-8. Violations. A vehicle in violation of these Rules may be stickered, wheel-locked, towed, or otherwise removed from the Property by the Board, at the expense of the vehicle's Owner. The Association expressly disclaims any liability for damage to vehicles on which the Association exercises these remedies for Rules violations.

## **I. TRASH DISPOSAL**

- I-1. General Duty. Resident will endeavor to keep the Property clean and will dispose of all refuse in individual receptacles provided specifically by the Association or by the city for that purpose. Resident may NOT litter Common Elements.
- I-2. Hazards. Resident may NOT store trash inside or outside his Unit in a manner that may permit the spread of fire, odors, or seepage, or encouragement of vermin. Before discarding coals, ashes, logs, or other materials used in barbecue grills or fireplaces, Resident will ensure that the debris is thoroughly cold.
- I-3. Excess Trash. Resident will place trash entirely within the designated receptacle, and may NOT place trash outside, next to, or on top of the receptacle. If a receptacle is full, Resident should locate another receptacle or hold his trash. Boxes and large objects should be crushed or broken down before placed in a receptacle. Receptacles are to be closed at all times when not in use. Resident must arrange privately for removal of discarded furnishings or any unusually large volume of debris.
- I-4. Storage of Receptacles. Resident will store all of trash receptacles inside his garage until no less than 24 hours before the scheduled pick up. Resident will return the receptacles to his garage within 24 hours after the trash has been removed and picked up.

## I. PETS

- J-1. Subject to Rules. A Resident may not keep or permit on the Property a pet or animal of any kind, at any time, except as permitted by these Rules and the Governing Documents.
- J-2. Permitted Pets. Subject to these Rules, a Resident may keep in his Unit customary domesticated house pets, such as domesticated dogs, cats, caged birds, and aquarium fish, provided there are not more than two cats, or two dogs, or one cat and one dog.
- J-3. Prohibited Animals. No Resident may keep a dangerous or exotic animal, pit bull terrier, trained attack dog, or any other animal deemed by the Board to be a potential threat to the well-being of people or other animals. No animal or house pet may be kept, bred, or maintained for any commercial purpose.
- J-4. Indoors/Outdoors. Subject to J-5 below, a permitted pet must be maintained inside the Unit, and may not be kept on a patio or balcony or in a fenced yard area. No pet is allowed on General Common Elements unless carried or leashed. No pet may be leashed to a stationary object on the Common Elements.
- J-5. Disturbance. Pets must be kept in a manner that does not disturb another Resident's rest or peaceful enjoyment of his Unit or the Common Elements. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time.
- J-7. Damage. Resident is responsible for any property damage, injury, or disturbance his pet may cause or inflict. Resident must compensate any person injured by his pet. A Resident who keeps a pet on the Property is deemed to indemnify and agrees to hold harmless the Board, the Association, and other Owners and Residents, from any loss, claim, or liability of any kind or character whatever resulting from any action of his pet or arising by reason of keeping or maintaining the pet on the Property.
- J-8. Pooper Scooper. No Resident may permit his pet to relieve itself on the Property, except in areas designated by the Board for this purpose. Resident is responsible for the removal of his pet's wastes from the Common Elements. The Board may levy a fine against a Unit and its Owner each time feces are discovered on the Common Elements and attributed to an animal in the custody of that Unit's Resident.
- J-9. Removal. If a Resident or his pet violates these Rules, or if a pet creates a nuisance, odor, unreasonable disturbance, or noise, the Resident or person having control of the animal may be given a written notice by the Board to correct the problem. If the problem is not corrected within the time specified in the notice (not less than ten (10) days), the Resident, upon written notice from the Board, may be required to remove the animal.



Each Resident agrees to permanently remove his violating animal from the Property within ten (10) days after receipt of a removal notice from the Board.

#### **K. MISCELLANEOUS**

- K-1. **Security.** The Association may, but is not be obligated to, maintain or support certain activities within the Property designed to make the Property less attractive to intruders than it otherwise might be. The Association, its directors, committees, members, agents, and employees, will not in any way be considered an insurer or guarantor of security within the Property, and may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner, Resident, guest, and invitee on the Property assumes all risk for loss or damage to his person, to his Unit, to the contents of his Unit, and to any other of his property on the Property. The Association expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment, or measures recommended, installed, or undertaken within the Property.
- K-2. **Right to Hearing.** An Owner may request in writing a hearing by the Board regarding an alleged breach of these Rules by the Owner or any person for whom the Owner is responsible. The Board will schedule a hearing within thirty (30) days after receiving the Owner's written request. At the hearing, the Board will consider the facts and circumstances surrounding the alleged violation. The Owner may attend the hearing in person, or may be represented by another person or written communication.
- K-3. **Mailing Address.** An Owner who receives mail at any address other than the address of his Unit must maintain with the Association his current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to Owners by the Governing Documents may be sent to an Owner's most recent address as shown on the records of the Association. If an Owner fails to provide a forwarding address, the address of that Owner's Unit is deemed effective for purposes of delivery.
- K-4. **Revision.** These Rules are subject to being revised, replaced, or supplemented. Owners and Residents are urged to contact the Association to verify the rules currently in effect on any matter of interest. These Rules will remain effective until ten (10) days after an Owner of each Unit has been given a notice of the amendment or revocation of these Rules.
- K-5. **Other Rights.** These Rules are in addition to and in no way whatsoever detract from the rights of the Association under the other Governing Documents and the laws of the State of Texas.

**ASSESSMENT COLLECTION POLICY  
CHESTNUT COMMONS, A CONDOMINIUM  
RECITALS**

Chestnut Commons, A Condominium is a Condominium Regime created by and subject to the Declaration of Chestnut Plaza, Ltd., recorded in the Real Property Records of Travis County, Texas, as it may be amended (the "Declaration"). As a Condominium Regime, Chestnut Commons, is also subject to State laws, including Chapter 82 of the Texas Property Code -- the Texas Uniform Condominium Act ("TUCA"). The operation of Chestnut Commons, A Condominium is vested in Chestnut Commons HOA, Inc. (the "Association"), acting through its Board of Directors (the "Board"). The Association is empowered to enforce the covenants of the Declaration, including the obligation of Unit Owners to pay assessments. In addition to rights and remedies of the Association under the Declaration, TUCA gives the Association, acting through the Board:

1. Authority to adopt and amend rules regulating the collection of delinquent assessments and the application of payments. §82.102(a)(13)
2. Authority to impose interest and late charges for late payments of assessments, and returned check charges. § 82.102(a)(12)
3. Authority to adopt and amend rules regulating the termination of utility service to a Unit, the Owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility. § 82.102(a)(14)
4. Authority to suspend the voting privileges of or the use of certain General Common Elements by an Owner delinquent for more than thirty (30) days in the payment of assessments. § 82.102(a)(18)
5. A private power of sale to foreclose the assessment lien nonjudicially, subject to a limited right of redemption by the Unit Owner. § 82.113

To establish equitable policies and procedures for the collection of delinquent assessments, the declarant adopts this policy for the benefit of the Association, as part of the initial project documentation.

**SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST**

- 1-A. Due Date. An Owner will timely and fully pay regular assessments and special assessments. Regular assessments are due and payable on the first (1<sup>st</sup>) calendar day of each month.

- 1-B. Delinquent. Any assessment that is not fully paid when due is delinquent. When the account of a Unit becomes delinquent, it remains delinquent until paid in full -- including collection costs and late fees.
- 1-C. Late Fees & Interest. If the Association does not receive full payment of a regular assessment by 5:00 p.m. on the fifth (5<sup>th</sup>) calendar day of the month, the Association may levy a late fee of \$25 per month and/or interest of ten percent (10%) per annum from the first (1<sup>st</sup>) day of delinquency until the delinquency is paid in full. After the initial month of delinquency, a late fee of \$25 may be levied on the first (1<sup>st</sup>) day of each month the account is delinquent until the account is current.
- 1-D. Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorney's fees incurred by the Association in collecting the delinquency.
- 1-E. Insufficient Funds. The Association may levy a charge of \$25 for any check returned to the Association marked "not sufficient funds" or the equivalent.
- 1-F. Waiver. Properly levied collection costs, late fees, and interest may not be waived by the Board, unless a majority of the directors determines that extraordinary circumstances warrant an adjustment to the account, in which case the adjustment must be described in detail in the minutes of the Board's meeting. Because of the potential for inadvertently effecting a waiver of the policies contained in this policy, the Board will exercise caution in granting adjustments to an Owner's account.

## SECTION 2. INSTALLMENTS & ACCELERATION

If a special assessment is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire assessment in default and accelerate the due date on all remaining installments of that assessment. A special assessment payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

## SECTION 3. PAYMENTS

- 3-A. Application of Payments. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, any payment received by the Association may be applied in the following order, starting with the oldest charge in each category, until that category is fully paid, regardless of the amount of payment, notations on checks, and the date the obligations arose:

- (1) Collection costs and attorneys fees;
- (2) All returned check charges, late charges and interest;
- (3) All other charges incurred by the Association as a result of any violation by an Owner, his family, guests, employees, agents, lessees or licensees of the Declaration, Bylaws, Rules and Regulations; and
- (4) The monthly and special assessments for each Unit, applied first to the oldest amount due.

3-B. Form of Payment. The Association may require that payment of delinquent assessments be made only in the form of cash, cashier's check, or certified funds.

3-C. Partial and Conditioned Payment. The Association may refuse to accept partial payment (i.e., less than the full amount due and payable) and payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Unit's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.

3-D. Notice of Payment. If the Association receives full payment of the delinquency after recording a notice of lien, the Association will cause a release of notice of lien to be publicly recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and recording the release.

3-E. Correction of Credit Report. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

3-F. Waiver. Failure by the Association to follow any of the procedures set forth herein shall not excuse any Owner from their obligation to pay all assessments, interest, charges and costs including reasonable attorney's fees, due in a timely manner, nor shall such failure constitute a waiver of the Association's right to collect all assessments, costs, including reasonable attorney's fees, charges and interest due to the Association.

#### SECTION 4. LIABILITY FOR COLLECTION COSTS

The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees, and other reasonable costs and attorney's fees incurred in the collection of the delinquency, which amounts are secured by a lien against the Unit.

#### SECTION 5. COLLECTION PROCEDURES

- 5-A. Delegation of Collection Procedures. From time to time, the Association may delegate some or all of the collection procedures, as the Board in its sole discretion deems appropriate, to the Association's managing agent, an attorney, or a debt collector.
- 5-B. Delinquency Notices. If the Association has not received full payment of an assessment by the due date, the Association may send one or more written notices of nonpayment to the defaulting Owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.
- 5-C. Collection by Attorney. After giving the Owner notice of the delinquency, the Association may refer the delinquent account to an attorney for collection. In that event, the defaulting Owner will be liable to the Association for its legal fees and expenses.
- 5-D. Verification of Owner Information. The Association may obtain a title report to determine the names of the Unit Owners and the identity of other lienholders, including the mortgage company.
- 5-E. Notification of Mortgage Lender. The Association may notify the mortgage lender of the default in assessment obligations.
- 5-F. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.
- 5-G. Notice of Lien. The Association may cause a notice of the Association's assessment lien against the Unit to be publicly recorded. In that event, a copy of the notice will be sent to the defaulting Owner, and may be sent to his mortgage holder.
- 5-H. Foreclosure of Lien -- Nonjudicially. The Board may instruct an attorney, officer, or agent of the Association to notify the defaulting Owner of the Association's intent to foreclose its assessment lien, to post the property for public auction, and to conduct a public auction of the Unit on the steps of the county courthouse in accordance with State law and the Association's Governing Documents. The Board may not foreclose a lien

consisting solely of fines or securing money for which the Association has obtained a personal money judgment.

- 5-I. Foreclosure of Lien – Judicially. The Association may file suit against the Owner for judicial foreclosure of the Association's assessment lien. This action may be combined with a claim against the Owner's personal liability, for recovery of a money judgment.
- 5-J. Suit for Owner's Personal Liability. Whether or not the Association forecloses the Association's assessment lien, the Board may file suit for a personal judgment against the defaulting Owner, and may execute on the judgment.
- 5-K. Possession Following Foreclosure. If the Association purchases the Unit at public auction, the Board may immediately institute actions to recover possession.
- 5-L. Limited Right of Redemption. If the Association buys a residential Unit at the nonjudicial foreclosure sale of its assessment lien, the Association's ownership is subject to a ninety (90)-day right of redemption by the Owner. TUCA's statutory right of redemption does not apply to judicial foreclosures or foreclosures of judgment liens.
- 5-M. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-N. Cancellation of Debt. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.
- 5-O. Suspension of Voting Rights. The Association may suspend the voting rights of an Owner whose account with the Association is delinquent for at least thirty (30) days.
- 5-P. Suspension of Use of Certain Facilities or Services. The Association may suspend the use of certain community amenities by an Owner or a Resident whose account with the Association is delinquent for at least thirty (30) days.

## SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, manager, and attorney of the Association will exercise their independent, collective, and respective judgment in applying this policy.
- 6-B. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect assessments under the Association's Governing Documents and

the laws of the State of Texas. All remedies herein shall be deemed cumulative of those set forth in the Governing Documents and of those otherwise available at law or in equity.

- 6-C. Limitations of Interest. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full.
- 6-D. Notices. Unless the Governing Documents, State law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed delivered to the Owner upon depositing same with the U.S. Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that a Unit is owned by 2 or more persons, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one Resident is deemed notice to all Residents. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent, or attorney.
- 6-E. Amendment of Policy. This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other community-wide publication.
- 6-F. Definitions. Words and phrases used in this Policy have the same meanings given to them in the Declaration.

**FINING POLICY**  
**CHESTNUT COMMONS, A CONDOMINIUM**

1. Background. This fining policy is based on the requirements of Sec. 82.102(d)+(e) of the Texas Uniform Condominium Act (TUCA), Chapter 82, Texas Property Code. To establish policies and procedures for fining under TUCA, the Declarant adopts this policy for the benefit of Chestnut Commons HOA, Inc. (the "Association"), as part of the initial project documentation.
2. Policy. The Association uses fines to discourage violations of the Governing Documents, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Governing Documents. The Association's use of fines does not interfere with its exercise of other rights and remedies for the same violation. Nor may the Association use fines to the exclusion of other remedies.
3. Owner's Liability. An Owner is liable for fines levied by the Association for violations of the Governing Documents by the Owner, the Residents of the Unit, and the relatives, guests, employees, and agents of the Owner and Residents. Regardless of who performs the violation, the Association will direct its communications to the Owner, although the Association may send copies of its notices to the Unit Resident.
4. Violation Notice. Before levying a fine, the Association will give the Owner a written violation notice and an opportunity to be heard. This requirement of State law may not be waived. The Association's written violation notice will contain the following items: (1) the date the violation notice is prepared or mailed; (2) a description of the violation; (3) a reference to the rule or provision that is being violated, (4) a description of the action required to cure the violation; (5) the amount of the fine; (6) a statement that not later than the thirtieth (30<sup>th</sup>) day after the date of the violation notice, the Owner may request a hearing before the Board to contest the fine; and (7) the date the fine attaches or begins accruing (the "**Start Date**"), subject to the following:
  - a. New Violation. If the Owner was not given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months, the notice will state a specific date by which the violation must be cured to avoid the fine, if the violation is ongoing or continuous. If the violation is not ongoing, but is instead sporadic or periodic, the notice must state that any future violation of the same rule may result in the levy of a fine.
  - b. Repeat Violation. In the case of a repeat violation, the notice will state that, because the Owner was given notice and a reasonable opportunity to cure a



similar violation within the preceding twelve (12) months, the fine attaches from the date of the violation notice.

5. Violation Hearing. An Owner may request in writing a hearing by the Board to contest the fine. To request a hearing before the Board, an Owner must submit a written request to the Association's manager within thirty (30) days after the date of the violation notice. Within fifteen (15) days after receiving the Owner's request for a hearing, the Association will give the Owner at least fifteen (15) days notice of the date, time, and place of the hearing. The hearing will be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine.

The hearing will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication. No audio or video recording of the hearing may be made. The minutes of the hearing must contain a statement of the results of the hearing and the fine, if any, imposed. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the meeting, the notice requirements will be deemed satisfied.

6. Levy of Fine. Within thirty (30) days after levying the fine, the Board must give the Owner notice of the levied fine. If the fine is levied at the hearing at which the Owner is actually present, the notice requirement will be satisfied if the Board announces its decision to the Owner at the hearing. Otherwise, the notice must be in writing. In addition to the initial levy notice, the Association will give the Owner periodic written notices of an accruing fine or the application of an Owner's payments to reduce the fine. The periodic notices may be in the form of monthly statements or delinquency notices.
7. Amount. The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. If circumstances warrant a variance from the schedule, the Board will document the reasons for the variance in the minutes of its meeting. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Governing Documents. If the Association allows fines to accumulate, it will establish a maximum amount for a particular fine, at which point the total fine will be capped.
8. Type of Levy. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, monthly, or quarterly), beginning on the Start Date. If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a

per occurrence basis.

9. Collection of Fines. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Association may not charge interest or late fees for unpaid fines.
10. Amendment of Policy. This policy may be revoked or amended from time to time by the Board. This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other community-wide publication.

**MOLD POLICY**  
**CHESTNUT COMMONS, A CONDOMINIUM**

**RECITALS**

- A. Background. Because of extensive news coverage in recent years relating to mold, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. In a condominium context, the mold issue has numerous facets. Like many other maintenance issues, the community of Owners must know where to draw the line between the Association's responsibility and the Owner's responsibility. The purpose of this policy is to help draw that line.
- B. Mold Information. In adopting this policy, the Association relies on information about mold obtained from government sources, including the "Indoor Air Mold" website sponsored by the U.S. Environmental Protection Agency at [www.epa.gov/mold](http://www.epa.gov/mold). On the date of this policy, the first page of the website contains this information:

*The Key to mold control is moisture control. It is important to dry water damaged areas and items within 24-48 hours to prevent mold growth. If mold is a problem in your home, clean up the mold and get rid of the excess water or moisture. Fix leaky plumbing or other sources of water. Wash mold off hard surfaces with detergent and water, and dry completely. Absorbent materials (such as ceiling tiles and carpet) that become moldy may have to be replaced.*

- C. Owner/Resident Duty. Because the Association does not have continual access to the individually owned Units, the Association relies on Owners and Residents to control the moisture levels in their Units, and to promptly identify and report water leaks and water penetrations in their Units. That a Unit is vacant or occupied by a person other than the Owner does not relieve the Owner from fulfilling his obligations to the Association and to the Owners of Units that adjoin his own. Although the Resident, if not the Owner, may perform the obligations, the Owner is ultimately responsible if the non-owner Resident fails or refuses to perform.
- D. Insurance. On the date of this Policy, property insurance available to the Association does not include coverage of mold at a price that is affordable for the Association. An Owner who wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowner's insurance policy.
- E. Mold Reminders. Mold spores are a natural component of our environment. Mold spores are everywhere – in the outside air and inside of Units. In addition to air-borne mold, visible surface mold is a common occurrence in wet areas, such as showers. Air

quality tests for mold are capable of being unreliable as determinates of a health problem.

## RULES

1. Inspect for Surface Mold. Each Resident and Owner will regularly inspect his entire Unit (including inside closets and cabinets, and behind furniture and appliances) and the appurtenant Limited Common Elements for visible surface mold and will promptly remove same using procedures recommended by an appropriate source, such as the U.S. Environmental Protection Agency ([www.epa.gov](http://www.epa.gov)). Similarly, the Resident and Owner will be alert to odors associated with mold, and will try to locate the source of such odor when detected.
2. Inspect for Water Leaks. Each Resident and Owner will regularly inspect his entire Unit (including inside closets and cabinets, and behind furniture and appliances) and the appurtenant Limited Common Elements for leaks, breaks, or malfunctions of any kind that may emanate from or cause damage to the Common Elements or another Unit. When possible, such inspection will be performed after rains when leaks from wind-driven rain are most likely to be evident. Typical indicators of water penetration problems include water leaks around window, doors, flues, and vents; standing water on a floor; water stains on ceilings and walls.
3. Monitor Water Appliances. Each Owner is responsible for the inspection, maintenance, repair, and replacement of all water-using appliances and fixtures in the Unit or serving the Unit exclusively, such as dishwashers, water heaters, washing machines, ice-makers, toilets, air conditioning drip pans, and shower pans. The Owner is solely responsible for any damage to his Unit, another Unit, or the Common Elements coming from the appliances and fixtures in his Unit or serving his Unit exclusively, regardless of the nature or exact location of the water source.
4. Report. A Resident or Owner will promptly report to the Association his discovery of any leak, break, or malfunction in any portion of his Unit or the adjacent Common Elements for which the Association has a maintenance responsibility. The origin of a water leak can be difficult to locate and may require repeated attempts to repair. The failure of the Association or its contractors to effectively stop a water leak on the first repair attempt is not uncommon and must not dissuade a Resident or Owner from reporting the leak on its next occurrence. The failure by an Owner or Resident to promptly report a water leak or water penetration problem may be deemed negligence, thereby making the Resident or Owner liable for any additional damage caused by the delay.
5. Mitigate. To mitigate damage from water leaks and penetrations, and to discourage mold, the Resident or Owner of a Unit that experiences a water leak or penetration must promptly dry, clean, and disinfect the wet area. If the water penetration is inside a wall cavity or above a ceiling, it may be necessary to cut a hole in the wall or ceiling to

circulate air that will dry the wet materials. If the wall or ceiling cavity that holds water is a Common Element, the Association will pay the cost of repairing the sheetrock, notwithstanding the Sheetrock Section in the Declaration.

6. Humidity. To discourage mold in his Unit, the Owner or Resident should maintain an inside humidity level under sixty percent (60%). If condensation or moisture collects on windows, walls or pipes, the Owner or Resident should promptly dry the wet surfaces and reduce the moisture/water sources. Condensation can be a sign of high humidity.
7. Negligence. The failure to promptly and properly repair a water-related problem in the Unit may be deemed negligence by the Owner, who may be liable for any additional damage caused by the failure or the delay.
8. Information. For more information about mold, please consult a reliable source, such as "A Brief Guide to Mold, Moisture, and Your Home" – a brochure published by the U.S. Environmental Protection Agency, which is available on its website at [www.epa.gov/mold](http://www.epa.gov/mold).

**CHESTNUT COMMONS, A CONDOMINIUM COMMUNITY**

**COMMUNITY MANUAL**

**CERTIFICATION AND ACKNOWLEDGMENT**

As the Declarant of Chestnut Commons, a Condominium Community and the initial and sole member of the Chestnut Commons Condominium HOA, Inc., I certify that the foregoing Chestnut Commons Community Manual was created and adopted by the Declarant of Chestnut Commons a Condominium Community, as part of the initial project documentation for Chestnut Commons Condominiums located in the City of Austin, Travis County, Texas, as recorded or to be recorded in the Real Property Records of Travis County, Texas.

Signed on the 30<sup>th</sup> day of April, 2007.

CHESTNUT PLAZA, LTD.,  
a Texas limited partnership

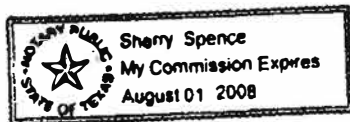
By: SHIRE'S COURT G.P., INC.  
a Texas corporation, its General Partner

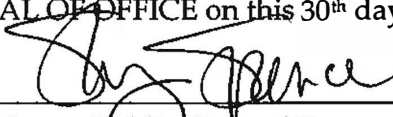
By:   
David C. Mahn, Vice President

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared David C. Mahn, Vice President of Shire's Court G.P., Inc., a Texas corporation, the general partner of Chestnut Plaza, Ltd., a Texas limited partnership, known to me to be the person and manager whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in the capacity and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 30<sup>th</sup> day of April, 2007.



  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

ROBERT D. BURTON, ESQ.  
WINSTEAD, PC  
401 CONGRESS AVE., SUITE 2100  
AUSTIN, TEXAS 78701  
email: [rburton@winstead.com](mailto:rburton@winstead.com)



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# CHESTNUT COMMONS SUPPLEMENT TO COMMUNITY MANUAL

Consisting of:  
Certificate of Formation  
Amendment to Fining Policy  
Solar Device Policy  
Energy Efficient Roofing Policy  
Rainwater Harvesting System Policy  
Flag Display and Flagpole Installation Policy  
Display of Certain Religious Items Policy

Cross Reference to: (i) Chestnut Commons Community Manual recorded as Document No. 2007084343, Official Public Records of Travis County, Texas; and (ii) Declaration of Condominium Regime for Chestnut Commons recorded as Document No. 2007084344, Official Public Records of Travis County, Texas, amended.

## SUPPLEMENT TO COMMUNITY MANUAL CHESTNUT COMMONS

This Supplement to Community Manual for Chestnut Commons is made and executed by the **CHESTNUT COMMONS HOA, INC.**, a Texas non-profit corporation (the "**Association**"), acting by and through its Board of Directors (the "**Board**"), and is as follows:

A. Chestnut Plaza, Ltd., a Texas limited partnership, previously executed that certain: (i) Declaration of Condominium Regime for Chestnut Commons recorded as Document No. 2007084344, Official Public Records of Travis County, Texas, as amended (collectively, the "**Declaration**"); and (ii) Chestnut Commons Community Manual recorded as Document No. 2007084343, Official Public Records of Travis County, Texas (the "**Community Manual**"). The Declaration establishes Chestnut Commons, a condominium regime located in Travis County, Texas created pursuant to Chapter 82 of the Texas Property Code (the "**Regime**").

B. The Board now desires to supplement the Community Manual as set forth hereinbelow.

NOW, THEREFORE, the Community Manual is hereby supplemented as follows:

1. **Certificate of Formation.** The Certificate of Formation for the Association attached hereto as Attachment 1 is hereby added to the Community Manual.

2. **Amendment to Fining Policy.** The Amendment to the Fining Policy for the Association attached hereto as Attachment 2 is hereby added to the to the Fining Policy contained in the Community Manual.

3. **Solar Device Policy.** The following Solar Device Policy is hereby added to the Community Manual as follows:

### **SOLAR DEVICE POLICY**

No solar device may be installed on any portion of the Common Elements without the advance written approval of the Architectural Control Committee. The Common Elements located in the Regime are owned in undivided interests by all the Members of the Association.

4. **Energy Efficient Roofing Policy.** The following Energy Efficient Roofing Policy is hereby added to the Community Manual as follows:

### **ENERGY EFFICIENT ROOFING POLICY**

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 Control Committee.



5. **Rainwater Harvesting System Policy.** The following Rainwater Harvesting System Policy is hereby added to the Community Manual as follows:

**RAINWATER HARVESTING SYSTEM POLICY**

No rain barrel may be installed on any portion of the Common Elements without the advance written approval of the Architectural Control Committee. The Common Elements located in the Regime are owned in undivided interests by all the Members of the Association.

6. **Flag Display and Flagpole Installation Policy.** The following Flag Display and Flagpole Installation Policy is hereby added to the Community Manual as follows:

**FLAG DISPLAY AND FLAGPOLE INSTALLATION POLICY**

No flag or flagpole may be installed on any portion of the Common Elements without the advance written approval of the Architectural Control Committee. The Common Elements located in the Regime are owned in undivided interests by all the Members of the Association.

7. **Display of Certain Religious Items Policy.** The following Display of Certain Religious Items Policy is hereby added to the Community Manual as follows:

**DISPLAY OF CERTAIN RELIGIOUS ITEM POLICY**

A. **Display of Certain Religious Items Permitted.** An Owner or resident is permitted to display or affix to the entry door or door frame of the Owner's unit (which may not extend beyond the outer edge of the door frame) one or more religious items, the display of which is motivated by the owner's or resident's sincere religious belief. This Policy outlines the standards which shall apply with respect to the display or affixing of certain religious items on the entry to the entry door or door frame of the Owner's unit.

B. **General Guidelines.** Religious items may be displayed or affixed to the entry door or door frame of the Owner's unit (which may not extend beyond the outer edge of the door frame); provided, however, that individually or in combination with each other, the total size of the display is no greater than twenty-five square inches (5"x5" = 25 square inches).

C. **Prohibitions.** No religious item may be displayed or affixed to the entry door or door frame of the Owner's unit (which may not extend beyond the outer edge of the door frame): (a) threatens the public health or safety; (b) violates applicable law; or (c) contains language, graphics or any display that is patently offensive. No religious item may be displayed or affixed in any location other than the entry door or door frame of the Owner's unit (which may not extend beyond the outer edge of the door frame). Nothing in this Policy may be construed in any manner to authorize an Owner or resident to use a material or color for the entry door or door frame of the Owner's unit or

make an alteration to the entry door or door frame that is not otherwise permitted pursuant to the Association's governing documents.

D. **Removal.** The Association may remove any item which is in violation of the terms and provisions of this Policy.

E. **Covenants in Conflict with Statutes.** To the extent that any provisions of the Association's recorded covenants restrict or prohibit an Owner or resident from displaying or affixing a religious item in violation of the controlling provisions of Section 202.018 of the Texas Property Code, the Association shall have no authority to enforce such provisions and the provisions of this Policy shall hereafter control.

8. **Miscellaneous.** Any capitalized terms used and not otherwise defined in this instrument shall have the meanings set forth in the Declaration and Community Manual.

*[SIGNATURE PAGE FOLLOWS]*

EXECUTED to be effective as of the 31<sup>ST</sup> day of MAY, 2012

ASSOCIATION:

CHESTNUT COMMONS HOA, INC., a Texas non-profit corporation

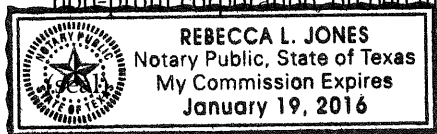
By: Jon Mathers, Director

By: Joe R. Randel, Director

By: [Signature], Director

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

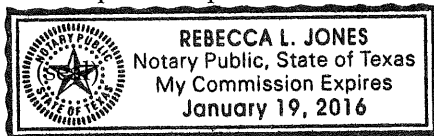
This instrument was acknowledged before me on MAY 31, 2012 by JON MATHERS, Director of the Board of Directors of the Chestnut Commons HOA, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



Rebecca Lyoner  
Notary Public Signature

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

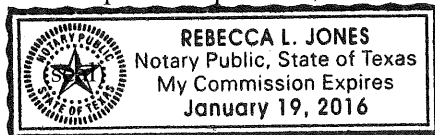
This instrument was acknowledged before me on MAY 31, 2012 by JOE RANDEL, Director of the Board of Directors of the Chestnut Commons HOA, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



Rebecca Lyoner  
Notary Public Signature

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on MAY 31, 2012 by CHRIS LUSCOMBE, Director of the Board of Directors of the Chestnut Commons HOA, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



Rebecca Lyoner  
Notary Public Signature

**ATTACHMENT 1**



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Chestnut Commons HOA, Inc.  
File Number: 800816586

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 05/16/2007

Effective: 05/16/2007



A handwritten signature in black ink that reads "Roger Williams".

Roger Williams  
Secretary of State

**CERTIFICATE OF FORMATION**

**OF  
CHESTNUT COMMONS HOA, INC.**

**FILED  
In the Office of the  
Secretary of State of Texas**

**MAY 16 2007**

**ARTICLE ONE  
NAME**

**Corporations Section**

The name of the domestic nonprofit entity is Chestnut Commons HOA, Inc. (hereafter the "Association"). This entity is the mandatory nonprofit property owners association created by the Declaration to govern the above-referenced Real Property. The filing of this Certificate of Formation with the Secretary of State creates a nonprofit corporation status for the Association.

**ARTICLE TWO  
REAL PROPERTY**

This Certificate of Formation pertains to Chestnut Commons, a multi-phased residential planned condominium community according to the plat thereof recorded on September 13, 2006 in Document No. 200600287 of the Plat Records, Travis County, Texas, as may be amended from time to time, and which is subject to the Declaration of Covenants, Conditions and Restrictions for Chestnut Commons, a Condominium Community, recorded on May 9, 2007, as Document No. 2007084344, Real Property Records, Travis County, Texas, as may be amended from time to time (the "Declaration").

**ARTICLE THREE  
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the Association's initial registered office and registered agent is 6001 West William Cannon, Bldg 2, Suite 201, Austin, Texas 78749, and the name of its initial registered agent at such address is David C. Mahn.

**ARTICLE FOUR  
DURATION**

The duration of the Association is perpetual.

**ARTICLE FIVE  
NON-PROFIT CORPORATION**

The Association is a non-profit corporation.

## ARTICLE SIX PURPOSES

The general purposes for which the Association is formed are (1) to exercise the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with the Governing Documents and State Law, as each may be amended from time to time; and (2) for any lawful purpose not expressly prohibited under Chapters 2 or 22 of the Texas Business Organizations Code (the "Code"), including any purpose described by Section 2.02 of the Code.

No part of the net earnings of the Association shall inure to the benefit of, or be distributable to its directors, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Six hereof. No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

## ARTICLE SEVEN POWERS

In furtherance of its purposes, the Association has the following powers which, unless indicated by the Governing Documents or State law, may be exercised by the board of directors: (1) all rights and powers conferred on nonprofit entities by State law in effect from time to time; (2) all rights and powers conferred on property owners associations by State law, in effect from time to time; (3) all necessary, appropriate, or advisable powers needed to perform any purpose or duty of the Association as set out in the Government Documents or State law.

