Preliminary Field Check For Drip Systems

DATE: 10/9/25

INSPECTOR: Hendry

COMMENTS: Probing in the area of the proposed drip field showed an average of 12” of soil above a restrictive horizon.

COMAL COUNTY
ENGINEER'S OFFICE

195 David Jonas Dr, New Braunfels, Texas 78132 (830)608-2090

Address: 8548 BENCLARE

Legal Description: BENCLARE ESTATES, LOT 2 Unit 213

Dear Property Owner & Agent,
Thank you for your submission. We have reviewed the planning materials for the referenced permit application, and unfortunately, they are insufficient. To proceed with processing this permit, we require the following:

118938.pdf Markup Summary 10-8-2025

Brandon Mark Olvera (2)



Subject: Group
Page Label: 2
Checkmark: Unchecked
Author: Brandon Mark Olvera
Date: 10/8/2025 11:59:02 AM

What is the overall GPD for Lot 2?



Subject: Group
Page Label: 11
Checkmark: Unchecked
Author: Brandon Mark Olvera
Date: 10/8/2025 11:59:33 AM

Total linear feet needs to match the design.

| Brandon Olvera | Designated Representative OS0034792 |
| t: 830-608-2090 | e: olverb@co.comal.tx.us |

RECEIVED
By Kathy Griffin at 10:55 am, Aug 18, 2025

COMAL COUNTY
ENGINEER'S OFFICE

OSSF DEVELOPMENT APPLICATION CHECKLIST

Staff will complete shaded items

		118938
Date Received	*Initials*	*Permit Number*

Instructions:

Place a check mark next to all items that apply. For items that do not apply, place "N/A". This OSSF Development Application Checklist **must** accompany the completed application.

OSSF Permit

- ☒ Completed Application for Permit for Authorization to Construct an On-Site Sewage Facility and License to Operate
- ☒ Site/Soil Evaluation Completed by a Certified Site Evaluator or a Professional Engineer
- ☒ Planning Materials of the OSSF as Required by the TCEQ Rules for OSSF Chapter 285. Planning Materials shall consist of a scaled design and all system specifications.
- ☒ Required Permit Fee - See Attached Fee Schedule
- ☒ Copy of Recorded Deed
- ☒ Surface Application/Aerobic Treatment System
  - ☒ Recorded Certification of OSSF Requiring Maintenance/Affidavit to the Public
  - ☒ Signed Maintenance Contract with Effective Date as Issuance of License to Operate

I affirm that I have provided all information required for my OSSF Development Application and that this application constitutes a completed OSSF Development Application.

Signature of Applicant

5/14/25
Date

___ COMPLETE APPLICATION

Check No. _____ Receipt No. _____

INCOMPLETE APPLICATION
___ (Missing Items Circled, Application Refused)

Revised: September 2019

RECEIVED
By Kathy Griffin at 10:55 am, Aug 18, 2025

COMAL COUNTY
ENGINEER'S OFFICE

ON-SITE SEWAGE FACILITY APPLICATION

195 DAVID JONAS DR
NEW BRAUNFELS, TX 78132
(830) 608-2090
WWW.CCEO.ORG

Date _____ Permit Number 118938

1. APPLICANT / AGENT INFORMATION

Owner Name	Heimer Estates Condominiums	Agent Name	Nicholas Kolbe
Mailing Address	211 N. LOOP 1604 E. SUITE 175	Agent Address	1825 FM 2438
City, State, Zip	SAN ANTONIO TX 78232	City, State, Zip	SeguinTX 78155
Phone #	210-957-3395	Phone #	830-708-9065
Email	casey.connelly@chesmar.com	Email	KolbeLandCo@Gmail.com

2. LOCATION

Subdivision Name BENCLARE ESTATES Unit 213 Lot 2 Block _____

Survey Name / Abstract Number _____ Acreage _____

Address 8548 BENCLARE City SAN ANTONIO State TX Zip 78266

3. TYPE OF DEVELOPMENT

☐ Single Family Residential

Type of Construction (House, Mobile, RV, Etc.) _____

Number of Bedrooms _____

Indicate Sq Ft of Living Area _____

☒ Non-Single Family Residential

(Planning materials must show adequate land area for doubling the required land needed for treatment units and disposal area)

Type of Facility <3500 SQFT, 4B SINGLE FAM. HOME for a condominium development

Offices, Factories, Churches, Schools, Parks, Etc. - Indicate Number Of Occupants _____

Restaurants, Lounges, Theaters - Indicate Number of Seats _____

Hotel, Motel, Hospital, Nursing Home - Indicate Number of Beds _____

Travel Trailer/RV Parks - Indicate Number of Spaces _____

Miscellaneous _____

What is the overall GPD for Lot 2?

Estimated Cost of Construction: $ 450,000.00 (Structure Only)

Is any portion of the proposed OSSF located in the United States Army Corps of Engineers (USACE) flowage easement?

☐ Yes ☒ No (If yes, owner must provide approval from USACE for proposed OSSF improvements within the USACE flowage easement)

Source of Water ☒ Public ☐ Private Well ☐ Rainwater

4. SIGNATURE OF OWNER

By signing this application, I certify that:

- The completed application and all additional information submitted does not contain any false information and does not conceal any material facts. I certify that I am the property owner or I possess the appropriate land rights necessary to make the permitted improvements on said property.
- Authorization is hereby given to the permitting authority and designated agents to enter upon the above described property for the purpose of site/soil evaluation and inspection of private sewage facilities..
- I understand that a permit of authorization to construct will not be issued until the Floodplain Administrator has performed the reviews required by the Comal County Flood Damage Prevention Order.
- I affirmatively consent to the online posting/public release of my e-mail address associated with this permit application, as applicable.

_____ 8/14/25

Signature of Owner Date

Revised January 2021

COMAL COUNTY
ENGINEER'S OFFICE

ON-SITE SEWAGE FACILITY APPLICATION

195 DAVID JONAS DR
NEW BRAUNFELS, TX 78132
(830) 608-2090
WWW.CCEO.ORG

Planning Materials & Site Evaluation as Required Completed By Nicholas Kolbe

System Description Aerobic Treatment with DRIP DISTRIBUTION

Size of Septic System Required Based on Planning Materials & Soil Evaluation

Tank Size(s) (Gallons) 600 GPD ATU Absorption/Application Area (Sq Ft) 3200 SQFT

Gallons Per Day (As Per TCEQ Table III) 300

(Sites generating more than 5000 gallons per day are required to obtain a permit through TCEQ.)

Is the property located over the Edwards Recharge Zone? ☐ Yes ☒ No

(If yes, the planning materials must be completed by a Registered Sanitarian (R.S.) or Professional Engineer (P.E.))

Is there an existing TCEQ approved WPAP for the property? ☐ Yes ☒ No

(If yes, the R.S. or P.E. shall certify that the OSSF design complies with all provisions of the existing WPAP.)

Is there at least one acre per single family dwelling as per 285.40(c)(1)? ☐ Yes ☒ No

If there is no existing WPAP, does the proposed development activity require a TCEQ approved WPAP? ☐ Yes ☒ No

(If yes, the R.S. or P.E. shall certify that the OSSF design will comply with all provisions of the proposed WPAP. A Permit to Construct will not be issued for the proposed OSSF until the proposed WPAP has been approved by the appropriate regional office.)

Is the property located over the Edwards Contributing Zone? ☐ Yes ☒ No

Is there an existing TCEQ approval CZP for the property? ☒ Yes ☐ No

(If yes, the P.E. or R.S. shall certify that the OSSF design complies with all provisions of the existing CZP.)

If there is no existing CZP, does the proposed development activity require a TCEQ approved CZP? ☐ Yes ☒ No

(If yes, the R.S. or P.E. shall certify that the OSSF design will comply with all provisions of the proposed CZP. A Permit to Construct will not be issued for the proposed OSSF until the CZP has been approved by the appropriate regional office.)

Is this property within an incorporated city? ☐ Yes ☒ No

If yes, indicate the city: _____

By signing this application, I certify that:

- The information provided above is true and correct to the best of my knowledge.
- I affirmatively consent to the online posting/public release of my e-mail address associated with this permit application, as applicable.

Signature of Designer

8·15·25
Date

2c

202506026021 08/15/2025 10:57:19 AM 1/2

AFFIDAVIT TO THE PUBLIC

THE COUNTY OF COMAL
STATE OF TEXAS

CERTIFICATION OF OSSF REQUIRING MAINTENANCE

According to Texas Commission on Environmental Quality Rules for On-Site Sewage Facilities (OSSF's), this document is filed in the Deed Records of Comal County, Texas.

I

The Texas Health and Safety Code, Chapter 366 authorizes the Texas Commission on Environmental Quality (commission) to regulate on-site sewage facilities (OSSFs). Additionally, the Texas Water Code (TWC), § 5.012 and§ 5.013, gives the commission primary responsibility for implementing the laws of the State of Texas relating to water and adopting rules necessary to carry out its powers and duties under the TWC. The commission, under the authority of the TWC and the Texas Health and Safety code, requires owner's to provide notice to the public that certain types of OSSFs are located on specific pieces of property. To achieve this notice, the commission requires a recorded affidavit. Additionally, the owner must provide proof of the recording to the OSSF permitting authority. This recorded affidavit is not a representation or warranty by the commission of the suitability of this OSSF, nor does it constitute any guarantee by the commission that the appropriate OSSF was installed.

II

An OSSF requiring a maintenance contract, according to 30 Texas Administrative Code §285.91 (12) will be installed on the property described as (insert legal description):

LOT 2 OF THE BENCLARE ESTATES SUBDIVISION, A SUBDIVISION IN COMAL COUNTY ACCORING TO THE PLAT RECORDED IN DOC. NO. 202106060252 OF THE OFFICIAL PUBLIC RECORDS OF COMAL COUNTY TEXAS CONTAINING UNIT 213, also known as 8548 BENCLARE, SAN ANTONIO TX 78266

The property is owned by (insert owner's full name):
HEIMER ESTATES CONDOMINIUMS

This OSSF must be covered by a continuous maintenance contract for the first two years. After the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days or maintain the system personally.

Upon sale or transfer of the above-described property, the permit for the OSSF shall be transferred to the buyer or new owner. A copy of the planning materials for the OSSF can be obtained from the Comal County Engineer's Office.

WITNESS BY HAND(S) ON THIS 14 DAY OF August, 20 25

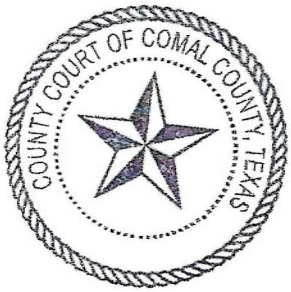
Ken Glass

Owner(s) signature(s)

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 14 DAY OF August 20 25

Notary Public, State of Texas

CASEY CONNELLY
Notary Public, State of Texas
Comm. Expires 07-30-2029
Notary ID 133242374



This page has been added to comply with the statutory requirements that the clerk shall stamp the recording information at the bottom of the last page.

This page becomes part of the document identified by the file clerk number affixed on preceding pages.

Filed and Recorded
Official Public Records
Bobbie Koepp, County Clerk
Comal County, Texas
08/15/2025 10:57:19 AM
MARY 2 Page(s)
202506026021

Bobbie Koepp

Created 7/27/15

Bulldog Septic Services
5361 Gin Rd, Marion Tx 78124
Tel.: (830) 583-7867

Permit# _____
Regulatory Agency Comal

COMMERCIAL INSPECTION & MAINTENANCE AGREEMENT

Regular and continuing Maintenance is the single most important key to the long-term safe and successful operation of surface application systems utilizing aerobic treatment plants. The **OWNER** of an aerobic wastewater treatment system is a **VITAL KEY** to its success or failure and thereby they must accept their responsibilities of its upkeep and maintenance. Bulldog Septic Services hereby enters this maintenance contract to assist the Owner in keeping his/her aerobic system operating properly and safely; and, to keep the owner in compliance with the Texas Commission on Environmental Quality (TCEQ) regulations. (Title 30 Texas Administrative Code, Chapter 285)

INSPECTION OF ITEMS: Items to be inspected include aerators, alarms, chlorine supply and disinfection system, diffusers, distribution systems, drip emitters, sludge volume, chlorine residual, electrical circuitry, filters and pumps.

FREQUENCY OF MAINENANCE INSPECTION: Bulldog Septic Services will perform maintenance inspections to the owner's aerobic wastewater treatment system three (3) times a year at approximately four (4) month intervals. On each report the owner receives, it will indicate when their next schedule maintenance inspection will occur.

REPORTS: A report will be generated during each visit with one (1) copy submitted to the required regulatory agency, one (1) copy sent to the owner of the system and the original maintained in our files. The report will indicate the date the inspection was performed, owners name and address, the items inspected, sampling test results for Chlorine Residual, comments, recommendations, and/or repairs performed.

SAMPLING: A Chlorine Residual sample will be conducted during each maintenance inspection visit. Results will be recorded on each report. For commercial systems only, each year, one (1) Biological Oxygen Demand (BOD) and one (1) Total Suspended Solids (TSS) sample will be taken for laboratory analysis. The owner is responsible for the laboratory cost for these tests. The test results will be submitted to the required regulatory agency.

REPAIRS: The owner of the aerobic wastewater treatment system is responsible for any cost associated with the repair or replacement of the system's components. Any repairs and/or replacement costs will be discussed with and accepted by the owner prior to any work performed by Bulldog Septic Services. Bulldog Septic Services will respond to non-scheduled services within 24 hours. There is additional fee for non-scheduled visits and/or service calls.

FEES: The cost of a maintenance agreement for the system listed below is: $ 500 and is valid for Two year(s). Payment is due at the time of contract signing. Failure to make payment within ten (10) days of date of the contract constitutes a breach of contract, and the appropriate regulatory agency will be notified of the cancellation of the contract. This maintenance agreement does not cover the cost of customer-requested service calls, materials or labor that are due to system or component failure. Non-scheduled visits and/or service calls requested by the owner will be at an additional charge. **Invoices are due upon completion of the work performed and/or receipt of invoices.**

OWNER'S RESPONSIBILITIES:

- The owner of the Aerobic Treatment Unit must maintain sufficient chlorine (tablets or liquid) in the disinfection system at all times.
- The owner must maintain an area free of overgrowth or vegetation around the Aerobic Treatment Unit and sprinklers.
- Make your property accessible (gate unlocked or key/combination provided), and dogs restrained during each visit.
- The owner must follow the manufacturer's recommendations for the system's proper operation, including restricting the disposal of non-biodegradable material, chemicals, solvents, thinners, fuels, grease, oils, etc. that can effect the systems performance and/or pollute the environment.
- The owner must have their system repaired or components replaced immediately by a Certified Provider as needed.
- The owner must have their Aerobic Treatment Unit pumped out by a licensed waste hauler when their system exceeds 65% sludge volume.
- Bulldog Septic Services will advise you when this is necessary by conducting a free annual 30 minute settleometer test.
- The owner should keep fire ants away from the Aerobic Treatment unit and its components. Any damage caused by fire ants is not covered under any warranty. Bulldog Septic Services reserves the right to refuse service to systems infested by fire ants. A Travel charge shall be made for return visits, due to fire ant infestation or animals not restrained.