## ARTICLE EIGHT MEMBERS

The corporation shall have Members. The Declaration or Bylaws will determine the number and qualifications of Members of the Association; any classes of membership; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

## ARTICLE NINE MANAGING BODY OF CORPORATION

The management and affairs of the Association is vested in its Board of Directors and such committees of the Board that the Board may, from time-to-time, establish, except for those matters expressly reserved to others in the Governing Documents. The Declaration and Governing Documents may determine the number and qualification of directors; the term of

office of directors; the methods of electing, removing and replacing directors; and the methods of holding a Board meeting and obtaining consents. Directors may vote by proxy at meetings of the board.

The names and street addresses of the directors who shall manage the affairs of the Association until the organizational meeting is held are:

<u>NAME</u>	<u>ADDRESS</u>
David C. Mahn	6001 West William Cannon Building 2, Suite 201 Austin, TX 78749
Terry Mitchell	6001 West William Cannon Building 2, Suite 201 Austin, TX 78749
Chris Risher	6001 West William Cannon Building 2, Suit 201 Austin, TX 78749

The number of directors may be increased or decreased in accordance with the Bylaws. The number of directors may not be decreased to fewer than three (3).

#### ARTICLE TEN LIMITATION ON LIABILITY OF DIRECTORS;

A director of the Association is not liable to the Association or its Members for monetary damages for acts or omissions that occur in the person's capacity as director, except to the extent a person is found liable for (1) breach of the director's duty of loyalty to the Association or its members; (2) an act or omission not in good faith that constitutes a breach of duty of the director to the Association; (3) an act or omission that involves intentional misconduct or a knowing violation of the law; (4) a transaction from which the director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office; or (5) an act or omission for which the liability of a director is expressly provided by an applicable statute. If the director is a Member of the Association, this limitation on liability does not eliminate or modify that person's pro rata share of the Association's liability as a member of the Association.



## ARTICLE ELEVEN INDEMNIFICATION

As provided by the Bylaws, the Association will indemnify a person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director, officer, committee chair, or committee member of the Association. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

## ARTICLE TWELVE ORGANIZERS

The name and address of the organizer is David C. Mahn, 6001 West William Cannon, Bldg. 2, Suite 201, Austin, and Texas 78749.

## ARTICLE THIRTEEN MANNER OF DISTRIBUTION

The Association is authorized on its winding up to distribute its assets in a manner other than as provided by Section 22.304 of the Code. The manner of distribution is as follows: In the event of winding up, the assets of the Association will belong to the members of the Association at the time of winding up and will be distributed, liquidated, or conveyed in accordance with the terms of a termination agreement approved by owners to whom 80 percent or more of the votes in the Association are allocated at the time of winding up.

## ARTICLE FOURTEEN AMENDMENT OF CERTIFICATE OF FORMATION

This Certificate of Formation may be amended or restated in accordance with applicable provisions of the Code, subject to the following: (1) an amendment may not conflict with the Community Declaration, Bylaws, or applicable State law, and (2) an amendment may not impair or dilute a right granted to a person by the Community Declaration, without that person's written consent. (3) If the Association is incorporated by the State of Texas at the time of the amendment, an amendment must be in accordance with applicable provisions of the Code.

The Board of Directors may unilaterally amend or restate this Certificate of Formation, without a vote of the Owners, for the following limited purposes: (1) to delete the names and addresses of the initial directors, (2) to delete the name and address of the initial registered agent or office, provided a statement of change is on file with the Secretary of State, and (3) change the name of the Community Association with the Secretary of State by adding, deleting or changing a geographical attribute to the name.

For all other purposes, an amendment must be approved by the Board and at least two-thirds of the votes or voting interests present, in person or by proxy, at a properly called meeting of the Association for which a quorum is obtained.

#### ARTICLE FIFTEEN AMENDMENT OF BYLAWS

The Bylaws of the Association may be amended or repealed according to the amendment provision of the Bylaws, which reserve those powers to the members, with limited exceptions for the board acting alone.

#### ARTICLE SIXTEEN ACTION WITHOUT MEETING

Subject to the additional requirements of Code Section 6.202, any action required by the Code or by the Association documents to be taken at a meeting of Members or Owners may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Members or Owners as would be necessary to take that action at a meeting at which the required number of Owners or Members were present or voted.

#### ARTICLE SEVENTEEN DECLARANT CONTROL PERIOD

The Declaration provides for a Declarant Control Period during which Declarant determines the number and qualification of officers and directors, who serve at the pleasure of the Declarant, who is empowered by the Declaration to appoint, remove and replace the officers and directors of the Association. The Declaration also determines the weight and numbers of votes allocated to parcels owned by Declarant. Because Declarant has powers, rights and duties in addition to those of other Members, Declarant may constitute a membership class as described by the Code, the other Unit Owners constituting a different class.

#### ARTICLE EIGHTEEN CHANGE OF STATUS

The continuing existence of the Association as described by its documents is vested in its Members – the Owners of the property – not its corporate status, its name or its filing number. During any period in which the Association is not incorporated, it will be subject to the Texas Uniform Unincorporated Nonprofit Act (Chapter 252 of the Code) and this Certificate of Formation will continue to be effective as a document of the Association.

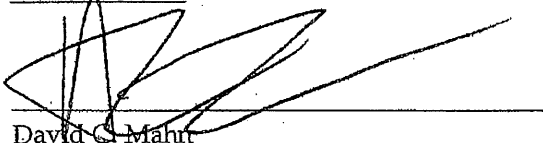
ARTICLE NINETEEN  
TERMINOLOGY

Capitalized terms in this Certificate of Formation, such as Association, Declarant, Declarant Control Period, Declaration and Governing Documents have the same meanings defined in Article 1 of the Declaration. The term Governing Documents as defined by the Code, is construed by the Association to mean Governing Documents as defined by the Declaration, even though the Governing Documents may have been initially adopted by the Declarant of the Real Property for the benefit and use of the Members of the Association.

The undersigned signs this Certificate of Formation subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Signed this 30 day of April, 2007.

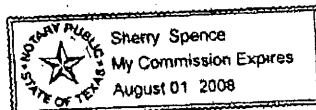
ORGANIZER:

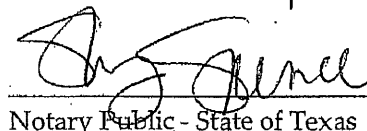
  
David C. Mahn

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

Before me, the undersigned authority, on this day personally appeared David C. Mahn, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30 day of April, 2007.



  
Notary Public - State of Texas

After Recording, Please Return To:

David C. Mahn  
Benchmark Land Development, Inc.  
6001 West William Cannon, Bldg 2, Suite 201  
Austin, TX 78749

## ATTACHMENT 2

### AMENDMENT TO FINING POLICY

The Fining Policy was previously adopted and recorded in that certain Chestnut Commons Community Manual recorded as Document No. 2007084343, Official Public Records of Travis County, Texas. Paragraph 7 of the Fining Policy is deleted in its entirety and replaces with the following.

6. Amount. The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. If circumstances warrant a variance from the schedule, the Board will document the reasons for the variance in the minutes of its meeting. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Documents. If the Association allows fines to accumulate, it will establish a maximum amount for a particular fine, at which point the total fine will be capped.

The Board has adopted the following general schedule of fines. Also, the Board reserves the right to set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation:

#### Schedule of Fines

##### Fine Amount:

1 <sup>st</sup> Violation:	\$25.00
2 <sup>nd</sup> Violation:	\$50.00
3 <sup>rd</sup> Violation:	\$100.00

Each notice will provide thirty (30) days for resolution or the Board will attempt to resolve the violation and assess the owner any fees or charges incurred for such resolution. If necessary, the Board will initiate legal proceedings to recover any costs incurred. The owner will be responsible for all legal fees, court costs and expenses incurred.

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

Jul 18, 2012 10:58 AM

2012116253

BENAVIDESV: \$68.00

Dana DeBeauvoir, County Clerk  
Travis County TEXAS



## Office of the Secretary of State

May 17, 2007

INDEPENDENCE TITLE CO.  
300 W. 6TH ST., STE. 120  
Austin, TX 78701 USA

RE: Chestnut Commons HOA, Inc.  
File Number: 800816586

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created nonprofit corporation.

Nonprofit corporations do not automatically qualify for an exemption from federal and state taxes. Shortly, the Comptroller of Public Accounts will be contacting the corporation at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the corporation. If you need to contact the Comptroller about franchise taxes or exemption therefrom, you may contact the agency by calling (800) 252-1381, by e-mail to [tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us) or by writing P. O. Box 13528, Austin, TX 78711-3528. Telephone questions regarding other business taxes, including sales taxes, should be directed to (800) 252-5555. Information on exemption from federal taxes is available from the Internal Revenue Service.

Nonprofit corporations do not file annual reports with the Secretary of State, but do file a report not more often than once every four years as requested by the Secretary. It is important for the corporation to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a report when requested may result in the involuntary termination of the corporation. Additionally, a nonprofit corporation will file documents with the Secretary of State if the corporation needs to amend one of the provisions in its certificate of formation.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555  
Enclosure



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Chestnut Commons HOA, Inc.  
File Number: 800816586

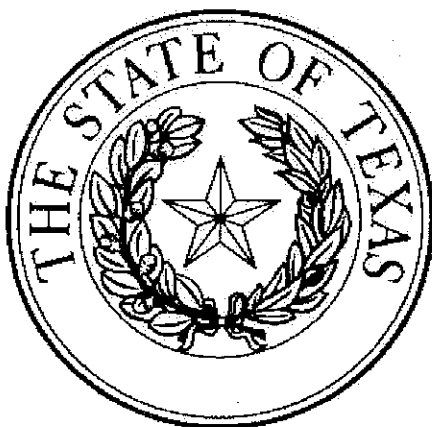
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 05/16/2007

Effective: 05/16/2007



A handwritten signature in black ink that reads "Roger Williams".

Roger Williams  
Secretary of State

**CERTIFICATE OF FORMATION  
OF  
CHESTNUT COMMONS HOA, INC.**

**FILED**  
In the Office of the  
Secretary of State of Texas

**MAY 16 2007**

**ARTICLE ONE  
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**Corporations Section**

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**ARTICLE THREE  
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**ARTICLE FOUR  
DURATION**

The duration of the Association is perpetual.

**ARTICLE FIVE  
NON-PROFIT CORPORATION**

The Association is a non-profit corporation.

## ARTICLE SIX PURPOSES

The general purposes for which the Association is formed are (1) to exercise the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with the Governing Documents and State Law, as each may be amended from time to time; and (2) for any lawful purpose not expressly prohibited under Chapters 2 or 22 of the Texas Business Organizations Code (the "Code"), including any purpose described by Section 2.02 of the Code.

No part of the net earnings of the Association shall inure to the benefit of, or be distributable to its directors, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Six hereof. No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

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## ARTICLE EIGHT MEMBERS

The corporation shall have Members. The Declaration or Bylaws will determine the number and qualifications of Members of the Association; any classes of membership; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

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The management and affairs of the Association is vested in its Board of Directors and such committees of the Board that the Board may, from time-to-time, establish, except for those matters expressly reserved to others in the Governing Documents. The Declaration and Governing Documents may determine the number and qualification of directors; the term of



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The number of directors may be increased or decreased in accordance with the Bylaws. The number of directors may not be decreased to fewer than three (3).

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A director of the Association is not liable to the Association or its Members for monetary damages for acts or omissions that occur in the person's capacity as director, except to the extent a person is found liable for (1) breach of the director's duty of loyalty to the Association or its members; (2) an act or omission not in good faith that constitutes a breach of duty of the director to the Association; (3) an act or omission that involves intentional misconduct or a knowing violation of the law; (4) a transaction from which the director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office; or (5) an act or omission for which the liability of a director is expressly provided by an applicable statute. If the director is a Member of the Association, this limitation on liability does not eliminate or modify that person's pro rata share of the Association's liability as a member of the Association.

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## ARTICLE TWELVE ORGANIZERS

The name and address of the organizer is David C. Mahn, 6001 West William Cannon, Bldg. 2, Suite 201, Austin, and Texas 78749.

## ARTICLE THIRTEEN MANNER OF DISTRIBUTION

The Association is authorized on its winding up to distribute its assets in a manner other than as provided by Section 22.304 of the Code. The manner of distribution is as follows: In the event of winding up, the assets of the Association will belong to the members of the Association at the time of winding up and will be distributed, liquidated, or conveyed in accordance with the terms of a termination agreement approved by owners to whom 80 percent or more of the votes in the Association are allocated at the time of winding up.

## ARTICLE FOURTEEN AMENDMENT OF CERTIFICATE OF FORMATION

This Certificate of Formation may be amended or restated in accordance with applicable provisions of the Code, subject to the following: (1) an amendment may not conflict with the Community Declaration, Bylaws, or applicable State law, and (2) an amendment may not impair or dilute a right granted to a person by the Community Declaration, without that person's written consent. (3) If the Association is incorporated by the State of Texas at the time of the amendment, an amendment must be in accordance with applicable provisions of the Code.

The Board of Directors may unilaterally amend or restate this Certificate of Formation, without a vote of the Owners, for the following limited purposes: (1) to delete the names and addresses of the initial directors, (2) to delete the name and address of the initial registered agent or office, provided a statement of change is on file with the Secretary of State, and (3) change the name of the Community Association with the Secretary of State by adding, deleting or changing a geographical attribute to the name.

For all other purposes, an amendment must be approved by the Board and at least two-thirds of the votes or voting interests present, in person or by proxy, at a properly called meeting of the Association for which a quorum is obtained.

#### ARTICLE FIFTEEN AMENDMENT OF BYLAWS

The Bylaws of the Association may be amended or repealed according to the amendment provision of the Bylaws, which reserve those powers to the members, with limited exceptions for the board acting alone.

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Subject to the additional requirements of Code Section 6.202, any action required by the Code or by the Association documents to be taken at a meeting of Members or Owners may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Members or Owners as would be necessary to take that action at a meeting at which the required number of Owners or Members were present or voted.

#### ARTICLE SEVENTEEN DECLARANT CONTROL PERIOD

The Declaration provides for a Declarant Control Period during which Declarant determines the number and qualification of officers and directors, who serve at the pleasure of the Declarant, who is empowered by the Declaration to appoint, remove and replace the officers and directors of the Association. The Declaration also determines the weight and numbers of votes allocated to parcels owned by Declarant. Because Declarant has powers, rights and duties in addition to those of other Members, Declarant may constitute a membership class as described by the Code, the other Unit Owners constituting a different class.

#### ARTICLE EIGHTEEN CHANGE OF STATUS

The continuing existence of the Association as described by its documents is vested in its Members – the Owners of the property – not its corporate status, its name or its filing number. During any period in which the Association is not incorporated, it will be subject to the Texas Uniform Unincorporated Nonprofit Act (Chapter 252 of the Code) and this Certificate of Formation will continue to be effective as a document of the Association.

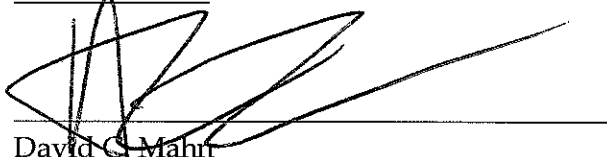
ARTICLE NINETEEN  
TERMINOLOGY

Capitalized terms in this Certificate of Formation, such as Association, Declarant, Declarant Control Period, Declaration and Governing Documents have the same meanings defined in Article 1 of the Declaration. The term Governing Documents as defined by the Code, is construed by the Association to mean Governing Documents as defined by the Declaration, even though the Governing Documents may have been initially adopted by the Declarant of the Real Property for the benefit and use of the Members of the Association.

The undersigned signs this Certificate of Formation subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Signed this 30 day of April, 2007.

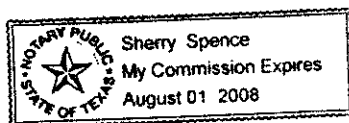
**ORGANIZER:**

  
David C. Mahn

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS   §

Before me, the undersigned authority, on this day personally appeared David C. Mahn, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30 day of April, 2007.

  
Notary Public - State of Texas

After Recording, Please Return To:

David C. Mahn  
Benchmark Land Development, Inc.  
6001 West William Cannon, Bldg 2, Suite 201  
Austin, TX 78749

## **EXHIBIT B**

### **BYLAWS OF CHESTNUT COMMONS HOA, INC. (A Texas Condominium Association)**

#### **ARTICLE 1 GENERAL**

1.1 **Purpose.** These Bylaws provide for the governance of the condominium known as Chestnut Commons, A Condominium Community, located in the City of Austin, Travis County, Texas, subject to and more fully described in the Declaration of Chestnut Commons, A Condominium Community, recorded or to be recorded in the Official Public Records of Travis County, Texas (the "**declaration**").

1.2 **Definitions.** Words and phrases defined in the Declaration have the same meanings when used in these Bylaws. Article 1 of the Declaration is incorporated herein by reference.

1.3 **Nonprofit Purpose.** The Association is organized to be a nonprofit corporation.

1.4 **Parties To Bylaws.** All present or future Unit Owners and all other persons who use or occupy the Condominium in any manner are subject to these Bylaws, the Declaration, and the other Documents as defined in the Declaration. The mere acquisition or occupancy of a Unit will signify that these Bylaws are accepted, ratified, and will be strictly followed.

1.5 **Declarant Control.** Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in Article XIII of the Declaration during the Declarant Control Period and Development Period, as defined in the Declaration, including the number, qualifications, appointment, removal and replacement of directors.

1.6 **General Powers And Duties.** The Association, acting through the Board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the condominium as may be required or permitted by the Documents and State law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Documents.

## ARTICLE 2

### MEMBERS

2.1 **Membership.** Ownership of a Unit is required to qualify for membership in the Association. Any person on becoming an Owner of a Unit shall automatically become a Member of the Association and be subject to these Bylaws.

2.2 **Termination.** The Board of Directors, by affirmative vote of a majority of all the Members of the Board, may terminate the membership of any Member who shall no longer own a Unit.

2.3 **Non-Transferability.** Except as provided herein, membership in this Association is not transferable or assignable.

## ARTICLE 3

### MEETINGS OF THE ASSOCIATION

3.1 **Annual Meeting.** An annual meeting of the Association will be held at such time as shall be designated by the Board and stated in a notice of the meeting for the purpose of electing directors in accordance with these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

3.2 **Special Meetings.** It is the duty of the President to call a special meeting of the Association if directed to do so by a majority of the Board or by a petition signed by Owners of at least twenty percent (20%) of the Units. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

3.3 **Place Of Meetings.** The Board may designate any place for the annual meeting or for any special meeting called by the Board.

3.4 **Notice Of Meetings.** At the direction of the Board, written notice of meetings of the Association will be given to an Owner of each Unit at least ten (10) days but not more than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and in the case of a special meeting when required by statute or these Bylaws, the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the Board.

3.5 **Voting Eligibility.** Each Member of the Association shall be entitled to one vote on each matter submitted to a vote of Members. However, the Board may determine that no Member may vote at meetings of the Association if the Member's financial account with the

Association is in arrears forty-five (45) days before the date of a meeting of the Association at which Members will vote, provided each ineligible Member is given notice of the arrearage and an opportunity to become eligible. The Board may specify the manner, place, and time for payment for purposes of restoring eligibility. A determination of Members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than forty-five (45) days after the original meeting. In accordance with Article 1396-2.1113 of the Texas Non-Profit Corporation Act, the Board will prepare and make available a list of the Association's voting Members.

3.6 **Voting Members List.** The Board will prepare and make available a list of the Association's voting Members in accordance with Art. 1396-2.11B of the Texas Non-Profit Corporation Act.

3.7 **Quorum.** At any meeting of the Association, the presence in person or by proxy of Members representing at least twenty percent (20%) of the votes in the Association constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of Members constituting a quorum. If a quorum is not present at any meeting of the Association for which proper notice was given, Members representing at least a majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than twenty-four (24) hours in order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same purposes within fifteen (15) to thirty (30) days may be given to an Owner of each Unit, at which meeting the Members present in person or by proxy (even if less than twenty percent (20%) of the votes) will be sufficient to constitute a quorum for the purposes of that meeting.

3.8 **Votes.** The vote of Members representing at least a majority of the votes cast at any meeting at which a quorum is present binds all Members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by law. Cumulative voting is prohibited.

3.8.1 **Co-Owned Units.** If a Unit is owned by more than one Member, the vote appurtenant to that Unit is cast in accordance with Section 82.110(a) of Act.

3.8.2 **Corporation-Owned Units.** If a Unit is owned by a corporation, the vote appurtenant to that Unit may be cast by any officer of the corporation in the absence of the corporation's written appointment of a specific person to exercise its vote. The vote of a partnership may be cast by any general partner in the absence of the partners' written appointment of a specific person. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote.

3.8.3 Association-Owned Units. Votes allocated to a Unit owned by the Association may be counted towards a quorum and for all ballots and votes except the election or removal of directors. The vote appurtenant to a Unit owned by the Association is exercised by the Board.

3.9 Proxies. At any meeting of Members, votes may be cast in person or by written proxy. To be valid, each proxy must (1) be signed and dated by a Member or his duly authorized attorney-in-fact; (2) identify the Unit to which the vote is appurtenant; (3) name the person or title (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (4) identify the meeting for which the proxy is given; (5) not purport to be revocable without notice; and (6) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the Board. Unless the proxy specifies a shorter or longer time, it terminates one (1) year after its date. Perpetual or self-renewing proxies are permitted, provided they are revocable. To revoke a proxy, the granting Member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy may be delivered by fax. However, a proxy received by fax may not be counted to make or break a tie-vote unless (1) the proxy has been acknowledged or sworn to by the Member, before and certified by an officer authorized to take acknowledgments and oaths, or (2) the Association also receives the original proxy within five (5) days after the vote.

3.10 Adjournment Of Meeting. At any meeting of the Association, a majority of the Members present at that meeting, either in person or by proxy, may adjourn the meeting to another time and place.

3.11 Action Without Meeting. Subject to Board approval, any action which may be taken by a vote of the Members at a meeting of the Association may also be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by Members representing at least a majority of votes in the Association or such higher percentage as may be required by the Governing Instruments. This Section may not be used to avoid the requirement of an annual meeting and does not apply to the election of directors.

3.12 Telephone Meetings. Members of the Association may participate in and hold meetings of the Association by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.13 Order of Business. Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the



Association is as follows: (1) determine votes present by roll call or check-in procedure; (2) announcement of quorum; (3) proof of notice of meeting; (4) reading and approval of minutes of preceding meeting; (5) reports; (6) election of directors (when required); (7) unfinished or old business; and (8) new business.

#### ARTICLE 4 BOARD OF DIRECTORS

Notwithstanding anything herein to the contrary, during the Declarant Control Period, Article XIII of the Declaration governs the number, qualification and appointment of directors. The initial directors will be appointed by Declarant and need not be Owners. Directors appointed by Declarant may not be removed by the Owners and may be removed only by Declarant. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

4.1 **Number and Term.** The Board will consist of three (3) persons. One director will be elected for a three (3) year term, one director will be elected for a two (2) year term and one director will be elected for a one (1) year term. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The number of directors may be changed by amendment of these Bylaws but may not be less than three (3).

4.2 **Qualification.** The following qualifications apply to the election or appointment of persons to the Board.

4.2.1 **Owners.** To qualify as a director, a person must be a Member of the Association or a spouse of a Member.

4.2.2 **Entity Member.** If a Unit is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity Member is eligible to serve as a director and is deemed to be a Member for the purposes of this Section. If the relationship between the entity Member and the director representing it terminates, that directorship will be deemed vacant.

4.2.3 **Not Qualified.** No person may be elected or appointed as a director if any assessment against the person or his Unit is delinquent at the time of election or appointment, provided he has been given notice of the delinquency and a reasonable opportunity to cure it. No person may be elected or appointed as a director if the person is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party

4.3 **Election.** Directors will be elected by the Members of the Association. The election of directors will be conducted at the annual meeting of the Association, at any special

meeting called for that purpose, or by mail, facsimile transmission, electronic mail, or a combination of any of these.

#### 4.4 Removal of Directors.

4.4.1 Removal of Members. Except to the extent limited by law, the Certificate of Formation or these Bylaws, any director may be removed, either for cause or without cause, at a special meeting called for that purpose by Members representing at least two-thirds of the votes present in person or by proxy at the meeting and a successor may then and there be elected to fill the vacancy created. Any director whose removal has been proposed by the Members must be given an opportunity to be heard at the meeting.

4.4.2 Removal by Directors. A director may not be removed by the officers or by the remaining directors, except for the following limited reasons for which a director may be removed by at least a majority of the directors at a meeting of the Board called for that purpose: (a) the director is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party; provided the Association did not file suit to effect removal of the director; (2) the director's account with the Association has been delinquent for at least ninety (90) days or has been delinquent at least three times during the preceding twelve (12) months, provided he was given notice of the default and a reasonable opportunity to cure; (3) the director has refused or failed to attend three or more meetings of the Board during the preceding twelve (12) months, provided he was given proper notice of the meetings; or (4) the director has refused or failed to cure a violation of the Documents for which he has been given notice, a reasonable opportunity to cure, and an opportunity to request a hearing before the Board.

4.5 Vacancies. Vacancies on the Board caused by any reason, except the removal of a director by a vote of the Association, are filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each director so elected serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder of the term.

#### 4.6 Meetings of the Board.

4.6.1 Organizational Meeting. Within ten (10) days after the annual meeting, the directors will convene an organizational meeting for the purpose of electing officers. The time and place of the meeting will be fixed by the Board and announced to the directors.

4.6.2 Regular Meetings. Regular meetings of the Board may be held at any time and place as the Board determines, from time to time, but at least one (1) such

meeting must be held each calendar quarter. Notice of regular meetings of the Board will be given to each director as provided in Article 11 of these Bylaws.

4.6.3 Special Meetings. Special meetings of the Board may be called by the President or, if he is absent or refuses to act, the secretary, or by any two directors. At least three (3) days' notice will be given to each director, personally or by telephone, written, or electronic communication, which notice must state the place, time, and purpose of the meeting.

4.6.4 Emergency Meetings. In case of emergency, the Board may convene a meeting after making a diligent attempt to notify each director by any practical method.

4.6.5 Actions without Meetings. Any action required or permitted to be made at a meeting or the Board may be made without a meeting. An action without a meeting may be made if a written consent to the decision is signed by all the persons entitled to vote on the matter. The original signed consents will be placed in the corporation minute book and kept with the corporate records. This Section does not apply to actions that require meetings under the Act.

4.6.6 Conduct of Meetings. The President presides over meetings of the Board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the Board and a record of transactions and proceedings occurring at meetings.

4.6.7 Quorum. A majority of the number of directors then in office constitutes a quorum for transacting business at any Board meeting, and the acts of the majority of the directors present at a meeting at which a quorum is present are the acts of the Board. If less than a quorum is present at a meeting of the Board, the majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business that may have been transacted at the meeting as originally called may be transacted without further notice. Directors may not participate by proxy at meetings of the Board.

4.6.8 Open Meetings. Regular and special meetings of the Board are open to Members of the Association, subject to the following provisions to the extent permitted or required by the Act:

4.6.8.1 No audio or video recording of the meeting may be made, except by the Board or with the Board's prior express written consent.

4.6.8.2 Members who are not directors may not participate in Board deliberations under any circumstances, and may not participate in Board discussions unless the Board expressly so authorizes at the meeting.

4.6.8.3 The Board may adjourn any meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or sensitive nature. The nature of business to be considered in executive session will first be announced in open session.

4.6.8.4 The Board may prohibit attendance by non-Members, including representatives, proxies, agents, and attorneys of Members.

4.6.8.5 The Board may prohibit attendance by any Member who disrupts meetings or interferes with the conduct of Board business.

4.6.8.6 The Board may but is not required to publish to Members the time, date, and place of Board meetings, but will provide the information if requested in writing by a Member on a meeting-by-meeting basis.

4.6.9 Telephone Meetings. Unless otherwise restricted by the Certificate of Formation, subject to the provisions required or permitted by law and these Bylaws for notice of meetings, Members of the Board or any committee of the Association may participate in and hold meetings of the Board or committee by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

4.7 Powers and Duties. The Board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Condominium. The Board may do all acts and things except those which, by law or the Governing Documents, are reserved to the Members and may not be delegated to the Board. Without prejudice to the general and specific powers and duties set forth in laws or the Governing Documents, or powers and duties as may hereafter be imposed on the Board by resolution of the Association, the powers and duties of the Board include, but are not limited to, the following:

4.7.1 Standard of Care. Directors will discharge their duties, including any duties as committee Members, in good faith, with ordinary care, and in a manner they reasonably believe to be in the corporation's best interest. In performing their duties, the directors are required to exercise certain standards of care and are subject to certain liabilities, including but not limited to the following provisions of State law: Section 82.103(a) and (f) of the Act, and Articles 1396-2.20.D., -2.25, -2.26, -2.28, -2.29, and -2.30 of the Texas Non-Profit Corporation Act.

4.7.2 Appointment of Committees. The Board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the Board with its responsibilities. The resolution may establish the purposes and powers of the committee created, provide for the appointment of a chair and committee Members, and may provide for reports, termination, and other administrative matters deemed appropriate by the Board. Members of committees will be appointed from among the Owners and Residents.

4.7.3 Manager. The Board may employ a manager or managing agent for the Association, at a compensation established by the Board, to perform duties and services authorized by the Board.

4.8 Actions by directors. The Board will try to act by consensus. However, if a consensus is not available, the vote of 75% of directors is enough to constitute the act of the Board, unless the act of a greater number is required by law or by some other provision of the Bylaws. In the event of a deadlock, a 50-50 split decision between the directors, each representative group shall be entitled to select a person experienced and knowledgeable in the operation of condominium associations or Owners' associations in general, and the two selected representatives shall together choose a third representative, and the decision of the majority of such representatives shall be final.

4.9 Interested Directors. Contracts or transactions between directors or officers who have a financial interest in the matter are not void or voidable solely for that reason. Nor are they void or voidable solely because the director or officer is present at or participates in the meeting that authorizes the contract or transaction, solely because the interested party's votes are counted for the purpose. However, every director with any personal interest in the transaction must disclose all material facts concerning the transaction, including all potential personal benefit and potential conflicts of interest, to the other Members of the Board or other group authorizing the transaction. The transaction must be approved by a majority of the uninterested directors or other group with authority to authorize the transaction.

4.10 Fidelity Bonds. Any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds. The premiums on the bonds may be a Common Expense of the Association.

## ARTICLE 5 OFFICERS

5.1 Designation. The principal officers of the Association are the President, the secretary, and the treasurer. The Board may create additional officer positions, define the authority and duty of each such position and elect or appoint persons to fill the positions. The President and Secretary must be directors. The same person may hold any two or more offices, but no one may serve as both President and Secretary at the same time. If an officer is absent or

unable to act, the Board may appoint a director to perform the duties of that officer and to act in place of that officer, on an interim basis. Notwithstanding anything to the contrary contained herein, no officer may take any action without written Board approval.

5.2 **Election and Term.** The Board shall elect the officers at the first Board meeting following each annual meeting of the voting Members, to serve until their successor is elected and qualified unless the officer shall sooner resign, or is removed, or otherwise disqualified to serve.

5.3 **Removal.** Any officer elected or appointed by the Board may be removed by the Board without cause at any regular meeting of the Board or at any special meeting of the Board called for that purpose. The removal of an officer who is also a director does not constitute removal from the Board.

5.4 **Resignation.** An officer may resign at any time by giving written notice to the Board. Unless the notice of resignation states otherwise, it is effective when received by the Board and does not require acceptance by the Board. The resignation of an officer who is also a director does not constitute resignation from the Board.

5.5 **Vacancies.** The Board may select a person to fill a vacancy in any office for the unexpired portion of the officer's term at a regular or special meeting called for that purpose.

5.6 **Standard of Care.** In performing their duties, the officers are required to exercise the standards of care provided by Section 82.103(a) and (f) of the Act and by Article 13962.20.D. of the Texas Non-Profit Corporation Act.

5.7 **President.** The President shall be the chief executive officer of the Association, and subject to the direction and control of the Board, shall (1) preside at all meetings of the Association and of the Board; (2) supervise and control the business and affairs of the Association; (3) possess all the general powers and duties which are usually vested in the office of President of a corporation organized under the laws of the State of Texas; (4) see that all orders and resolutions of the Board are carried into effect ; and (5) perform such other duties as the Board may prescribe.

5.8 **Secretary.** The secretary shall:(1) attend all meetings of the Board; (2) keep the minutes of all meetings of the Board and of the Association; (3) be in charge of such books, papers, and records as the Board may direct; (4) maintain a record of the names and addresses of the Members for the mailing of notices; (5) certify and record any amendments to the Declarations; and (6) in general, perform all duties incident to the office of secretary.

5.9 **Treasurer.** The treasurer shall: (1) have custody of the corporate funds and securities of the Association; (2) keep full and accurate financial records and books of account

showing all receipts and disbursements; (3) deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board; (4) prepare all required financial data and tax returns; (5) prepare the annual and supplemental budgets of the Association; (6) review the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (7) perform all the duties incident to the office of treasurer.

5.10 **Authorized Agents.** Except when the Governing Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association. In the absence of Board designation, the Resident and the secretary are the only persons authorized to execute instruments on behalf of the Association.

## **ARTICLE 6**

### **TRANSACTIONING BUSINESS**

6.1 **Contracts.** The Board may authorize any officer or agent of the corporation to enter into a contract or execute and deliver any instrument in the name of, and on behalf of, the corporation. This authority may be limited to a specific contract or instrument, or it may extend to any number and type of possible contracts and instruments.

6.2 **Custody of Funds.** All the corporation's funds will be deposited to the credit of the corporation in banks, trust companies, or other depositories that the Board selects.

6.3 **Conflicts of Interest.** The corporation may not make any loan to a director or officer of the corporation. The corporation may not borrow money from—or otherwise transact business with—a director, officer, or committee Member of the corporation without the Board's approval.

6.4 **Prohibited Actions.** As long as the corporation exists, and except with the Board's prior approval, no director, officer, or committee Members of the corporation may:

- A. Do any act in violation of these Bylaws or a binding obligation of the corporation.
- B. Do any act with the intention of harming the corporation or any of its operations.
- C. Do any act that would make it impossible or unnecessarily difficult to carry on the corporation's intended or ordinary business.
- D. Receive an improper personal benefit from the operation of the corporation.
- E. Use the corporation's assets, directly or indirectly, for any purpose other than carrying on the corporation's business.

- F. Wrongfully transfer or dispose of corporation property, including intangible property such as good will.
  - i. Use the corporation's name (or any substantially similar name) or any trademark or trade name adopted by the corporation, except on behalf of the corporation in the ordinary course of its business.
  - ii. Disclose any of the corporation's business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it.

## ARTICLE 7 RULES

7.1 **Rules.** The Declarant has adopted initial rules and regulations for: (1) the administration of the Association and the Governing Documents; (2) the maintenance, management, operation, use, conservation, and beautification of the Condominium; and (3) the health, comfort, and general welfare of the Residents; provided, however, that such rules may not be in conflict with law or the Governing Documents. The Board will, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the Members. On request from any Member or Resident, the Board will provide a current and complete copy of rules. Additionally, the Board will, from time to time, distribute copies of the current and complete rules to Owners and, if the Board so chooses, to non-member Residents.

7.2 **Adoption and Amendment.** Any rule may be adopted, amended, or terminated by the Board, provided that the rule and the requisite Board approval are properly recorded as a resolution in the minutes of the meeting of the Board and provided further, that until expiration or termination of the Development Period, all amendments to the rules and regulations must be approved in advance and in writing by the Declarant.

7.3 **Notice and Comment.** At least ten (10) days before the effective date, the Board will give written notice to an Owner of each Unit of any amendment, termination, or adoption of a rule, or will publish same in a newsletter or similar publication that is circulated to the Members. The Board may, but is not be required, to give similar notice to Residents who are not Members.

## ARTICLE 8 ENFORCEMENT

8.1 **Remedies.** The violation of any provision of the Governing Documents gives the Board the following rights, in addition to any other rights set forth in the Governing Documents:



8.1.1 Fines. To impose reasonable fines, if notice and an opportunity to be heard are given.

8.1.2 Self-Help. After notice and an opportunity to be heard are given, except in case of an emergency, to enter the Unit or Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is contrary to the intent and meaning of the provisions of the Governing Documents. The Board may not be deemed liable for any manner of trespass by this action.

8.1.3 Courts. To enjoin, abate, or remedy, by appropriate legal proceedings, the continuance of any breach.

8.2 Notice and Hearing. Before imposing a fine or exercising self-help abatement, the Board must give the Owner a written violation notice and an opportunity to be heard.

8.2.1 Notice of Violation. The Board's written violation notice will contain the following: (1) the date the violation notice is prepared or mailed; (2) a description of the violation; (3) a reference to the rule or provision of the Governing Documents that is being violated; (4) a description of the action required to cure the violation; (5) the amount of the fine to be levied and/or the abatement action to be taken; (6) the date the fine begins accruing or abatement action becomes possible; and (7) a statement that not later than the 30th day after the date of the violation notice, the Owner may request a hearing before the Board to contest the fine or the abatement action. In addition to giving the written violation notice to the Owner, the Board may also give a copy of the notice to the non-Owner Resident, if the Board deems it appropriate.

8.2.2 Hearing. To request a hearing before the Board, an Owner must submit a written request to the Board within thirty (30) days after the date of the violation notice. Within ten (10) days after receiving the Owner's request for a hearing, the Board will give the Owner notice of the date, time, and place of the hearing. The hearing will be scheduled for a date within forty-five (45) days from the date the Board receives the Owner's request, and should be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. Pending the hearing, the Board may continue to exercise the Association's 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 the fine or the abatement action described in the notice. The hearing will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication. No audio or video recording of the hearing may be made. The minutes of the hearing must contain a statement of the results of the hearing and the amount of fine, if any, imposed, or

abatement action, if any, authorized. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the hearing, the notice requirement will be deemed satisfied.

8.3 **Imposition of Fine.** Within thirty (30) days after levying the fine or authorizing the abatement, the Board must give the Owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the Owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

8.3.1 **Amount.** The Board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the Board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

8.3.2 **Type of Fine.** If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

8.3.3 **Other Fine-Related.** The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Board may adopt a collection policy that applies Owners' payments to unpaid fines before retiring other types of assessments.

8.3.4 **Additional Enforcement Rights.** Notwithstanding the notice and hearing requirement, the Board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Governing Documents which, in the Board's opinion, are (1) self-evident, such as vehicles parked illegally or in violation of posted signs; (2) threatening to life or property; or (3) repeat violations of the same provision by the same Owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Governing Documents for certain violations, such as nonpayment of assessments and for any claims, disputes or controversies subject to mandatory binding arbitration as provided in Article XXII of the Declaration.

**ARTICLE 9**  
**OBLIGATIONS OF THE OWNERS**

9.1 **Notice of Sale.** Any Owner intending to sell or convey his Unit or any interest therein must give written notice to the Board of his intention, together with (1) the address or legal description of the Unit being conveyed, (2) the name and address of the intended purchaser, (3) the name, address, and phone number of the title company or attorney designated to close the transaction, (4) names and phone numbers of real estate agents, if any, representing seller and purchaser, and (5) scheduled date of closing. An Owner will furnish this information to the Board at least ten (10) business days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the Owner's request to the Association for a resale certificate.

9.2 **Proof of Ownership.** Except for those Owners who initially purchase a Unit from Declarant, any person, on becoming an Owner of a Unit, must furnish to the Board evidence of Ownership in the Unit, which copy will remain in the files of the Association. A copy of the recorded deed is the customary evidence. The Association may refuse to recognize a person as a Member unless this requirement is first met. This requirement may be satisfied by receipt of a Board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the Unit or any interest therein.

9.3 **Owners' Information.** Within thirty (30) days after acquiring an Ownership interest in a Unit, the Owner must provide the Association with the Owner's mailing address, telephone number, and driver's license number, if any; the name and telephone number of any Resident other than the Owner; and the name, address, and telephone number of any person managing the Unit as agent of the Unit Owner. An Owner must notify the Association within thirty (30) days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time.

9.4 **Mailing Address.** The Owner or the several Co-Owners of a Unit must register and maintain one mailing address to be used by the Association for mailing of monthly statements, notices, demands, and all other communications. If an Owner fails to maintain a current mailing address with the Association, the address of the Owner's Unit is deemed to be his mailing address.

9.5 **Registration of Mortgagees.** Within thirty (30) days after granting a lien against his Unit, the Owner must provide the Association with the name and address of the holder of the lien and the loan number. The Owner must notify the Association within thirty (30) days after he has notice of a change in the information required by this Section. Also, the Owner will provide the information on request by the Association from time to time.

9.6 **Assessments.** All Owners are obligated to pay assessments imposed by the Association to meet the Common Expenses as defined in the Declaration. A Member is deemed to be in good standing and entitled to vote at any meeting of the Association if he is current in the assessments made or levied against him and his Unit.

9.7 **Compliance with Documents.** Each Owner will comply with the provisions and terms of the Governing Documents, and any amendments thereto. Further, each Owner will always endeavor to observe and promote the cooperative purposes for which the Condominium was established.

## **ARTICLE 10**

### **BOOKS AND RECORDS**

10.1 **Required Books and Records.** The Association will use its best efforts to keep complete and correct copies of the books and records required by Section 82.114(a) of the Act which, on the date these Bylaws were prepared, include the following:

- A. Minutes or a similar record of the proceedings of meetings of the Association. A recitation in the minutes that notice of the meeting was properly given is sufficient evidence that the notice was given.
- B. Minutes or a similar record of the proceedings of meetings of the Board.
- C. Names and mailing addresses of the Members, the currency and accuracy of the information being the responsibility of the Members.
- D. Names and mailing addresses of the Mortgagees, the currency and accuracy of the information being the responsibility of the Members and their Mortgagees.
- E. Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles.
- F. A copy of plans and specifications acquired by the Association over time for Improvements to the Condominium.
- G. Copies of income tax returns prepared for the Internal Revenue Service.
- H. Copies of the Governing Documents and all amendments to any of these. Also, for at least four (4) years, a record of all votes or written consents by which amendments to the Governing Documents were approved.

10.2 **Inspection of Books and Records.** Books and records of the Association will be made available for inspection and copying pursuant to Section 82.114(b) of the Act and Article

1396-2.23 of the Texas Non-Profit Corporation Act. The Board may require a Member to submit a written demand for inspection, stating the purpose for which the Member will inspect the books and records. The Board has the following rights:

- A. To determine whether the Member's purpose for inspection is proper.
- B. To deny the request if the purpose is deemed not proper.
- C. If granting the request, to identify which books and records are relevant to the Member's stated purpose for inspection.

10.2.1 Copies. A Member, at Member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the Member, and to charge the Member a reasonable fee for copying.

10.2.2 Member's Agent. A Member's inspection of the books and records may be assisted or performed by the Member's agent, accountant, or attorney.

10.2.3 Records of Attorneys and Accountants. The files and records of an attorney or accountant who performs services for the Association are not records of the Association and are not subject to inspection by Members.

10.3 Resale Certificates. Any officer may prepare or cause to be prepared, certify, and execute resale certificates in accordance with Section 82.157 of the Act. The Association may charge a reasonable fee for preparing resale certificates. The Association may refuse to furnish resale certificates until the fee is paid. Any unpaid fees may be assessed against the Unit for which the certificate is furnished.

## ARTICLE 11

### NOTICES

11.1 Notices. Any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, or by any other method permitted by the Texas Nonprofit Corporation Act. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the Member at the address shown on the Association's records. If transmitted by fax, the notice is deemed delivered on successful transmission of the facsimile. If a Unit is owned by more than one person, notice to one co-Owner is deemed notice to all Co-Owners.

11.2 Waiver of Notice. Whenever a notice is required to be given to an Owner, Member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a Member or director at any meeting of the Association or Board, respectively,

constitutes a waiver of notice by the Member or director of the time, place, and purpose of the meeting. If all Members or directors are present at any meeting of the Association or Board, respectively, no notice is required and any business may be transacted at the meeting.

## **ARTICLE 12**

### **DECLARANT PROVISIONS**

12.1 **Board of Directors.** The number, qualification, and appointment of directors during the Declarant Control Period shall be governed by Article XIII of the Declarations. The initial directors will be appointed by Declarant and need not be Owners. Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

12.2 **Organizational Meeting.** Within sixty (60) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call an organizational meeting of the Members for the purpose of electing directors, by ballot of Members. Notice of the organizational meeting will be given as if it were notice of an annual meeting.

12.3 **Conflict.** To the extent of any conflict with any provision in the Bylaws, the provisions of this Article shall control.

## **ARTICLE 13**

### **AMENDMENTS TO BYLAWS**

13.1 **General.** These Bylaws may be amended by a majority of the Members.

13.2 **Effective.** To be effective, each amendment must be in writing, reference the names of the Condominium and the Association; be executed by a majority of the Members. Further, if these Bylaws are publicly recorded, the amendment must recite the recording data for the Bylaws, be in a form suitable for recording as a real property record, and be delivered to the county clerk for recordation.

13.3 **Mortgagee Protection.** In addition to the notices and consents required by these Bylaws, certain actions and amendments require notice to or approval by Eligible Mortgagees, pursuant to the Financing article of the Declaration. If applicable, the Association must give the required notices to and obtain the required approvals from Eligible Mortgagees.

13.4 **Declarant Protection.** As long as the Declarant owns a Unit in the Condominium, no amendment of these Bylaws may affect the Declarant's rights herein without the Declarant's written and acknowledged consent. Specifically, this Section and the article titled "Declarant Provisions" may not be amended without prior written approval of the Declarant. The Declarant's written consent must be part of the amendment instrument.

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

14.1 **Fiscal Year.** The fiscal year of the Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year.

14.2 **Compensation.** A director, officer, Member, or Resident may not receive any pecuniary profit from the operation of the Association, and no funds or assets of the Association may be paid as a salary or as compensation to, or be distributed to, or inure to the benefit of a director, officer, Member, or Resident. Nevertheless,

- A. Reasonable compensation may be paid to a director, officer, Member, or Resident for services rendered to the Association in other capacities.
- B. A director, officer, Member, or Resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the Board.
- C. The Board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities.
- D. This provision does not apply to distributions to Unit Owners permitted or required by the Declaration or the Act.

14.3 **Choice of Law.** These Bylaws will be construed under Texas law.

14.4 **Conflicting Provisions.** If any provision of these Bylaws conflicts with any provision of the laws of the State of Texas, the conflicting Bylaws provision is null and void, but all other provisions of these Bylaws remain in full force and effect. In the case of any conflict between the Certificate of Formation of the Association and these Bylaws, the Certificate of Formation shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

14.5 **Severability.** Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidation of any provision of these Bylaws, by judgment or court order, does not affect any other provision which remains in full force and effect.

14.6 **Construction.** To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements for obtaining and maintaining all tax exemptions available to

nonprofit corporations. The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and may not be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

14.7 **Waiver**. No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

14.8 **Indemnification**. To the fullest extent permitted by applicable law, the Association will indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee Member, employee, servant or agent of the Association, against expenses (including attorneys fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (a) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to be, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

14.9 **Preparer**. These Bylaws were prepared by Mitchell D. Savrick, Savrick, Schumann, Johnson, McGarr, Kaminski & Shirley, 4330 South Mopac, Suite 150, Austin, Texas 78735.



**CERTIFICATION & ACKNOWLEDGMENT**

I CERTIFY that the foregoing Bylaws of Chestnut Commons HOA, Inc., were adopted by the Declarant of Chestnut Commons, A Condominium, for the benefit of Chestnut Commons HOA, Inc., a Texas condominium association.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2007.

CHESTNUT PLAZA, LTD.,  
a Texas limited partnership

By: SHIRE'S COURT G.P., INC.  
a Texas corporation, its General Partner

By: \_\_\_\_\_  
David C. Mahn, Vice President

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared David C. Mahn, Vice President of Shire's Court G.P., Inc., a Texas corporation, the general partner of Chestnut Plaza, Ltd., a Texas limited partnership, known to me to be the person and manager whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public, State of Texas



CONDO DE 2007084344

116 PGS

**AFTER RECORDING RETURN TO:**

David Mahn  
Benchmark Management, Inc.  
6001 West William Cannon, Bldg 2, Suite 201  
Austin, TX 78749

**DECLARATION OF CONDOMINIUM REGIME  
FOR CHESTNUT COMMONS,  
A CONDOMINIUM COMMUNITY  
(A RESIDENTIAL CONDOMINIUM IN TRAVIS COUNTY, TEXAS)**

**DECLARANT: CHESTNUT PLAZA, LTD.**

**DECLARATION OF CONDOMINIUM REGIME  
OF  
CHESTNUT COMMONS, A CONDOMINIUM COMMUNITY**

This Declaration of Condominium Regime is made and executed this 30<sup>th</sup> day of April, 2007, by Chestnut Plaza, Ltd., a Texas limited partnership (hereinafter referred to as "Declarant"), pursuant to the provisions of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code, (hereinafter referred to as the "Act"), for the purpose of submitting the hereinafter described real property and Improvements located thereon to a Condominium Regime.

Declarant owns certain real property in the County of Travis, State of Texas (herein called "Subject Property") more particularly described in the attached Exhibit A. Declarant desires and intends to submit the Subject Property to a Condominium Regime as established by the Act. Declarant intends, by recording this Declaration of Condominium Regime, together with the Bylaws attached hereto as Exhibit B and the Condominium Plat and Plans attached hereto as Exhibit C, to establish a Condominium Project under the provisions and within the meaning of the Act known as Chestnut Commons, A Condominium Community, sometimes hereinafter referred to as the "Project" or "Condominium Project".

Declarant by declaring the Condominium Regime intends to establish a plan for the individual Ownership in fee simple of the area of space contained within each Unit and the co-ownership by the individual and separate Owners thereof, as tenants in common, of all of the Common Elements of the Project. The Project shall be divided into no more than sixty-four (64) Units.

The Units and other areas of the Project are more particularly described in the Condominium Plat and Plans attached hereto as Exhibit C, which are attached hereto and incorporated by reference. The Owners each have an undivided interest in the remaining property of the Project (referred to as the "Common Elements"). Exhibit D sets forth the allocation to each Unit of (a) a percentage of undivided interests in the Common Elements of the Condominium, (b) a percentage of undivided interests in the Common Expenses of the Association (as hereinafter defined), and (c) a portion of votes in the Association, by the formulas set forth therein.

The Declarant intends to impose upon the Project mutually beneficial restrictions for the benefit of all Units and the persons who own those Units (the "Owners"). The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Project by means of an organization of Owners (herein the "Association"), as more particularly set forth herein. The formal name of the Association is Chestnut Commons HOA, Inc.

Accordingly, Declarant does upon the recording hereof, establish the Project under the Act and does declare that the Project shall, after such establishment, be held, conveyed,

hypothecated, sold, insured, transferred, encumbered, leased, rented, occupied, improved and in any other manner utilized, subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations, easements, Declarant's representations and reservations and affirmative obligations set forth in this Declaration of Condominium Regime all of which shall be deemed to run with the title to all or any portion of the Project and shall be a burden and a benefit to Declarant, and any persons acquiring or owning any interest in the Project, their grantees, heirs, executors, administrators, successors and assigns. In furtherance of the establishment of this Condominium Project, it is provided as follows:

## 1. DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meanings:

- 1.1 "Act" shall mean Chapter 82 of the Texas Property Code, the Uniform Condominium Act, as it may be amended from time to time.
- 1.2 "Architectural Control Committee" shall mean the Declarant during the Development Period and after expiration of the Development Period, the rights shall automatically be transferred to the Board or Board appointed committee established pursuant to Article XII.
- 1.3 "Assessment" shall mean and refer to any charge levied against a Unit or Owner by the Association pursuant to the Governing Documents and the Act, including but not limited to, the funds required to pay Common Expenses, other lawfully agreed upon expenses, plus surplus and reserves, and such costs, expenses and reserves as are determined by the Managing Agent or Board of Directors and are levied by the Board of Directors upon all of the Owners as provided in Article VII of this Declaration.
- 1.4 "Association" shall mean and refer to all of the Owners of all the Units in the Property, initially organized as Chestnut Commons HOA, Inc., a Texas non-profit association, serving in accordance with the Act and as the property owners' association as defined in the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Bylaws and the Act.
- 1.5 "Board" shall mean the Board of Directors of the Association.
- 1.6 "Builder" shall mean Armadillo Construction Company of Austin, Ltd. or the successors or assigns of same.
- 1.7 "Building" means any building (including detached, semi-attached or attached residential dwelling) constructed within the Condominium Project, together with all

appurtenant Improvements. Declarant has reserved the right to add additional Units and Buildings to the Regime as permitted in the Declaration.

- 1.8 "Bylaws" means the Bylaws of the Association attached hereto as Exhibit B for reference and any amendment, modification or revision thereto as therein permitted.
- 1.9 "Common Elements" shall mean all of the other areas of the Subject Property other than each Unit. All Common Elements are General Common Elements unless 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.
- 1.10 "Common Expenses" means and includes:
- A. All sums lawfully assessed against the Common Elements by the Board of Directors of the Condominium Project;
  - B. Expenses of administration and management, maintenance, repair or replacement of the Common Elements;
  - C. Expenses agreed upon as Common Expenses by the Owners; and
  - D. Expenses declared Common Elements by provisions of this Declaration and by the Bylaws.

Common Expenses may include, but are not limited to, the overhead expenses of the Association, costs of maintenance, repair and operation of the Common Elements, taxes and special Assessments unless separately assessed, insurance premiums for insurance coverage as deemed desirable or necessary by the Association, utility charges for the Common Elements (including gas, electricity, water, and sewer) trash and garbage collection, guard service, burglar alarm service, landscape maintenance, janitorial service, manager's salary, legal and accounting fees, management fees.

- 1.11 "Community Manual" means the community manual adopted by the Board for the benefit of the Association as part of the initial Project documents for the Regime. The Community Manual shall include the Rules and may also include such other policies governing the Association as the Board may determine in the best interests of the Association in its sole and absolute discretion.
- 1.12 "Condominium" shall mean and refer to the Chestnut Commons, A Condominium Community created by the filing of the Declaration.

- 1.13 "Condominium Plan or Plans" means a dimensional drawing that is recordable in the real property records or the condominium plan records that horizontally and vertically describes Units and Common Elements that are contained in buildings.
- 1.14 "Condominium Plat" means an engineering survey recordable in the real property records or the condominium plat records.
- 1.15 "Condominium Project" shall mean and refer to Chestnut Commons, as a Condominium Community established in conformance with the provisions of the Act, sometimes referred to as "Project."
- 1.16 "Construction Dispute" means any claim, grievance, or other dispute involving Declarant or an affiliate of Declarant, including any construction company which is an affiliate of Declarant, and arising out of or relating to the construction or design of the Subject Property, including the interpretation or enforcement of any warranty.
- 1.17 "Declarant" means Chestnut Plaza, Ltd., a Texas limited partnership, or the successors and assigns of same which acquire any portion of the Property for the purpose of development and which are designated a successor Declarant by Chestnut Plaza, Ltd., or any successor or assign, in a recorded document.
- 1.18 "Declarant Control Period" shall mean the period of time, beginning the date this Declaration is recorded, during which Declarant controls the operation and management of the Association, pursuant to Article XIII of this Declaration.
- 1.19 "Declaration" means this document, as it may be amended from time to time.
- 1.20 "Development Period" means that period of time during which the Property is being developed, constructed, expanded or marketed and extends from the date this Declaration is recorded until title to all of the Units that may be created – including the Additional Land described in Exhibit G hereto – has been conveyed to Owners other than Declarant. The Development period may not exceed seven (7) years after the date this Declaration is recorded. Declarant may terminate the Development Period by recording a Notice of Termination.
- 1.21 "Entire Premises" or "Property" means and includes the Subject Property, Buildings, all Improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.
- 1.22 "First Mortgagee" means any holder of a security interest in a Unit, represented by a first deed of trust, mortgage or security agreement giving such holder a first and paramount priority under Texas law.

- 1.23 "Garage LCE" means any portion of a Building, other than a Unit located therein, which has been designated on the Plat and Plans as a Limited Common Element for the exclusive use of an Owner for use as a garage.
- 1.24 "General Common Elements" means Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated GCE, General Common Element, General Common Area or Common Area.
- 1.25 "Governing Documents" shall mean this Declaration, the Association's Certificate of Formation and Bylaws, Community Manual, Association Budget, Disclosure of Insurance Coverage, Limited Warranty, and any other documents promulgated by the Association's Board of Directors. An exhibit, schedule or certification accompanying a Governing Document is a part of that Document.
- 1.26 "Improvements" means every structure and all appurtenances of every type and kind whether temporary or permanent in nature, including, without limitation, buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air-conditioning equipment and fixtures, exterior fixtures, water softener fixtures or equipment, and poles, pumps, tanks, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television or other utilities.
- 1.27 "Land" means that certain real property more particularly described in Exhibit A attached to this Declaration, together with all and singular the rights and appurtenances pertaining thereto, including any additional real property that becomes part of the Property.
- 1.28 "Limited Common Elements" shall mean those portions of the Common Elements that are reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as LCE or as Limited Common Elements, as are identified on Exhibit C.
- 1.29 "Majority" means more than half.
- 1.30 "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 of Directors of a committee of the corporation.

- 1.31 "Mortgagee" means a holder, insurer, or guarantor of a purchase money or construction mortgage secured by a recorded senior or first deed of trust lien against a Unit.
- 1.32 "Over Garage Unit" means any Unit within the Regime located within a Building which contains more than one Garage LCE.
- 1.33 "Owner" shall mean and refer to a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who or which is the record Owner of fee simple title to one or more Units in the Condominium Project. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or judicial or nonjudicial foreclosure are Owners. Persons or entities having Ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.
- 1.34 "Regime" means the Project, Units, General Common Elements and Limited Common Elements that comprise the Condominium Regime established under this Declaration.
- 1.35 "Resident" means an occupant of a Unit, regardless of whether the person owns the Unit.
- 1.36 "Rules" mean rules and regulations adopted by the Board of Directors in accordance with the Governing Documents or the Act.
- 1.37 "Special Assessment" shall mean an additional Assessment created for any purpose of the Association as a whole.
- 1.38 "Stand-Alone Unit" means any Unit within the Regime located within the Building which does not contain a Garage LCE.
- 1.39 "Subject Property" means all the Land subject to this Declaration and all Improvements, thereon and all easements, rights and appurtenances thereto, and includes every Unit and Common Element thereon.
- 1.40 "Underwriting Lender" means the Federal Home Loan Mortgage Corporation, Federal Housing Administration, Federal National Mortgage Association or U.S. Department of Veterans Affairs, singly or collectively. The use of this term and/or these institutions may not be construed as a limitation on an Owner's financing neither options nor a representation that the Property is secured by any institution.
- 1.41 "Unit" shall mean a physical portion of the Condominium including land designated for separate ownership or occupancy, the boundaries of which are further described, delineated and delimited in the Plans and below in Article III (and as may hereafter be



described, delineated and delimited by an amendment or supplement hereto as herein permitted).

- 1.42 "Yard LCE" means any yard space within the Regime which has been designated on the Plat and Plans as Limited Common Element for the exclusive benefit of an Owner. Not all Units include Yard LCE.

## **2. ESTABLISHMENT OF REGIME**

- 2.1 **Grant and Submission.** Declarant hereby grants and submits to Condominium ownership all of the Subject Property, the Improvements to be constructed thereon, the Condominium Project and all easements, rights, attachments and appurtenances thereto and in anywise belonging to the Subject Property subject to the terms, conditions, covenants, restrictions, liens and easements of this Declaration. The Project initially consists of \_\_\_\_ Units. During the Development Period, Declarant as permitted in Article XIII, has reserved the right to create a total of 64 Units. The initial Units subject to this Regime MUST BE BUILT. To add additional Units, Declarant shall comply with Section 2.4 herein.
- 2.2 **Title.** Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from Declarant or any Owner shall be deemed an acknowledgment of and consent to this Declaration and its provisions.
- 2.3 **Description of Property.** The Condominium Plan shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to first conveyance of any Unit. Declarant hereby expressly reserves the right to supplement, amend and change the Condominium Plan to conform the map to actual location of the constructed Improvements; to establish, vacate and relocate outside utility easements, access, and parking facilities as same may be located on the ground; to change the dimensions of the Condominium Plan and layout and to redesignate Building letters and Unit numbers at Declarant's sole discretion without the joinder of any Owner's of the Units. Such supplement shall not require the joinder of any Owner or mortgagee.
- 2.4 **Additional Property.** Additional real property may be annexed to the Subject Property and subjected to this Declaration and the jurisdiction of the Association on approval of Owners representing at least two-thirds of the Units in the Project or during the Development Period, by Declarant. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Exhibit A and Exhibit C, in the county's real property records. If Units are added to the Project, amendment of Exhibit D is also required. No Additional Property may be added to the existing Condominium Regime without the prior written consent of any Mortgagee insuring or guaranteeing any mortgage in the existing Condominium Regime at the

time such property is to be added. In the event Additional Property is added, the Improvements shall be substantially completed before such property is added to the existing Condominium Regime and provided further, no Additional Property may be annexed to the Subject Property and subjected to the Declaration and jurisdiction of the Association after the date which is seven (7) years after the date on which this Declaration as recorded in the Official Property records of Travis County, Texas.

- 2.5 **Adjacent Land Use.** Declarant makes no representations of any kind as to current or future uses, actual or permitted of any land that is adjacent to or near the Subject Property.
- 2.6 **Subject to Documents.** The real property described in Exhibit A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens and easements of this Declaration, including Declarant's representations and warranties in Article XIII hereof, which run with the Property, bind all parties having or acquiring any right, title or interest in the Property, their heirs, successors, and assigns, and insure to the benefit of each Owner of the Property.
- 2.7 **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners representing at least two-thirds of the total allocated votes. On merger or consolidation of the Association with another association, the property, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will affect a revocation, change or addition to the covenants established by this Declaration within the Property.
- 2.8 **Responsibility for Design and Construction.**
- 2.8.1 Each Owner, by accepting a deed to a Unit, acknowledges and agrees that the Units, the General Common Elements, the Limited Common Elements and any other Improvements to be constructed within the Regime will be designed and constructed by a Builder, and will not be designed or constructed by Declarant. Accordingly, Declarant shall have no responsibility for the design or construction of the Units, the General Common Elements, Limited Common Elements or Improvements to be constructed within the Regime.
- 2.8.2 In connection with the foregoing, each Owner shall release Declarant, its partners, and their respective officers, agents, directors, representatives and

employees (collectively the "Released Parties") 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 such Owner ever had, now has, or may hereafter have (collectively the "Design and Construction Claims") against the Released Parties for or by reason of any matter, cause or thing whatsoever occurring in connection with the design and construction of the Units, General Common Elements, Limited Common Elements and any other Improvements to be constructed within the Regime (collectively the "Release"). THIS RELEASE EXPRESSLY INCLUDES ANY DESIGN AND CONSTRUCTION CLAIMS ARISING OUT OF THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF ONE OR MORE OF THE RELEASED PARTIES.

- 2.8.3 Each Owner shall defend, indemnify and hold the Released Parties harmless from and against any cause of action, claim, personal injury, property damage, obligation, liability, cost or expense, including reasonable attorneys fees, incurred, arising out of or resulting from the design and construction of the Units, the General Common Elements, Limited Common Elements and any other Improvements to be constructed within the Regime (collectively the "Indemnity"). THIS INDEMNITY EXPRESSLY INCLUDES ANY DESIGN AND CONSTRUCTION CLAIMS ARISING OUT OF THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF ONE OR MORE OF THE RELEASED PARTIES.

### III.

#### ESTATES AND UNIT BOUNDARIES

- 3.1.1 **Unit Boundaries.** The boundaries and identifying number of each Unit (including both Stand-Alone Units and Over-Garage Units, are shown on the Plat and Plans attached as Exhibit C.
- 3.2 **What the Unit Includes:** Each Unit, including both Over-Garage Units and Stand-Alone Units, includes:
- 3.2.1 All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting part of the finished surfaces are a part of a Unit, and all other portions of the walls, floors or ceilings are hereby designated General Common Elements.
- 3.2.2 If any chute, flue, duct, wire, conduit, bearing, wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a Unit, then the portion serving only that Unit is a Limited Common Element

allocated solely to that Unit, and the portion serving more than one Unit is hereby designated as General Common Elements assigned to all Units.

- 3.2.3 Unless otherwise provided above, the spaces, interior partitions and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.
- 3.2.4 Shutters, awnings, window boxes, doorsteps, stoops, porches, patios, exterior doors, door hardware, windows, window screens and frames, firebox and fireplace flue or other fixtures designed to serve a Unit, but located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to that Unit.
- 3.2.5 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.
- 3.2.6 Any balcony or deck that is attached to the living area of a Unit and which is accessed via the Unit's living area is part of the Unit. The boundaries of the balcony or deck portion of a Unit are the outermost construction materials of the walls, floors, railings and ceilings (if any) of the balcony or deck area, including, for example, wood decking, wood siding, stucco walls, metal railings, and fabric awnings.
- 3.2.7 Except as specifically included above, each Unit excludes the spaces and Improvements lying outside of the boundaries of the Unit.
- 3.2.8 If the foregoing description of Unit boundaries is inconsistent with the Plats and Plans, then this Section will control.
- 3.2.9 **Note:** The space contained within the Unit's boundaries is not related to the size of the Unit's living areas. Similarly, the Units may be marketed on the basis of a limited number of representational floor plans, each of which is marked with a rounded and estimated size of air-conditioned space, taken from pre-construction architectural drawings. Those marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries and the actual area contained within the air-conditioned space of the Unit.

3.2.10 **Note:** The Units include some portions of the building outside of the traditional air-conditioned living areas. For example, attic area, firebox and fireplace flue, exterior wall cavities, windows, doors and some components of the roof and exterior walls are included within the Unit's boundaries.