This contract is valid from: License to Operate through 2 years from License to Operate

Manufacturer: Aeris Model: 600-GPD Serial Number: _____

Owner's Name: Chesmar Homes LLC Site Address: 8548 Benclare

Mailing Address: 8548 Benclare, San Antonio, TX 78266

Telephone: _____ Cell Phone: 210-957-3395 Work Phone: _____

Email: shelby.trainer@chesmar.com Call or Text Before Each Visit? ___ Yes ___ No Gate Code: _____

Signature of Owner	Date	Scott Platt, MP	MP2739 TCEQ License
	5/15/25		

OSSF Soil & Site Evaluation

Page 1 (Soil & Site Evaluation) **Date Performed:** 8/12/2025

Property Owner: CHESMAR HOMES LLC

Site Location: 8548 BENCLARE SAN ANTONIO TX 78266 Proposed Excavation Depth: 6"

REQUIREMENTS:

At least two soil excavations must be performed on the site, at opposite ends of the proposed disposal area. Locations of soil borings or dug pits must be shown on the site drawing. For subsurface disposal, soil evaluations must be performed to a depth of at least two feet below the proposed disposal field excavation depth. For surface disposal, the surface horizon must be evaluated. Describe each soil horizon and identify any restrictive features on this form. Indicate depths where features appear.

Soil Boring Number: 1-2					
Depth (Feet)	**Texture Class**	**Gravel Analysis (If Applicable)**	**Drainage (Mottles/ Water Table)**	**Restrictive Horizon**	**Observations**
1 FT.	III, CLAY LOAM 0-12"	NONE	WELL DRAINED	NONE	EX. DOWN AND PLACE DRIP FIELD IN 6"
2 FT.					
3 FT.	IA (ROCK AT (12"-14")	OVER 30%	WELL DRAINED	ROCK AT 12"	FIELD SIZED ON IV ABS. RATE. WITH DISINF.
4 FT.					
5 FT.					

Soil Boring Number:					
Depth (Feet)	**Texture Class**	**Gravel Analysis (If Applicable)**	**Drainage (Mottles/ Water Table)**	**Restrictive Horizon**	**Observations**
1 FT.					
2 FT.					
3 FT.					
4 FT.					
5 FT.					

FEATURES OF SITE AREA

Presence of 100 year flood zone	☐ Yes	☒ No
Presence of upper water shed	☐ Yes	☒ No
Presence of adjacent ponds, streams, water impoundments	☐ Yes	☒ No
Existing or proposed water well in nearby area (within 150 feet)	☐ Yes	☒ No
Ground Slope	5 %	

I certify that the findings of this report are based on my field observations and are accurate to the best of my ability.

(Signature of person performing evaluation)	8-15-25 ~~8/5/2025~~ (Date)	OS0036987 Registration Number and Type

Form # PA3/2-2004-Revised-Final

Page 2 (Soil & Site Evaluation):

Date Performed: 3/5/2025

Site Location: 8528 BENCLARE SAN ANTONIO TX 78266 ☒ Subsurface Disposal ☐ Surface Disposal

Schematic of Lot or Tract

Show:

Compass North, adjacent streets, property lines, property dimensions, location of buildings, easements, swimming pools, water lines, and any other structures where known.
Location of existing or proposed water wells within 150 feet of the property.
Indicate slope or provide contour lines from the structure to the farthest location of the proposed disposal field.
Location of soil boring or excavation pits (show location with respect to a known reference point).
Location of natural, constructed, or proposed drainage ways (ditches, streams, ponds, lakes, rivers, etc.), water impoundment areas, cut or fill bank, sharp slopes and breaks.

Lot Size: _____ or Acreage: LOT 2, unit 213

SITE DRAWING

See Design

Form # PA4/2-2004-Revised-Final

Nicholas Kolbe, R.S., S.E.
1825 FM 2438 Seguin, Texas 78155
Mobile 830-708-9065 KolbeLandCo@gmail.com

OSSF DESIGN

Owner: **CHESMAR HOMES LLC**
Location: **8548 BENCLARE SAN ANTONIO TX 78266**
Phone:
Date: **8/13/2025**

Development: **Single Family Residence** Bedrooms: **4** SQFT=<**3500** **GPD = 300**
Total GPD= **300**

GPD: **300** Soil: **Type 4(IV)** R_a: **0.10 gall/ft²/day** **Q=300**



Design Q: **300 gpd**
System Type: **Aerobic Treatment & Drip Disposal**

Minimum Required ATU Capacity: **480 GPD ATU**
Designed ATU: **600 gpd (aeris d-600-m)**

ATU: **Aeris D-600-M, 600 GPD ATU** Dripline: **Netafim Bioline 0.62**

Dripline Spacing: **2'** Emitter Spacing: **24"** Emitter Flow Rate (F): **0.62 gph**

Total Absorption Area Required (A): **3000ft²** (Q/R_a) Total Length Dripline Required (L): **1500 ft** (A/2)

ZONE 1

Total Length Dripline Designed: **1600 ft** Total Absorption Area Designed: (L)(2 ft) **3200 ft²**

Total Number Emitters (E): **800** (L/2) Dripline Flow Rate: **8.26 gpm** (E)(F)/(60 min/hr)

Dosing Duration: **13min** (6 -15 min) Dosing Volume: **107.38 gall/dose** (Duration)(Dripline Flow Rate)
Total Dose Vol. over 24 Hrs = Dose Every 8 Hours = 3 Doses a Day = **(322.14 Gallons over 24hrs)**

Doses Per Day: **3** (Q/Dosing Volume) Dosing Interval: **8 hrs**

Supply Line: **Sch 40, 1" purple (~180')** Flush Line: **Sch 40, 1" purple (~ 180')**

Filter: **100-130 micron disc filter, manual flush** Flush Valve: **1" Ball Valve**

Disinfection: **Required**

****Pressure Gauge and hose bib installed in the pump tank on the manifold to maintain pressure of 40 PSI****
Pump Used: **StaRite 0.50 HP, 20 gpm or equivalent**

A = 3" or 4" SCH 40 PVC with 2-way Clean Out. Approximately 10' from home to tank.

B = Aeris 600 GPD ATU

C = DRIP IRRIGATION FIELD, WITH 1600 LINEAR FEET OF DRIP TUBING.

S = Supply Line

F = Flush Line

R = Vacuum Relief Valves

TH = Test Hole

Lot: LOT 2, UNIT 213, CONDOMINIUM HEIMER ESTATES IN COMAL COUNTY TX.

Property is Not located within 100YR Flood Plain.
Property is not Located in the Edwards Aquifer Contribution zone OR the recharge zone.

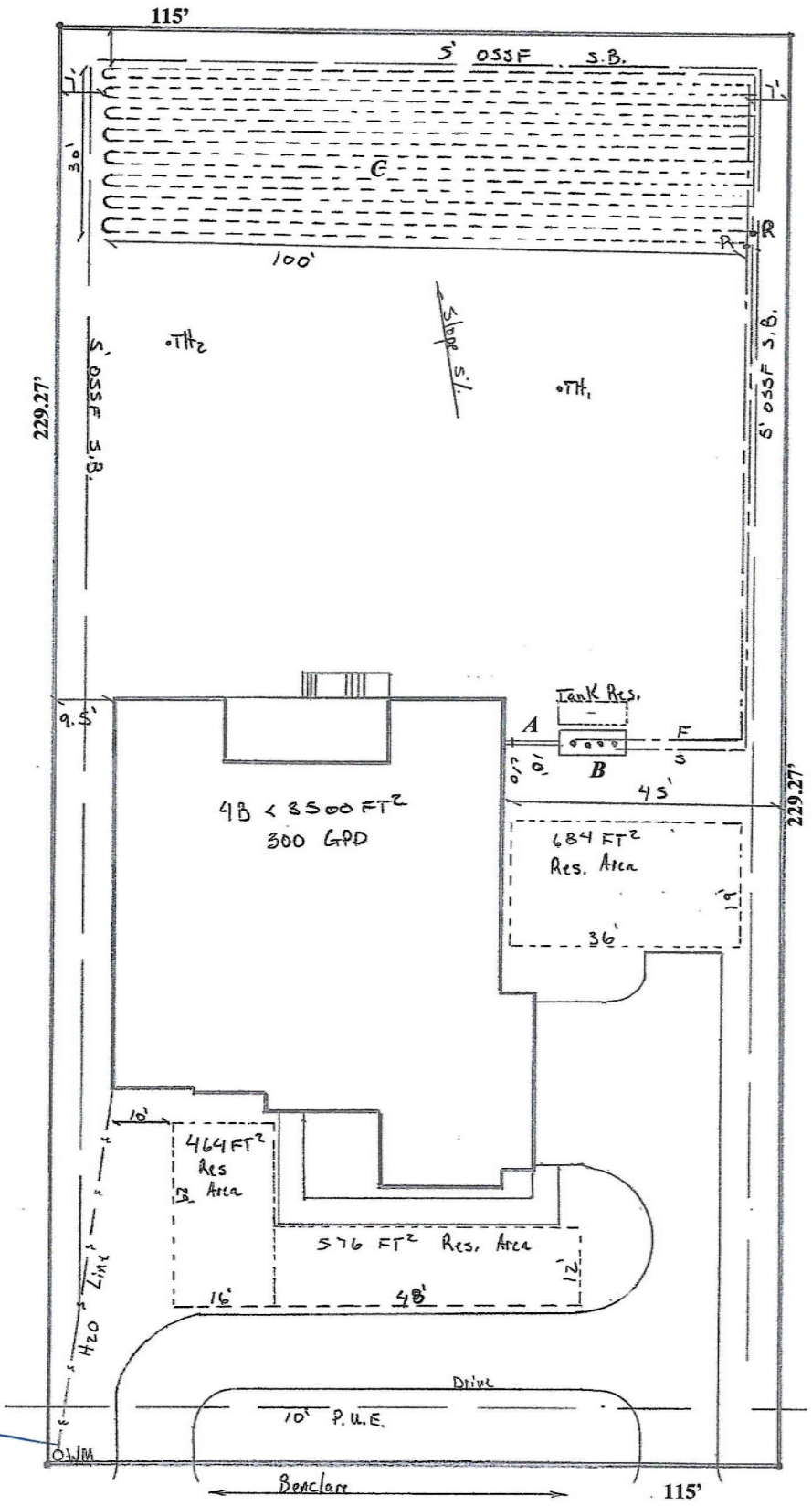
SITE PLAN & OSSF DESIGN:

Contributing Zone Plan (CZP) Notes

THE DESIGNED ON-SITE SEWAGE FACILITY (OSSF) FOR THE REFERNCED PROPERTY COMPLIES WITH ALL OF THE PROVISIONS OF THE CONTRIBUTING ZONE PLAN AS APPROVED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

8.15.25

STATE OF TEXAS
Nicholas Kolbe
5115
REGISTERED
PROFESSIONAL SANITARIAN



CHESMAR HOMES LLC **8548 BENCLARE** **SAN ANTONIO TX 78266**	
Nicholas Kolbe, R.S. #5115 1825 FM 2438 Seguin TX 78155	Date: 8/13/2025 Scale: 1"= 40'

NOTES

1. ***This system is designed for a maximum of 300 gall of wastewater flow per day on a 4 bedroom, <3500sqft home. Exceeding this volume may result in system failure.***
2. ***System designed aerobic drip system. Backfill oil shall be type 2 (sandy Loam) and the drainfield shall be sized on the absorption rate for type 4 soil.***
3. Install a minimum 600 GPD ATU (Aeris 600 GPD ATU). Audible and visual high-water alarms, external disconnect within site of the pump tank, pump and alarms on separate breakers and external wiring in conduit required.
4. Install a 2-way cleanout in a 3" or 4" tightline from the house to the ATU, minimum slope 1/8 in/ft. Minimum 5' from home to tank edge. Designed for 10' from home to tank.
5. The drip field shall be excavated down 6" and drip line shall be laid in the native soil 6".
6. Then drip tubing will be laid and a minimum of 6" of type 2 sandy loam soil shall be placed over the dripfield area and a minimum of 1'-2' beyond the edges. ***NOT SAND***. Total of 6" minimum of soil brought to site.
7. The ossf design is for one drip field with a total of 1540 linear feet of drip tubing.
8. For field 1, Install 1600' of Netafim 0.62 gph dripline into the field, 2' apart. No single lateral shall exceed 320' in length. All loops in the dripline shall be flexible PVC.
9. Design for field 1 is for 8 total runs. **1 = 200' 2 = 200' 3 = 200' 4 = 200' 5 = 200' 6=200' 7=200' 8=200'**
10. Supply (S) and Flush (F) lines shall be 1" purple sch 40 PVC. A 100-130 micron disc filter shall be installed in the supply line inside the pump chamber. A 1" ball valve shall be installed on the flush line and shall be located in the tank or in a valve box. This valve shall be used to open the flush line periodically to flush the drip lines (OTHER THAN WHEN FLUSHING SYTEM, VALVE SHALL REMAIN CLOSED. PERIODIC FLUSHING. The flush line shall terminate in the Pretreatment (trash chamber) of the tank. Solids caught in the disc filter are flushed each cycle back to the trash tank.
11. A vacuum relief valve (R) shall be installed on both the supply and flush lines at their **highest** points. The valves shall be located in valve boxes filled with pea gravel.
12. Install a pressure gauge and hose bib in the pump tank on the manifold to maintain pressure of 40 PSI.
13. Cover the dripfield with a minimum of 6" type 2 soil, NOT SAND. Drainfield shall be sodded with grass/seeded over/or erosion blanket placed over the field prior to start up.
14. **DISINFECTION IS REQUIRED**
15. The pump shall operate on a timer set to run for (SEE SPEC SHEET FOR RUN TIME DETAILS).
16. ***The reserve capacity (1/3) of the daily flow for this system is 100 gallons***
17. No
18. part of the septic system absorption field is within 150' of any sensitive recharge feature. No part of the On Site Sewage Facility treatment tank is within 50' of any sensitive recharge feature.
19. ***Potable water line must maintain a 10' separation distance from OSSF (field and tank). Waterline to be sleeved in sch 40 where it is located <10' from any OSSF element or spray area in order to provide the equivalent protection of a 10' separation in compliance with TAC Chapter 290, Subchapter D, Rules for Public Drinking Water Systems.***
20. ***Entirety of septic system is to stay within the setbacks and boundary lines of property.***
21. ***Design and details written and drawn herein were prepared with the best available information provided to the Registered Sanitarian by the landowner and by ground truth/evaluation.***
22. ***THE RESERVE DISTRIBUTION AREA OUTLINE ON THE DESIGN IS FOR A MOUNDED AEROBIC DRIP SYSTEM WITH A MINIMUM OF 12" BETWEEN DRIPLINES AND FISSUED OR FRACTURED ROCK. SIZED ON A CLASS III SOIL. MINIMUM OF 1500 SQFT NEEDED. RESERVES IS 1688 SQFT.***