3.3 **Representations of Size.** It is expressly agreed and each and every purchaser of a Unit, his heirs, executors, administrators, assigns and grantees hereby agrees that the square footage, size and dimensions of each Unit as set out or shown in this Declaration or in the Map attached hereto are approximate and are shown for descriptive purposes only. The Declarant does not warrant, guarantee or represent that any Unit actually contains the area, square footage or dimensions shown by the Plat thereof. Each purchaser and Owner of a Unit or interest therein agrees that the Unit has been or will be purchased as actually and physically existing at the time such purchase is closed. Each purchaser of a Unit expressly waives any claim or demand which he may have against the Declarant or any person whomsoever on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the respective Plat thereof exhibited hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purposes whatsoever or in connection with any matter, the existing physical boundaries of the Unit shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movements of the Building, and regardless of variances between boundaries as shown on the Plat and those of the Buildings. Except for those warranties, if any, expressly agreed upon in writing between Declarant and the Owners or any written warranty provided by the Builder to the Owner, each purchaser of a Unit accepts the Unit as is and with all faults and without any warranties or representations, either express or implied, as to the condition of the Unit, the Common Elements, Limited Common Elements or the usability or suitability of the Unit and the Common Elements. NEITHER THE DECLARANT NOR ANY OWNER SHALL BE LIABLE TO ANY OTHER OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL MEASUREMENTS FROM THOSE SET FORTH ON THE MAP OR IN ANY CONTRACT TO WHICH DECLARANT OR ANY OWNER IS OR WAS A PARTY, AND EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION.

#### IV.

#### **COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

4.1 **Common Element Interests.** Each Owner shall be entitled to an undivided interest in the Common Elements in the percentage expressed in Exhibit D. The percentage of the undivided interest of each Owner in the Common Elements, as expressed in Exhibit D, shall have a permanent character and shall not be altered without the consent of all Owners, expressed in an amended, duly recorded Declaration. The percentage of the undivided interest in the Common Elements shall not be separated from the Unit to

which it pertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though the interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Elements in accordance with the purpose for which they are intended as long as the lawful rights of the other Owners are not hindered or encroached on. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of Ownership so long as the Property remains a Condominium Project. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all Mortgagees must be obtained.

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

4.2.1 **Shown on Plats and Plans.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as Exhibit C, by "LCE", and the identifying number of the Unit to which the Limited Common Element is appurtenant.

4.2.2 **Garage LCE.** Certain Buildings have been allocated as Limited Common Elements designated as Garage LCE as shown by reference on the Plat and Plans attached hereto as Exhibit C. The Garage LCE is defined as the walls, floor and ceilings of the area described on Exhibit C and includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting part of the finished surfaces are part of the Garage LCE. All Garage LCE shall be maintained in good condition and repair by the Owner's of the Unit to which the Garage LCE has been assigned. The Association will not maintain or repair Garage LCE

4.2.3 **Uncovered Parking.** If not assigned as Limited Common Elements, the uncovered off-street parking spaces are General Common Elements parking, even though a space may be located in close proximity to only one or two Units.

4.2.4 **Appurtenant Areas.** Only to the extent they are not part of the Unit, any front porches, sidewalk or fenced yards that are obviously intended for the sole and exclusive use of the Unit to which the area is appurtenant are deemed Limited Common Elements, whether or not the area is so designated on Plats and Plans. If the boundaries of a deck, patio or fenced yard change, with the Board's approval, the altered boundaries of the patio, deck or fenced yard are the boundaries of the Limited Common Element.

4.3 **Subsequent Allocation or Reallocation of Limited Common Elements.** A Common Element not allocated by this Declaration as limited may be so allocated only pursuant to the provisions of this Article. Declarant reserves the right to create and assign

Limited Common Elements within the Property. Further, a Limited Common Element may not be reallocated, except by amendment. An amendment of reallocation requires the approval of all Owners and Mortgagees of Units whose interests are to be allocated or reallocated. The parties executing the amendment will provide an executed copy of the amendment to the Association, which will record it, provided that the amendment complies with the provisions of this Declaration and the Act. The amendment must contain words of conveyance and must be recorded and indexed in the names of the parties and the Property. The amendment will specify to which Unit or Units the Limited Common Element is allocated. The parties executing the amendment are responsible for the preparation of the amendment and will reimburse the Association for its reasonable attorney's fees in connection with review and recording the amendment.

## V.

### **ALLOCATED INTERESTS**

- 5.1 **Allocation of Interests.** The Owner's interests have been allocated in accordance with the formulas set forth herein which are to be used in allocating interests when additional Units are added to the Property. The same formulas shall be used in reallocating interests if Units are added to the Property. The table showing the allocated interest and identifying Unit number are attached as Exhibit D. The date on which the amendment creating additional Units is recorded in the county's real property records is the effective date for assigning allocated interests to those Units. The interests allocated to each Unit are calculated by the formulas set forth in this Article V.
- 5.2 **Common Element Interests.** The Common Interest allocation assigned to each Unit is set forth on Exhibit D. The same formula is 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.
- 5.3 **Common Expense Liabilities.** The percentage of liability for Common Expenses allocated to each Unit is based on the same formula for Common Element interests.
- 5.4 **Votes.** One (1) vote is allocated to each Unit. The one (1) vote appurtenant to each Unit is weighted equally for all votes, regardless of the other allocations appurtenant to the Unit.

**VI.**  
**PROPERTY EASEMENTS AND RIGHTS**

- 6.1 **General.** In addition to other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained in this Article and to the recorded easements and licenses attached as Exhibit F, which are appurtenant to or included in the Property or to which a portion of the Property is or may become subject by reservation in this Declaration.
- 6.2 **Owner's Easement of Enjoyment.** Each Owner shall have a nonexclusive easement for the use and enjoyment of the Common Elements and for ingress and egress, and support over and through the Common Elements. These easements shall be appurtenant to and shall pass with the title to each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Association to regulate time and manner of use, to charge reasonable admission fees and to perform its obligations under this Declaration.
- 6.3 **Owners' Maintenance Easement.** Every Owner is granted an easement over adjoining Units and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Association in the case of Common Elements, and provided the easement does not damage or materially interfere with the use of the Common Elements. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit shall be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Elements be limited to Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require the Owner to abide by reasonable rules with respect to use and protection of the Common Elements during such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising this easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing by the Association of the damage. Notwithstanding the foregoing, no Owner shall perform any work to any portion of his Unit if the work requires access to, over or through the Common Elements without the prior consent of the Board except in the case of an emergency. All such work may only be performed by a person who shall deliver to the Board prior to commencement of such work, 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 without 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.

- 6.4 **Reciprocal Utility Easements.** The Owners grant to each other and to the Association an easement for the construction and maintenance of utilities and the Association grants to the Owners an easement for construction and maintenance of utilities over and across the Common Elements so long as the locations of such easements are reasonable. The Association may grant to third parties easements in, on and over the Common Elements for the purpose of constructing, installing or maintaining necessary utilities and services. Utilities may include, but are not limited to, sewer, water, trash removal, electricity, gas, telephone, master or cable television, and security. Each Owner, in accepting the deed to the Unit, expressly consents to such easements. No such easement may be granted, however, if it would interfere with any exclusive easement or with any Owner's use, occupancy or enjoyment of the Owner's Unit.
- 6.5 **Owner's Ingress and Egress Easement.** Each Owner is granted a perpetual easement over the Property as may be reasonably required, for vehicular ingress to and egress from his Unit, the assigned parking in the Garage LCE or the appurtenant Limited Common Elements.
- 6.6 **Owner's Encroachment Easement.** If any portion of the Common Elements encroaches upon a Unit or Units, for any reason whatsoever, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of an adjoining Unit or Units encroaches upon another Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachment(s) and easement(s) shall not be considered or determined to be encumbrances either on the Common Elements or the Units.
- 6.7 **Easement of Cooperative Support.** Each Owner is granted an easement of cooperative support over each adjoining Unit and Limited Common Element as needed for the common benefit of the Property, or for the benefit of Units in a Building, or Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner: (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 try refraining from actions that interfere with the Association's maintenance and operation of the Property.

- 6.8 **Association's Access Easement.** The Association is granted an easement of access and entry into every Unit and Common Element, including the right to enter a Unit Owner's enclosed yard at all times, to perform inspections and/or maintenance, to enforce architectural and use restrictions, to respond to emergencies, to grant easements to utility providers as may be reasonably necessary to install, maintain and inspect utilities serving any portion of the Property, and to perform any other duties required by the Governing Documents or by applicable law.
- 6.9 **Easement to Inspect and Correct.** For a period of 10 years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, Builder an general contractor, the right (the "Inspection Parties"), 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 Units and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The Inspection Parties will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall location may be warranted by a change in circumstance, imprecise sitting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty by Declarant or the Association and may not be amended without Declarant's written and acknowledged consent.
- 6.9 **Security.** READERS, PLEASE PAY CLOSE ATTENTION TO THE NEXT TWO SECTIONS. The Association *may, but is not obligated to,* maintain or support certain activities within the Subject Property designed, either directly or indirectly, to improve safety in or on the Subject Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association and its directors, officers, committees, agents and employees are not providers, insurers, or guarantors of security within the Subject Property. Each Owner and Resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and its directors, officers, committees, agents and employees have made no representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association and its directors, officers, committees, agents and employees may not be held liable

for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

- 6.10 **Risk.** Each Resident uses all common amenities *at his own risk*. All common amenities are unattended and unsupervised. Each Resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the common amenities. Neither the Association nor Declarant, or their respective directors, officers, committees, agents and employees have a duty or obligation to any Owner, Resident or other guests: (1) to supervise minor children or any other person; (2) to fence or otherwise enclose any Limited Common Element, General Common Element or other Improvement; (3) to provide security or protection to any Owner, Resident or their guests, employees, contractors or 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 Subject Property to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, guests, employees, contractors or invitees to the extent the claim is not covered by insurance obtained by the Association at the time of such accident or injury.

## VII.

### **COVENANT FOR ASSESSMENTS**

- 7.1 **Common Purpose Of Assessments.** The Association will use assessments for the general purposes of preserving and enhancing the Property, and promoting the recreation, common benefit, and enjoyment of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.
- 7.2 **Personal Obligation.** An Owner is obligated to pay assessments levied by the Board against the Owner or his Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of his Unit. An Owner's obligation is not subject to offset by the Owner. Payment of assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

- 7.3 **Control For Assessment Increases.** This Section of the Declaration may not be amended without the approval of Owners representing at least sixty-seven percent (67%) of the votes in the Association. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's Budget. At least thirty (30) days prior to the effective date of a special assessment or increase in regular assessments, the Board will notify an Owner of each Unit of the amount of, the budgetary basis for, and the effective date of the special assessment or increase. The special assessment or increase will automatically become effective unless Owners representing at least a majority of the votes in the Association disapprove the special assessment or increase by petition or at a meeting of the Association. In that event, the last-approved Budget will continue in effect until a revised Budget is approved.
- 7.4 **Types Of Assessments.** There are four (4) types of Assessments: Regular, Special, Individual, and Deficiency.
- 7.5 **Regular Assessments.**
- 7.5.1. **Purpose of Regular Assessments.** Regular assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:
- a. Maintenance, repair, and replacement, as necessary, of the Common Elements, and Improvements, equipment, signage, and property owned by the Association.
  - b. Annual examination and report, as required in this Declaration.
  - c. Any utilities billed to the Association.
  - d. Services billed to the Association and serving all Units, such as trash removal and pest control.
  - e. Taxes on property owned by the Association (including any taxes owed for private roads and streets) and the Association's income taxes.
  - f. Management, legal, accounting, auditing, and professional fees for services to the Association.
  - g. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.

- h. Insurance premiums and deductibles.
- i. Contributions to the reserve funds.
- j. Any other expense which the Association is required by law or the Governing Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Governing Documents.

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

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

7.5.4. Supplemental Increases. If during the course of a year the Board determines that regular assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase regular assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

7.6 Special Assessments. In addition to regular assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual Budget or reserve funds. Special assessments do not require the approval of the Owners, except that special assessments for the following purposes must be approved by at least a majority of the votes in the Association: (1) acquisition of real property, (2) construction of additional Improvements to the Property -- not repair or replacement of existing Improvements, and (3) any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

- 7.7 **Individual Assessments.** In addition to regular and special assessments, the Board may levy an individual assessment against a Unit and its Owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Unit into compliance with the Governing Documents; fines for violations of the Governing Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; submetered utilities serving the Unit; reimbursement for damage or waste caused by willful or negligent acts; Common Expenses that benefit fewer than all of the Units, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Unit basis; and "pass through" expenses for services to Units provided through the Association and which are equitably paid by each Unit according to benefit received.
- 7.8 **Deficiency Assessments.** The Board may levy a deficiency assessment against all Units for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.
- 7.9 **Utility Assessments.** This Section applies to utilities serving the Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be sub metered by or through the Association. In addition to Regular Assessments, the Board may levy a Utility Assessment against each Unit. If the Units are sub metered for consumption of a utility, the Utility Assessment will be based on the sub metered reading. If the Units are not sub metered, the Board may allocate the Association's utility charges among the Units by any conventional method for similar types of properties. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub metering services. The board may, from time to time, change the method of allocation, provided the same type of method or combination of methods is used for all Units.
- 7.10 **Reserve Fund Contribution.** Upon the transfer of a Unit from one Owner to a subsequent Owner excluding a transfer to or from Declarant to the initial Owner, a fee equal to one (1) month of regular assessments will be paid to the Association for the Association's replacement reserve funds. Upon termination of the Development Period, and only at such time, the Board will be permitted to modify any reserve fund assessment payable on the transfer of a Unit. Each reserve fund contribution will be collected 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 will not be subject to the reserve fund contribution: (1) foreclosure of a deed of trust lien, tax lien or the Association's assessment lien; (2) 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. Contributions to the fund are not advance payments of regular assessments and are not refundable. Declarant may not use reserve fund fees collected hereunder to pay operational expenses until the Declarant Control Period terminates.

- 7.11 **Due Date.** Regular assessments are due on the first (1<sup>st</sup>) calendar day of each month, and are delinquent if not received by the Association on or before such date. Special and individual 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 assessment is given.
- 7.12 **Reserve Funds.** The Association will establish, maintain and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and may fund reserves out of regular assessments.
- 7.12.1 **Operations Reserves.** The Association will maintain operations reserves at a level sufficient to cover the cost of operational or maintenance emergencies, including the full amount of deductibles on insurance policies maintained by the Association.
- 7.12.2 **Replacement & Repair Reserves.** The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Areas.
- 7.13 **Association's Right To Borrow Money.** The Association is granted the right to borrow money, subject to the consent of Owners representing at least a majority of the votes in the Association and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.
- 7.14 **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 the Governing 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 do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication

of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the managing agent to levy transfer-related fees. This Section does not apply to Declarant during the Development Period.

- 7.15 **Limitations Of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full.
- 7.16 **Declarant's Right to Inspect and Correct Accounts.** For a period of five (5) years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not obligation, to inspect, correct and adjust the Association financial records and accounts from the Declarant Control Period. The Association may not refuse to accept an adjustment or correcting payment made by or for the benefit of the Declarant. By way of example, but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligation under the Governing Documents or applicable state law. This Section may not be construed to create a duty for Declarant or a right for the Association and may not be amended without the Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and Development Periods.

## **ARTICLE VIII**

### **ASSESSMENT LIEN**

<i>If you fail to pay Assessments to the Association, you may lose title to your Unit if the Association forecloses on its Assessment Lien.</i>
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- 8.1 **Assessment Lien.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed



on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Unit. As provided in Section 82.113 of the Act, assessments include regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorneys fees and any other amount due to the Association by the Unit Owner or levied against the Unit by the Association, all of which are enforceable as assessments.

- 8.2 **Superiority Of Assessment Lien.** The assessment lien is superior to all other liens and encumbrances on a Unit, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original Unit, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due. The assessment lien is superior to a lien for construction of Improvements to the Unit, regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.
- 8.3 **Effect Of Mortgagee's Foreclosure.** A Mortgagee's foreclosure of its deed of trust 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 Mortgagee's foreclosure sale is liable for assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a Common Expense.
- 8.4 **Notice And Release Of Notice.** To evidence the assessment lien, the Board may, but is not required to, cause a written notice of the lien to be recorded in the county's real property records. After the debt for which the notice was recorded has been cured, the Association will record a release of the notice. The Association may require reimbursement of its costs of preparing and recording the notices before granting the release.
- 8.5 **Power Of Sale.** By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.
- 8.6 **Foreclosure Of Lien.** The assessment lien may be enforced by judicial or nonjudicial foreclosure. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of

the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

## **ARTICLE IX**

### **EFFECT OF NONPAYMENT OF ASSESSMENTS**

- 9.1 **Delinquency Assessment.** Regular assessments are due on the first (1<sup>st</sup>) calendar day of each month, and are delinquent if not received by the Association on or before the first (1<sup>st</sup>) calendar day of the month. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within ten (10) days after notice of the assessment is given. The Association, acting through its Board, is responsible for taking action to collect delinquent assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.
- 9.2 **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. Interest is an individual assessment.
- 9.3 **Late Fees.** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.
- 9.4 **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. Collection costs are an individual assessment.
- 9.5 **Acceleration.** If an Owner defaults in paying an assessment that is payable in installments, the Board 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.
- 9.6 **Suspension Of Use And Vote.** If an Owner's account has been delinquent for at least thirty (30) days, the Board may suspend the right of Owners and Residents to use Common Elements and common services during the period of delinquency. Services

include master-metered or submetered utilities serving the Unit. The Board may not suspend an Owner or Resident's right of access to the Unit. The Board may also suspend the right to vote appurtenant to the Unit. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay assessments.

- 9.7 **Assignment of Rents.** Every Owner hereby grants to the Association a continuing assignment of rents to secure payment of assessments to the Association. If a Unit's account becomes delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to Owner any rents recovered in excess of the past due amount. A tenant's delinquent rent to the Association under the authority granted hereunder is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.
- 9.8 **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of assessments, without foreclosing or waiving the Association lien for assessments.
- 9.9 **Notice To Mortgagee.** The Board may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in payment of assessments.
- 9.10 **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, special assessments, and (lastly) regular monthly 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 payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Unit's account.

## X.

### **MAINTENANCE AND REPAIR OBLIGATIONS**

- 10.1 **Association's Maintenance Obligations.** The Association maintains, repairs and replaces, as a Common Expense, all General and Limited Common Elements, including without limitation, the exterior materials, the Buildings, including (if any) roof shingles and gutters, foundations, sealants and fillers and exterior wall materials such as brick veneer, stucco or siding, also including any Yard LCE; provided however, that the interior portions of any garage designated as Garage LCE shall be maintained by the

Owner of the Unit to which the Garage LCE has been assigned. The Association also maintains, as a Common Expense, any component of a Unit delegated to the Association by this Declaration. The Association has the right to enter the Unit premises and any Limited Common Elements to affect emergency repairs and a reasonable right of entry thereupon to affect other repairs, Improvements, replacement or maintenance deemed necessary. If any Yard LCE has been allocated for the benefit of a Unit, then the Association shall, as a Common Expense, (i) edge the streets curbs at regular intervals; and (ii) weed and mow the lawns and grounds at regular intervals. Apart from the foregoing maintenance obligations of the Association, the Owner of the Unit to which the Yard LCE has been assigned, must keep the Yard LCE in a neat and attractive condition.

- 10.2 **Owner Responsibility.** Every Owner has the responsibility for the maintenance, repair and replacement of his Unit; the routine cleaning of any balcony, porch or deck area of his Unit, keeping same in a neat, odorless, orderly and attractive condition; 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; to not do any work or 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; and to be responsible for his own willful and negligent acts and those of his or the Resident's family, guests, agents, employees or contractors when those acts necessitate maintenance, repair or replacement of Common Element, the Property of another Owner or any component of the Property for which the Association has maintenance or insurance responsibility.
- 10.3 **Annual Inspection of Common Elements.** From the period commencing at the expiration of the Development Period until ten (10) years thereafter, at least annually, the Association must examine the condition of the Common Elements to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer or professional contractors such as landscapers and brick masons. The expert may then submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.
- 10.4 **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by delegating responsibility to the

individual Owners. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this Article that all areas not expressly delegated to the Association are the responsibility of the individual Owners.

- 10.5 **Sheetrock.** Notwithstanding anything to the contrary in the Governing 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 cause 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 the sheetrock damage to a Unit and chooses to not perform the repairs, the Owner of the damaged Unit is entitled to the proceeds in exchange for identification of the damage and a release from future claims for the same damage.
- 10.6 **Mold.** In the era in which this Declaration is written, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. This section addresses that environment. For more information on mold and mold prevention an Owner should consult a reliable source such as the U.S. Environmental Protection Agency.
- 10.6.1 **Owner's Duties.** To reduce the risks associated with concentrations of mold, Owners should be proactive in preventing circumstances conducive to mold, identifying mold and eliminating mold. Towards that end, each Owner is responsible for: (1) regularly inspecting his entire Unit for evidence of water leaks or penetrations or other conditions which may lead to mold growth; (2) repairing promptly any water leaks, breaks, or malfunctions of any kind in his Unit that may cause damage to a Unit or Common Element; (3) regularly inspecting his entire Unit for visible surface mold and promptly removing same using appropriate procedures; and (4) reporting promptly to the Association any water leak, penetration, break or malfunction in any portion of his Unit or any adjacent Common Elements for which the Association may have maintenance responsibility.
- 10.6.1 **Insurance.** Many insurance policies do not cover damages related to mold. The Association may not maintain insurance coverage applicable to mold damage with respect to a Unit. Accordingly, any Owner who wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowner's insurance policy.
- 10.7 **Concrete.** Minor cracks in poured concrete, including foundations, garage floors, walks, driveways and porches are inevitable as a result of the normal movement of soil

(expansion and contraction), shrinkage during the curing of the concrete and settling of the Building. Such minor cracking in poured concrete may not warrant repair. The Association's duty to maintain and repair foundations and other concrete or cementuous components of the Building does not extend to minor or cosmetic cracking. Generally, the Association is responsible for repair of the following conditions for the exterior surfaces of Over-Garage Units: (1) leakage or seepage through walls or floors; (2) cracks in concrete masonry walls, or masonry veneer that exceed one-quarter inch in width; (3) improper drainage of water from stoops; (4) pitting, scaling or spalling of concrete work. Concrete sub flooring on second and third floors of a Unit is typically a non-reinforce "lightweight" concrete topping which may develop extensive cracks and disintegration as a result of normal wear and tear and the movement of the structures on which the lightweight concrete is applied. The Association is not responsible for any aspect of the lightweight concrete in any Unit, regardless of the source of damage.

- 10.8 **Warranty Claims.** If the Owner is the beneficiary of a warranty against defects of the Common Elements, the Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements.
- 10.9 **Owner's Default in Maintenance.** If the Board determines that an Owner has failed to properly discharge his obligations to maintain, repair and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an individual assessment against the Owner and his Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect the persons or property, the cost of the action being the Owner's expense.

## XI.

### **OCCUPANCY AND USE**

- 11.1 **Restrictions on Occupancy and Use.** The use and occupancy of the Subject Property is subject to those restrictions contained in this Declaration, the Community Manual, and further subject to those rules and restrictions set forth in Exhibit E attached hereto and as are approved and adopted by the Board or any architectural review and covenant committee appointed by the Board to preserve and maintain the design, use and appearance of the Units and Common Elements. If the Board appoints an architectural review and covenant committee ("ARCC"), all references in this Article XI to the Board are construed to mean the ARCC. The Association acting through its Board, may

adopt, amend, repeal and enforce the rules and restrictions and penalties for infractions thereof regarding the occupancy, use, maintenance and enjoyment of the Subject Property. 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 the Board, is further granted the right to adopt, amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines to be in the best interests of the Association, in its sole and absolute discretion. The Board may grant a variance or waiver of a rule or restriction on a case-by-case basis and may limit or condition its grant. The Board shall have no liability for decisions made in good faith, and which are not arbitrary and capricious. The Board is not responsible for errors in or omissions from the plans or specifications submitted to the Board, supervising the construction for Owner's compliance with approved plans and specifications or compliance of Owner's plans and specifications with city codes and ordinances, state and federal laws.

- 11.2 **Conveyance of Condominium Units.** Each Unit and the undivided interest in the Common Elements appurtenance thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit. Any conveyance of a Unit shall be deemed to include the Common Elements appurtenant thereto.
- 11.3 **Description of Condominium Units.** Every deed, lease, mortgage, trust deed or other instrument may legally describe a Condominium Unit by its number followed by the words "Chestnut Commons, A Condominium Community" with further reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect a Unit, the Common Elements appurtenant thereto and such Unit's fractional interest in the Common Elements.

## XII.

### **ARCHITECTURAL CONVENANTS AND CONTROLS**

- 12.1 **Purpose.** Because the Units are part of a single, unified community, the Association has the right to regulate the exterior design, use and appearance of the Units and the Common Elements in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality and harmony by which the Property is developed and maintained. Another purpose is to prevent Improvements and modifications that may be widely considered to be peculiar in comparison to existing Improvements.
- 12.2 **Declarant Rights.** During the Development Period, the Declarant and Declarant only is responsible for architectural control of the Property. Declarant may designate one or

more persons from time to time to act on its behalf in reviewing and responding to applications. The Association, Board or a committee appointed by the Association or Board may not involve itself with architectural approval during the Development Period. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owe no duty to any other person or any organization.

12.3 **Composition and Appointment of Architectural Review and Covenants Committee.**

Until expiration or termination of the Development Period, the Declarant has the sole discretion with respect to taste, design and all standards specified by this Article. After the Development Period, the Board may appoint an Architectural Review and Covenants Committee ("ARCC"). Such committee shall initially consist of three (3) Members, but may thereafter be increased or decreased in size from time to time by the Board of Directors. Members of the ARCC shall serve a one (1) year term, or until their successors are elected and qualified. Any vacancy in the membership of the ARCC shall be filled by the Board to serve the remaining portion of the term of the originally appointed Member. If any vacancy shall occur, the remaining Members of the ARCC may continue to act until the vacancy is filled. Except for Members who have been designated by Declarant, any Member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors shall fail to designate an ARCC, the Board of Directors shall serve as the ARCC.

12.4 **Powers and Duties.** The ARCC shall serve as an architectural review board and shall regulate the external design, appearance and location of the Units and structures erected thereon so as to enforce the architectural provisions of this Declaration, enforce the requirements of the recorded Plats, deeds and to preserve and maintain a harmonious relationship among Units and the Property. The ARCC shall serve in such manner as may be determined from time to time by the Board of Directors in enforcing the provisions of the Governing Documents. Any decision by the ARCC may be appealed by a Member affected thereby to the Board of Directors.

12.5 **Limitation on Work.** No Owner shall in any way alter, modify, add to, re-construct or otherwise perform any work whatsoever upon any of the Common Elements or Property that affects the appearance, use or structural integrity of the Property without the prior written approval of the ARCC as provided herein.

12.6 **Prohibited Acts.** You cannot change the exterior of your Unit or any Building unless you have the signed consent of the Board. The types of acts that may not be commenced without the ARCC's prior written approval, include, but are not limited to installation of walls, gates, screens, carports or fences; enclosure of patios, balconies, yards, garages or carports; landscaping; installation of equipment that may create a noise annoyance; installation of a receiving or transmitting tower, ornamental iron or burglar bars, storm window or door, exterior lighting, storage shed, basketball goal, treehouse, freestanding mailbox, trash can enclosure, patio cover, chimney or skylight



– if any are visible from another Unit, a street or the Common Elements; and installation of impermeable decking or other Improvement that may interfere with established drainage patterns. In the event Owner obtains approval from the Board to enclose a garage, carport, or fence around a patio area, the Association shall no longer be responsible for maintaining the enclosed and/or fenced in area and the Owner shall have full responsibility for maintenance and repair upon completion of the enclosure or fencing.

12.7 **Approval.** To request approval from the ARCC, an Owner must make a written application and submit plans and specifications showing the nature, color, size and location of the work to be performed. The ARCC will respond to the request and the Owner will have a specified period of time to comply. If the ARCC does not respond to any request in writing within sixty (60) days of its actual receipt of the request, the Owner may submit a new request. If the ARCC fails to respond to the second request within forty-five (45) days after the Board's actual receipt of the Owner's second request, the Owner's application will be deemed approved. If an application is for work that requires a building permit from the city, the Owner must obtain the appropriate permit. Approval of plans by the ARCC or its appointed committee does not mean that the plans and specifications meet city requirements.

12.8 **Limits on Liability.** The ARCC has sole discretion with respect to taste, design and all standards specified by this Article. The Members of the ARCC have no liability for the ARCC's decisions made in good faith, and which are not arbitrary or capricious. The ARCC is not responsible for: (1) errors or omissions from the plans and specification submitted to the ARCC, (2) supervising construction for the Owner's compliance with approved plans and specifications or (3) the compliance of the Owner's plans and specifications with city codes and ordinances, state and federal laws.

12.9 **Expenses of ARCC.** The ARCC may charge reasonable fees for the processing of any requests, plans and specifications. The Association shall pay all ordinary and necessary expenses of the ARCC; however, no Member of the ARCC shall be paid a salary or receive any form of compensation.

### XIII.

#### **DEVELOPMENT PERIOD AND DECLARANT CONTROL PERIODS**

13.1 **Declarant Control Periods.** Declarant reserves certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of the Owners and Mortgagees.

13.2 **Duration.** The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of: (a) five (5)

years after the date of recording this Declaration; (b) within four (4) months after the conveyance of seventy-five percent (75%) of the Units to the Owners other than Declarant or (c) when, in the sole opinion of Declarant, the Association is viable, self-supporting, and operational. Declarant will comply with Section 81.023 of the Act regarding transition of control from Declarant to Owners by phased elections and directors.

- 13.2.1 Association Budget. During the Declarant Control Period, the Declarant appointed Board will establish a Project Budget for the Property as a fully developed and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the Budget was prepared. The Association Budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in that Property.
- 13.2.2 Officers and Directors. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need to be Members or Owners. The Declarant appointed Board will consist of at least three (3) persons.
- 13.2.3 Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for special assessments, individual assessments, and deficiency assessments in the same manner as any Owner. During the Declarant Control Period only, Declarant, at Declarant's option may support the Association's Budget by either of the following methods: (a) pay regular assessments on each Declarant owned Unit in the same manner as any other Owner; or alternatively (b) Declarant will assume responsibility for the difference between the Association's Common Expenses and the regular assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association *but in no event* in excess of the amount the Declarant would pay pursuant to 13.2.3(a). On termination of the Declarant Control Period, Declarant must begin paying assessments on each Declarant owned Unit according to the Unit's allocated interest for assessments.
- 13.2.4 Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.
- 13.2.5 Budget Control. During the Declarant Control Period, the right of Owners to veto assessment increases or special assessments is not effective and may not be exercised.

- 13.2.6 Organizational Meeting. Within sixty (60) days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing by vote of the Owners, directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Unit at least ten (10) days before the meeting. For the organizational meeting, Owners of ten percent (10%) of the Units constitute a quorum.
- 13.2.7 Management Control. If Declarant enters into a professional management contract on behalf of the Association during the Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at least thirty (30) days notice to the manager, at any time after the Board elected by the Owners takes office.
- 13.2.8 Common Elements. At or prior to termination of the Declarant Control Period, if title or Ownership to any Common Element is capable of being transferred, Declarant will convey title or Ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for property taxes, if any, accruing for the year of conveyance. Declarant's conveyance of title or Ownership is a ministerial function that does not require and is not subject to acceptance by the Association or the Owners.
- 13.3 Development Period. Declarant makes the following representations and reservations regarding Declarant's development of the Property:
- 13.3.1 Phasing. The Property is subject to expansion by phasing for up to seven (7) years from the date this Declaration is recorded. Declarant's right to annex land described in Exhibit G is for a term of seven (7) years and does not require that Declarant own a Unit in the area described in Exhibit A at the time or times Declarant exercises its right of annexation.
- 13.3.2 Leasehold. No part of the Property is a leasehold condominium, as defined in the Act.
- 13.3.3 Conversion. None of the Improvements in the Property are conversion buildings as defined by the Act.
- 13.3.4 Inclusionary Zoning and Flood Zone. At the time of drafting of this Declaration, the area in which the Property is located is not subject to inclusionary zoning restrictions, nor is the Property located in a flood zone.
- 13.3.5 Changes in Development Plan. Declarant may modify the initial development plan to comply with changes and appointments in the marketplace, such as

changes in the size, style, configuration, and appearance of Units, buildings and Common Elements.

13.3.6 Amendment. During the Development Period, Declarant may amend the Declaration and other Governing Documents, without the consent of the other Owners or any Mortgagee for the following purposes:

- a. To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender (including The Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or local governments) to make or purchase mortgage loans on the Units.
- b. To correct any defects in the execution of this Declaration.
- c. To add real property to the Property, in the exercise of Statutory Development Rights.
- d. To create Units, Common Elements, and Limited Common Elements within the Property, in the exercise of Statutory Development Rights.
- e. To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of Statutory Development Rights.
- f. To withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved," in the exercise of Statutory Development Rights.
- g. To resolve conflicts, clarify ambiguities, and to correct inadvertent misstatements, errors, or omission in the Governing Documents.
- h. To change the name or entity of Declarant.
- i. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

13.3.7 Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights: (a) to add real property to the Property; (b) to create Units, Common Elements, and Limited Common Elements within the Property; (c) to subdivide Units or convert Units into Common Elements and (d) to withdraw from the Property any portion of the real property marked on the Plats 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," 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.

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

13.3.9 Architectural Control. During the Development Period, Declarant has the absolute right to appoint the ARCC, consisting of any number of persons who serve at the direction of the Declarant and who may be removed or replaced by Declarant.

13.3.10 Website and Property Name. During the Development Period, the Declarant has the unilateral right to approve or disapprove uses of any website pertaining to the Property or the Association, all information available or though the Property website if any and all uses of the Property name by the Association.

13.3.11 Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are subject by the Association to late fees, fines, administrative charges or other charges that may be a penalty.

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

13.4.1 The right to complete or make Improvements indicated on the Plat and Plans.

13.4.2 The right to exercise any Development Right permitted by the Act and this Declaration.

13.4.3 The right to make the Property part of a larger Condominium or planned community.

- 13.4.4 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.
- 13.4.5 For purposes of promoting, identifying and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, and seasonal landscaping on the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property.
- 13.4.6 Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- 13.5 **Additional Easements and Rights.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:
- a. An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
  - b. The right to sell or lease any Unit owned by Declarant.
  - c. The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.
  - d. An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done within one hundred twenty (120) days after termination of the Development Period.
  - e. An easement over the entire Property including the Units, General Common Elements, Limited Common Elements and Garage LCE, to

inspect the Common Elements and all appurtenants thereon and related thereto to evaluate the maintenance and conditions of the Common Element Improvements.

- 13.6 **Marketing of other Locations.** This Declaration grants to Declarant a number of significant rights to market the Property. Declarant hereby reserves for itself and its affiliates the right to use each and every right and privilege for the additional purposes of promoting, identifying and marketing off-site developments of Declarant or its affiliates for the duration of the Development Period even though Declarant may have completed the marketing of Units in the Project. Additionally, Declarant, at its sole option and discretion, may extend the effect of this Section for up to twelve (12) months after the end of the Development Period by paying the Association \$1,000.00.
- 13.7 **Common Elements.** Because the Common Elements are owned by the Owners collectively and in undivided interest, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements.
- 13.8 **Expansion by Phasing.** During the Development Period, Declarant may annex to the Property any or all of the real property described in Exhibit G and subject it to the Declaration and jurisdiction of the Association by amending the Declaration. The amendment of annexation must include a legal description of the Property, as expanded, and a revised schedule of allocated interests if Units are annexed. As each phase is added, the Property will contain the number of Units listed in the most current Exhibit C. This Section does not obligate the Declarant to expand the Property. If Declarant desires the Property to be approved by FNMA for financing, Declarant will comply with FNMA's guidelines for phasing.
- 13.6.1 **FNMA Compliance.** If Declarant desires the Property to be approved by FNMA for financing, Declarant will comply with FNMA's guidelines for phasing, which may include the following requirements:
- a. All Improvements must be substantially completed prior to annexation.
  - b. The structure, type and quality of construction of Buildings and Improvements will be consistent with that of the Buildings and Improvements constructed in the phase initially made subject to this Declaration.
  - c. All Units and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Units created under this Declaration.

- d. On annexation, Owners of Units on the Additional Land will be granted undivided interests in the Property's total Common Elements. If not, the amendment of annexation must provide reciprocal easements for specified Common Elements in various phases of the Property.

- 13.9 **Actions Requiring FHA/VA Approval.** During the Development Period, the following actions require the prior written approval of the U.S. Department of Housing and Urban Development ("HUD/FHA") or the U.S. Department of Veterans Affairs ("VA") so long as HUD/FHA insures or VA guarantees a mortgage on a Unit: (a) annexation of additional property to the Property, except for annexation by Declarant pursuant to a plan of development previously approved by HUD/FHA or VA; (b) merger or consolidation with another property Owners association; (c) mortgaging of Common Elements; (d) dedication of Common Elements to a public entity; (e) amendment of a material nature to any Document; or (f) dissolution or amendment of the Certificate of Formation. The approval of HUD/FHA or VA, as the case may be, is implied when it fails to respond within thirty (30) days after receiving written request for approval of a proposed action, provided the request was delivered by certified or registered mail, return receipt requested.
- 13.10 **Working Capital Fund.** Declarant will establish a working capital fund for the Association in an amount that is at least equal to two (2) months of regular assessments for all Units. Each Unit's contribution will be collected when the sale of the Unit closes or on termination of the Declarant Control Period, whichever occurs first. Contributions to the fund are not advance payments of regular assessments and are not refundable. Not later than termination of the Declarant Control Period, the fully funded working capital fund will be transferred to the Association for deposit to a segregated fund. Declarant may not use the fund to defray Declarant's expenses, reserve contributions, or construction costs, or to cover the Association's Budget deficits during the Declarant Control Period. If Declarant has unsold Units on termination of the Declarant Control Period, Declarant may reimburse itself for a Unit's pre-paid contributions from monies collected at the Unit's closing.
- 13.11 **Successor Declarant.** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the real property records of Travis County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.



#### XIV. INSURANCE

- 14.1 **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 Articles 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.
- 14.2 **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.
- 14.3 **No coverage.** Even if the Association and the Owner have adequate amounts of recommended and required coverages, the Property may experience a loss that is not covered by insurance. In that event, the Association is responsible for restoring the Common Elements as a common expense, and the Owner is responsible for restoring his Unit at his sole expense. This provision does not apply to the deductible portion of a policy.
- 14.4 **Requirements.** The cost of insurance coverages and bonds maintained by the Association is a common expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The 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 Resident who is not under the Association's control.
- 14.5 **Association as Trustee.** Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

- 14.6 **Notice of Cancellation or Modification.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Eligible Mortgagees, and the insurer will give go Mortgagees, prior notices of cancellation, termination, expiration, or material modification.
- 14.7 **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 Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with the Notice and hearing Section of this Declaration.
- 14.8 **Property Insurance.** The Association will insure: (i) General Common Elements; (ii) Limited Common Elements (excluding Garage LCE); and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender, such as Inflation Guard Endorsement, Building Ordinance or Law Endorsement, and a Special Condominium Endorsement. The Federal National Mortgage Association recommends use of a guaranteed replacement cost endorsement, or a replacement cost endorsement, together with an agreed amount endorsement in case of coinsurance.
- 14.9 **Liability Insurance.** The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Resident within his Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. Each Owner will obtain and maintain general liability insurance on his Unit and Garage LCE. The amount of coverage should be at least that required by an Underwriting Lender, to the extent reasonably available. The purpose of this requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. For example, the Federal National Mortgage Association requires

a minimum of \$1 million for bodily injury and property damage per single occurrence. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

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

14.11 **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, that will be in the Association's custody at any time 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 for its own fidelity insurance policy with the same coverages. If the Property has more than 20 Units, the Association must maintain fidelity coverage to the extent reasonably available.

14.12 **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.

14.13 **Mortgagee Required Policies.** Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an Underwriting Lender for condominium developments as long as an Underwriting Lender is a Mortgagee or an Owner.

14.14 **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.

14.5 **Owner's Responsibility For Insurance.**

14.5.1 **Property Insurance.** Each Owner will obtain and maintain fire and extended coverage on the Owner's Unit and Garage LCE in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Unit and Garage LCE. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to

maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an Individual Assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and Resident is solely responsible for insuring his personal property, including furnishings, vehicles, and stored items. THE ASSOCIATION DOES NOT INSURE UNITS OR GARAGE LCE. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON HIS PERSONAL BELONGINGS WITHIN HIS UNIT.

- 14.5.2 Insurance by Owners. Notwithstanding the foregoing, the Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.
- 14.5.3 Owners' Responsibilities. On request, an Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to his Unit, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Unit for purposes of insurance appraisal. Each Owner, at his expense, will maintain any insurance coverages required by the Association pursuant to this Article. Each Owner at his expense, may obtain additional insurance coverage of his real property, Improvements, and betterments thereto, or personal property.
- 14.5.4 Association Does Not Insure. The Association does not insure an Owner's Unit, Garage LCE, or Owner's personal property. Each Owner is solely responsible for insuring the Owner's Unit and Garage LCE. Each Owner is solely responsible for insuring his personal property in his Unit and on the Property, including furnishings, vehicles, and stored items. The Association strongly recommends that each Owner and Resident purchase and maintain insurance on his personal belongings.

**XV.**  
**LIMITATIONS ON UNIT LEASING**

- 15.1 **Unit Leasing.** Leasing of Units is regulated by this Section and Article to protect the Owners' equity in the Property, to preserve the character of the Property as a residential community of predominantly Owner-occupied Units, to prevent the Property from assuming the character of a renter-occupied apartment complex and to comply with the fair housing laws and the eligibility requirements of Underwriting Lenders for mortgage financing. For purposes of this Section, a Unit is considered "Owner occupied" if at least one (1) Resident of an occupied Unit is an Owner of the Unit or is related by blood, marriage, or adoption to an Owner of the Unit, or if the Unit is vacant – except that a Unit being offered for lease may not be considered "Owner occupied" even though the Unit is then-vacant or then-occupied by an Owner. In calculating occupancy, Units are counted uniformly regardless of size.
- 15.2 **Conditions of Lease.** The leasing of Units is subject to the following conditions: (i) no Unit shall be rented for transient or hotel purposes or for a period of less than six (6) months; (ii) no Unit may be subdivided for rent purposes and not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Governing Documents; (iv) an Owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Governing Documents, federal and state laws and local ordinances.
- 15.3 **Eviction of Tenants.** Every lease agreement on a Unit, whether written or oral, express or implied, is subject to and is deemed to include the following provisions:
- 15.3.1 **Violation Constitutes Default.** Failure by the tenant or his invitees to comply with the Governing Documents, Federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant, subject to the terms of this Section.
- 15.3.2 **Association as Attorney-in-Fact.** Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Governing Documents by the Association, each Owner appoints the Association as his attorney-in-fact, with full authority to act in his place in all respects, solely for the purpose of enforcing the Governing Documents against his tenants, including but not

limited to the authority to institute forcible detainer proceedings against his tenant on his behalf, provided the Association gives the Owner at least ten (10) days' notice, by certified mail, of its intent to so enforce the Governing Documents.

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

15.4 Mortgagees and Declarant Exempt. A Mortgagee acquiring possession of or title to a Unit by exercise of its rights under a deed of trust is exempt from the effect of this Article. This exemption does not pass to the Mortgagee's successors and assigns. During the Development Period, Declarant is exempt from the effect of this Article.

## XVI.

### ADMINISTRATION

16.1 Association. The administration of this Condominium Project shall be governed by this Declaration and all Owners shall be bound thereby for the Owners shall be the association for purposes of this Declaration. Declarant may, at its election, cause to be formed Chestnut Commons HOA, Inc., a Texas non-profit corporation bearing said name, in which event such non-profit corporation shall thereafter act and do all things to be done by the "Association." "Association" as herein used shall refer to the Member Owners as a group, both before and after incorporation. In the event of incorporation, a certified copy of the certificate of formation shall be recorded and shall provide that at least three (3) persons shall act as a Board of Directors and shall serve as the directors until their successors have been elected and qualified. As provided in Article XIII, the powers of the Declarant shall terminate with regard to the administration and control of the Association, except in the Declarant's status as an Owner, the earlier of five (5) years after the date of recording this Declaration; within four (4) months after the conveyance of seventy-five percent (75%) of the Units to the Owners other than Declarant, or when, in the sole opinion of the Declarant, the Association is viable, self-supporting, and operational.

16.2 Membership. An Owner of a Condominium Unit, upon becoming an Owner, shall automatically be a Member of the Association and shall remain a Member for the period of his ownership. On the transfer of title to any Unit, the Membership of the transferor automatically ceases and each new Owner becomes a Member. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at a meeting of the Association.

- 16.3 **Voting Rights.** Each Unit is allocated one (1) vote. If a Unit has more than one Owner, the aggregate vote of the Owners of the Unit may not exceed the total vote assigned to the Unit. The aggregate number of votes for all Members of the Association shall be one hundred percent (100%) and shall be divided among the respective Unit Owners in accordance with their respective fractional ownership interest in the Common Elements as set forth in Paragraph 5.1. of this Declaration.
- 16.4 **Membership Meetings.** Meetings of the Owners shall be called, held, and conducted in accordance with the requirements and procedures set forth in the Bylaws.
- 16.5 **General Powers And Authority.** The Association shall have all of the powers allowed by the Act, as well as all the powers of a nonprofit corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Documents. The Association may perform all acts that may be necessary for, or incidental to, the performance of the obligations and duties imposed on it by this Declaration and the other Governing Documents.
- 16.6 **Indemnification.** The Association indemnifies every officer, director and committee member (for purposes of this section, "Indemnitee") against expenses, including attorney's fees, reasonably incurred by or imposed on the Indemnitee in connection with any threatened or pending action, suit, or proceeding to which the Indemnitee is a party or respondent by reason of being or having been an officer, director or committee member. Officers, directors and committee members are not responsible for any mistake of judgment, negligent otherwise but are liable for willful misfeasance, malfeasance, misconduct or bad faith. This right to indemnification does not exclude any other rights to which present or former officers, directors or committee members may be entitled. As a Common Expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation.
- 16.7 **Board of Directors and Officers of the Association.** The affairs of the Association shall be managed and its duties and obligations performed by a Board of Directors. Provisions regulating the number, term, qualifications, manner of election, and conduct of meetings of the members of the Board of Directors shall be set forth in the Bylaws of the Association. The Board shall elect officers, who shall include a President, Treasurer, Secretary, and such other officers as the Board may deem proper. Provisions regulating the numbers, term, qualifications, manner of election, powers and duties of the officers shall be set forth in the Bylaws of the Association.
- 16.8 **Duties of the Association.** In addition to the duties required under the Act, the Association shall have the duties delegated to the Association in the Governing Documents.

- 16.9 **Powers and Duties of the Board of Directors.** The Board shall act in all instances on behalf of the Association pursuant to the Act, this Declaration, and the Governing Documents.
- 16.10 **Limitations On Powers of Board of Directors.** Notwithstanding the powers set forth in this Declaration, the Board shall be prohibited from taking any of the following actions except with the approval of eighty percent (80%) of the voting power of the Association residing in the Owners:
- A. Entering into (i) a contract with a third person under which the third person will furnish goods or services for a term longer than one year, except for a management contract approved by the Federal Housing Administration or Veterans' Administration; (ii) a contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; or (iii) prepaid casualty and/or liability insurance of not more than three (3) years duration, provided that the policy provides for short-rate cancellation by the insured.
  - B. Incurring aggregate expenditures for capital Improvements to the Common Elements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
  - C. Selling during any fiscal year property of the Association having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
  - D. Paying compensation to directors or to officers of the Association for services rendered in the conduct of the Association's business, provided, however, that the Board may cause a director or officer to be reimbursed for expenses incurred in carrying out the business of the Association.
- 16.11 **Compliance.** Each Owner shall comply strictly with the provisions of this Declaration, Bylaws, and the decisions and resolutions of the Board of Directors and the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same may result in: (1) the levy of an assessment against the Owner failing to comply; (2) suspension of the right of Owners to use the Common Elements (except ingress and egress) for any period of violation (a suspension does not constitute any waiver or discharge of an Owner's obligations under this Declaration); and/or (3) shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Owners, or, in proper cases, by an aggrieved Owner and any other remedy allowed by law as provided in this Declaration.



- 16.12 **Notice and Hearing.** Before levying a fine or violation of the Governing Documents, or before levying in 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 the Act. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; statement that not later than the 30<sup>th</sup> day after the date of the notice, Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 month period). Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation. The Owner's request for a hearing only suspends the levy of the fine or damage charge.
- 16.13 **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners representing at least two-thirds of the total allocated votes. On merger or consolidation of the Association with another association, the property, rights and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.
- 16.14 **Name.** A name is not the defining feature of the Association. Although the initial name of the Association is Chestnut Commons HOA, Inc., the Association may operate under any name that is approved by the Board and filed with the Travis County Clerk as an assumed name or filed with the Texas Secretary of State as the name of the filing party. The Association may also change its name by amending the Governing Documents.
- 16.15 **Manager.** The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association.

## XVII. **FINANCING**

- 17.1 **Right to Finance.** Subject to the provisions of the Act, any Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument and such mortgages and encumbrances shall have paramount priority under applicable law. 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 and Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary to comply.

- 17.2 **Known Mortgagees and Eligible Mortgagees.** An Owner who mortgages his Unit will notify the Association, giving the complete name and address of his Mortgagee and the loan number. The Association's obligations to Mortgagees under the Governing Documents extend only to those Mortgagees known to the Association. All actions and approvals required by Mortgagees will be conclusively satisfied by the Mortgagees known to the Association, without regard to other holders of mortgages on Units. The Association may rely on the information provided by Owners and Mortgagees. "**Eligible Mortgagee**" means the holder, insurer, or guarantor of a first purchase money or construction mortgage secured by a recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Governing Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Units subject to mortgages held by Eligible Mortgagees.
- 17.3 **Notice of Actions.** The Association will send timely written notice to Mortgagees of certain actions, including any condemnation or casualty loss that affects a material portion of the Property or mortgaged Unit; any delinquency in payment of assessments or charges owned by an Owner of a mortgaged Unit; a lapse, cancellation or material modification of any insurance policy maintained by the Association; any proposed action that requires the consent of a specified percentage of Eligible Mortgagees; any proposed amendment of a material nature (as defined herein) or any proposed termination of the Condominium Regime.
- 17.4 **Foreclosure.** Any Mortgagee, upon foreclosure of its lien on a Unit, or upon acceptance of a deed in lieu of foreclosure thereon, shall not be required to pay any unpaid Assessments owing on said Unit. Any Assessment lien created or claimed under the provisions of this Declaration of Condominium Regime shall be subject and subordinate to the rights of any Mortgagee of any duly recorded mortgage upon one or more Units made in good faith and for value as provided in the Act. No lien created under the provisions hereof shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such duly recorded mortgage unless such Mortgagee shall expressly subordinate its interest, in writing, to such lien.

17.5 **Amendment Affecting Financing.** Except as otherwise expressly provided herein, no amendment to this Declaration or Condominium Regime shall affect the rights of the Mortgagee of any such mortgage. Provided, however, an 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 Eligible Mortgagees. This approval requirement does not apply to amendments affected by the exercise of a development right provided in Article XIII of the Declaration. A change to any of the following would be considered material:

- A. Voting rights.
- B. Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.
- C. Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- D. Responsibility for maintenance and repairs.
- E. Reallocation of interests in the General or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action.
- F. Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action.
- G. Convertibility of Units into Common Elements or Common Elements into Units.
- H. Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or, from the Property.
- I. Property or fidelity insurance requirements.
- J. Imposition of any restrictions on the leasing of Units.
- K. Imposition of any restrictions on Owners' right to sell or transfer their Units.

- L. If the Property consists of fifty (50) Units or more, a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or an Eligible Mortgagee.
  - M. Restoration or repair of the Property, in a manner other than that specified in the Governing Documents, after hazard damage or partial condemnation.
  - N. Any provision that expressly benefits mortgage holders, insurers, or guarantors.
- 17.6 **Breach.** No breach of any provision of this Declaration of Condominium Regime shall impair or invalidate any lien of any duly recorded mortgage.
- 17.7 **Termination.** An action to terminate the legal status of the Property after substantial destruction or condemnation 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 Eligible Mortgagees. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least sixty-seven percent (67%) of Eligible Mortgagees.
- 17.8 **Implied Approval.** The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.
- 17.9 **Inspection Of Books.** The Association will maintain current copies of the Governing Documents and the Association's books, records and financial statements. Unit Owners, lenders and the holders and insurers of the first mortgage, may inspect the Governing Documents and records by appointment during normal business hours.
- 17.10 **Financial Statements.** Upon request from any agency or corporation which has an interest or property interest in the Condominium, the Association will prepare and furnish within a reasonable time, a financial statement of the Association for the immediately preceding fiscal year.
- 17.11 **Attendance At Meetings.** A representative of Eligible Mortgagee may attend and address any meeting which an Owner may attend.
- 17.12 **Management Contract.** If professional management of the Association is required by this Article, the contract for professional management may not require more than 90 days' notice to terminate the contract, nor payment of a termination penalty.

- 17.13 **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 maintain the required coverage to the extent they are reasonably available and must try to comply with any notifications or processes required by the Underwriting Lender. Because the Underwriting Lender's requirements are subject to change they are not listed in this Declaration. The initial requirements are those of Section 4265.1, Chg. 4, Appendix 24, HUD Handbook.

## XVIII.

### **DAMAGE, REPLACEMENT AND REPAIR AFTER LOSS**

- 18.1 **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. To the extent the Act is silent, the following provisions apply:

18.1.1 **Restoration Funds.** For purposes of this Article, "Restoration Funds" includes insurance proceeds, condemnation awards, deficiency assessments, individual assessments and other funds received on account of or arising out of injury or damage to 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 funds requires the signatures of at least two Association directors or that of a duly authorized agent by Board.

18.1.2 **Sufficiency of Restoration Funds.** If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damages or destroyed Property, the Association, as trustee, will promptly apply the funds to the repair or restoration. If the restoration funds are insufficient as determined by the Board, the Board may level a deficiency assessment against the Owners to cover the difference. If a surplus exists after payment of all costs and repairs, the surplus will be applied as follows:

- A. 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 no Owner may receive a sum greater than contributed and further provided that any deficiency assessments owed by Owner to the Association will first be deducted from the surplus.
- B. Any surplus remaining after disbursement will be common funds of the Association to be used in accordance with the Board's direction.

18.1.3 **Owner's Duty to Repair.** If the loss to the Unit is covered by insurance, Owner will begin repair or restoration of damage to this Unit on receipt of the

insurance proceeds or any portion thereof. If loss to the Unit is not covered, Owner will begin repair or reconstruction within sixty (60) days after the date of damage. If Owner fails to repair or restore damage as required herein, the Association may affect the necessary repairs and levy an individual assessment against the Owner and Unit for the cost thereof, after giving Owner reasonable notice of the Association's intent to do so. If a repair or restoration of Common Elements or Units is required as a result of an insured loss, the Board may levy an individual assessment in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of repair or reconstruction in absence of insurance.

## XIX.

### **TERMINATION, REVOCATION AND CONDEMNATION**

19.1 **Termination and Revocation.** This Declaration may be revoked and the Condominium terminated, only, as provided herein:

19.1.1 **Association as Trustee.** Each Owner hereby irrevocably appoints the Association, acting through its Board, as trustee, to deal with the Property in the event of damage, 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 reasonably necessary to effect this Declaration, the Act and the Governing Documents, including without limitation, the right to receive, administer and distribute funds, awards and insurance proceeds, to effect the sale of the Property as permitted in this Declaration or by the Act and to make, execute and allocate any contract, deed or other instrument with respect to the interest of an Owner.

19.1.2 **Termination.** Termination of the terms of this Declaration and the condominium status of the Property will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of substantially total damage, destruction or public condemnation of the Property, an amendment to terminate must be approved by Owners of at least sixty-seven percent (67%) of the Units and by certain Mortgagees pursuant to the Mortgagee Protection Article of this Declaration. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. In all other circumstances, an amendment to terminate must be approved by Owners of at least eighty percent (80%) of the Units and by certain Mortgagees pursuant to the Mortgagee Protection Article of this Declaration.

19.2 **Condemnation.** Section 82.007 of the Act will govern the Association's response to condemnation of any part of the Property. The Association shall represent the Unit

Owner's in the condemnation proceedings or in negotiating, settlement and agreements with the condemning authorities. Each Unit Owner appoints the Association as attorney in fact for such purpose. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association to be held in trust for the Unit Owners and the first mortgagee holders as their interests may appear.

## XX.

### UTILITIES

- 20.1 **Utilities.** Each Owner shall be responsible for and shall pay all charges for gas, electricity, water, wastewater and other utilities relating to such services used or consumed at or with respect to the occupancy of the Unit, to the extent such charges are separately metered by the respective utility companies. Any utility charges not so separately metered, and charges relating to such services used in connection with the use and maintenance of the Common Elements shall constitute a Common Expense and be payable by the Association.

## XXI.

### AMENDMENTS

- 21.1 **Consents Required.** As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by certain Owners alone, or by the Board alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association.
- 21.2 **Method Of Amendment.** This Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Unit the substance if not exact wording of the proposed amendment, a description in layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment. For amendments requiring the consent of Eligible Mortgagees, the Association will send each Eligible Mortgagee a detailed description, if not exact wording, of any proposed amendment.
- 21.3 **Effective.** To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; and (3) recorded in the real property records of every county in which the Property is located.

- 21.4 **Declarant Provisions.** 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.

## XXII.

### **ENFORCEMENT AND ARBITRATION**

- 22.1 **Assignment.** Declarant may assign its rights and obligations pursuant to this Article XXII, unilaterally and in whole or part, to a Builder. In the event of a partial assignment of the rights and obligations of this Article XXII to a Builder, such assignment shall only govern defects in General Common Elements, Limited Common Elements, Units, and/or Improvements constructed or caused to be constructed by the Builder.
- 22.2 **Enforcement.** Except as provided below, the Association and any Owner shall have the right to enforce by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained or any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. If the Association or any Owner successfully brings an action to extinguish a violation or to otherwise enforce the provision of the Governing Documents, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation and shall also be a lien upon the Unit of such Owner as provided in this Declaration. This Section shall be in addition to and not in limitation of any rights and remedies provided in other sections of this Declaration.
- 22.3 **Binding Arbitration.** Notwithstanding any provision in this Declaration to the contrary, all claims to which Declarant is the Respondent shall be resolved by binding arbitration in accordance with the American Arbitration Association's ("AAA") rules unless arbitration is specifically waived in writing by Declarant. Declarant may, by summary proceedings (e.g., plea in abatement or motion to stay further proceedings) bring an action to compel arbitration of any claim not referred to arbitration as required herein. The AAA shall administer all aspects of the arbitration, including the selection of arbitrators, pursuant to the AAA's Commercial Arbitration Rules. The cost of the arbitrator and any hearing transcript shall be divided equally between the parties. No party shall be entitled to receive any award of damages in connection with the arbitration of the dispute other than the party's direct damages. **Each party shall be deemed to have waived their right to receive any damages in a dispute other than direct damages, including without limitation, the right to receive indirect damages such as special damages and consequential damages and the right to receive punitive or exemplary damages or attorney and expert fees.** Each party agrees to fully



cooperate with any such arbitrator and to use its best efforts to respond to all reasonable requests of the arbitrator. Judgment upon the arbitrator's determination shall be entered and enforced by the district court for the county in which the Project is located. In the event the district court finds and determines for any reason that any judicial proceeding is allowed or had herein, in order to expedite final resolution of the dispute, **each party to the dispute waives any right to a jury trial for claims and counterclaims relating to the dispute.** 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. No provisions of, nor the exercise of any rights under this Section 22.3, will limit the right of a claimant or Declarant and claimant and Declarant 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 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 the exercise of self-help remedies shall not constitute a waiver of the right of any party, including claimant, to submit to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

- 22.4 **Suit against Declarant by Association.** Notwithstanding any provision in this Declaration to the contrary, the Association may not institute any judicial, arbitration or administrative proceedings, including any Construction Disputes, against Declarant without the approval of Owners representing at least eighty percent (80%) of the Units.
- 22.5 **Funding Litigation.** Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation or arbitration prior to initiating a judicial, arbitration or administrative proceeding. The Association may not use its annual operating income or reserve funds to fund litigation or arbitration, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation and arbitration reserve fund.
- 22.6 **Settlement.** The Board, on behalf of the Association, and without the consent of Owners, is hereby authorized to negotiate settlement of litigation and may execute any document related thereto, such as a settlement agreement and waiver or release of claims.

**XXIII.**  
**CERTAIN PROPERTY FEATURES**

- 23.1 **General.** This Article discloses selective features of the Regime that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.
- 23.2 **Contract Services Disclosure.** In connection with construction of the Property, the Units, may have been wired or fitted for one or more services to be provided by vendors to the individual Unit Owners on a contract basis, such as intrusion monitoring or cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owners for a period of service to all Units. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered individual assessments. However, the Association is not the service provider and is not responsible or liable for the availability or quality of the service, or for the maintenance, repair or replacement of wires, conduits, equipment or other fittings relating to the contract service.
- 23.3 **Cable TV.** On the date of the Declaration, neither the Declarant nor the Association has granted a blanket easement across the Property to a cable television franchise. The Property is being constructed with conduit for cable television lines. An Owner who contracts for cable television services must require his vendor to use the Common Element cable conduit on the Property, which may not be removed or relocated by the vendor without the Board's prior written approval. Without prior notice to any person, the Association may remove any cable line or additional conduit found elsewhere on the grounds or the exterior surfaces of the Buildings that do not have the Board's prior written approval.
- 23.4 **Streets within the Property.** Streets adjacent to the Property are public streets and maintained by applicable governmental instrumentalities. Streets within the Property are private and maintained by the Association.
- 23.4.1 **Private Streets.** Any private streets located within the Property are General Common Elements and are maintained and administered by the Association. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of private streets, including but not limited to: (1) identification of vehicles used by Owners and Residents and their guests; (2) designation of parking or no-parking areas; (3) limitations or prohibitions on curbside parking; (4) removal or prohibition of vehicles that violate applicable rules and regulations; (5) fines for violations of applicable rules and regulations.

23.4.2 Public Streets. Public streets are not Common Elements but may be maintained and/or regulated by the Association to the extent they are not maintained or regulated by the City or county. As to public streets, the Association, acting through the Board, is specifically authorized: (1) to accept from governmental authorities any delegation of street-related duties; (2) to act as attorney in fact for the Owners in executing instruments required by public ordinances or law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets serving and adjacent to the Property.

#### XXIV. MISCELLANEOUS

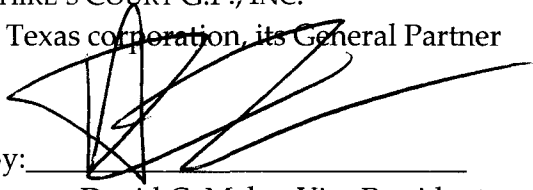
- 23.1 Compliance with Declaration. Each Owner shall comply strictly with the provisions of this Declaration, the Certificate of Formation, Bylaws, rules, regulations and resolutions of the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages, attorneys' fees, interest as allowed by law, injunctive relief or both, maintainable by the Association on behalf of the Owners, or by an aggrieved Owner.
- 23.2 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, word or section in any other circumstances shall not be affected thereby.
- 23.3 Construed Under Laws Of Texas. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Texas and to all other provisions of law.
- 23.4 Notice. All notices, demands or other notices intended to be served upon an Owner shall be sent by regular or certified mail, postage prepaid, addressed in the name of such Owner in care of the Unit number and building address of such Owner. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by regular or certified mail, postage prepaid to 6001 West William Cannon, Bldg. 2, Ste. 201, Austin, Texas 78749 until such address is changed by a notice of address change duly recorded, with copies to each Owner.
- 23.5 Word Construction. That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural and the use of any gender shall include all genders.

- 23.6 **Nonwaiver Of Remedies.** Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.
- 23.7 **Binding.** This Declaration, as well as any amendment to this Declaration, and any valid action or directive made pursuant to it shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.
- 23.8 **Interpretation.** The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce the provision or any other provision of this Declaration.
- 23.9 **Limitation Of Liability.** The liability of any Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in the Owner's Unit with respect to obligations arising from and after the date of such divestment.
- 23.10 **Usury.** It is expressly stipulated that the terms of the Declaration and the Bylaws shall at all times comply with the usury laws of the State of Texas. If such laws are ever revised, repealed or judicially interpreted so as to render usurious any amount called for hereunder or in the Bylaws or contracted for, charged or received in connection with any amounts due hereunder or under the Bylaws, or if the Association's exercise of any provisions hereof or under the Bylaws results in any party having paid any interest in excess of that permitted by applicable law, then it is the Association's and/or Declarant's express intent that all excess amounts theretofore collected by the Association be credited on the principal balance of any indebtedness (or, if the indebtedness has been paid in full, refunded to the payor), and the provisions of this Declaration and the Bylaws immediately be deemed reformed and the amounts thereafter collected be reduced, without the necessity of execution of any new document, so as to comply with then applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

EXECUTED in multiple originals on the date first above written.

CHESTNUT PLAZA, LTD.,  
a Texas limited partnership

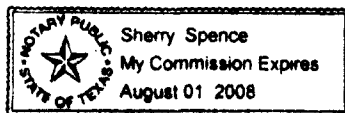
By: SHIRE'S COURT G.P., INC.  
a Texas corporation, its General Partner

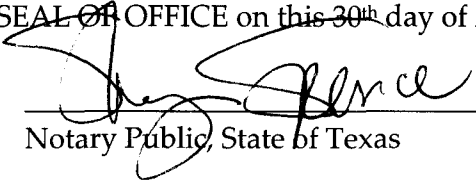
By:   
David C. Mahn, Vice President

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared David C. Mahn, Vice President of Shire's Court G.P., Inc., a Texas corporation, the general partner of Chestnut Plaza, Ltd., a Texas limited partnership, known to me to be the person and manager whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 30<sup>th</sup> day of April, 2007.