Total linear feet needs to match the

8.15.25

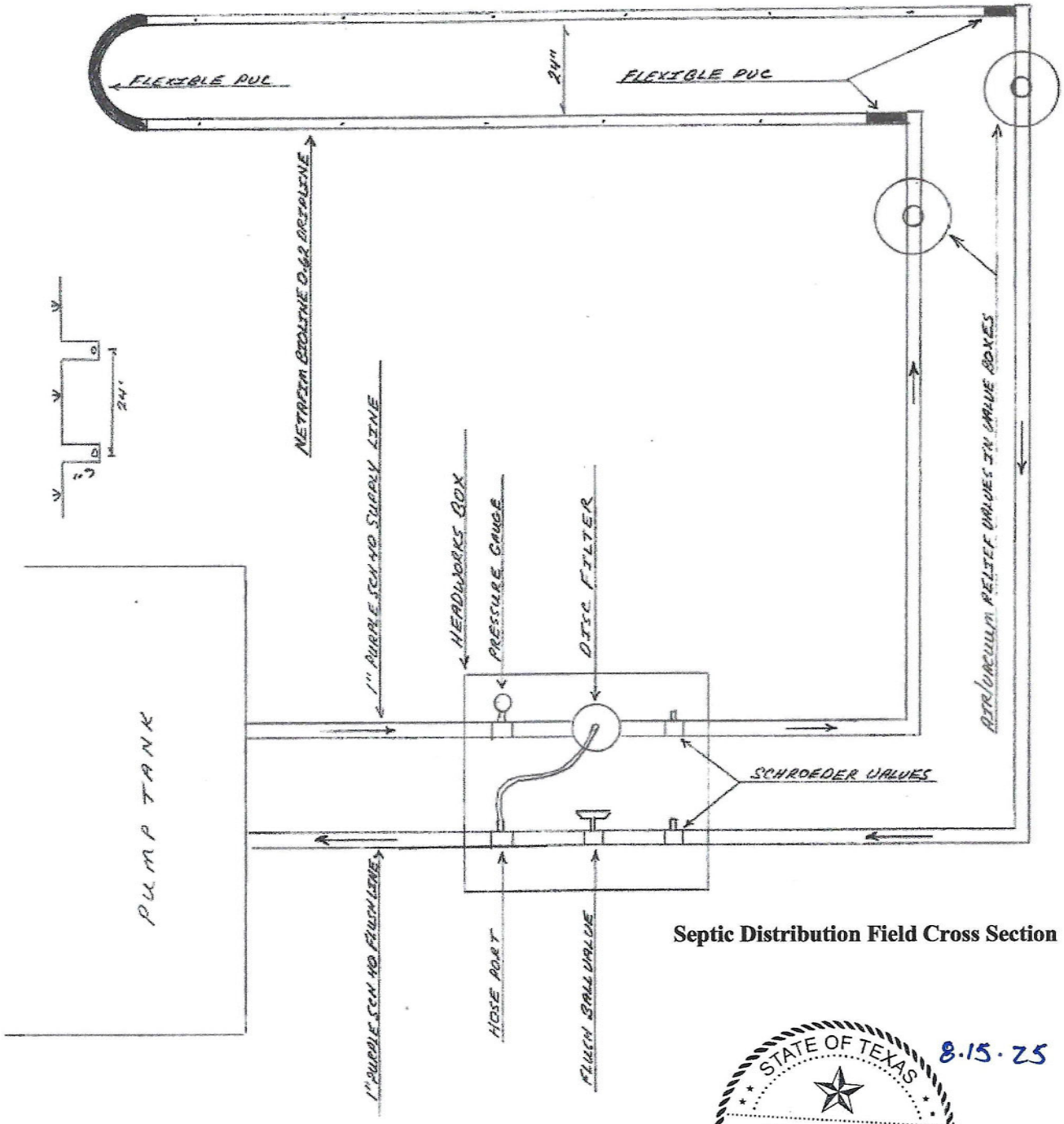
STATE OF TEXAS
Nicholas Kolbe
5115
REGISTERED
PROFESSIONAL SANITARIAN

CHESMAR HOMES LLC **8548 BENCLARE** **SAN ANTONIO TX 78266**	
Nicholas Kolbe, R.S. #5115 1825 FM 2438 Seguin TX 78155	Date: 8/13/2025 Scale: 1"= 40'

Lot: LOT 2, UNIT 213, CONDOMINIUM HEIMER ESTATES IN COMAL COUNTY TX.

Property is Not located within 100YR Flood Plain.
Property is not Located in the Edwards Aquifer Contribution zone OR the recharge zone.

SITE PLAN & OSSF DESIGN:



Septic Distribution Field Cross Section

STATE OF TEXAS
Nicholas Kolbe
5115
REGISTERED
SANITARIAN
8.15.25

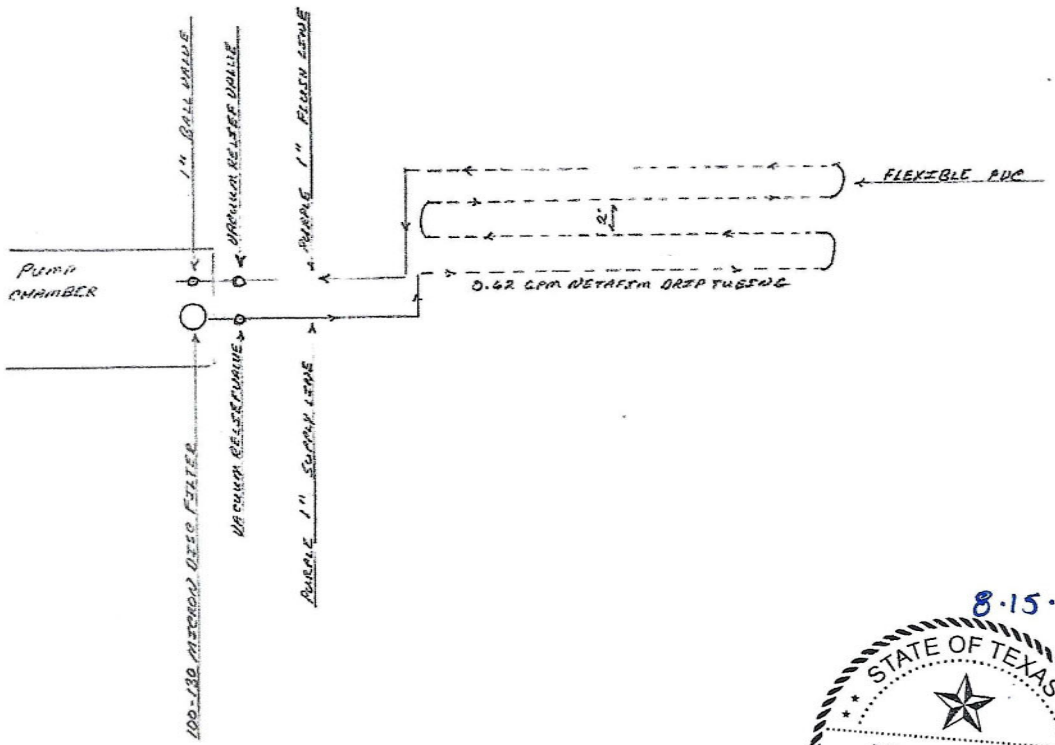
CHESMAR HOMES LLC **8548 BENCLARE** **SAN ANTONIO TX 78266**	
Nicholas Kolbe, R.S. #5115 1825 FM 2438 Seguin TX 78155	Date: 8/13/2025 Scale: 1"= 40'

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SITE PLAN & OSSF DESIGN:

Septic Distribution Field Cross Section



8·15·25

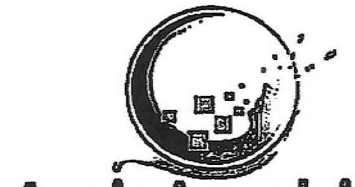
STATE OF TEXAS
Nicholas Kolbe
5115
LICENSED PROFESSIONAL SANITARIAN

CHESMAR HOMES LLC **8548 BENCLARE** **SAN ANTONIO TX 78266**	
Nicholas Kolbe, R.S. #5115 1825 FM 2438 Seguin TX 78155	Date: 8/13/2025 Scale: 1"= 40'

Lot: LOT 2, UNIT 213, CONDOMINIUM HEIMER ESTATES IN COMAL COUNTY TX.

Property is Not located within 100YR Flood Plain.
Property is not Located in the Edwards Aquifer Contribution zone OR the recharge zone.

SITE PLAN & OSSF DESIGN:



Aeris Aerobics Gallon Per Chamber:

Aeris Systems Chambers:	Trash	Aeration	Clarifier	Pump
D-500m	568	371	197	763
D-600m	478	461	197	763
D-750	355	584	197	763
D-840	552	601	205	919
D-1100	807	836	300	
D-1500		1532	388	

GULF COAST TESTING, LLC

June 4, 2015

Matt Dulworth
Aeris Aerobics
5021 SE McKinney
Rice, TX 75155

Re: Calculation of BOD Removal

Dear Matt,

Aeris Aerobics has requested the maximum amount of BOD removed from their units on a daily basis. NSF/ANSI Standard 40 requires the BOD to average 300 mg/day or less. Based on 300 mg/day, the maximum daily load removed by your units is set forth below:

300 mg/L		
Unit	Capacity gpd	lbs/day
D-500	500	1.3
D-600	600	1.5
D-750	750	1.9
D-840	840	2.1
D-890	890	2.2
D-1100	1100	2.8
D-1250	1250	3.1
D-1500	1500	3.8

Should you have any questions in regard to this letter or require additional information, please do not hesitate to contact me.

Sincerely yours,

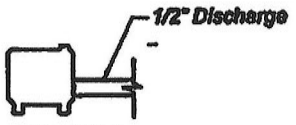
Gulf Coast Testing, Inc.

William B. Daniel IV
Program Manager

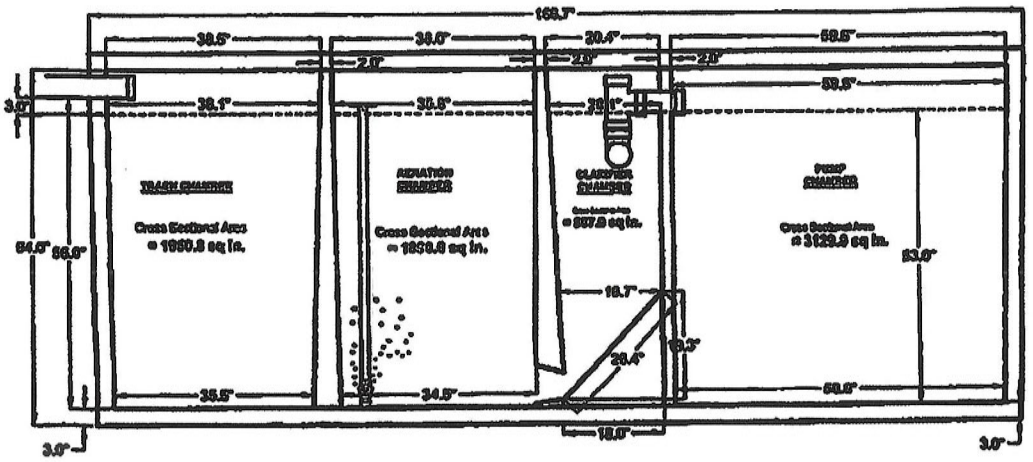
Correspondence.2015.06.04.SPE253 Daily Load Calculations

Office/Mailing | 17170 Perkins Road • Baton Rouge, LA 70810
Phone 225.612.1987 • Fax 225.612.1988
Test Site Address | 14378 Park Avenue • Prairieville, LA 70769
william.daniel@gctla.com

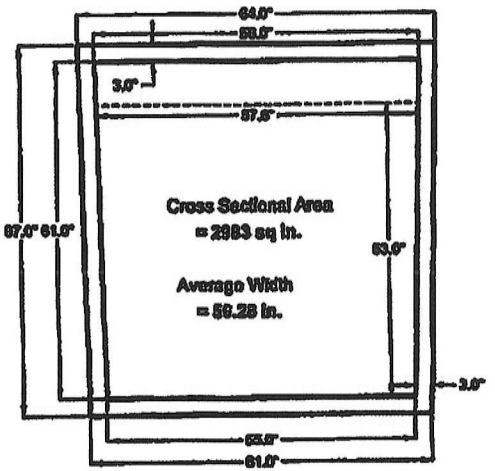
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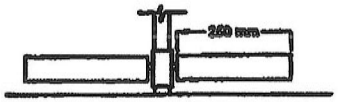
BLOWER



SIDE SECTION VIEW
SCALE: 1" = 3/8 "



END SECTION VIEW
SCALE: 1" = 3/8 "



DIFFUSER DETAIL
2 - 250 mm
Max flow per diffuser
= 55 liters/minute

TOTAL GALLONS PER DAY USE IS EQUAL TO OR LESS THAN 360
53" = 763 GALLONS = 14.39 GALLONS PER INCH

PUMP OFF = 8" = 115.12 GALLONS
PUMP ON = 16" = 115.12 GALLONS
HIGH WATER ALARM = 42" = 374.14 GALLONS
RESERVE AREA = BOTTOM OF INLET (53") TO HIGH WATER ALARM (42")
11" = 158.29 GALLONS (NEED 120 MINIMUM).

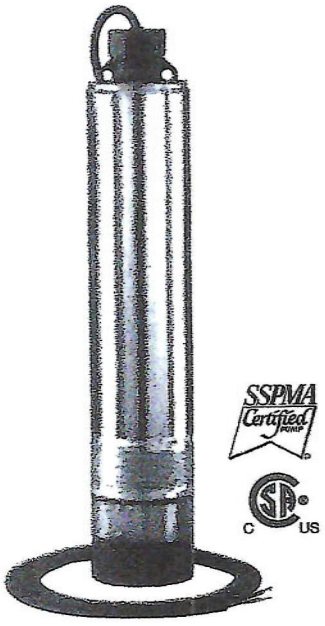


8.15.25

Title:	Company Name:	Date:
Model D-600-m 600 gallon per day Aerobic Treatment Unit	Aeris Aerobics	2-22-2015

STA-RITE® ST.E.P Plus D Series

4" multi-stage submersible effluent pumps



The ST.E.P Plus D Series 4" submersible pump in 10, 20 and 30 GPM models dominate with superior "draw-down" capability.

The ST.E.P Plus D Series 4" submersible pump dominates with reduced amp draw.

The ST.E.P Plus D Series 4" submersible pump dominates with cooler and quieter operation.

APPLICATIONS

Clean and Gray Water... for residential, commercial, and agricultural use.

SPECIFICATIONS

Motor – Available in 115 or 230 volt versions. Dry-wound, double ball-bearing, double-seal and thermal overload protected, UL and CSA approved.

Shell – Stainless steel (300 grade)

Discharge – 1-1/4" Fiberglass-reinforced thermoplastic

Discharge Bearing – Nylatron®

Impellers – Acetel

Diffusers – Polycarbonate

Suction Caps – Polycarbonate with stainless steel wear ring

Thrust Pads – Proprietary spec.

Shaft and Coupling – Stainless steel 300 grade

Intake – Fiberglass-reinforced thermoplastic

Intake Screen – Stainless steel

Jacketed Cord – 600 Volt "SJOW" jacketed 10' leads, 2-wire with ground

Agency Listing – CSA

FEATURES

ST.E.P. Plus DOMINATES with a...

Proven Stage System – The proven SignaSeal staging system utilizes a patented ceramic wear surface. When incorporated with STA-RITE's "true" independent floating impellers, dominates with 1st-in-class performance, superior sand handling, and a thrust management staging system with industry exclusive "dry-run" capabilities.

Superior "draw-down" capability – The ST.E.P. Plus Dominates in this class with the lowest draw-down of 4-1/2" (a standard 4" NEMA submersible only draws-down to 13-1/2").

Reduced amp draw – The ST.E.P. Plus Dominates in this class with less energy consumption – over 25% less amp draw (9.5 amps vs. 12.7 amps, 115 volt) than a 4" NEMA submersible, reducing operating costs and extending the service life of float switch contacts.

Cooler and quieter operation – The ST.E.P. Plus Dominates by using the pumped liquid to cool the motor as it passes over the motor. The water passing over the motor dampens the motor noise, eliminating expensive "flow-inducer sleeves" required when using a standard 4" NEMA submersible.

Impellers – Precision molded for perfect balance... ultra smooth for the highest performance and efficiency. Allows for .080" solids.

Shaft – Positive drive, hexagonal 7/16" – 300-grade stainless steel shaft offers generous impeller drive surfaces.

Shaft bearing – Exclusive self-lubricating Nylatron® bearing resists wear surface from sand and abrasives.

Shell – Corrosion resistant 300-grade stainless steel.

ORDERING INFORMATION

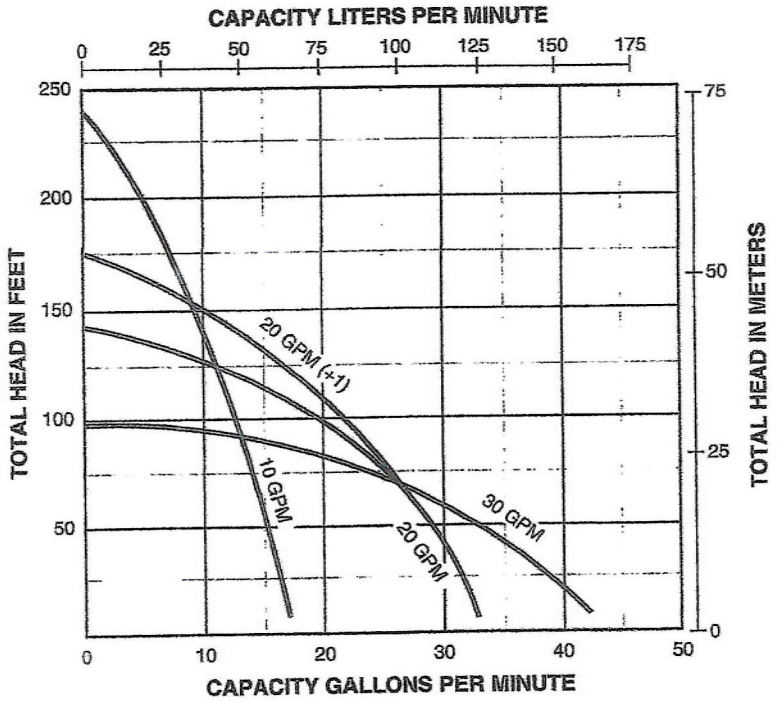
CATALOG NUMBER	HP	MAX. LOAD AMPS	VOLTS	PHASE/ CYCLES	CORD LENGTH	PALLET QUANTITY	WEIGHT (LBS.)
10DOM05221	1/2	5.5	230	1/60	10'	80	16
10DOM05121	1/2	11.0	115	1/60	10'	80	16
20DOM05221	1/2	4.6	230	1/60	10'	80	16
20DOM05121	1/2	9.5	115	1/60	10'	80	16
30DOM05221	1/2	4.6	230	1/60	10'	80	16
30DOM05121	1/2	9.5	115	1/60	10'	80	16
20DOM05221+1	1/2	5.3	230	1/60	10'	80	16
20DOM05121+1	1/2	10.6	115	1/60	10'	80	16

In order to provide the best products possible, specifications are subject to change.

STA-RITE® ST.E.P Plus D Series

4" multi-stage submersible effluent pumps

PUMP PERFORMANCE



PUMP PERFORMANCE (CAPACITY IN GALLONS PER MINUTE)

PUMP MODEL	FLOW RATE (GPM)	PSI											
		0	10	20	30	40	50	60	70	80	90	100	110
10DOM05221	10			15.0	13.7	12.7	11.5	10.2	8.4	6.5	4.3	1.0	
10DOM05121	10			15.0	13.7	12.7	11.5	10.2	8.4	6.5	4.3	1.0	
20DOM05221	20			30.0	26.0	21.5	14.2	4.4					
20DOM05121	20			30.0	26.0	21.5	14.2	4.4					
30DOM05221	30		38.5	33.3	25.8	16							
30DOM05121	30		38.5	33.3	25.8	16							
20DOM05221+1	20 + 1			30	27.5	24	20	13.5	6				
20DOM05121+1	20 + 1			30	27.5	24	20	13.5	6				

PUMP PERFORMANCE (CAPACITY IN LITERS PER MINUTE)

PUMP MODEL	FLOW RATE (LPM)	BAR											
		.69	1.38	2.07	2.76	3.45	4.13	4.82	5.51	6.20	6.89	7.58	110
10DOM05221	37.85			56.8	51.9	48.1	43.5	38.6	31.8	24.6	16.3	3.8	
10DOM05121	37.85			56.8	51.9	48.1	43.5	38.6	31.8	24.6	16.3	3.8	
20DOM05221	75.7			113.6	98.4	81.4	53.7	16.7					
20DOM05121	75.7			113.6	98.4	81.4	53.7	16.7					
30DOM05221	113.55		145.7	126.0	97.7	60.6							
30DOM05121	113.55		145.7	126.0	97.7	60.6							
20DOM05221+1	75.7 + 1			113.4	103.9	90.7	75.6	51.0	22.6				
20DOM05121+1	75.7 + 1			113.4	103.9	90.7	75.6	51.0	22.6				



MANUAL DISC FILTERS

APPLICATIONS

- Residential
- Commercial
- Municipal
- Institutional

SPECIFICATIONS

- Maximum pressure:
  ¾", 1", 1 ½": 140 psi
  2" Dual Lite: 115 psi
  2" Dual HP: 174 psi
- Flow range:
  ¾" - 1 to 17 GPM
  1" - 5 to 26 GPM
  1 ½" - 10 to 35 GPM
  1 ½" Long - 10 to 52 GPM
  2" Dual Lite - 40 to 110 GPM
  2" Dual HP - 40 to 120 GPM

MATERIALS

- Filter body and cover: reinforced polyamide
- Disc rings: polypropylene
- O-Rings: EPDM rubber
- Clamps: stainless steel

FEATURES & BENEFITS

DISC FILTER DESIGN

Collects debris along the depth of the discs, not just at the surface like screen filters. Disc helps filtration with calcium build up.

100% THERMOPLASTIC DISCS

Corrosion resistant. Disc screens prevents element collapsing.

REPLACEMENT FILTER RINGS AVAILABLE

Color-coded for easy mesh identification.

EXTRA LARGE FILTRATION CAPACITY

Requires less cleaning.



3/4" FILTER



1" FILTER



1 1/2" FILTER



1 1/2" LONG FILTER



2" DUAL LITE FILTER



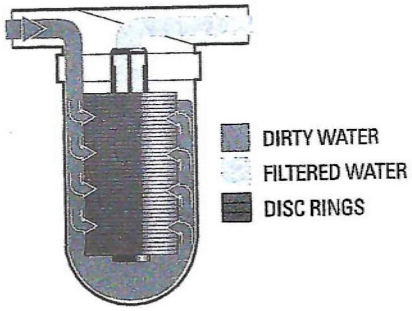
2" DUAL HP FILTER

DISC FILTER TECHNOLOGY

Grooves in the disc rings criss-cross to form a network that traps debris between and on the outside of the discs.

HOW IT WORKS

As dirty water is pumped into the filter, and pressure increases, the water compresses the disc rings together tightly. The water is then forced to flow through the grooves of the disc rings, where debris is trapped, releasing only clean water to the irrigation system.

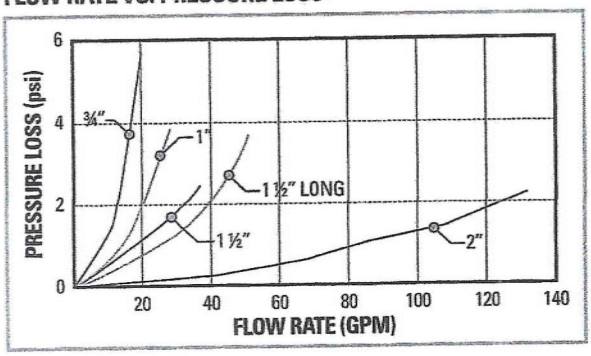


DISC FILTER RINGS



YELLOW	RED	BLACK	GREEN
80 MESH 200 MICRON	120 MESH 130 MICRON	140 MESH 115 MICRON	200 MESH 55 MICRON (2" ONLY)

FLOW RATE VS. PRESSURE LOSS



FLOW RATE VS. PRESSURE LOSS

FLOW RATE (GPM)	PRESSURE LOSS (psi)					
	3/4"	1"	1 1/2"	1 1/2" LONG	2" DUAL LITE	2" DUAL HP
5	0.60	0.25				
10	2.50	0.60				
13	3.40	1.44				
17	5.87	2.10				
22		3.24	1.10			
26			1.30	1.50		
31			1.70	2.10		
35			2.30	2.50		
44				4.20	0.30	0.30
66					0.63	0.63
88					1.03	1.03
110					1.47	1.47

Losses shown are for filters with 140 mesh.

LEGEND

- River, ditch, lake or reservoir water
- Well water containing sand only
- Municipal supply

DIMENSIONS & WEIGHT

SIZE	LENGTH	WIDTH	WEIGHT (LBS)
3/4"	5 22/32"	7 15/32"	.66
1"	9 11/32"	6 7/32"	2.2
1 1/2"	10 5/8"	7 7/8"	2.4
1 1/2" LONG	14 1/2"	7 7/8"	3.3
2" DUAL LITE	16 5/16"	10 1/4"	6.6
2" DUAL HP	14 3/4"	10 1/4"	11

ORDERING INFORMATION

FILTER SIZE	MESH	DISC FILTER MODEL NUMBER	REPLACEMENT FILTER RINGS MODEL NUMBER
3/4"	40	DF075-040	DFR075040
	80	DF075-080	DFR075080
	120	DF075-120	DFR075120
	140	DF075-140	DFR075140
1"	40	DF100-040	DFR150040*
	80	DF100-080	DFR150080*
	120	DF100-120	DFR150120*
	140	DF100-140	DFR150140*
1 1/2"	40	DF150-040	DFR150040*
	80	DF150-080	DFR150080*
	120	DF150-120	DFR150120*
	140	DF150-140	DFR150140*
1 1/2" LONG	40	DF150S-040	DFR150L040*
	80	DF150S-080	DFR150L080*
	120	DF150S-120	DFR150L120*
	140	DF150S-140	DFR150L140*
2" DUAL LITE	40	DF2DL-040	DFR200040
	80	DF2DL-080	DFR200080
	120	DF2DL-120	DFR200120
	140	DF2DL-140	DFR200140
	200	DF2DL-200	DFR200200
2" DUAL HP	40	DF200-040	DFR200040
	80	DF200-080	DFR200080
	120	DF200-120	DFR200120
	140	DF200-140	DFR200140
	200	DF200-200	DFR200200

* Ring set and filter spine.
140 Mesh: Standard for LVCZ Kit.

NETAFIM™

NETAFIM USA
(888) 638 2346
www.netafimusa.com

LMNFL 10/16

Arkal 1" Super Filter

Catalog No. 1102 0_ _ _



Features

- A "T" shaped filter with two 1" male threads.
- A "T" volume filter for in-line installation on 1" pipelines.
- The filter prevents clogging due to its enlarged filtering area that collects sediments and particles.
- Manufactured entirely from fiber reinforced plastic.
- A cylindrical column of grooved discs constitutes the filter element.
- Spring keeps the discs compressed.
- Screw-on filter cover.
- Filter discs are available in various filtration grades.

Technical Data

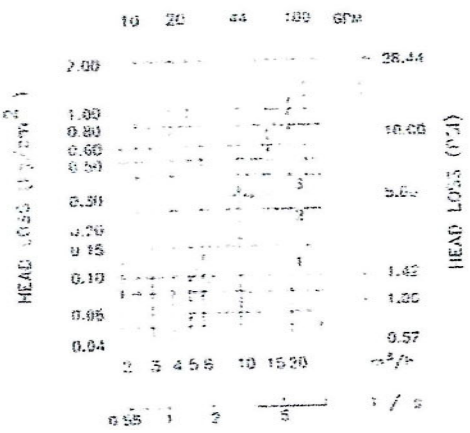
Inlet/outlet diameter	1" BSPT (male) 25.0 mm – nominal diameter 33.6 mm – pipe diameter (O. D.)	1" NPT (male)
Maximum pressure	10 atm	145 psi
Maximum flow rate	8 m^3/h (1.7 l/sec)	35 gpm
General filtration area	500 cm^2	77.5 in^2
Filtration volume	600 cm^3	37 in^3
Filter length L	340 mm	13 13/32"
Filter width W	130 mm	5 3/32"
Distance between end connections A	158 mm	6 7/32"
Weight	1.420 kg	3.13 lbs.
Maximum temperature	70° C	158 °F
pH	5-11	5-11



Filtration Grades

Blue (400 micron / 40 mesh)
Yellow (200 micron / 80 mesh)
Red (130 micron / 120 mesh)
Black (100 micron /140 mesh)
Green (55 micron)

Head Loss Chart



Mesh filter: irrigation system using the highest [illegible]

PMR-MF

PRESSURE-MASTER REGULATOR - MEDIUM FLOW

Specifications

The pressure regulator shall be capable of operating at a constant, factory preset, non-adjustable outlet pressure of 6, 10, 12, 15, 20, 25, 30, 35, 40, 50, or 60 PSI (0.41, 0.69, 0.83, 1.03, 1.38, 1.72, 2.07, 2.41, 2.76, 3.45, or 4.14 bar) with a flow range between:

4 - 16 GPM (909 - 3634 L/hr) for 6 - 10 PSI models or
2 - 20 GPM (454 - 4542 L/hr) for 12 - 60 PSI models.

The pressure regulator shall maintain the nominal pressure at a minimum of 5 PSI (0.34 bar) above model inlet pressure and a maximum of 80 PSI (5.52 bar) above nominal model pressure*. Refer to the PRU performance curve to establish specific outlet pressures based on relative inlet pressure and flow rate. Always install downstream from all shut off valves. Recommended for outdoor use only. Not NSF certified.

All pressure regulator models shall be equipped with one of these inlet-x-outlet configurations:

Inlet	Outlet
¾-inch Female National Pipe Thread (FNPT)	¾-inch Female National Pipe Thread (FNPT)
1-inch Female National Pipe Thread (FNPT)	1-inch Female National Pipe Thread (FNPT)
1-inch Female British Standard Pipe Thread (FBSPT)	1-inch Female British Standard Pipe Thread (FBSPT)

The upper housing, lower housing, and internal molded parts shall be of engineering-grade thermoplastics with internal elastomeric seals and a reinforced elastomeric diaphragm. Regulation shall be accomplished by a fixed stainless steel compression spring, which shall be enclosed in a chamber isolated from the normal water passage.

Outlet pressure and flow shall be clearly marked on each regulator.

The pressure regulator shall carry a two-year manufacturer's warranty on materials, workmanship, and performance. Each pressure regulator shall be water tested for accuracy before departing the manufacturing facility.

The pressure regulator shall be manufactured by Senninger Irrigation in Clermont, Florida. Senninger is a Hunter Industries Company.

Physical

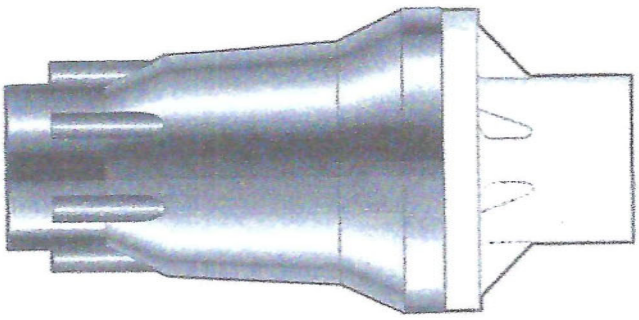
3/4" FNPT x 3/4" FNPT model *(shown on right)*

Overall Length	5.2 inches (13.1 cm)
Overall Width	2.5 inches (6.4 cm)

1" FNPT x 1" FNPT model

1" FBSPT x 1" FBSPT model

Overall Length	5.8 inches (14.6 cm)
Overall Width	2.5 inches (6.4 cm)



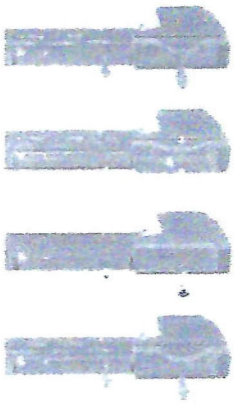
* Please consult factory for applications outside of recommended guidelines.