  
Notary Public, State of Texas

**Exhibits:**

- A. Description of Subject Property
- B. Bylaws
- C. Condominium Plat and Plans
- D. Unit Allocation of Interest Percentages
- E. Occupancy and Use Restrictions
- F. Recorded Easements and Licenses
- G. Additional Land

**EXHIBIT A**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

Lot 1, Block A, CHESTNUT PLAZA, PHASE ONE, a Subdivision in Travis County, Texas according to the Plat thereof recorded in Instrument No. 200600287, Plat Records, Travis County Texas.

**EXHIBIT C**

**CONDOMINIUM PLAT AND PLANS**

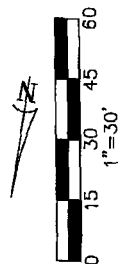
**(Attached)**



# CHESTNUT COMMONS CONDOMINIUMS

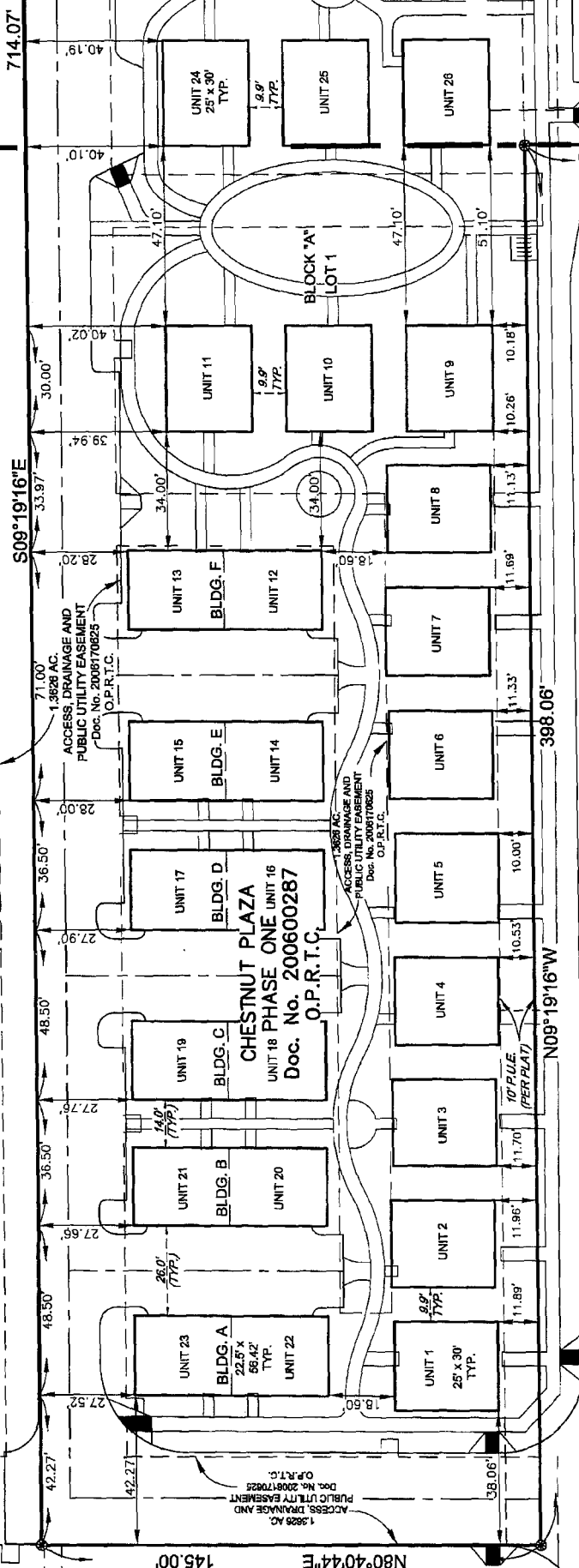
## EXHIBIT C-1

22.011 AC.  
OVANDO HOLDINGS  
(EAST AUSTIN) L.P.  
Doc. No. 2003074061  
O.P.R.T.C.



MATCHLINE

SEE SHEET 2 OF 3



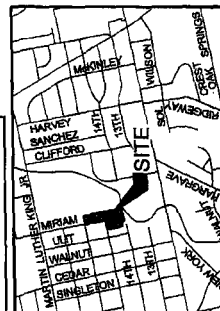
22.011 AC.  
OVANDO HOLDINGS  
(EAST AUSTIN) L.P.  
Doc. No. 2003074061  
O.P.R.T.C.

GENERAL NOTE: THE LOCATIONS SHOWN FOR EACH BUILDING/UNIT IS THE PROPOSED LOCATION. (CONSTRUCTION HAS NOT BEEN COMPLETED ON THESE BUILDING/UNIT(S)). ONCE CONSTRUCTION IS COMPLETE, REVISIONS TO THE PLANS WILL BE MADE TO REFLECT ACTUAL UNIT/BUILDING LOCATIONS AND DIMENSIONS.

### LEGEND

- O.P.R.T.C. OFFICIAL PUBLIC RECORDS TRAVIS COUNTY
- T.C.D.R. TRAVIS COUNTY DEED RECORDS
- T.C.P.R. TRAVIS COUNTY PLAT RECORDS
- ( ) RECORD INFORMATION
- P.U.E. PUBLIC UTILITY EASEMENT
- L.C.E. LIMITED COMMON ELEMENT
- D.E. DRAINAGE EASEMENT
- 1/2" IRON ROD FOUND
- UNLESS OTHERWISE NOTED
- 1/2" IRON ROD SET WITH PLASTIC CAP
- STAMPED "CAPITAL SURVEYING CO. INC."
- ▲ CALCULATED POINT

MIRIAM AVE. (45' R.O.W.)



BLOCKS 4-5-6-7-8 & 9  
OF THE SECOND HENRY ULIT ADDITION  
OF OUTLOT 31, DIVISION B  
BOOK 3, PAGE 108  
T.C.P.R.

E. 16th ST.  
(50' R.O.W.)

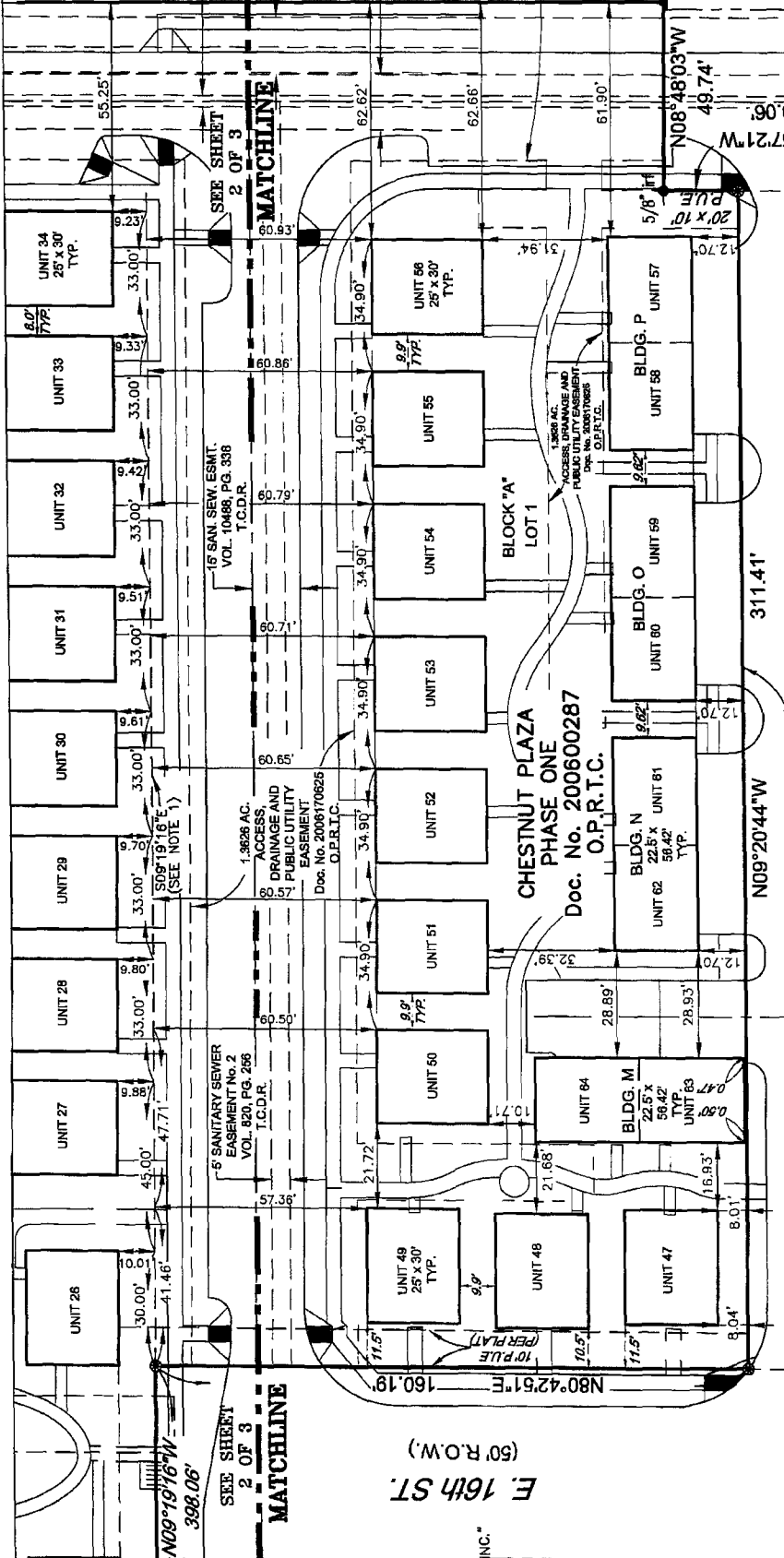
## EXHIBIT C-1

CAPITAL SURVEYING COMPANY		SHEET NO. 1 OF 3	
INCORPORATED IN TEXAS		DATE: MAY 2, 2007	
1401 Capital City Blvd., Suite 200, Austin, TX 78701		JOB NO.: 03539.20	
DRAWN BY: WAL		SCALE: 1" = 30'	
CHECKED BY: [Signature]		DATE: MAY 2, 2007	
DRAWING NO.: 03539.25		CRD #: 03549a	

LOCATION MAP  
NOT TO SCALE



# **CHESTNUT COMMONS CONDOMINIUMS** **EXHIBIT C-1**



**LEGEND**

O.P.R.T.C.	OFFICIAL PUBLIC RECORDS	TRAVIS COUNTY
T.C.D.R.	TRAVIS COUNTY DEED RECORDS	
T.C.P.R.	TRAVIS COUNTY PLAT RECORDS	
( )	RECORD INFORMATION	
P.U.E.	PUBLIC UTILITY EASEMENT	
L.C.E.	LIMITED COMMON ELEMENT	
D.E.	DRAINAGE EASEMENT	
●	1/2" IRON ROD FOUND	
○	UNLESS OTHERWISE NOTED	
●	1/2" IRON ROD SET WITH PLASTIC CAP	
▲	STAMPED "CAPITAL SURVEYING CO. INC."	
	CALCULATED POINT	

**NOTE 1.** THE LINE SHOWN IS AN EXTENSION OF THE NORTHERLY RIGHT-OF-WAY LINE OF MIRIAM AVENUE FOR TIES TO UNITS.

**WESTLING ADDITION**  
**BOOK 3, PAGE 215**  
**T.C.P.R.**

**LOT 1**   **LOT 2**   **LOT 3**   **LOT 4**

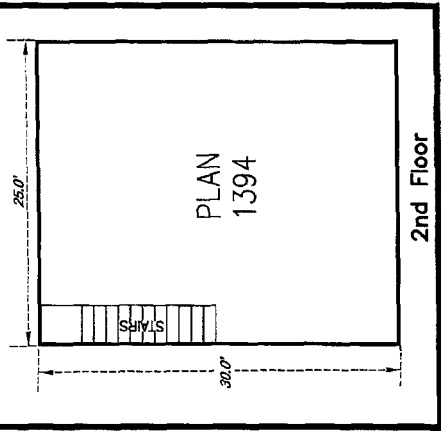
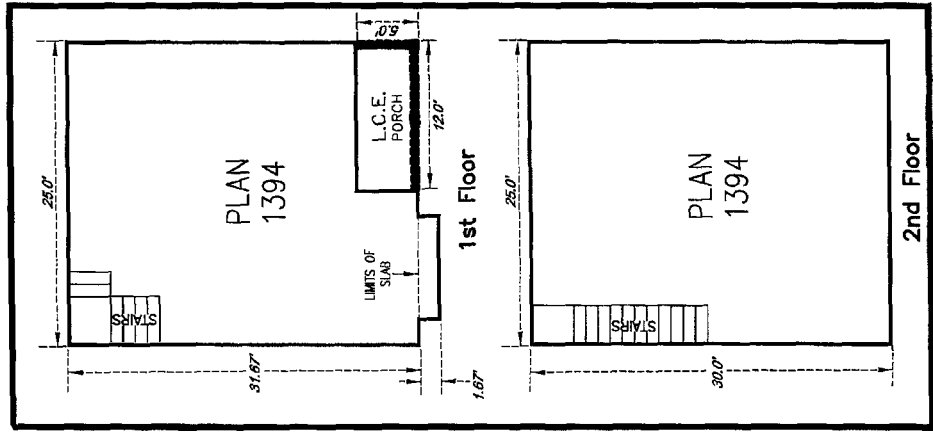
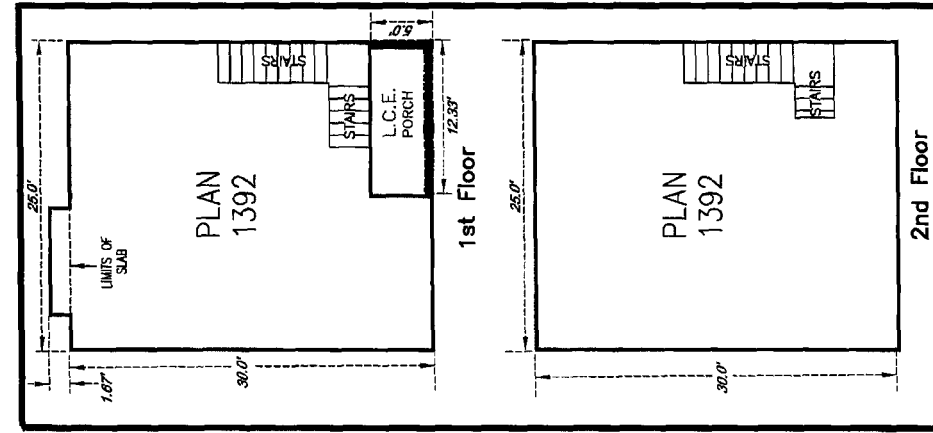
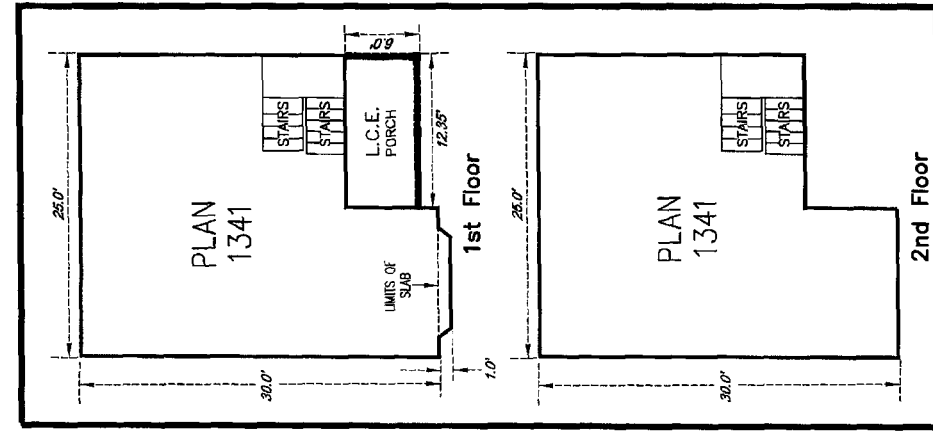
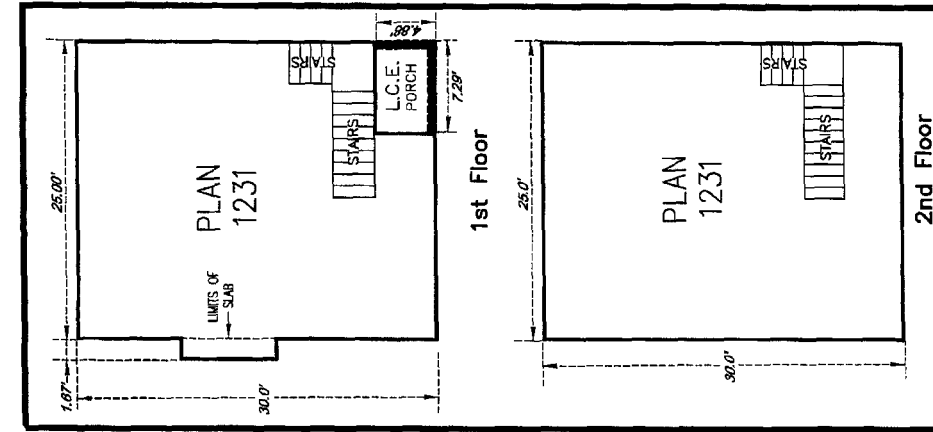
**ES&S**  
CAPITAL SURVEYING COMPANY  
INCORPORATED  
1101 Capital of Texas Highway South  
Austin, Texas 78748  
Tel: (512) 397-0099

**EXHIBIT C-1 (CONTINUED)**

DRAWN BY:	WAL	SCALE:	1" = 30'
JOB NO.:	03539.20	DATE:	MAY 2, 2007
DRAWING NO.:	03539525	SHEET NO.:	3 OF 3
		CRD #:	03549rot

# CHESTNUT COMMONS CONDOMINIUMS

EXHIBIT C-2

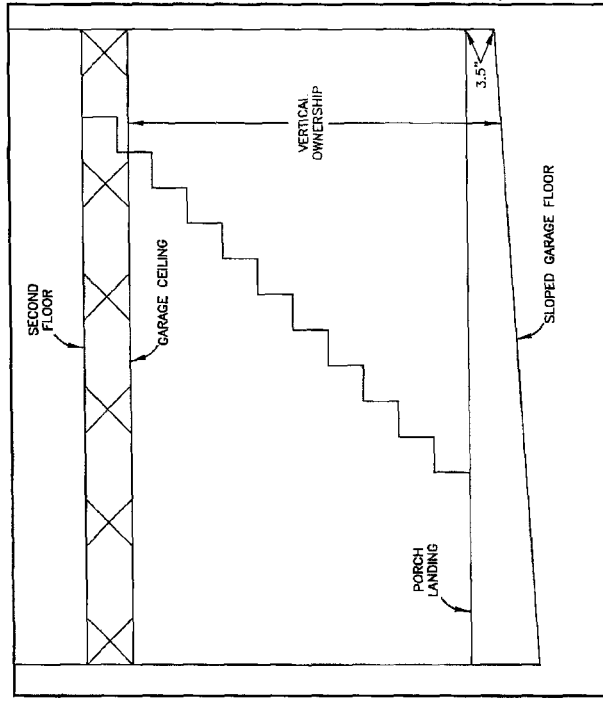


GENERAL NOTE: THE LOCATION OF EACH UNIT ON EXHIBIT C-2 IS THE CONCRETE FOUNDATION (SLAB) FOR EACH OF THE PROPOSED UNITS.

EXHIBIT C-2

<b>ES&amp;C</b>	
DATE: 08/29/20	SCALE: 1" = 10'
DRAWN BY: W.A.	F.B.
JOB NO.: 0859.20	DATE: APRIL 12, 2007
DRAWING NO.: 00000000	SHEET NO.:
CDD #:	03444007

# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3



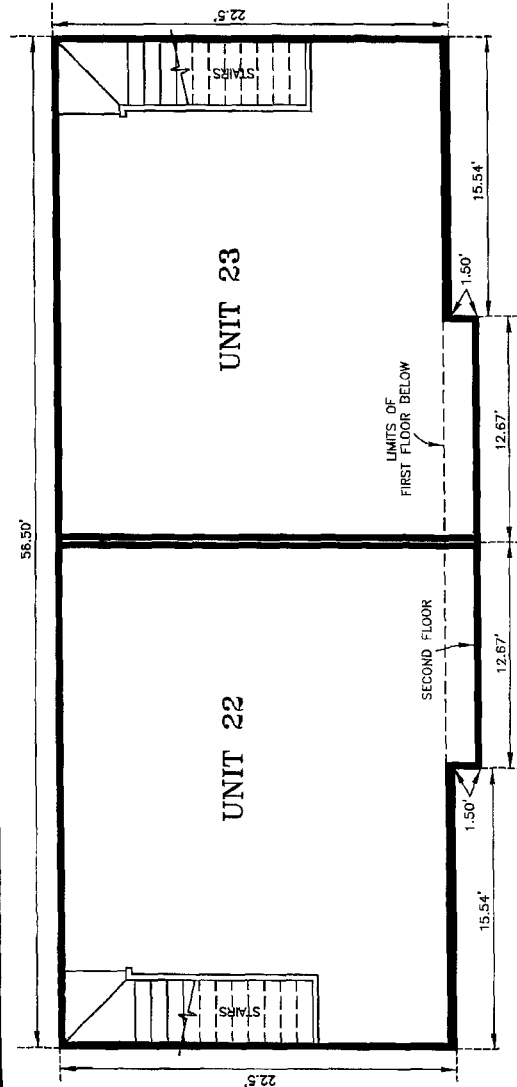
DETAIL: (TYPICAL)

GENERAL NOTE: Upper and lower vertical boundaries in Units extend from unfinished floor to ceiling. Upper and lower vertical boundaries in the Garage LCE extend from the unfinished floor to the ceiling as shown on the above sketch. The horizontal boundaries for the Units and Garage LCE extend to the inside plane of the exterior wall studs. provided however, the horizontal boundaries of shared party walls in the Units and Garage LCE extend to the plane and surface of the wall studs facing the Unit.

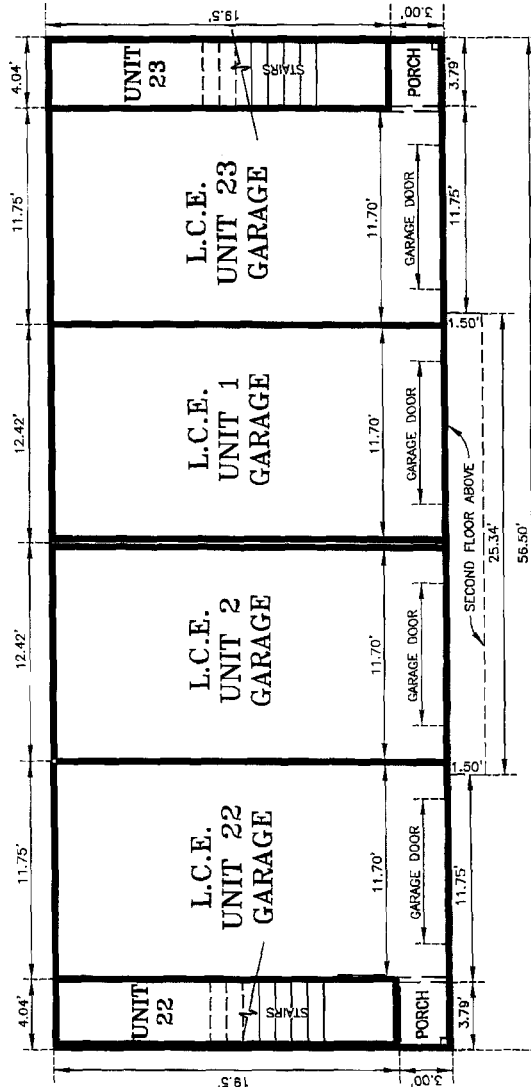
## EXHIBIT C-3 BUILDING A



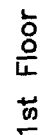
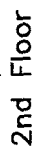
ES&I	CAPITAL SURVEYING COMPANY INCORPORATED	F.B.
DRAWN BY: WML	SCALE: NO SCALE	SHEET NO:
JOB NO: 03539-20	DATE: MAY 2, 2007	1 OF 16
DRAWING NO: 0354850	CRD #: 03548-01	



2nd Floor



1st Floor



**EXHIBIT C-3  
(CONTINUED)  
BUILDING B**

[illegible]

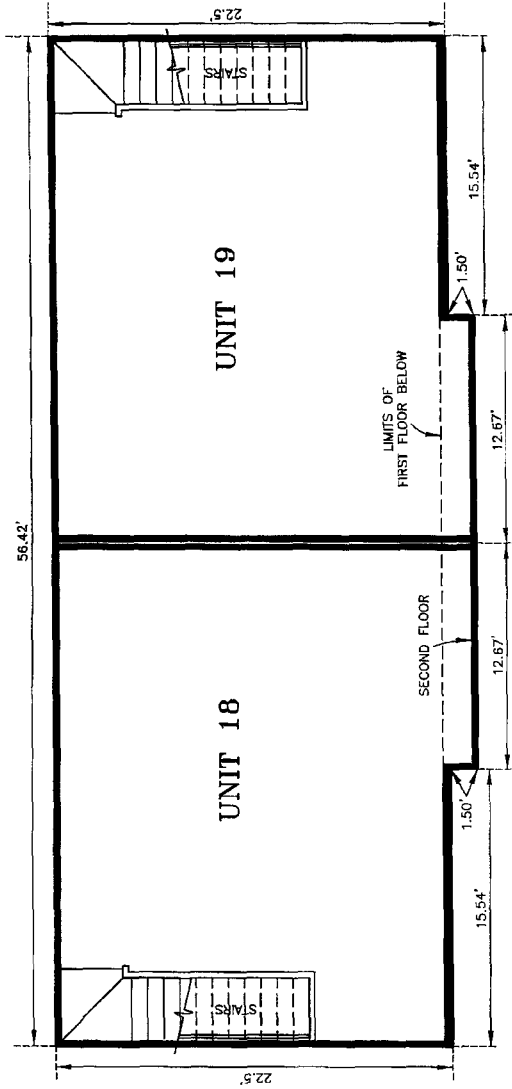
# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3



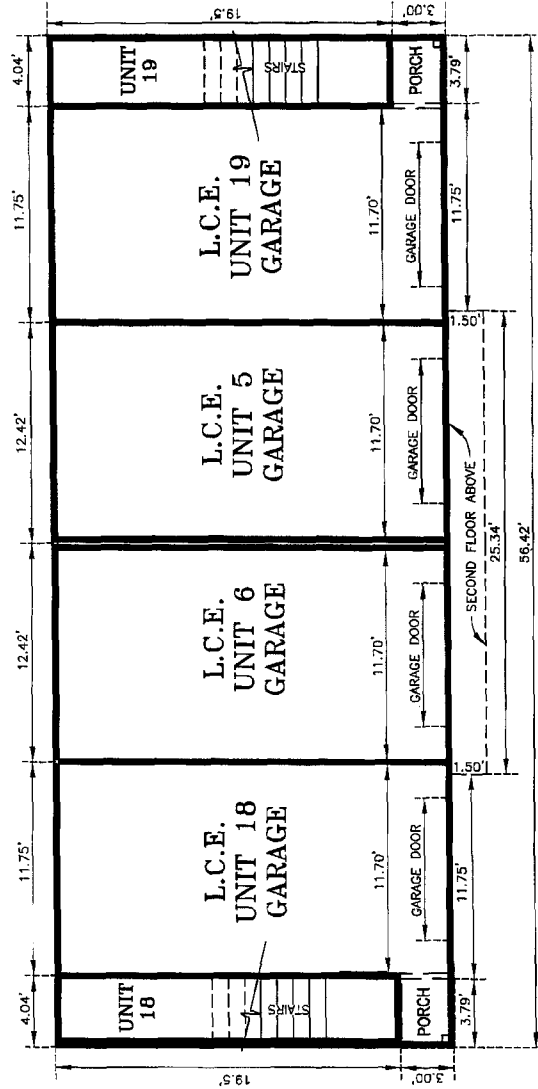
## EXHIBIT C-3 (CONTINUED) BUILDING C



CAPITAL SURVEYING COMPANY INCORPORATED	1101 Capital of Texas Highway South Austin, Texas 78748 Building S, Suite 110 7013 217-0000	DRAWN BY: WAL	SCALE: ND SCALE	SHEET NO.: 3 OF 16
JOB NO.: 03539.20	DATE: APRIL 12, 2007	DRAWING NO.: 03549S11	ORD #: 03549-01	



2nd Floor



1st Floor

CHESTNUT  
COMMONS  
CONDOMINIUMS  
EXHIBIT C-3

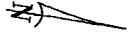
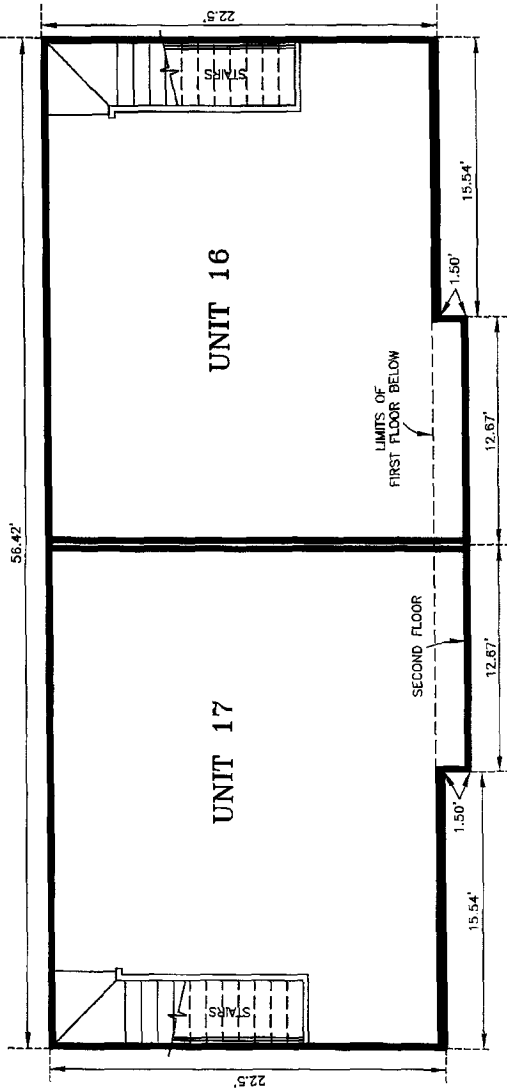


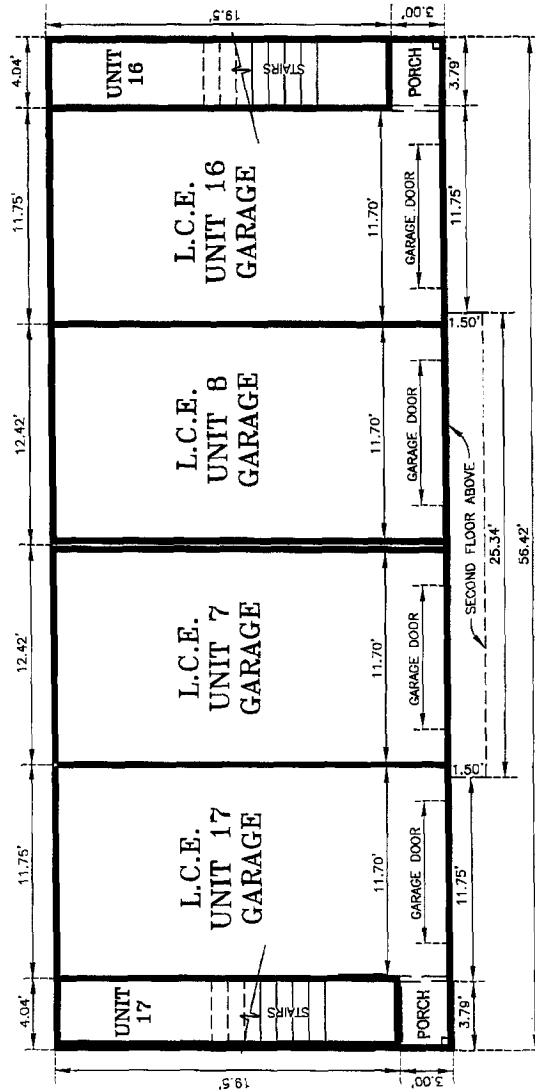
EXHIBIT C-3  
(CONTINUED)  
BUILDING D



DRAWN BY:	WAL	SCALE:	NO SCALE	SHEET NO.:	4 OF 16
JOB NO.:	03538.20	DATE:	APRIL 12, 2007		
DRAWING NO.:	03548S12	CRD #:	03548rot		