NETAFIM™

Bioline® Dripperline

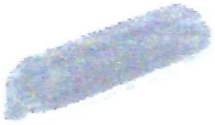


Pressure Compensating Dripperline for Wastewater



Bioline's Self-Cleaning, Pressure Compensating Dripper is a fully self-contained unit molded to the interior wall of the dripper tubing.

As shown at left, Bioline is continuously self-cleaning during operation, not just at the beginning and end of a cycle. The result is dependable, clog free operation, year after year.



Applications

- For domestic strength wastewater disposal.
- Installed following a treatment process.
- Can be successfully used on straight septic effluent with proper design, filtration and operation.
- Suitable for reuse applications using municipally treated effluent designated for irrigation water.

Specifications

Wall thickness (mil): 45*

Nominal flow rates (GPH): .4, .6, .9*

Common spacings: 12", 18", 24"*

Recommended filtration: 120 mesh

Inside diameter: .570"

Color: Purple tubing indicates non-potable source

*Additional flows, spacings, and pipe sizes available by request. Please contact Netafim USA Customer Service for details.

Product Advantages

The Proven Performer

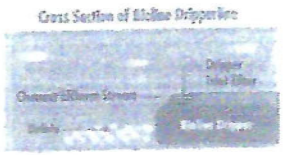
- Tens of millions of feet used in wastewater today.
- Bioline is permitted in every state allowing drip disposal.
- Backed by the largest, most quality-driven manufacturer of drip products in the U.S.
- Preferred choice of major wastewater designers and regulators.
- Proven track record of success for many years of hard use in wastewater applications.

Quality Manufacturing with Specifications Designed to Meet Your Needs

- Pressure compensating drippers assure the highest application uniformity - even on sloped or rolling terrain.
- Excellent uniformity with runs of 400 feet or more - reducing installation costs.
- Highest quality-control standards in the industry: Cv of 0.25 (coefficient of manufacturer's variation).
- A selection of flows and spacings to satisfy the designer's demand for almost any application rate.

Long-Term Reliability

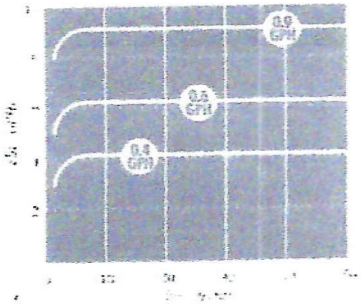
- Protection against plugging:
  - Dripper inlet raised 0.27" above wall of tubing to prevent sediment from entering dripper.
  - Drippers impregnated with Vinyzene to prevent buildup of microbial slime.
  - Unique self-flushing mechanism passes small particles before they can build up.



Root Safe

- A physical barrier on each Bioline dripper helps prevent root intrusion.
- Protection never wears out - never depletes - releases nothing to the environment.
- Working reliably for up to 15 years in subsurface wastewater installations.
- Additional security of chemical root inhibition with Techflow - supplies Trifluralin to the entire system, effectively inhibiting root growth to the dripper outlets.

BIOLINE Flow Rate vs. Pressure



NETAFIM

NETAFIM USA
5470 E. Home Ave. • Fresno, CA 93727
888.638.2346 • 559.453.6800
FAX 800.695.4753
www.netafimusa.com

Senninger®

PMR-MF

PRESSURE-MASTER REGULATOR - MEDIUM FLOW

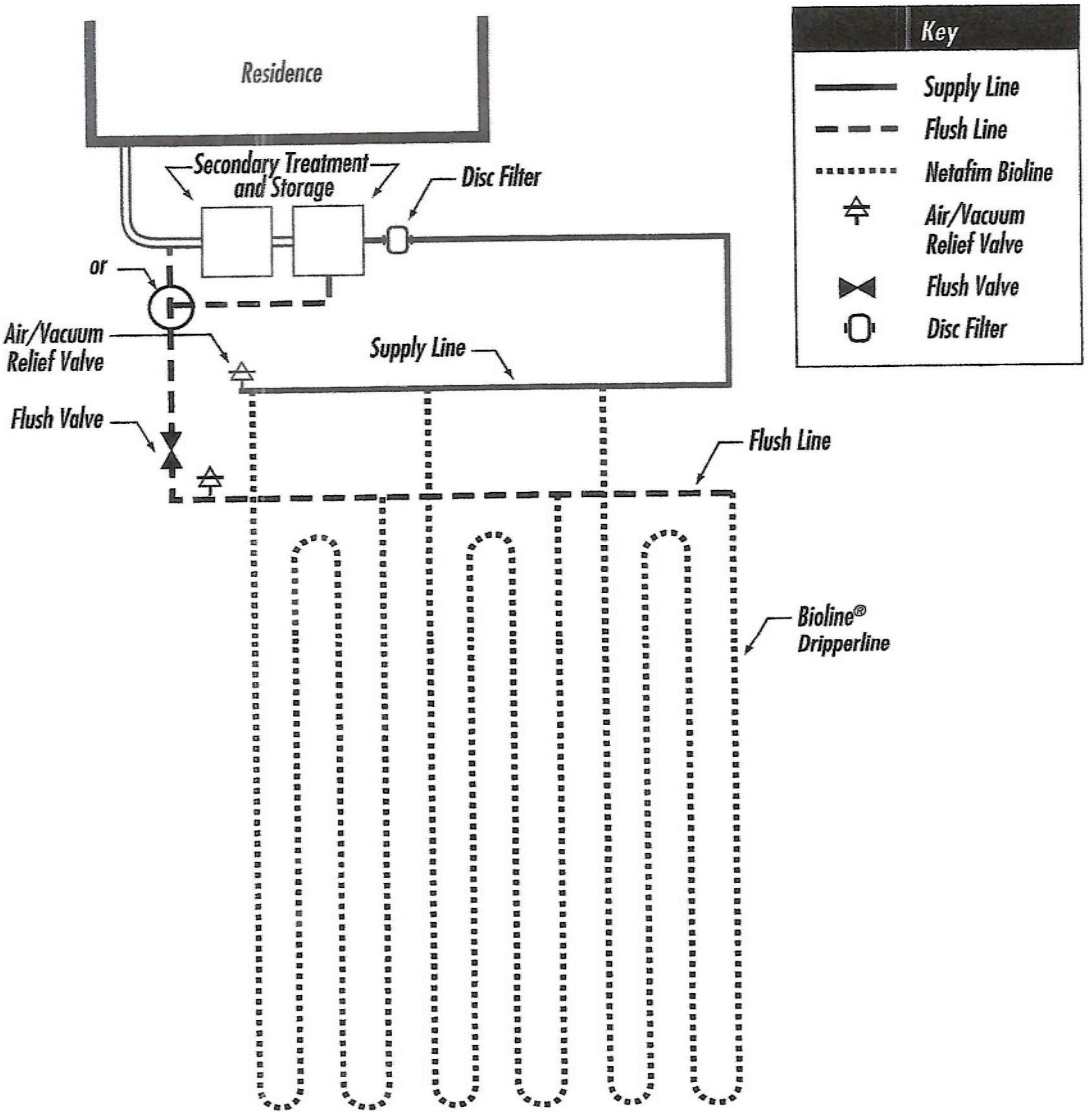
Model Numbers

Model #	Flow Range	Preset Operating Pressure	Maximum Inlet Pressure
PMR-6 MF	4 - 16 GPM (909 - 3634 L/hr)	6 PSI (0.41 bar)	80 psi (5.51 bar)
PMR-10 MF	4 - 16 GPM (909 - 3634 L/hr)	10 PSI (0.69 bar)	90 psi (6.20 bar)
PMR-12 MF	2 - 20 GPM (454 - 4542 L/hr)	12 PSI (0.83 bar)	90 psi (6.20 bar)
PMR-15 MF	2 - 20 GPM (454 - 4542 L/hr)	15 PSI (1.03 bar)	95 psi (6.55 bar)
PMR-20 MF	2 - 20 GPM (454 - 4542 L/hr)	20 PSI (1.38 bar)	100 psi (6.89 bar)
PMR-25 MF	2 - 20 GPM (454 - 4542 L/hr)	25 PSI (1.72 bar)	105 psi (7.24 bar)
PMR-30 MF	2 - 20 GPM (454 - 4542 L/hr)	30 PSI (2.07 bar)	110 psi (7.58 bar)
PMR-35 MF	2 - 20 GPM (454 - 4542 L/hr)	35 PSI (2.41 bar)	115 psi (7.93 bar)
PMR-40 MF	2 - 20 GPM (454 - 4542 L/hr)	40 PSI (2.76 bar)	120 psi (8.27 bar)
PMR-50 MF	2 - 20 GPM (454 - 4542 L/hr)	50 PSI (3.45 bar)	130 psi (8.96 bar)
PMR-60 MF	2 - 20 GPM (454 - 4542 L/hr)	60 PSI (4.14 bar)	140 psi (9.65 bar)

SINGLE TRENCH LAYOUT

Rectangular field with supply and flush manifolds on the same side and in the same trench:

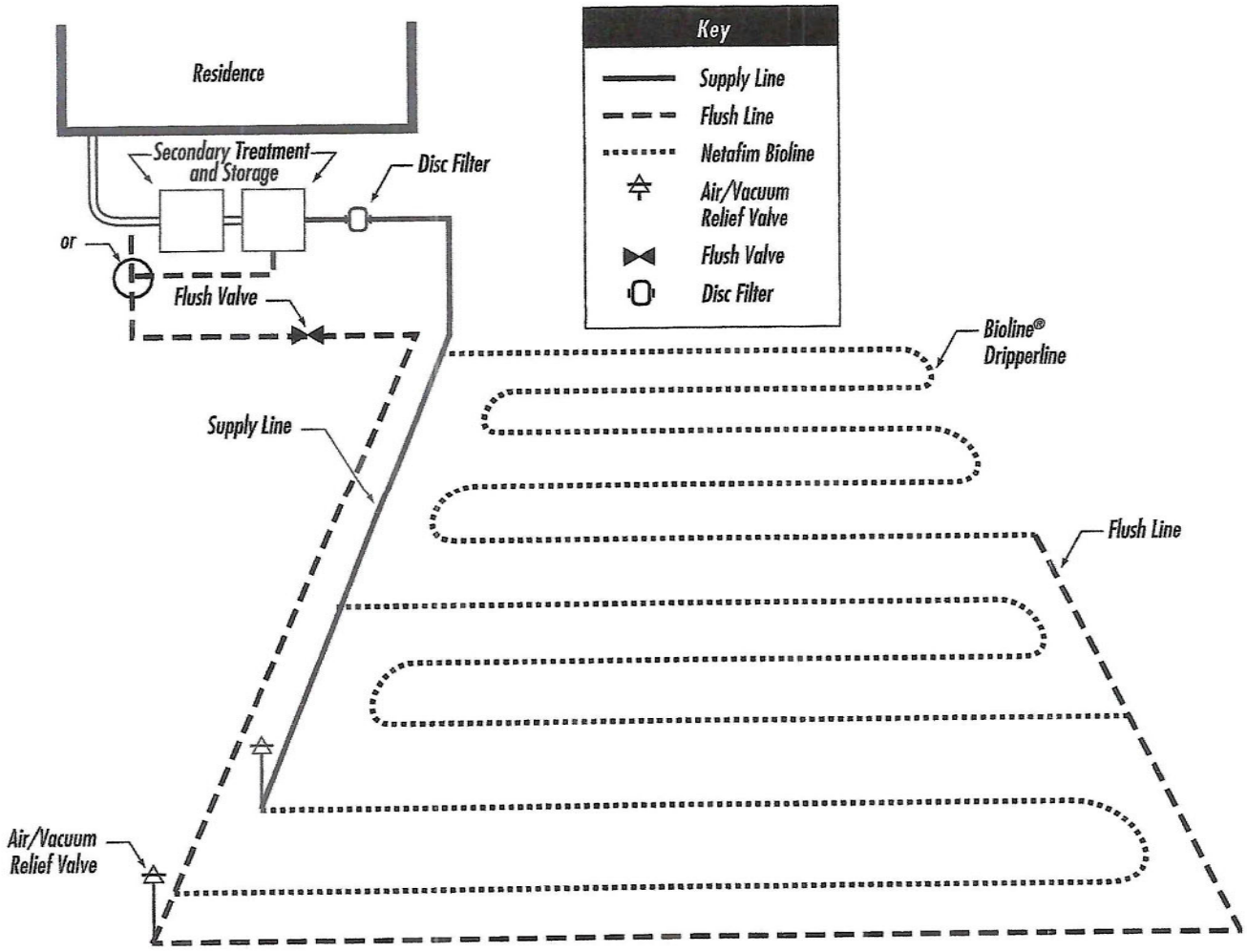
- Locate the supply and flush manifolds in the same trench
- Dripperlines are looped at the halfway point of their run and returned to flush manifold
- Bioline® laterals should never exceed recommended lengths



IRREGULAR FIELD SHAPE LAYOUT

Triangular field with looping and varied positioning of flush manifolds:

- Used when site limitations dictate unequal dripperline length with respect to dispersal field length
- Loop the Bioline® to increase lateral length and reduce the number of connections
- Keep the Bioline laterals as close to the same length as possible to provide for an equal field flush
- The flush manifold may be located on the same or opposite side of the supply manifold
- As pictured, it may be necessary to make one or more distal end connections to the flush line on an opposing side in order to balance dripperline lateral lengths and to limit the number of connections

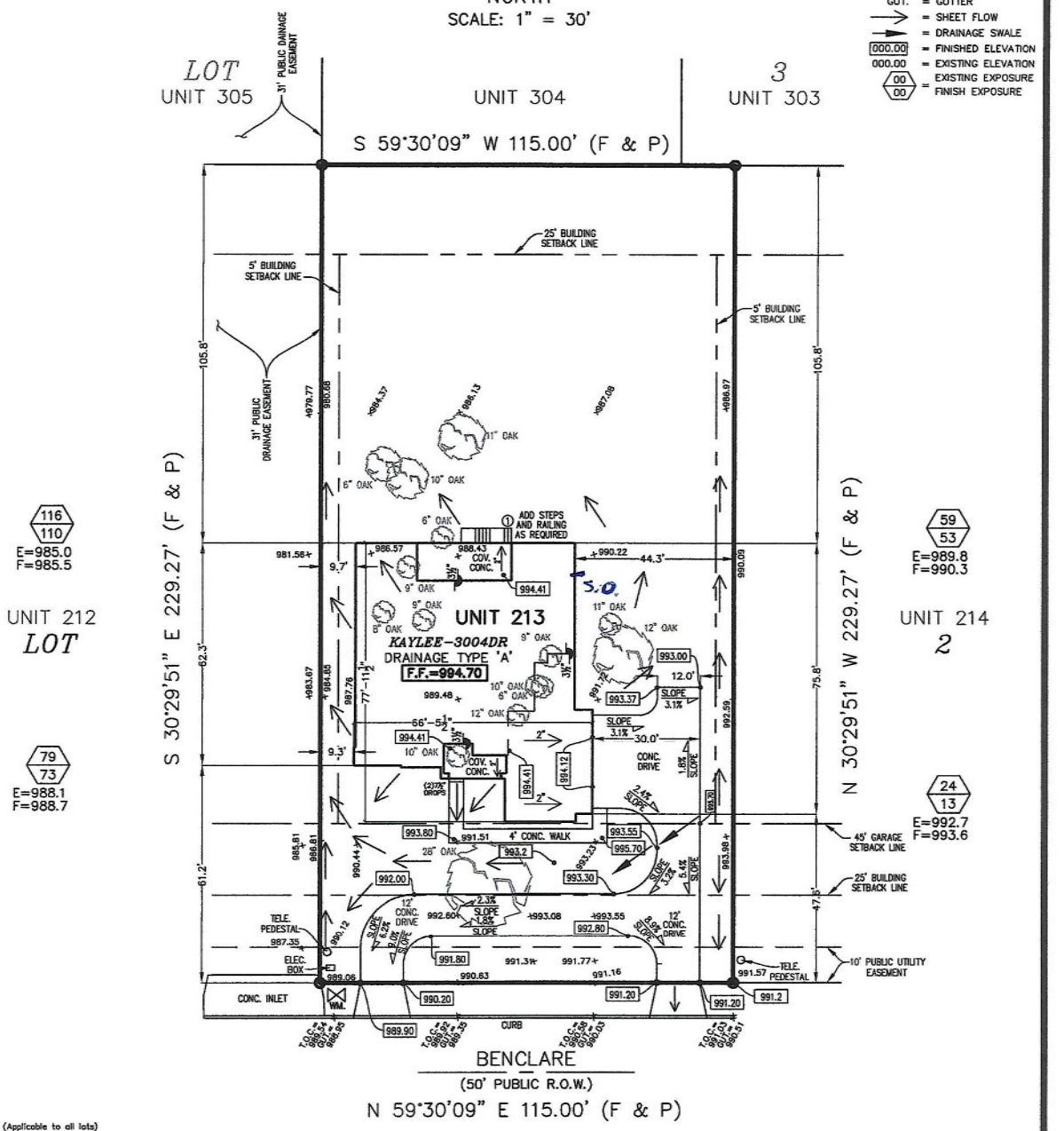


Special Note to Prospective Buyers:

This Plot Plan is technical in nature and is intended to guide workmen in the construction of a house and appurtenant features on the lot. It is not intended to show all features of the lot and house construction. The exact flat work locations, number of steps, foundation exposure, utility locations, drainage features and patterns, etc. may be altered from those shown on the plan without notice. No representation is made or intended by Chesmar Homes that final construction shall conform in detail to this Plot Plan.

LEGEND:
(F) = FIELD BEARING
(P) = PLAT BEARING
R.O.W. = RIGHT-OF-WAY
COV. = COVERED
CONC. = CONCRETE
ELEC. = ELECTRIC
TELE. = TELEPHONE
WM. = WATER METER
F.F. = FINISHED FLOOR
T.O.C. = TOP OF CURB
GUT. = GUTTER
= SHEET FLOW
= DRAINAGE SWALE
000.00 = FINISHED ELEVATION
000.00 = EXISTING ELEVATION
00/00 = EXISTING EXPOSURE / FINISH EXPOSURE

NORTH
SCALE: 1" = 30'



General Notes: (Applicable to all lots)

1. This Plot Plan shows the existing elevations, topography and culture on the lot, layout location of the foundation on the lot, the location and certain dimensions of the driveways, walkways and other flat work on the lot, the Finished Floor Elevation, Garage Floor Elevation and certain elevations of flat work, and the finished drainage patterns. Refer to the foundation and building plans for all foundation and building details and information.

2. The Foundation Contractor is responsible for the layout of the foundation in accordance with this Plot Plan, applicable codes and ordinances. Chesmar Superintendent and the Engineer shall verify location and elevation of forms and sign off prior to steel being set.

3. Existing elevations, topography and culture shown on this Plot Plan are based on information provided by Sinclair Land Surveying, Inc. However such information is, by nature, approximate and all critical elements shall be verified in the field prior to construction.

4. Lot line bearings and dimensions shown on this Plot Plan by the Surveyor reflect the approved or recorded plat of the legal subdivision, but do not constitute a boundary survey of the lot.

5. Easements and setbacks shown on this Plot Plan reflect the best information available to the Surveyor, without the benefit of a title commitment, and may not show all matters of record.

6. All concrete driveways, walkways and other flat work shall be constructed to the widths, locations and dimensions shown on the plans. Deviations from the Plot Plan shall require approval by the Chesmar Superintendent.

7. All concrete driveway approaches, sidewalks, and wheelchair ramps shall be constructed in accordance with the City of San Antonio Handbook for Flatwork Construction, latest edition. Driveway approaches shall have a 2' flare and shall be a minimum of the curb height above the gutter elevation at the property line. Refer to plot plan for actual approach elevations and grades.

8. The finished lot drainage shall be constructed as shown on the plans. Deviations from the Plot Plan shall require approval by the Chesmar Superintendent.

9. No trees shown to remain shall be removed without the approval of the Chesmar superintendent.

10. Provide positive drainage away from slab perimeter. The slab surface shall be a minimum of 8 inches above the surrounding outside finished grade. The ground should be sloped down a minimum of 6" in the first five feet and any resulting swale shall have a minimum slope of 1.0%.

KEY NOTES: ① ADD RAILING AS REQUIRED

FLATWORK SCHEDULE	
DRIVEWAY	2,647 S.F.
APPROACH	277 S.F.
LEAD WALKS	250 S.F.
HVAC PADS	16 S.F.
TOTAL	3,190 S.F.
SOD SCHEDULE	
TOTAL	20,026 S.F.
LOT NOTES	
AVERAGE EXPOSURE	70' AVG.
DRIVE SLOPE	% VARIES
LOT AREA	26,367 S.F.
SLAB AREA	4,324 S.F.

PLOT PLAN OF
8548 BENCLARE
UNIT 213, LOT 2
BENCLARE ESTATES
COMAL COUNTY, TEXAS
CHESMAR JOB NO: 562-2213

DRAWN BY: P.G.
CHECKED BY: A.L.
DATE: 7/9/25
REVISED: 7/21/25

SINCLAIR LAND SURVEYING, INC.
3411 MAGIC DRIVE
SAN ANTONIO, TEXAS 78229
210-341-4518
TBPELS FIRM NO.10089000
JOB NUMBER: S-202371024

ADDRESS MAP: BENCLARE ESTATES

COMAL COUNTY
ENGINEER'S OFFICE



Legend

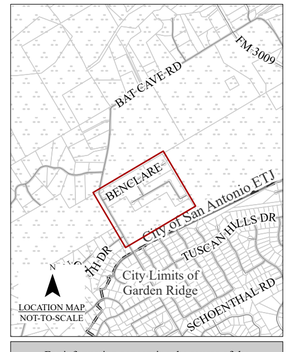
- Address
- Street
- Parcel

NOTES:

THE SUBDIVISION LIES WITHIN THE SAN ANTONIO ETJ, COMAL COUNTY, TEXAS

N

SCALE: 1" = 110'



For information concerning the source of the data, please contact:
Comal County Engineer's Office
195 David Jonas Dr
New Braunfels, TX 78132
(830)608-2090

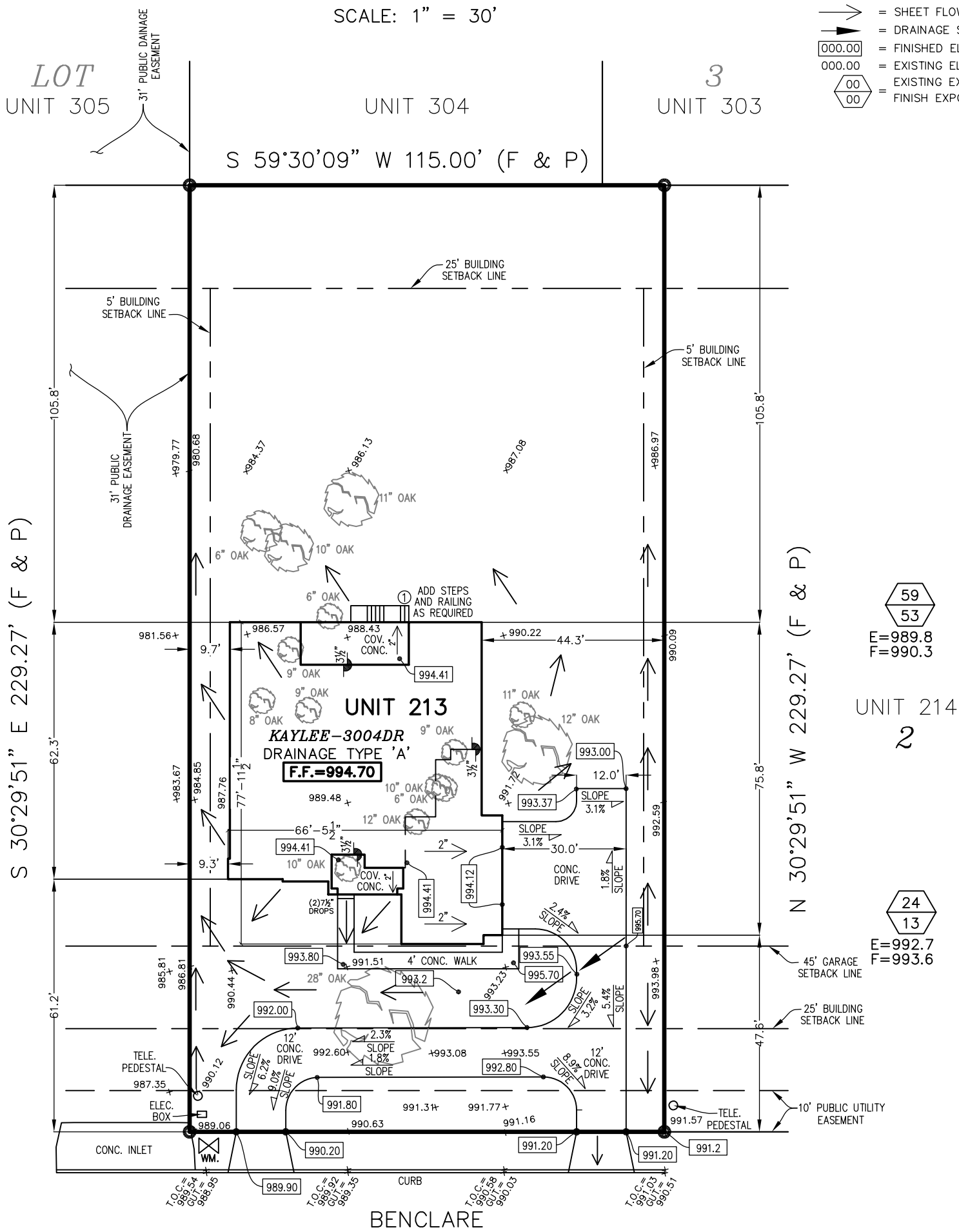
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

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210-341-4518
TBPELS FIRM NO.10089000
JOB NUMBER: S-202371024

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Effective Date: January 3, 2025

Grantor: HCH Development, LLC, a Texas limited liability company

Grantor's Mailing Address (including county:

480 Wildwood Forest Drive, Suite 803
The Woodlands, Texas 77380

Grantee: Chesmar Homes, LLC, a Texas limited liability company

Grantee's Mailing Address (including county):

211 N Loop 1604 E, Suite 175
San Antonio, Bexar County, Texas 78232

Consideration:

Ten Dollars and No/100 ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged

Property (including any improvements):

101 and the space encompassed by the boundaries thereof, and an undivided percent interest in and to the general common elements of the condominium project known as Heimer Estates Condominiums, together with the limited common elements and all appurtenances thereto, according to the condominium declaration, by-laws, and exhibits attached thereto recorded in Document No. 202206049607, all of the Condominium Records, Comal County, Texas

103 and the space encompassed by the boundaries thereof, and an undivided percent interest in and to the general common elements of the condominium

N Title Inc.
GF#: EF00-TR241172
CLOSER: Carrie Wallace

project known as Heimer Estates Condominiums, together with the limited common elements and all appurtenances thereto, according to the condominium declaration, by-laws, and exhibits attached thereto recorded in Document No. 202206049607, all of the Condominium Records, Comal County, Texas

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Exceptions to Conveyance and Warranty:

1. Standby fees, taxes and assessments by any taxing authority for the year 2025 and subsequent years, except for any taxes or other assessments based on change in use or ownership, including, without limitation, rollback taxes, which remain the obligation of Grantor.

2. The matters set forth in **Exhibit "A"** attached hereto and incorporated herein to the extent same currently exist and affect the Property or any portion thereof.

Grantor, for the Consideration and subject to the Exceptions to Conveyance and Warranty set forth above, GRANTS, SELLS, and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor but not otherwise, except as to the Exceptions to Conveyance and Warranty. Grantor and Grantee acknowledge that taxes for the current year have been prorated as of the date hereof, the payment of which Grantee assumes.

When this Deed is executed by more than one person, or when the Grantee is more than one person, the instrument shall read as though pertinent verbs, nouns and pronouns were exchanged correspondingly, and when executed by or to a legal entity other than a natural person, the words "heirs, executors and administrators" or "heirs and assigns" shall be construed to mean "successors and assigns." Reference to any gender shall include either gender and in the case of a legal entity other than a natural person, shall include the neuter gender, all as the case may be.

HCH DEVELOPMENT, LLC, a Texas limited liability company

By: Bart Swider
Name: Bart Swider
Title: Manager

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on the 2 day of January, 2025, by Bart Swider as manager of HCH DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

After Recording Return to:
Chesmar Homes, LLC
211 N Loop 1604 E, Suite 175
San Antonio TX 78232

ALLYSON WALTERS
Notary ID #129531158
My Commission Expires
April 13, 2026

EXHIBIT "A"
OF
SPECIAL WARRANTY DEED

Permitted Exceptions

1. Plat recorded in Document No. 202106060252, Official Public Records, Comal County, Texas.

2. Declaration recorded in Document No. 202206049607, Official Public Records, Comal County, Texas.

3. First Amendment of Declaration recorded in Document No. 202306034563, Official Public Records, Comal County, Texas.

4. Community Manual recorded in Document No. 202206052798, Official Public Records, Comal County, Texas.

5. Declarant Removal and Appointment recorded in Document No. 202406035435, Official Public Records, Comal County, Texas

6. Water Line Easement recorded in Volume 585, Page 7, Official Public Records, Comal County, Texas.

7. Permanent Water Easement recorded in Document No. 202106060240, Official Public Records, Comal County, Texas.

8. Oil, Gas and Mineral Lease recorded in Volume 222, Page 887 and Volume 322, Page 377, Official Public Records, Comal County, Texas.

Filed and Recorded
Official Public Records
Bobbie Koepp, County Clerk
Comal County, Texas
01/06/2025 08:06:31 AM
TERRI 9 Pages(s)
202506000288

Bobbie Koepp

AFTER RECORDING RETURN TO:
KRISTI E. STOTTS, ESQ.
WINSTEAD PC
401 CONGRESS AVE., SUITE 2100
AUSTIN, TEXAS 78701
EMAIL: KSTOTTS@WINSTEAD.COM

FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM REGIME FOR HEIMER ESTATES CONDOMINIUMS

(A Residential Condominium Project located in Comal County, Texas)

Declarant: **HCH DEVELOPMENT, LLC,** a Texas limited liability company

Cross-reference to that certain Declaration of Condominium Regime for Heimer Estates Condominiums, recorded under Document No. 202206049607, Official Public Records of Comal County, Texas.

FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM REGIME FOR HEIMER ESTATES CONDOMINIUMS

This First Amendment to Declaration of Condominium Regime for Heimer Estates Condominiums (this "**Amendment**") is made by **HCH DEVELOPMENT, LLC**, a Texas limited liability company ("**Declarant**"), and is as follows:

RECITALS:

A. Declarant previously executed and recorded that certain Declaration of Condominium Regime for Heimer Estates Condominiums, recorded under Document No. 202206049607, Official Public Records of Comal County, Texas (the "**Declaration**").