2nd Floor



1st Floor



# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3

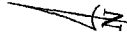
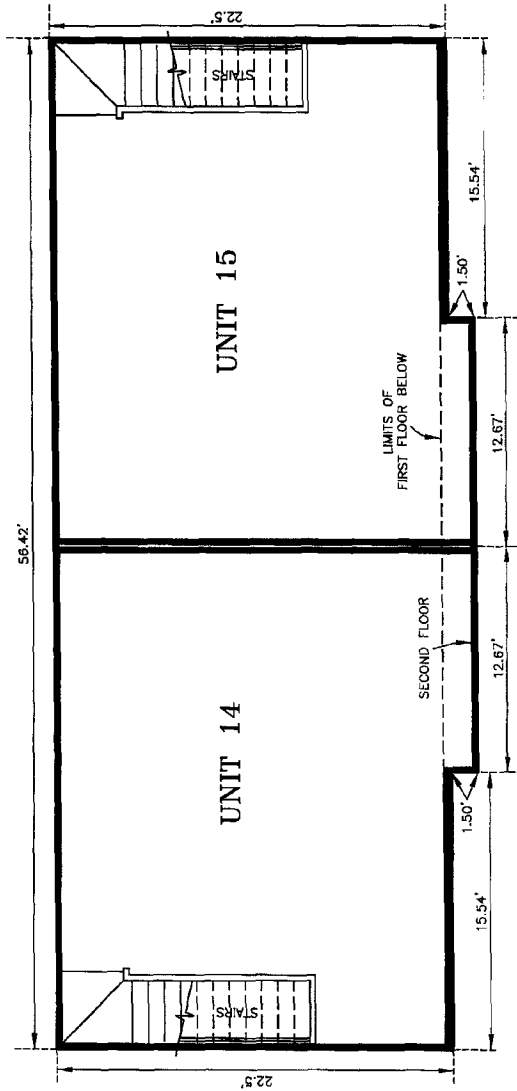


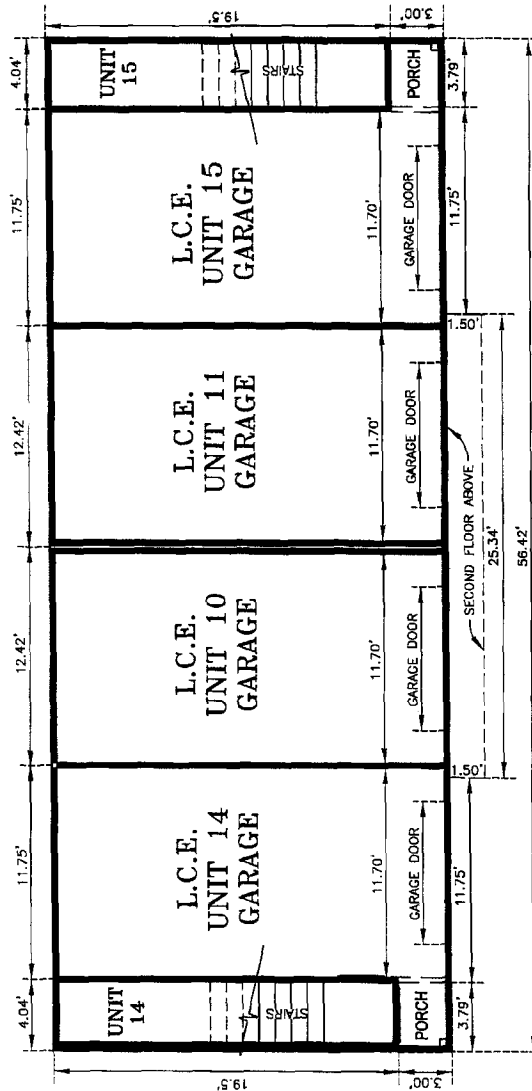
EXHIBIT C-3  
(CONTINUED)  
BUILDING E

**ESCI**

CAPITAL SURVEYING COMPANY INCORPORATED 1550 Capital Building Baltimore, Maryland 21201 (410) 327-1000	WAL	SCALE: NO SCALE	F.B.
DRAWN BY: 03538.20	DATE: APRIL 12, 2007	SHEET NO.:	
JOB NO.:	03548513	CRO #:	03548-rot
DRAWING NO.:			5 OF 16



2nd Floor



1st Floor

# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3

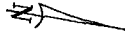
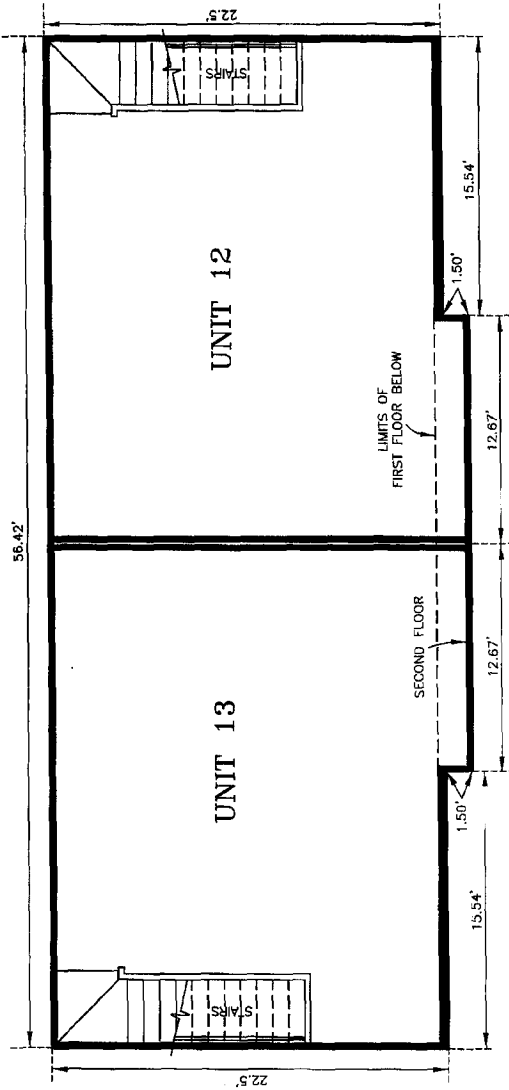


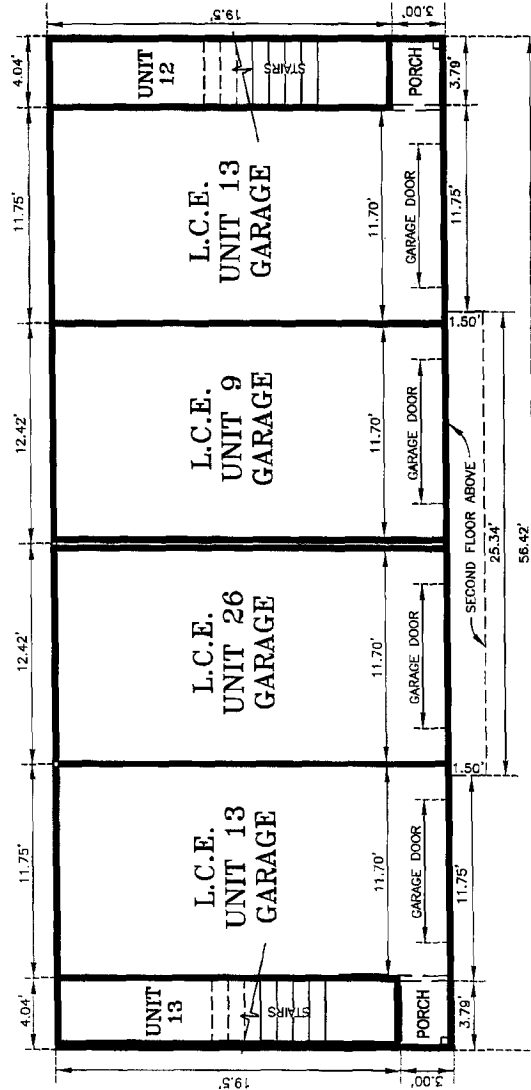
EXHIBIT C-3  
(CONTINUED)  
BUILDING F



DRAWN BY:	WAL	SCALE:	NO SCALE	F.B.
JOB NO.:	03536.20	DATE:	APRIL 12, 2007	SHEET NO.:
DRAWING NO.:	03549514	CRD #:	03549-01	6 OF 16



2nd Floor



1st Floor

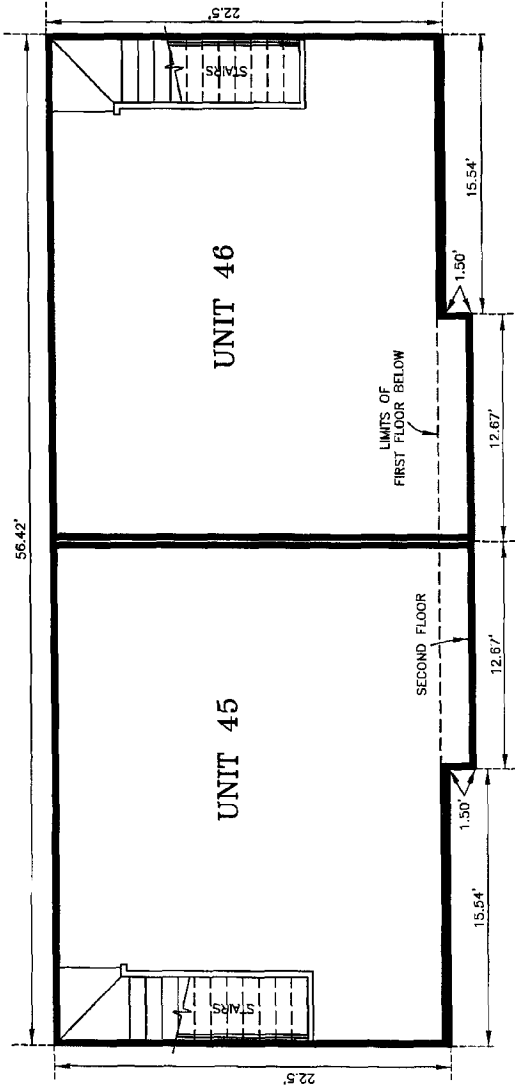
# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3



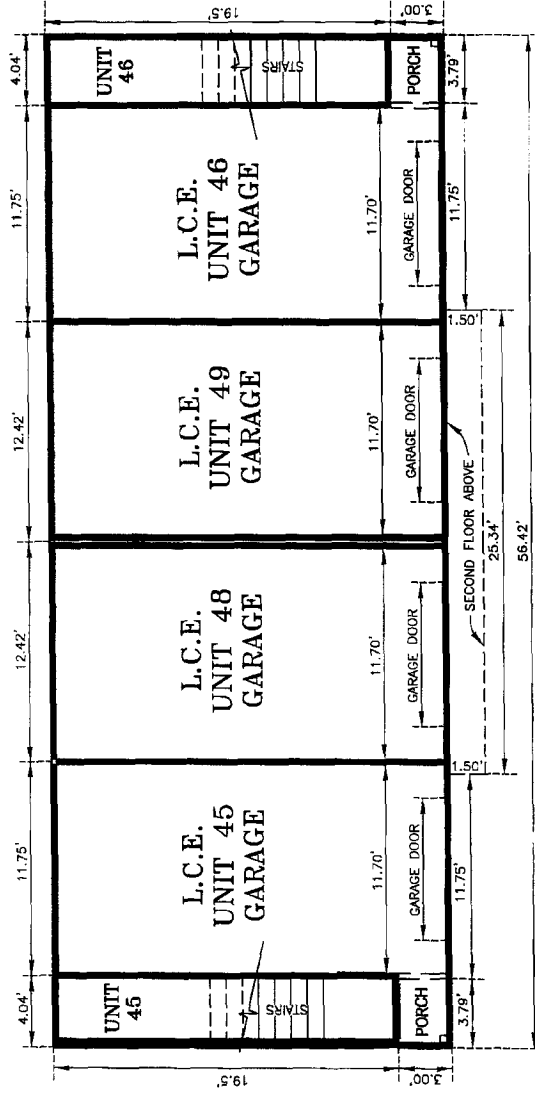
## EXHIBIT C-3 (CONTINUED) BUILDING G



CAPITAL SURVEYING COMPANY INCORPORATED 1101 Capital of Texas Highway South Austin, Texas 78748	DRAWN BY: WAL	SCALE: NO SCALE	SHEET NO.: 7 OF 16
JOB NO.: Q3539.20	DATE: APRIL 3, 2007		
DRAWING NO.: 03548515	CRD #: 03548rd		



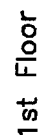
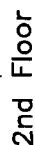
2nd Floor



1st Floor

# WU

<b>ES&amp;I</b>		CAPITAL CRISTING COMPANY INCORPORATED 1111 Capital Square Atlanta, GA 30309 (404) 537-4093	
PROJECT NO.	DATE	SCALE	NO. SHEET
1111 Capital Square Atlanta, GA 30309	APRIL 12, 2007	1/4" = 1'-0"	8 OF 18
DRAWN BY: WML		SHEET NO.: 8 OF 18	
JOB NO.: 033538.20	DATE: APRIL 12, 2007	SHEET NO.: 8 OF 18	
DRAWING NO.: Q3548S14	CRD #: Q3548-01	SHEET NO.: 8 OF 18	

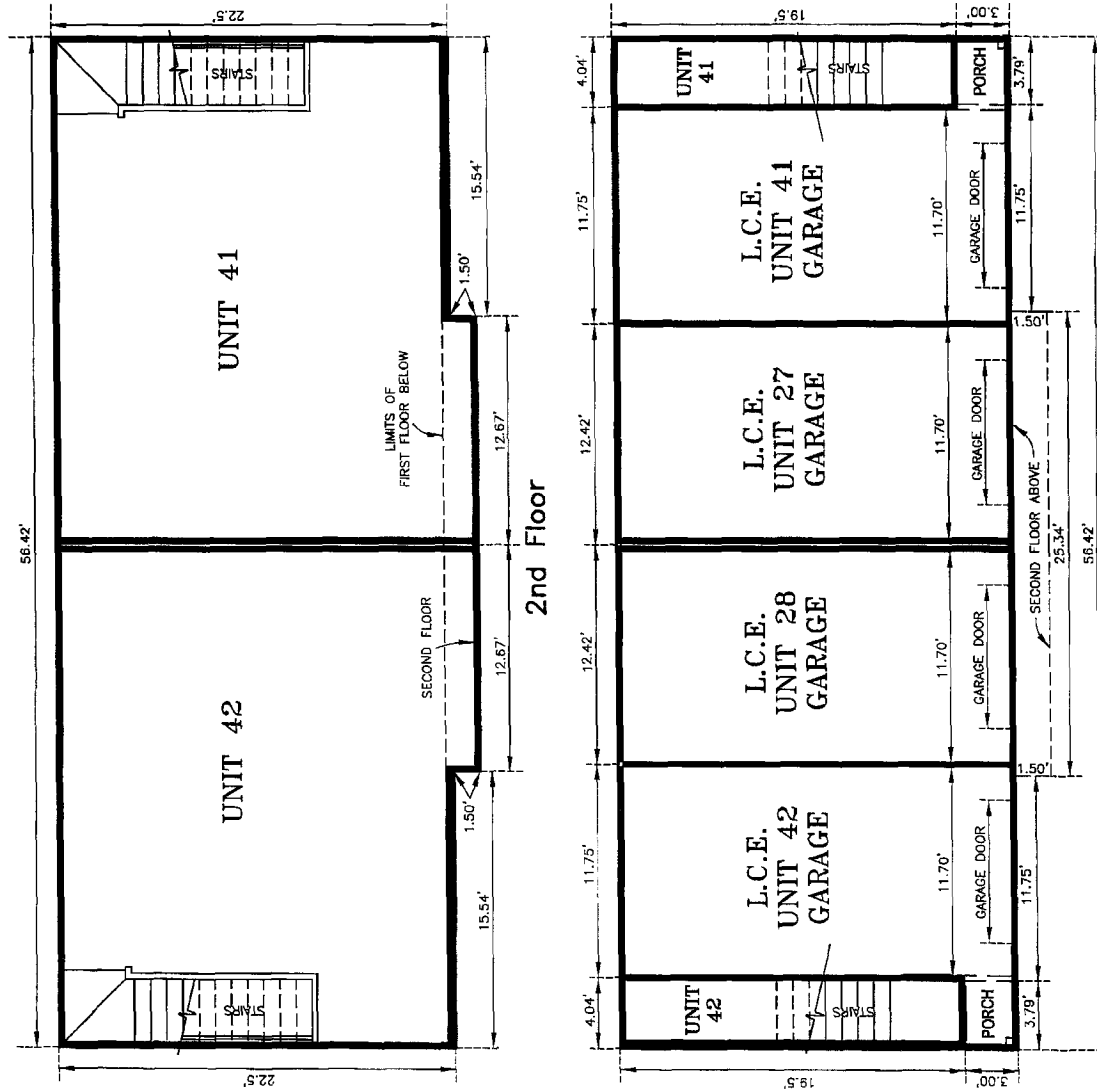


# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3

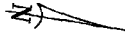


## EXHIBIT C-3 (CONTINUED) BUILDING I

<b>CSC</b>		CAPITAL SURVEYING COMPANY	INCORPORATED IN THE STATE OF MISSISSIPPI
1101 Capital of Jones Highway South Mobile, AL 36688	WAL	SCALE: NO SCALE	F.B.
DRAWN BY:	WAL	DATE: APRIL 12, 2007	SHEET NO.:
JOB NO.:	03532.20	CRD #:	0354804
DRAWING NO.:	03548317		9 OF 16

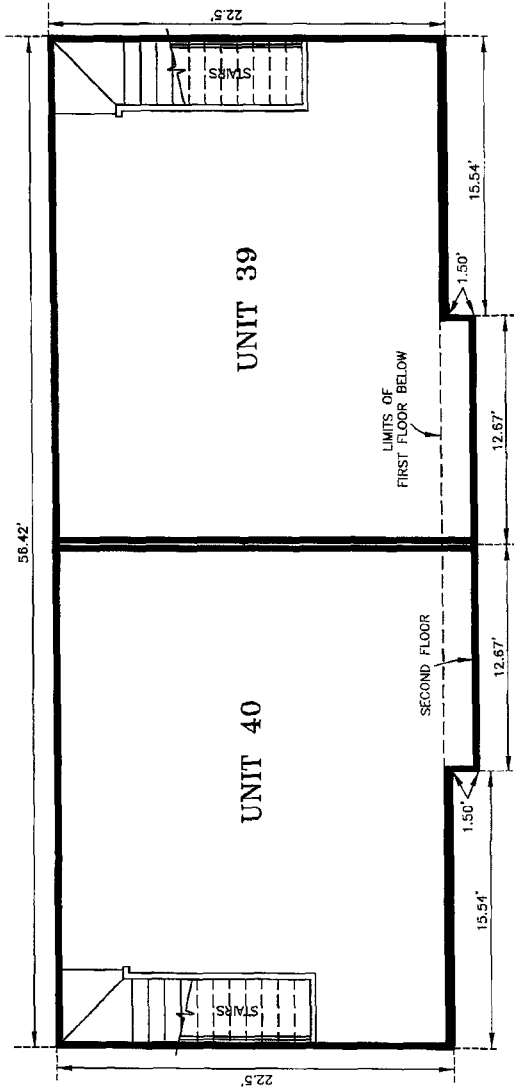


# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3

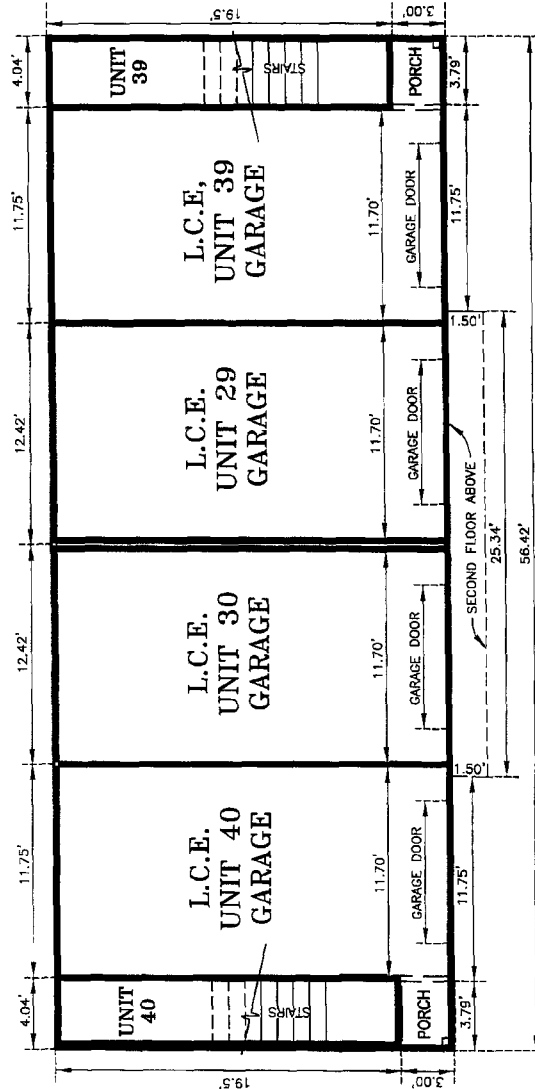


## EXHIBIT C-3 (CONTINUED) BUILDING J

<b>CSC</b>		CAPITAL SURVEYING COMPANY	INCORPORATED
1101 Capital of Texas Highway South Austin, Texas 78745		WAL	NO SCALE
DRAWN BY:	WAL	SCALE:	NO SCALE
JOB NO.:	03539.20	DATE:	APRIL 12, 2007
DRAWING NO.:	0354951B	CRD #:	03549-01
			SHEET NO.:
			10 OF 19



2nd Floor



1st Floor

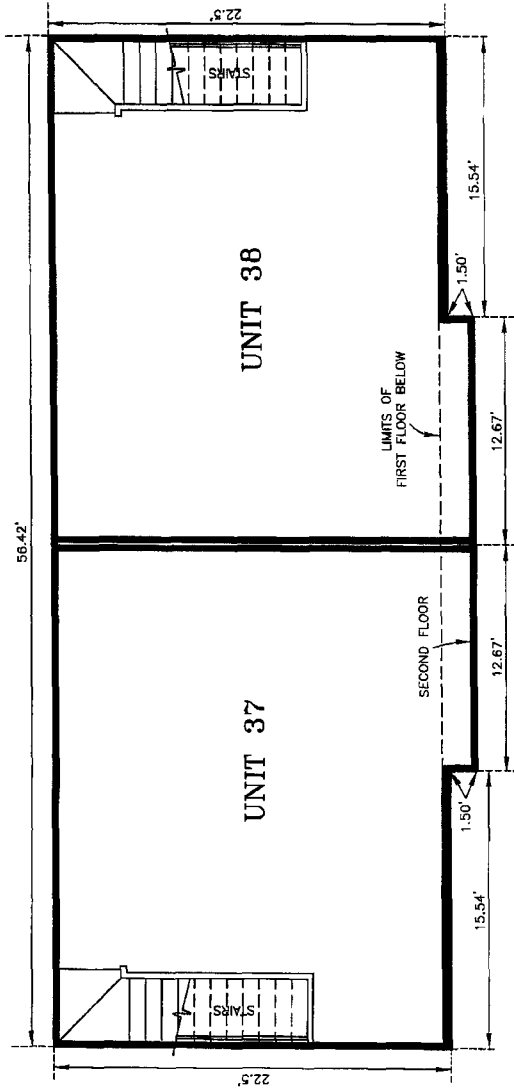
**CHESTNUT  
COMMONS  
CONDOMINIUMS  
EXHIBIT C-3**



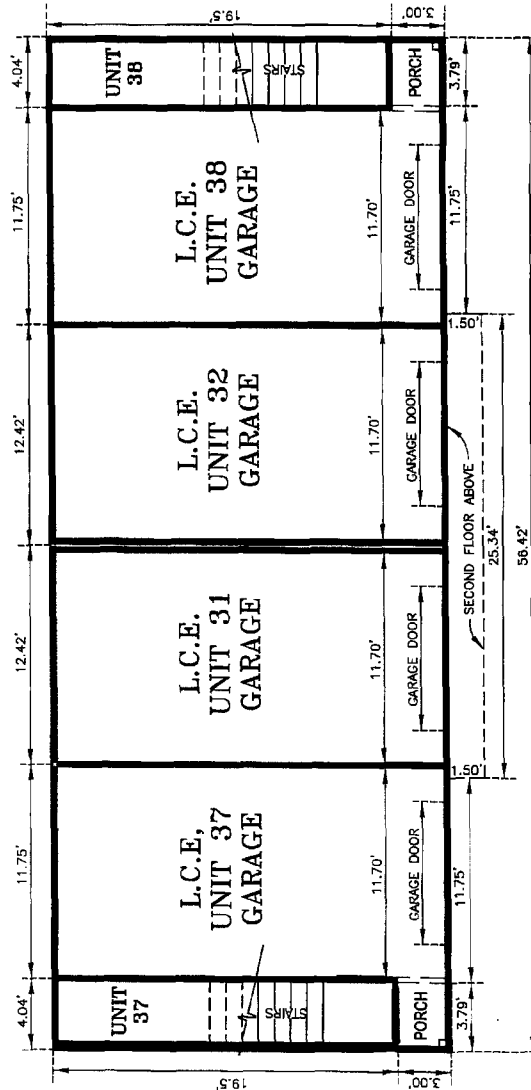
**EXHIBIT C-3  
(CONTINUED)  
BUILDING K**



DRAWN BY:	WAL	SCALE:	NO SCALE	SHEET NO.:	11 OF 18
JOB NO.:	03539.20	DATE:	APRIL 12, 2007		
DRAWING NO.:	03549519	ORD #:	03549rd		

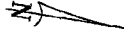


**2nd Floor**



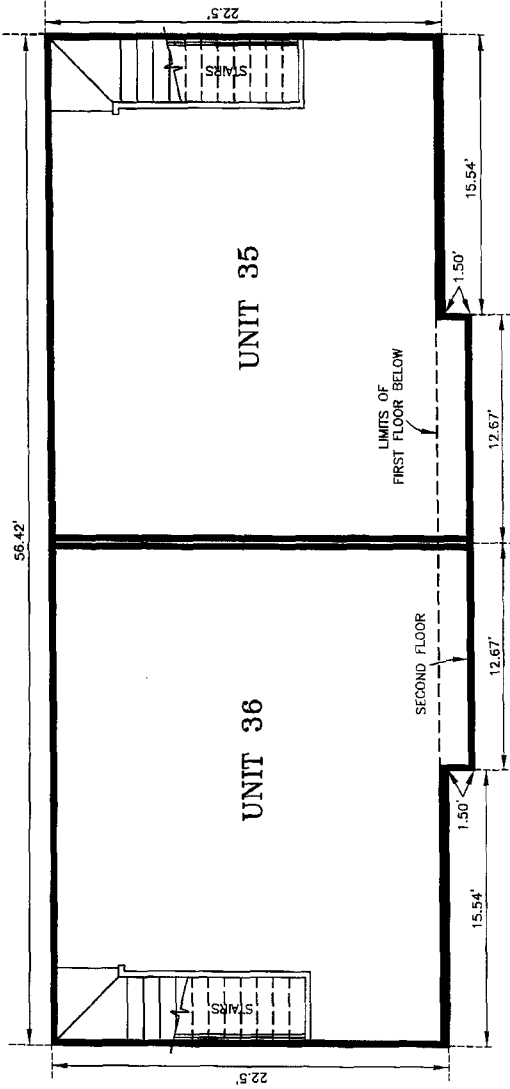
**1st Floor**

# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3

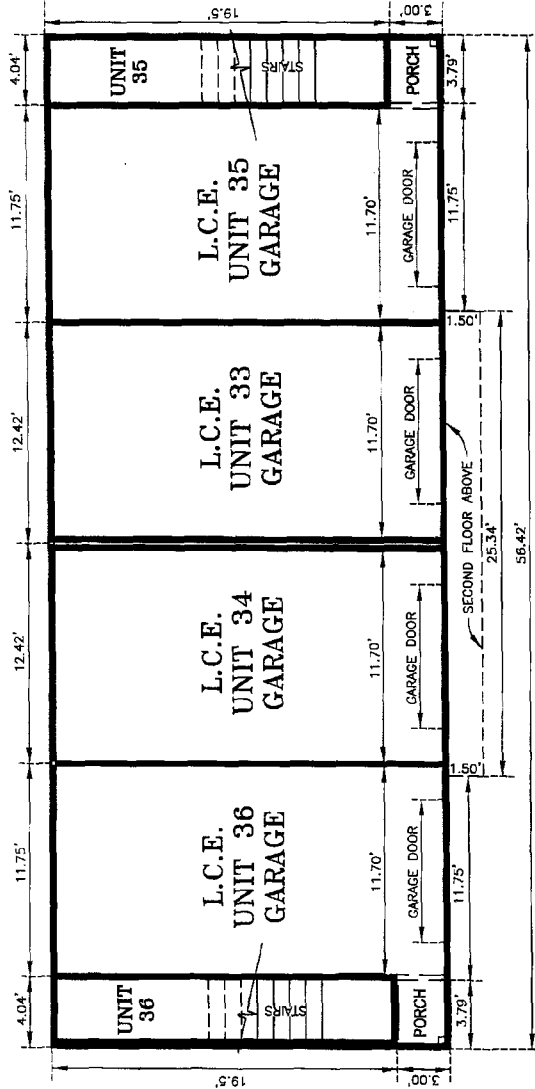


## EXHIBIT C-3 (CONTINUED) BUILDING L

<b>CSC</b>		CAPITAL SURVEYING COMPANY INCORPORATED
1101 Capital of Texas Highway South Austin, Texas 78745		Building & Surveying Division 5, State 120 Building 507-0000
DRAWN BY: WAL	SCALE: NO SCALE	F.B.
JOB NO.: 03539.20	DATE: APRIL 12, 2007	SHEET NO.:
DRAWING NO.: 03548520	CRD #: 03548520	12 OF 18



2nd Floor



1st Floor



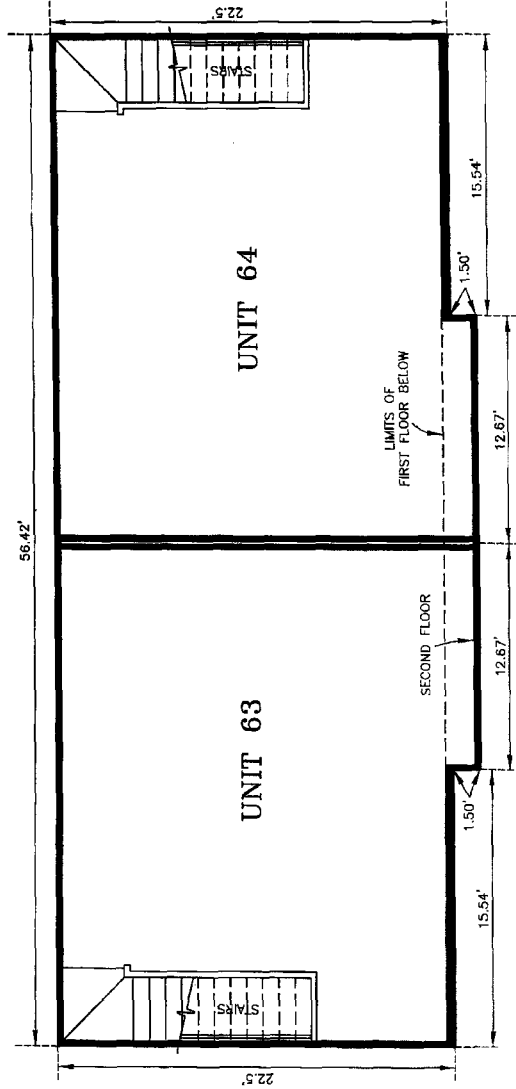
CHESTNUT  
COMMONS  
CONDOMINIUMS  
EXHIBIT C-3



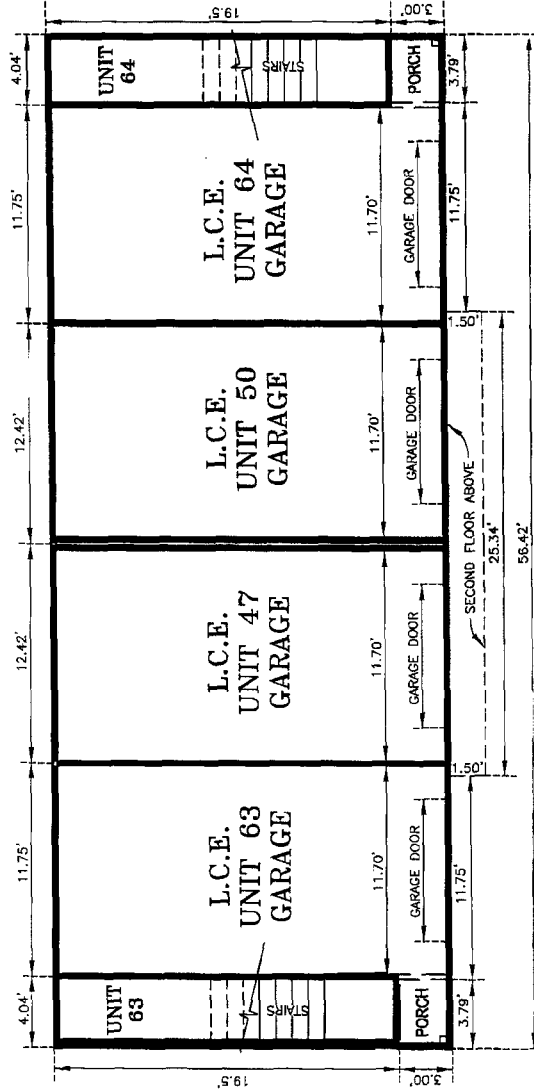
EXHIBIT C-3  
(CONTINUED)  
BUILDING M



DRAWN BY:	WAL	SCALE:	NO SCALE	SHEET NO.:	13 OF 16
JOB NO.:	03539.20	DATE:	APRIL 12, 2007		
DRAWING NO.:	03546S21	CRD #:	03549rot		