B. Pursuant to *Section 18.9* of the Declaration, Material Amendments to the Declaration 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 the First Mortgagees. The Declarant is the Owner of all of the Units in the Regime and holds one hundred percent (100%) of the votes in the Association. There are no Mortgagees.

C. Declarant now desires to amend the Declaration as set forth herein below.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Definitions. The following definition is hereby added to *Article 1* of the Declaration:

> "**Area of Common Responsibility**" means those portions of a Unit that may be designated, from time to time, by this Declaration, the Declarant until expiration or termination of the Development Period, and the Association thereafter, to be maintained, repaired, and replaced by the Association, as reflected in the Area of Common Responsibility and Maintenance Chart attached hereto as Attachment 4. The estimated and actual costs associated with the maintenance, repair, and replacement (including replacement reserves) of the Area of Common Responsibility shall be charged to all Units as a Regular Assessment.

2. Regular Assessments. The following *subsection (xi)* is hereby added to *Section 6.4.1* of the Declaration, as follows:

> (xi) Administration, maintenance and repair of the Area of Common Responsibility, including but not limited to the costs of: (a) maintaining, repairing, and replacing, as necessary, the Area of Common Responsibility; and (b) contributions to the reserve funds for capital improvements and replacement

of the Area of Common Responsibility (to be repaired or replaced by the Association pursuant to Attachment 4 attached hereto).

3. **Reserve Funds**. *Section 6.11* of the Declaration is hereby deleted in its entirety and replaced as follows:

> **6.11. Reserve Funds**. The Association may maintain reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association. The Association may maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Elements and the Area of Common Responsibility.

4. **Maintenance and Repair Obligations**. *Article 9* of the Declaration is hereby deleted in its entirety and replaced as follows:

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

> **9.1. Overview**. Generally, the Association maintains the Common Elements, and the Owner maintains the Owner's Unit. If any Owner fails to maintain their Unit, the Association may perform the work at the Owner's expense. This Declaration assigns portions of the Units and Improvements located therein to the Area of Common Responsibility. The Area of Common Responsibility is maintained by the Association and not the Owner. As of the date this Declaration is Recorded, the initial designation of components of Units and Improvements located therein included within the Area of Common Responsibility is attached hereto as Attachment 4.
>
> **9.2. Association Maintains**. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a Common Expense, all Common Elements, the Area of Common Responsibility and any other component of a Unit delegated to the Association by this Declaration.
>
> **9.3. Area of Common Responsibility**. The Declarant until expiration or termination of the Development Period, and the Association thereafter, has the right but not the duty to designate or modify, from time to time, portions of the Units as an Area of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a Common Expense. A designation applies to every Unit having the identified feature. The cost of maintaining the Area of Common Responsibility is added to the annual budget

and assessed uniformly against all Units as a Regular Assessment, unless, after expiration of the Development Period, the Owners of at least a Majority of the Units decide to assess the costs as Individual Assessments.

9.3.1. Easement. The Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designee to maintain, repair and/or replace the Area of Common Responsibility. If the Association damages any Improvements located within a Unit in exercising the easement granted hereunder, the Association will restore such Improvements to the condition which existed prior to any such damage, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

9.3.2. Change in Designation. Until expiration or termination of the Development Period, the Declarant may, from time to time, modify the Area of Common Responsibility, by a Recorded written instrument. After expiration or termination of the Development Period, the Association may, from time to time, modify the Area of Common Responsibility, by a Recorded written instrument; provided, however, that any modification to the Area of Common Responsibility must be approved by a Majority of the votes in the Association. During the Development Period, the Area of Common Responsibility may be modified or amended by the Declarant acting alone.

9.4. Inspection Obligations.

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

9.4.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements and Area of Common Responsibility is attached to this Declaration as Attachment 5. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to

the provisions of this Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

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

9.4.4. Limitation. The provisions of this *Section 9.4* shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

9.5. Owner Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, unless such portions of the Unit or Improvements located therein are maintained by the Association as an Area of Common Responsibility:

(i) To maintain, repair, and replace the Owner's Unit and all Improvements constructed therein or thereon.

(ii) The routine cleaning of any yard space, patio, terrace, and/or balcony within an Owner's Unit, keeping the same in a neat, clean, odorless, orderly, and attractive condition.

(iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.

(iv) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.

(v) To be responsible for such Owner's own willful or negligent acts and those of the Owner or the Occupant's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.6. **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by the Documents, the dispute will be resolved by the Board. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this *Article 9* that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners unless otherwise approved by the Board.

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

9.8. **Owner's Default in Maintenance.** If the Board determines that an Owner has failed to properly discharge such Owner's obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at the 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 the Owner's expense, which will be levied as an Individual Assessment against the Owner and the Owner's Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense and levied as an Individual Assessment.

5. **Maintenance Responsibility Chart.** The maintenance responsibility chart attached as Attachment 4 to the Declaration is hereby deleted in its entirety and replaced by the Area of Common Responsibility and Maintenance Chart attached hereto as Attachment 4 (the "**New Maintenance Responsibility Chart**"). The New Maintenance Responsibility Chart modifies the designation of certain portions of the Units as an Area of Common Responsibility to be maintained by the Association pursuant to *Section 9.3* of the Declaration.

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

[SIGNATURE PAGE FOLLOWS]

Executed to be effective on the 30th day of October, 2023.

DECLARANT:

HCH DEVELOPMENT, LLC, a Texas limited liability company

By: Bart Swider

Printed Name: Bart Swider

Title: Vice President

STATE OF TEXAS §
§
COUNTY OF Bexar §

This instrument was acknowledged before me on 30th day of October, 2023, by Bart Swider, Vice President of HCH DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said limited liability company.

[seal]

Notary Public Signature

ALLYSON WALTERS
Notary ID #129531158
My Commission Expires
April 13, 2026

ATTACHMENT 4

NEW MAINTENANCE RESPONSIBILITY CHART

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

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Fences, screening walls, and retaining walls around perimeter of property.	None.	All aspects.
Exterior Lighting within a Unit.	None.	All aspects.
Sidewalks located within a Unit.	None.	All aspects.
Exterior street addresses or Unit numbers.	None.	All aspects.
Exterior landscaping	None.	All aspects.
Exterior components of each Building.	None.	All aspects.
Exterior painting.	None.	All aspects.
Foundation of each Building.	None.	All aspects.
Unit interior, including improvements, fixtures, partition walls and floors within the Unit.	None.	All aspects.
Exterior Unit Doors, include the Garage Door.	None.	All aspects.
Exterior Building Windows.	None.	All aspects.
Driveways.	None.	All aspects.
HVAC System.	None.	All aspects.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Intrusion alarms, fire alarms, smoke/heat detectors, monitoring equipment	None.	All aspects.
Rainwater Harvesting Systems.	None.	All aspects.
Solar Energy Devices.	None.	All aspects.
Permitted Antennas.	None.	All aspects.
Water and electrical lines and systems.	All aspects of common lines & systems serving more than one Unit, none for those serving an individual Unit.	All aspects of lines, pipes, fixtures, and appliances serving only that Owner's Unit.
Individual septic system serving each Unit.	All aspects.	None.

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

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

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

Filed and Recorded
Official Public Records
Bobbie Koepp, County Clerk
Comal County, Texas
10/30/2023 03:26:23 PM
CHRISTY 9 Pages(s)
202306034563

Bobbie Koepp

AFTER RECORDING RETURN TO:

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UNOFFICIAL

DECLARATION OF CONDOMINIUM REGIME FOR HEIMER ESTATES CONDOMINIUMS

(A Residential Condominium Project located in Comal County, Texas)

Declarant: **HCH DEVELOPMENT, LLC**, a Texas limited liability company

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UNOFFICIAL

DECLARATION OF CONDOMINIUM REGIME
FOR
HEIMER ESTATES CONDOMINIUMS

HCH DEVELOPMENT LLC, a Texas limited liability company ("**Declarant**"), is the owner of that certain real property located in Comal County, Texas, as more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes, together with all Improvements thereon and all easements, rights, and appurtenances thereto (collectively, the "**Property**"). The Property is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Heimer Estates Condominiums.

NOW, THEREFORE, it is hereby declared that: (i) the Property will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Property and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE 1
DEFINITIONS

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

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

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

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

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

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

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

1.7 "**Building**" means a residential dwelling constructed within a Unit.

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

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

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

1.11 "**Common Expense**" or "**Common Expenses**" means the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Regime, including but not limited to those expenses incurred for the maintenance, repair, replacement and operation of the Common Elements.

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

1.13 "**Declarant**" means **HCH DEVELOPMENT, LLC**, a Texas limited liability company. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by

Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Declaration.

1.14 "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration. The duration of Declarant Control Period is the earlier to occur of (i) from the date this Declaration is Recorded for a period not to exceed one hundred and twenty (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant; or (ii) five (5) year period beginning on the date this Declaration is Recorded.

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

1.16 "**Deficiency Assessment**" means an assessment described and assessed in accordance with *Section 6.8* of this Declaration.

1.17 "**Development Period**" means the five (5) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

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

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

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

1.19 **"General Common Elements"** mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area",

or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment 1, attached hereto.

1.20 "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, 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, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennas, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, irrigation, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.21 "**Individual Assessment**" means an assessment described and levied in accordance with *Section 6.7* of this Declaration.

1.22 "**Limited Common Elements**", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", "Limited Common Elements" or "Limited Common Areas" on Attachment 1, attached hereto and/or as provided in *Section 5.7* and *Section 5.8* of this Declaration.

1.23 "**Majority**" means more than half.

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

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

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

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

1.28 "**Person**" means any individual or entity having the legal right to hold title to real property.

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

1.30 "**Record, Recordation, Recorded and Recording**" means filing the referenced instrument or document in the Official Public Records of Comal County, Texas.

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

1.32 "**Regular Assessments**" means an assessment described and assessed in accordance with *Section 6.4* of this Declaration.

1.33 "**Rules**" means rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules may be adopted by Declarant (as part of the Community Manual, or otherwise) for the benefit of the Association. The Rules may be amended from time to time by the Declarant, prior to the expiration of the Development Period, and by the Board thereafter.

1.34 "**Sales Restriction Period**" means a period commencing on the date that a Unit is conveyed to an Owner by Declarant and ending on the earlier of (i) one year after the date of the conveyance of such Unit to the Owner by Declarant; or (ii) the date the last of the Units with the same number of bedrooms as such Unit (e.g., two bedroom or three bedroom Units) is conveyed to an Owner by Declarant.

1.35 "**Special Assessment**" means an assessment described and levied in accordance with *Section 6.6* of this Declaration.

1.36 "**Tract**" or "**Tracts**" means, individually or collectively, as applicable, Tract 1, Tract 2, Tract 3, Tract 4, and/or Tract 5.

1.37 "**Tract 1**" means the real property originally described as Lot 1 of Benclare Estates Subdivision, a sudivision according to the plat recorded in Document No. 202106060252 of the Official Public Records of Comal County, Texas and contains Units 101-113.

1.38. "**Tract 2**" means the real property originally described as Lot 2 Benclare Estates Subdivision, a subdivision according to the plat recorded in Document No. 202106060252 of the Official Public Records of Comal County, Texas and contains and contains Units 201-214.

1.39 "**Tract 3**" means the real property originally described Lot 3 Benclare Estates Subdivision, a subdivision according to the plat recorded in Document No. 202106060252 of the Official Public Records of Comal County, Texas and contains Units 301-314.

1.40 "**Tract 4**" means the real property originally described Lot 4 Benclare Estates Subdivision, a subdivision according to the plat recorded in Document No. 202106060252 of the Official Public Records of Comal County, Texas and contains Units 401-414.

1.41 "**Tract 5**" means the real property originally described Lot 5 Benclare Estates Subdivision, a subdivision according to the plat recorded in Document No. 202106060252 of the Official Public Records of Comal County, Texas and contains Units 501-514.

1.42 "**Underwriting Lender**" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA) Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or the Veterans Administration, singularly or collectively. Use of the term "Underwriting Lender" in this Declaration, and the specific instructions listed in this definition, may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any specific institution.

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

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

2.1. **Subject to Documents**. The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Appendix "A", attached hereto, which run with the Property, bind all Persons having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property. Please be advised that the Documents do not purport to list or describe each requirement, rule, or restriction which may be applicable to each Unit. Each Owner is advised to review all encumbrances affecting the use and improvement of their Unit. The Association, each Owner, Occupant or other user of any portion of the Regime must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

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

2.3. **Adjacent Land Use**. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

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

2.5. **Common Elements**. The Common Elements of the Property consist of all of the Property, save and except the Units. The designation of Common Elements is determined by this Declaration. The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with the development of the Property, and the cost thereof is not a Common Expense of the Association. Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration elsewhere provides for a different allocation for a specific Common Element.

ARTICLE 3
PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. **General**. In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this *Article 3*.

3.2. **Owner's Easement of Enjoyment**. Every Owner is granted a right and easement of enjoyment over the General Common Elements and the use of Improvements therein, subject to other limitations, rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Occupants of the Owner's Unit, and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit. The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Documents or nonpayment of Assessments.

3.3. **Owner's Ingress/Egress Easement**. Each Owner is hereby granted a perpetual easement over the Property, as may be reasonably required, for vehicular and pedestrian ingress to and egress from the Owner's Unit or the Limited Common Elements assigned thereto. Such easement shall be subject, in any event, to any Rules governing or limiting each Owner's right of ingress and egress granted hereby.

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

(i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.

(ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.

(iii) To enforce the Documents.

(iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.

(v) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.

(vi) To respond to emergencies.

(vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.5. **Utility Easement**. Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant, during the Development Period, and the Association thereafter, may grant easements over and across the Units and Common Elements to the extent necessary or required to provide utilities to Units; provided, however, that such easements will not unreasonably interfere with the use of any Unit for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board and may not unreasonably interfere with the use of a Unit for residential purposes. Utilities may include, but are not limited to, water, irrigation, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

NOTICE

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

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

3.7. **Injury to Person or Property**. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Occupant or their guests: (i) to supervise minor children or any other Person; (ii) to fence or otherwise enclose any Limited Common Element, General Common Element, or other Improvement; or (iii) to provide security or protection to any Owner, Occupant, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Unit, each Owner agrees that the limitations set forth in this *Section 3.7* are reasonable and constitute the exercise of ordinary care by the Association and Declarant. **Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents from any claim of damages, to Person or property arising out of an accident or injury in or about the Regime to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance maintained by the Association at the time of such accident or injury.**

3.8. **Easement to Inspect and Right to Correct**. For a period of ten (10) years after expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive

easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising the easement reserved hereunder, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a utility panel may be warranted by a change of circumstance, imprecise siting, or desire to comply more fully with Applicable Law. This *Section 3.8* may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant, and the Declarant's architect, engineer, other design professionals, builder, and general contractor an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Unit for the purposes contained in this *Section 3.8*.

ARTICLE 4
DISCLOSURES

This *Article 4* discloses selective features of the Regime that may not be obvious to potential Owners and Occupants. Because features may change over time, no disclosure in this *Article 4* should be relied upon without independent confirmation.

4.1. **Service Contracts.** In connection with construction of the Unit, the Unit may have been wired or fitted for one or more services to be provided by vendors to the Owner on a contract basis, such as intrusion monitoring and cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owner for a period of service to the Owner's Unit. In that event, whether or not an Owner chooses to use the service, the Owner may be required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Individual Assessments. **However, neither the Declarant nor the Association is the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.**

4.2. **Water Quality Facilities, Drainage Facilities and Drainage Ponds**. The Property may include one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property. The Association will be obligated to inspect, maintain and administer such water quality facilities, drainage facilities, and drainage ponds in good and functioning condition and repair. Each Owner is advised that any such water quality facilities, sedimentation, drainage and detention facilities and ponds are an active utility feature integral to the proper operation of the Regime and may periodically hold standing water. Each Owner is advised that entry into the water quality facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Rules.

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

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

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

4.6. **Construction Activities.** Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time to time, produce certain conditions within the Regime, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration.

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

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

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

4.10. **Environment.** Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in urban and suburban areas. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other

similar items). These things are part of the reality and vibrancy of the environment in which the Regime is located.

4.11. **Unit Plans and Dimensions.** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed within the Property or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Room dimensions, Unit size and elevations may vary due to the nature of the construction process and site conditions. If the Owner is concerned about any representations regarding room dimensions, Unit size and elevations, the Owner should conduct its own investigation of such matters prior to contracting for the purchase of a Unit.

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

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

4.14. **Wastewater Systems – Notice**. Each Unit is served by an individual septic system. The total flow from septic systems serving Units within a Tract is restricted to 5,000 gallons per day. In no event may the collective flow of septic systems located within a Tract exceed 5,000 gallons per day.

4.15. **Private Streets, Trails and Parks**. Private streets, trails and parks located within the Property (if any) are General Common Elements and will be operated and maintained by the Association. By acquiring a Unit in the Regime, each Owner acknowledges and agrees that use of any private streets, trails or parks will be subject to all applicable Rules. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules for use of private streets, trails and parks, including but not limited to:

(i) Identification of vehicles used by Owners and Occupants and their guests.

(ii) Designation of guest parking areas, no-parking areas and loading/unloading zones.

(iii) Limitations or prohibitions on driveway parking.

(iv) Removal or prohibition of vehicles that violate applicable Rules.

(v) Access to community grill.

(vi) Fines for violations of applicable Rules.

Private streets located within the Property shall provide perpetual access for police and other emergency vehicles, public and private utility maintenance and service personnel, solid waste collection services, the U.S. Postal Service, and government employees in pursuit of their official duties. Access to the private streets for the persons and entities referenced in the preceding sentence shall be reasonably provided by the Association.

ARTICLE 5
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. **Number of Units.** The Regime initially consists of sixty-nine (69) Units. During the Development Period, Declarant, as permitted in Appendix "A", has reserved the right to create a total of sixty-nine (69) Units on the Property and to add additional property to the Regime. To add Units or property to the Regime, Declarant during the Development Period may, from time to time, Record an amendment to this Declaration. The amendment will: (i) describe the property being added to the Regime, if applicable; (ii) describe and assign an identifying number to each new Unit; (iii) reallocate the Common Interest Allocation (computed pursuant to *Section 5.9* below) among all Units then existing within the Regime; (iv) describe any Limited Common Elements, if any, created or designated to each new Unit; and (v) with respect to new Units, include the information required by Section 82.055 and Section 82.059(b) of the Act, as applicable. The amendment will include a description of the Units added to the Regime if Declarant elects to create Units upon Recordation of the amendment, OR if Declarant elects to create additional Units subsequent to the Recordation of the amendment adding property to the Regime, the amendment will describe the property and include the information required by Section 82.055 and Section 82.059(b) of the Act, as applicable. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Unit.

5.2. **Unit Boundaries.** The boundaries and identifying number of each Unit are shown on the Plat and Plans attached as Attachment 1. The boundaries of each Unit are further described as follows:

5.2.1. Lower Boundary of the Unit: The horizontal plane corresponding to the finished grade of the land within the Unit as described and defined on Attachment 1, extending twenty feet (20') below the surface of the land within Master Unit, except as expressly provided in *Section 5.5* of this Declaration.

5.2.2. Upper Boundary of the Unit: The horizontal plane parallel to and seventy feet (70′) above the lower boundary of the Unit.

5.2.3. Lateral Boundaries of the Unit: A plane located on each side of a Unit perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit.

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

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

5.5. **What a Unit Includes**. Each Unit includes the spaces and Improvements within the lower, upper, and lateral boundaries defined in *Section 5.2* above, including without limitation, the Building, the roof and foundation, landscaping, driveways, sidewalks, fences, yards, utility lines and meters, and all other Improvements located within the Unit. In addition to the Building and the Improvements located within the Unit, each Unit also includes Improvements, fixtures, and equipment serving the Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Unit, including but not limited to any below-grade foundation, piers, retaining walls, fence, or other structural supports; plumbing, sewage and/or septic and utility lines, pipes, drains, and conduits; drainage facilities, and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Unit exclusively.

Not a Typical Condominium Unit

Although a Unit resembles a platted lot: (i) a Unit does not include land; (ii) the conveyance of a Unit is not a metes and bounds conveyance of land; and (iii) the creation of a Unit does not constitute a subdivision of land. Instead, each Unit is the surface of a designated piece of land, and everything above the surface for 70 feet, and anything below the surface that serves or supports the above-surface Improvements.

5.6. **Building Size.** The space contained within the vertical and horizontal boundaries of the Unit is not related to the size of the Building. A Building may only occupy a portion of a Unit in a location approved in advance by the Architectural Reviewer.

5.7. **Initial Designations of Limited Common Elements.** Portions of the Common Elements may be allocated as Limited Common Elements on the Plat and Plans, attached hereto as Attachment 1, by use of "LCE" and the identifying number of the Unit(s) to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.

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

5.9. **Common Interest Allocation.** The percentage of interest in the Common Elements (the "**Common Interest Allocation**") allocated to each Unit is set forth on Attachment 3 and is assigned to each Unit in accordance with a ratio of one (1) to the total number of Units established by this Declaration. The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment is Recorded.

5.10. **Common Expense Liability.** The percentage of liability for Common Expenses allocated to each Unit (the "**Common Expense Liability**") and levied pursuant to *Article 6* is equivalent to the Common Interest Allocation assigned to the Unit in accordance with *Section 5.9*.

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

ARTICLE 6
COVENANT FOR ASSESSMENTS

6.1. **Purpose of Assessments**. The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Occupants, including but not limited to maintenance of the Regime, management and operation of the Association, and any expense reasonably related to the purposes for which the Association was formed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

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

6.3. **Types of Assessments**. There are four (4) types of Assessments: Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments.

6.4. **Regular Assessments**.

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

(i) Maintenance, repair, and replacement, as necessary, of the Common Elements and Improvements, equipment, signage, and property owned by the Association.

(ii) Maintenance examination and report, as described in *Section 9.3*.

(iii) Utilities billed to the Association.

(iv) Services obtained by the Association and available to all Units.

(v) Taxes on property owned by the Association and the Association's income taxes.

(vi) Management, legal, accounting, auditing, and professional fees for services to the Association.

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(vii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.

(viii) Insurance premiums and deductibles.

(ix) Contributions to the reserves.

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

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

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

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

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

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

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

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

6.10. **Due Date**. Regular Assessments are due annually, with monthly installments of the total annual Regular Assessments to be paid on the first calendar day of each month or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Utility, Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment

or, if no date is stated, within ten (10) days after notice of the Utility, Special, Individual, or Deficiency Assessment is given.

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

6.12. **Declarant's Right to Inspect and Correct Accounts**. For a period of ten (10) years after termination or expiration of the Development Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts established during the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to re-characterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This *Section 6.12* may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and the Development Period.

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

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

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

ARTICLE 7
ASSESSMENT LIEN

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

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

7.3. **Effect of Mortgagee's Foreclosure**. Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale.

IF YOU FAIL TO PAY ASSESSMENTS TO THE ASSOCIATION, YOU MAY LOSE TITLE TO YOUR UNIT IF THE ASSOCIATION FORECLOSES ITS ASSESSMENT LIEN AGAINST YOUR UNIT.

7.4. **Notice and Release of Notice**. The lien established hereby for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, in the exercise of its lien rights, the Association may, at its option, cause a notice of the lien to be Recorded. Each lien filed by the Association must be prepared and filed by an attorney licensed to practice law in the State of Texas. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

7.5. **Power of Sale**. By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of sale in connection with its Assessment lien. The Board may

appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. Any such appointment must be in writing and may be in the form of a resolution duly adopted by the Board.

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

ARTICLE 8
EFFECT OF NONPAYMENT OF ASSESSMENTS

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

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

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

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

8.5. **Suspension of Vote**. Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a

Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussions at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds twenty percent (20%) of the total Members (Co-Owners of a Unit constituting one Member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

8.6. **Assignment of Rents**. Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of Assessments to the Association. If a Unit's account becomes delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

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

8.8. **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.

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

8.10. **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: (i) Individual Assessments, (ii) Deficiency Assessments, (iii) Special Assessments, and (iv) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the Owner attaches conditions or directions contrary to the Association's policy for applying payments. The policies of the Association may provide that endorsement and deposit of a payment does not constitute acceptance, and that acceptance occurs when payment is posted to the Owner's account.

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

9.1. **Overview.** Generally, the Association maintains the Common Elements, and the Owner maintains the Owner's Unit. If any Owner fails to maintain its Unit, the Association may perform the work at the Owner's expense.

9.2. **Association Maintains.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a Common Expense, all Common Elements, and any other component of a Unit delegated to the Association by this Declaration.

9.3. **Inspection Obligations**.

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

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

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

9.3.4. Limitation. The provisions of this *Section 9.3* shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

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

(i) To maintain, repair, and replace the Owner's Unit and all Improvements constructed therein or thereon.

(ii) To maintain the yard space within an Owner's Unit, keeping the same in a neat, clean, odorless, orderly, and attractive condition.

(iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.

(iv) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.

(v) To be responsible for such Owner's own willful or negligent acts and those of the Owner or the Occupant's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.5. **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by the Documents, the dispute will be resolved by the Board. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this *Article 9* that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners unless otherwise approved by the Board.

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

9.7. **Owner's Default in Maintenance.** If the Board determines that an Owner has failed to properly discharge such Owner's obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at the 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 the Owner's expense, which will be levied as an Individual Assessment

against the Owner and the Owner's Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense and levied as an Individual Assessment.

ARTICLE 10
ARCHITECTURAL COVENANTS AND CONTROL

10.1. **Purpose**. Because the Units are part of a single, unified community, the Architectural Reviewer has the right to regulate the appearance of all Improvements in order to preserve and enhance the Property's value and architectural harmony. The Architectural Reviewer has the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation. During the Development Period, the primary purpose of this *Article 10* is to reserve and preserve Declarant's right of architectural control. Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property and all architectural modifications made thereto that are made by the Declarant or its designee shall not be subject to approval pursuant to this *Article 10*.

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

10.3. **Architectural Control by Declarant**.

10.3.1. Declarant as Architectural Reviewer. During the Development Period, the Architectural Reviewer shall mean Declarant or its designee, and neither the Association or the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the review and approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this *Article 10*.

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

Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

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

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

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

10.6. **Prohibition of Construction, Alteration and Improvement**. Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of a Building, provided that such action is not visible from any other portion of the Property; provided, however, that the foregoing sentence shall not include any modifications, alterations or repair of the exterior any Building.

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

10.7. **No Deemed or Verbal Approval.** Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by the Declarant, Declarant's representative or designee or the Association, an Association director or officer, a member or chair of the Declarant or Board-appointed architectural control committee, the Association's manager, or any other representative of the Association. To be valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Architectural Reviewer's actual receipt of the Owner's application, **the application is deemed denied**. **Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed**. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded, with the cost of Recordation borne by the Owner. Architectural Reviewer approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer's approval and thereafter diligently prosecuted to completion, or, if no commencement date is stated, within ninety (90) days after the date of Architectural Reviewer approval.

10.8. **Application.** To request Architectural Reviewer approval, an Owner must make written application and submit one (1) set of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

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

(i) The Owner complies with *Section 3.3*.

(ii) The Owner must adhere strictly to the plans and specifications which accompanied the application.

(iii) The Owner must initiate, diligently prosecute, and complete the Improvement in a timely manner.

(iv) If the approved application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that such plans and specifications comply with a municipality or other regulatory authority's requirements. Alternatively, approval by a municipality or other regulatory authority does not ensure Architectural Reviewer approval.

ARTICLE 11
USE RESTRICTIONS

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

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

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

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

11.4. **Rules**. In addition to the restrictions contained in this *Article 11*, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

(i) Use of Common Elements.

(ii) Hazardous, illegal, or annoying materials or activities on the Property.

(iii) The use of Property-wide services provided through the Association.

(iv) The consumption of utilities billed to the Association.

(v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.

(vi) The occupancy and leasing of Units.

(vii) Animals.

(viii) Vehicles.

(ix) Disposition of trash and control of vermin, termites, and pests.

(x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

During the Development Period, all Rules must be approved in advance and in writing by the Declarant.

11.5. **Animals - Household Pets**. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for anywhere on the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). 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 on the Property. If the Rules fail to establish animal occupancy quotas, an Owner or Occupant shall be allowed no more than three (3) cats and dogs in the aggregate. 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.

11.6. **Annoyance**. No Unit or Limited Common Element may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the

desirability of the Property; (iii) may endanger the health or safety of Occupants; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

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

11.8. **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 Occupants, as provided in Appendix "A" of this Declaration. Declarant's exercise of a Development Period right that appears to violate a Rule or a provision of this *Article 11* does not constitute waiver or abandonment of the restriction by the Association.

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

11.10. **Garages**. Garages may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein. Trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles may not fit into the garages. Declarant makes no representations or warranties that any trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles will actually fit into any garage parking spaces.

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

11.12. **Landscaping**. No person may install new landscaping which is visible from adjacent Units or General Common Elements without the prior written authorization of the Architectural Reviewer.

11.13. **Noise and Odor**. An Occupant must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Occupants of neighboring Units. The Rules may limit, discourage, or prohibit noise-producing activities and items in the Units and on the Common Elements.

11.14. **Residential Use**. The use of a Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit an Occupant from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a residential dwelling; (ii) the uses conform to Applicable Law; (iii) there is no external evidence of the use; (iv) the use does not entail visits

to the Unit by employees or the public; and (v) the uses do not interfere with the use and enjoyment of other Units. Other than the air conditioned part of a Unit, no thing or structure on the Property may be occupied as residence at any time by any Person.

11.15. **Signs.** No sign of any kind may be erected, placed, or permitted to remain on the Property unless written approval has been obtained in advance from the Architectural Reviewer. The Architectural Reviewer may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Unit. As used in this *Section 11.15*, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Architectural Reviewer may cause the immediate removal of any sign or object which has not been approved in advance by the Architectural Reviewer.

Notwithstanding the foregoing, candidate or measure signs may be erected provided the sign: (i) is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or measure. In addition, signs which include any of the components or characteristics described in Section 259.002(d) of the Texas Election Code are prohibited.

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

11.17. **Vehicles; Guest Parking.** All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this *Section 11.17* and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle from which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or restorations of vehicles on the Property. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. No vehicle may park on any street or other area designated as a fire lane. The Association may affect the removal of any vehicle in violation of this *Section 11.17* or the Rules without liability to the owner or operator of the vehicle.

11.18. **Decorations and Lighting.** No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the Building or on the front yard or on any other portion of a Unit which is visible from any street or General Common Element, unless such specific items have been approved in writing by the Architectural Reviewer. Customary seasonal decorations for holidays are permitted without approval by the Architectural Reviewer but shall be removed within thirty (30) days of the

applicable holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Unit and so as not to affect or reflect into surrounding Units.

11.19. **Tanks**. No leaching cesspool, propane tank or elevated tanks used for fluid storage, including oil, may be erected, placed or permitted on any Unit. This provision will not apply to a tank used to operate a standard residential gas grill or septic tanks.

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

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

11.20.2. Notification