2nd Floor



1st Floor

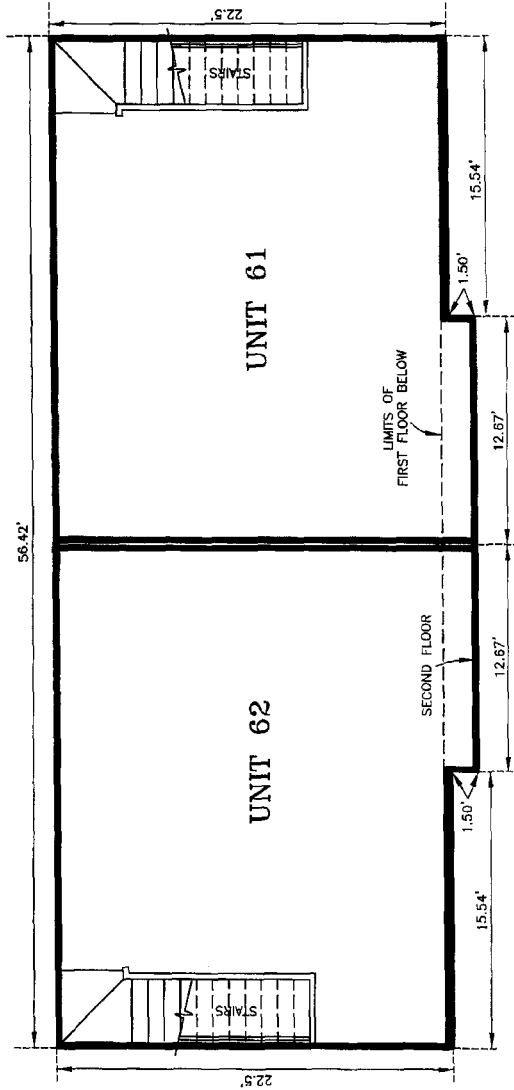
# CHESTNUT COMMONS CONDOMINIUMS EXHIBIT C-3



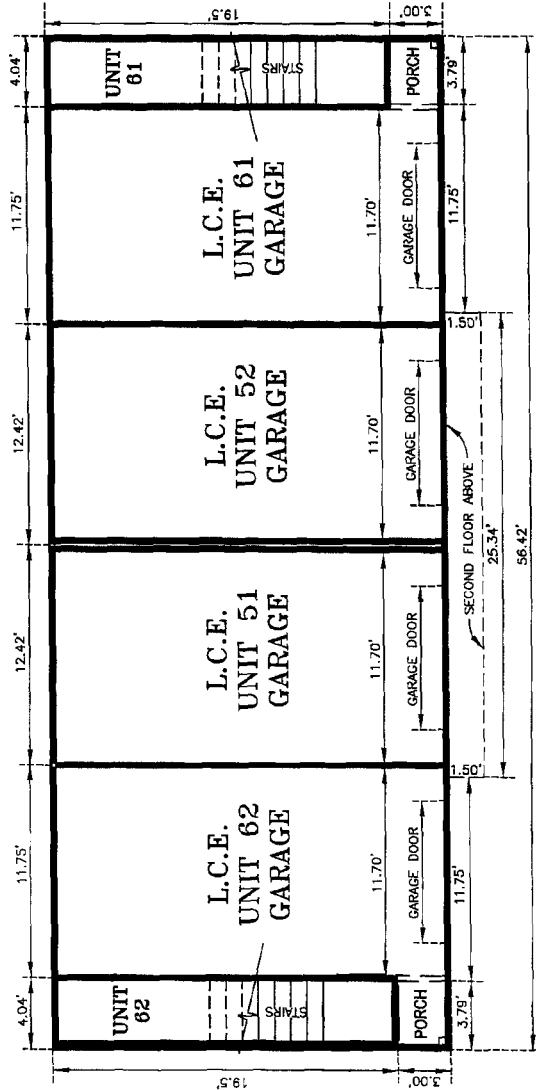
## EXHIBIT C-3 (CONTINUED) BUILDING N



CAPITAL SURVEYING COMPANY INCORPORATED	SCALE: NO SCALE	SHEET NO.: 14 OF 18
1101 Capital of Texas Highway South Austin, Texas 78748	DATE: APRIL 12, 2007	
DRAWN BY: WAL	JOB NO.: 0354622	
	DRAWING NO.: 0354622	
	CRD #:	




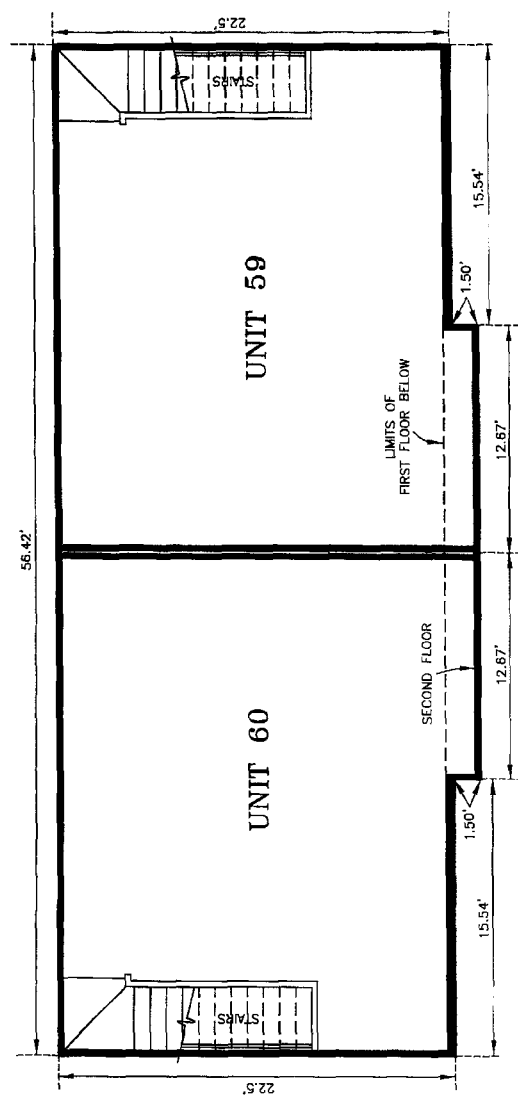
2nd Floor



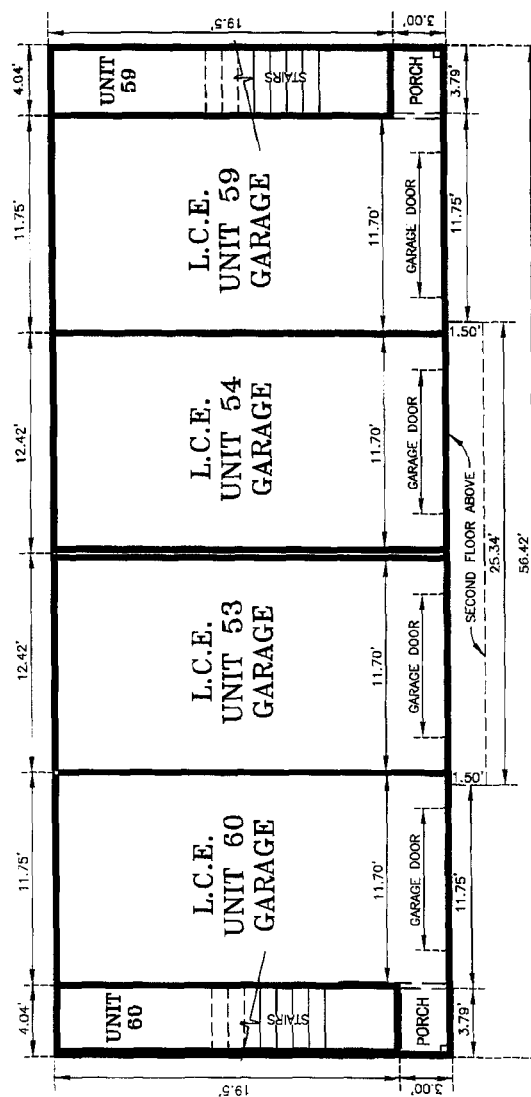
1st Floor

**US**

		<b>CAPITAL SURVIVING COMPANY INCORPORATED</b> Building C, Suite 100 Building C, Suite 100 (815) 397-4003			
1101 Capital of Texas Highway South Austin, Texas 78748		DRAWN BY:	SCALE:	NO SCALE	F.B.
JOB NO.:	03539.20	DATE:	APRIL 12, 2007	SHEET NO.:	
DRAWING NO.:	03548523	CRD #:	03546rcr	5 OF 16	



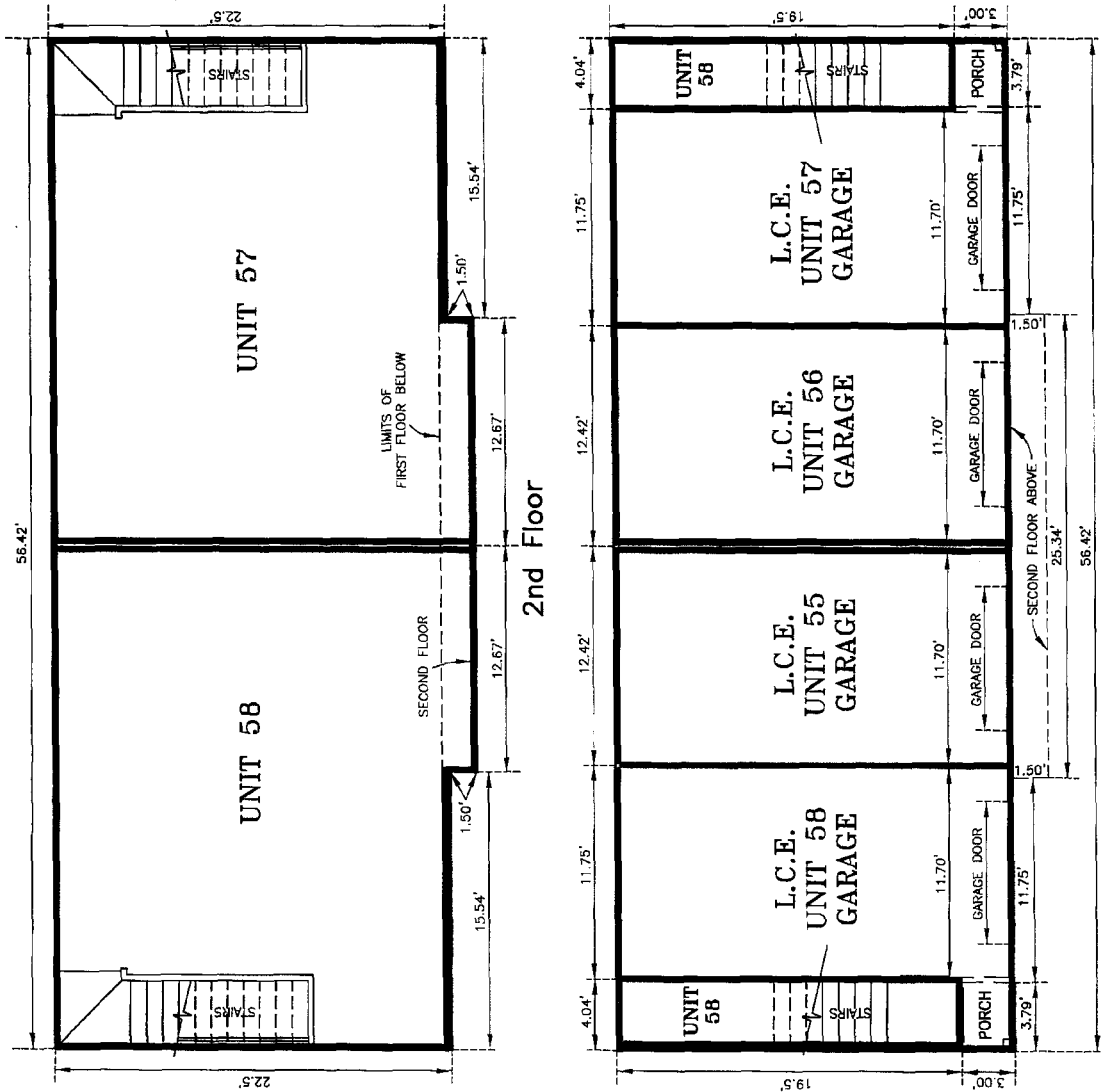
## 2nd Floor



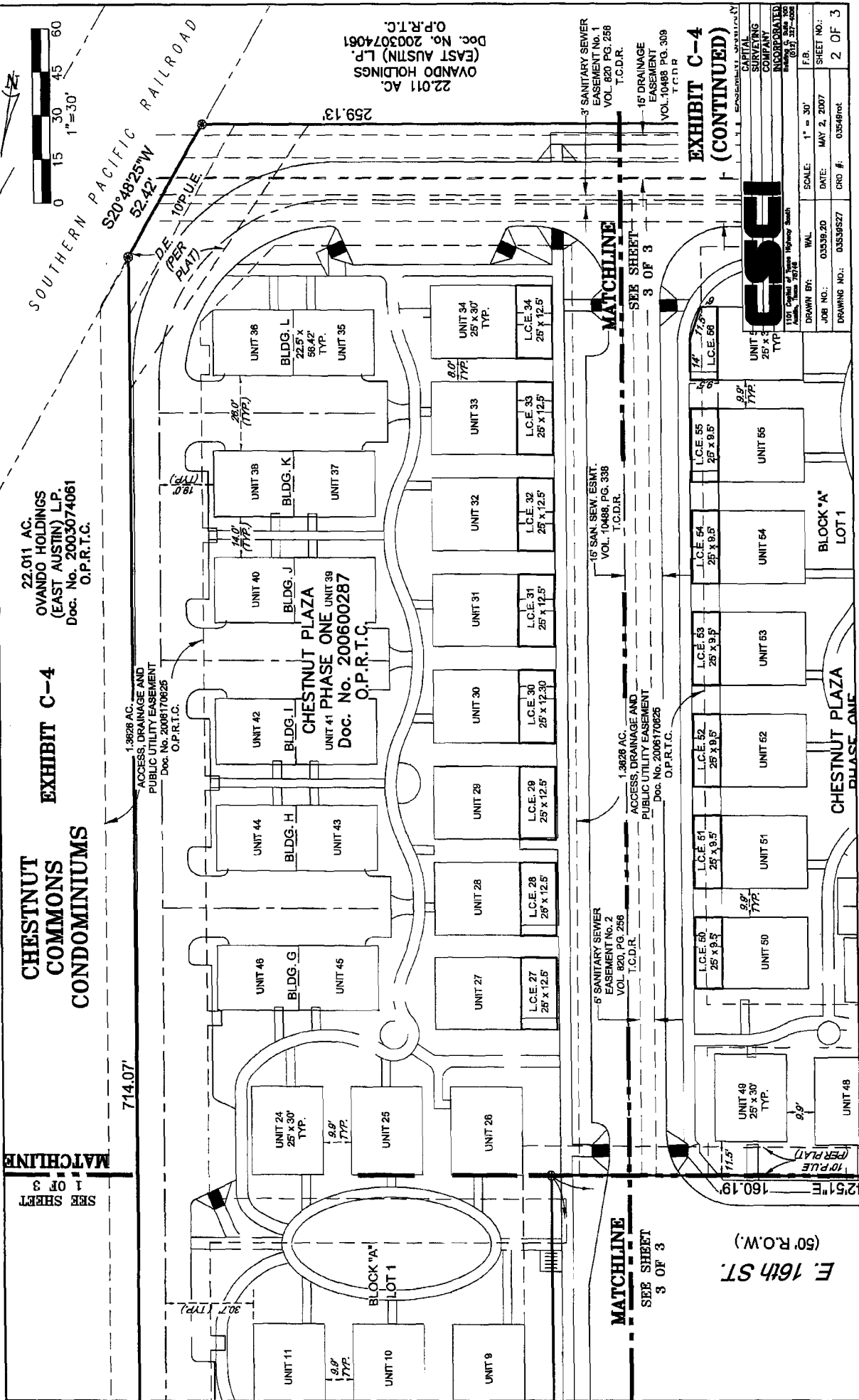
## 1st Floor

**US**

1st Floor

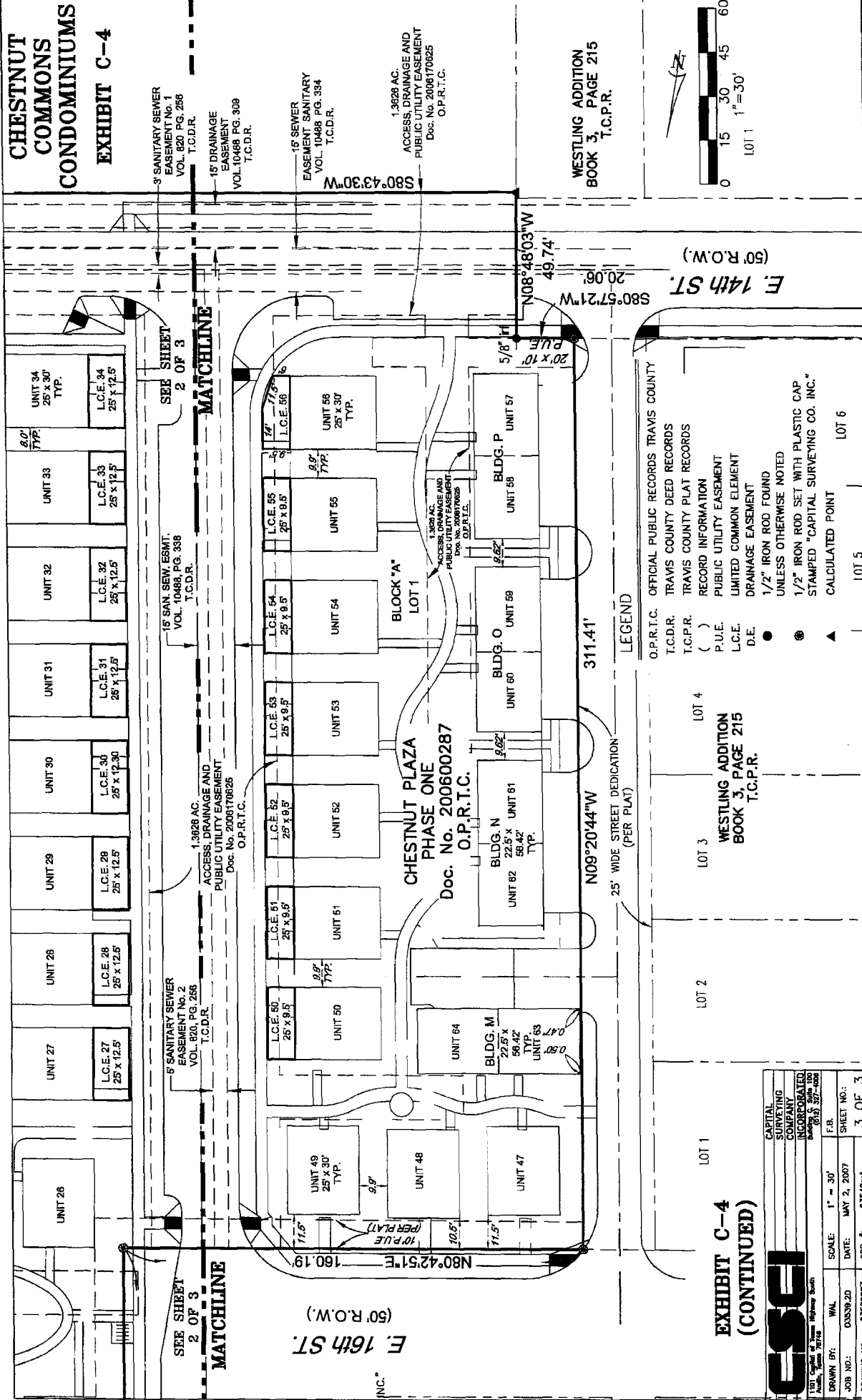






# CHESTNUT COMMONS CONDOMINIUMS

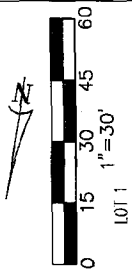
## EXHIBIT C-4



## EXHIBIT C-4 (CONTINUED)

CAPITAL SURVEYING COMPANY, INCORPORATED		F.B.	
1301 Capital of Texas Highway South		SHEET NO. 3 OF 3	
Austin, Texas 78748		DATE: MAY 2, 2007	
DRAWN BY: WAL		SCALE: 1" = 30'	
JOB NO.: 03538527		CRD #: 03548104	

- LEGEND
- O.P.R.T.C. OFFICIAL PUBLIC RECORDS TRAVIS COUNTY
  - T.C.D.R. TRAVIS COUNTY DEED RECORDS
  - T.C.P.R. TRAVIS COUNTY PLAT RECORDS
  - ( ) RECORD INFORMATION
  - P.U.E. PUBLIC UTILITY EASEMENT
  - L.C.E. LIMITED COMMON ELEMENT
  - D.E. DRAINAGE EASEMENT
  - 1/2" IRON ROD FOUND
  - 1/2" IRON ROD SET WITH PLASTIC CAP
  - STAMPED "CAPITAL SURVEYING CO. INC."
  - ▲ CALCULATED POINT



WESTLING ADDITION  
BOOK 3, PAGE 215  
T.C.P.R.

SEE SHEET  
2 OF 3  
MATCHLINE

SEE SHEET  
2 OF 3  
MATCHLINE

SEE SHEET  
2 OF 3  
MATCHLINE

SEE SHEET  
2 OF 3  
MATCHLINE

SEE SHEET  
2 OF 3  
MATCHLINE

E. 16th ST.  
(50' R.O.W.)

E. 14th ST.  
(50' R.O.W.)

N.C.

**EXHIBIT D**

**SCHEDULE OF UNIT ALLOCATION PERCENTAGES  
CHESTNUT COMMONS**

**UNIT ALLOCATION PERCENTAGES**

UNIT	PERCENTAGE OF COMMON ELEMENT OWNERSHIP	PERCENTAGE OF LIABILITY FOR COMMON EXPENSES	VOTE
100	1.7188	1.7188	1/64
101	1.7188	1.7188	1/64
102	1.7188	1.7188	1/64
103	1.7188	1.7188	1/64
104	1.7188	1.7188	1/64
105	1.7188	1.7188	1/64
106	1.7188	1.7188	1/64
107	1.7188	1.7188	1/64
108	1.7188	1.7188	1/64
109	1.7188	1.7188	1/64
110	1.7188	1.7188	1/64
111	1.4063	1.4063	1/64
112	1.4063	1.4063	1/64
113	1.4063	1.4063	1/64
114	1.4063	1.4063	1/64
115	1.4063	1.4063	1/64
116	1.4063	1.4063	1/64
117	1.4063	1.4063	1/64
118	1.4063	1.4063	1/64
119	1.4063	1.4063	1/64
120	1.4063	1.4063	1/64
121	1.4063	1.4063	1/64
122	1.4063	1.4063	1/64
200	1.7188	1.7188	1/64
201	1.7188	1.7188	1/64
202	1.7188	1.7188	1/64



203	1.7188	1.7188	1/64
204	1.7188	1.7188	1/64
205	1.7188	1.7188	1/64
206	1.7188	1.7188	1/64
207	1.7188	1.7188	1/64
208	1.7188	1.7188	1/64
209	1.7188	1.7188	1/64
210	1.7188	1.7188	1/64
211	1.4063	1.4063	1/64
212	1.4063	1.4063	1/64
213	1.4063	1.4063	1/64
214	1.4063	1.4063	1/64
215	1.4063	1.4063	1/64
216	1.4063	1.4063	1/64
217	1.4063	1.4063	1/64
218	1.4063	1.4063	1/64
219	1.4063	1.4063	1/64
220	1.4063	1.4063	1/64
221	1.4063	1.4063	1/64
222	1.4063	1.4063	1/64
300	1.7188	1.7188	1/64
301	1.7188	1.7188	1/64
302	1.7188	1.7188	1/64
303	1.7188	1.7188	1/64
304	1.7188	1.7188	1/64
305	1.7188	1.7188	1/64
306	1.7188	1.7188	1/64
307	1.7188	1.7188	1/64
308	1.7188	1.7188	1/64
309	1.7188	1.7188	1/64
310	1.4063	1.4063	1/64
311	1.4063	1.4063	1/64
312	1.4063	1.4063	1/64
313	1.4063	1.4063	1/64
314	1.4063	1.4063	1/64
315	1.4063	1.4063	1/64
316	1.4063	1.4063	1/64
317	1.4063	1.4063	1/64

## EXHIBIT E

### OCCUPANCY AND USE RESTRICTIONS

1. VARIANCE. The use of the Property is subject to the restrictions contained in this Article, and subject to Rules adopted pursuant to this Article, including the rules set forth in the Community Manual. The Board, Declarant or the ARCC, as the case may be, may grant a variance or waiver of a restriction or Rule on a case-by-case basis, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances.

2. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its 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 its Board, is further granted the right to adopt, amend, repeal and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines to be in the best interests of the Association, in its sole and absolute discretion.

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

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

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

5. ANIMAL RESTRICTIONS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy quotas, no more than 2 dogs, or 2 cats, or 1 dog and 1 cat, may be maintained in each Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules.

6. ANNOYANCE. No Unit or Limited Common Element may be used in any way that: (a) may reasonably be considered annoying to neighbors; (b) may be calculated to reduce the desirability of the Property as a residential neighborhood; (c) may endanger the health or safety of Residents; (d) may result in the cancellation of insurance on any portion of the Property, or (e) will violate any law. The Board has the sole authority to determine what constitutes an annoyance.

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

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

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

10. DRIVEWAYS. Sidewalks, driveways, streets, parking areas, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access. Without the Board's prior approval, such areas may not be used: (a) for storage purposes, including storage of boats other watercraft, campers, recreational vehicles, commercial vehicles or other mobile storage units, trailers and inoperable vehicles; or (b) for repair or restoration of vehicles.

11. Fire Safety. No person may misuse, cover, disconnect, tamper with or modify the fire and safety equipment of the Property or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

12. GARAGE RESTRICTIONS. Garage LCE may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein, without the Board's written authorization. Automatic garage door openers are to be maintained by their Owners. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

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

14. NOISE & ODOR. A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Units. The Rules may prohibit the use of noise-producing security devices and windchimes. The Units are not soundproofed – noise transmission will occur.

15. OCCUPANCY OF UNITS. The Board may adopt reasonable Rules regarding the occupancy of Units and limit the total number of occupants permitted in each Unit on the basis of the square footage of the Unit and the fair use of the Common Area. A person may not occupy a Unit if the person constitutes a direct threat to the health or safety of other persons, or if the person's occupancy would result in substantial damage to the property of others. Notwithstanding the foregoing, no rule shall interfere with the freedom of the Owners to determine the composition of their households or be more restrictive than any standard permitted by the U.S. Department of Housing and Urban Development.

16. RESIDENTIAL USE. The use of a Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using the Unit for personal business or professional pursuits provided that: (a) the uses are incidental to the use of the Unit as a dwelling; (b) the uses conform to applicable governmental ordinances; (c) there is no external evidence of the uses; (d) the uses do not entail visits to the Unit by employees or the public; and (e) the uses do not interfere with Residents' use and enjoyment of neighboring Units.

17. SIGN RESTRICTIONS. No signs or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Units without written authorization of the Board. The Board's authorization may specify the location, nature, dimensions, number, and time period of any sign. Signs for lease, for rent and realtor signs may not be erected, placed or permitted in the windows or front yards of the Units or any of the Common Elements.

18. SPECIFIC USES. Except for ingress and egress, the front yards, sidewalks, and driveways on the Property may not be used for any purpose that has not been authorized in writing by the Board.

19. SPORTING EQUIPMENT. Without the Board or ARCC's prior written approval, basketball goals and other recreational or sporting equipment may not be used, attached, mounted, or installed in a front yard, on a front driveway, in an unfenced portion of a side yard, any Common Area, Limited Common Area, or on the street side exterior portion of a Unit. This prohibition applies to portable goals and equipment.

20. STRUCTURAL INTEGRITY. No person may directly or indirectly impair the structural soundness or integrity of a building or another Unit, nor do any work that will impair an easement or hereditament.

21. SATELLITE DISH/ANTENNA. A satellite dish or antenna that is permitted by Section 20 herein, or by public law is subject to this Section. As used in this Section, "Antenna/Dish Unit" means the Unit served by a satellite dish or antenna, or the Unit that is obviously intended to be served by a satellite dish or antenna, regardless of whether the service is operational. "Antenna/Dish Owner" means the Owner of a Unit served by a satellite dish or antenna, regardless of whether the Unit Owner purchases, uses or has actual knowledge of the satellite dish or antenna.

- a. Owner Responsibility. The installation of an Antenna/Dish on Common Elements subjects the Antenna/Dish Unit and its Owner to this Section, regardless of who installs the Antenna/Dish and regardless of whether the Antenna/Dish Owner has actual notice of installation. The Antenna/Dish Owner is solely responsible for (1) the cost of maintaining, repairing, replacing, and removing as necessary, the Antenna/Dish and (2) the cost of repairing the Common Elements if such repairs are necessitated by the Antenna/Dish or its installation, maintenance, repair or replacement, irrespective of whether the repairs are undertaken by the Antenna/Dish Owner or the Association. If required by the Association, the Antenna/Dish Owner will remove the Antenna/Dish, as necessary, to permit the Association to maintain, repair or replace Common Elements as the Association, in its sole discretion, deems necessary or desirable.
- b. Association Controls. To the extent permitted by public law, the Association may adopt and amend reasonable standards for the color, appearance, location, method of installation, maintenance, screening, camouflaging and use of Antenna/Dishes. The location and installation of an Antenna/Dish on the Common Elements must have the prior written approval of the Association, unless the location and installation comply with the most current standards that have been adopted and published by the Association.

- c. Interference. An Antenna/Dish or the use of an Antenna/Dish may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Residents or other Units or to the Association.

22. RISK. An Antenna/Dish on the Common Elements exists at the sole risk of the Owner and/or occupant of the Antenna/Dish Unit. The Association does not insure the Antenna/Dish and is not liable to the Antenna/Dish Owner or any other person for any loss or damage to the Antenna/Dish from any cause. The Antenna/Dish Owner indemnifies the Association, its directors and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits by anyone arising from his Antenna/Dish.

23. TELEVISION. Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Without the prior written consent of the Board or ARCC, no person may install the following equipment on the Common Elements or the exterior of buildings if it would be visible from a street: an antenna, microwave or satellite dish, receiving or transmitting tower; provided, however, that (a) reception-only TV antennas, (b) direct broadcast satellites (DBS) that are one meter or less in diameter, and (c) multipoint distribution service (MDS) antennas that are one meter or less in diameter may be installed, subject to paragraphs 20 and 21, the "Satellite Dish/Antenna".

24. VEHICLE RESTRICTIONS. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and Rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. Residents may wash their cars provided that they do not let the water run continuously. The Board may prohibit any vehicle which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, 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.

25. WINDOW RESTRICTIONS. All window treatments within the Unit, that are visible from the street or another Unit, must appear to be clear, white or beige in color when viewed from the outside of the Unit.

## **EXHIBIT F**

### **RECORDED EASEMENTS AND LICENSES**

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

1. Sanitary Sewer Easement recorded in Volume 820, Page 256, of the Deed records, of Travis County, Texas.
2. Drainage Easement recorded in Volume 10488, Page 305, of the Real Property records, of Travis County, Texas.
3. Drainage Easement recorded in Volume 10488, Page 309, of the Real Property records, of Travis County, Texas.
4. Sanitary Sewer Easement recorded in Volume 10488, Page 334, of the Real Property records, of Travis County, Texas.
5. Sanitary Sewer Easement recorded in Volume 10488, Page 338, of the Real Property records, of Travis County, Texas.

**EXHIBIT G**

**DESCRIPTION OF ADDITIONAL LAND SUBJECT TO ANNEXATION**

During the Development Period, Declarant, may but is not obligated to, annex any real property any portion of which is contiguous with, adjacent to, or within 1,000 feet of any real property that is subject to this Declaration, any and all of the below parcels of land:

[NONE]

**Recorders Memorandum**-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2007 May 09 02:26 PM

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ESPINOZAC \$476.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS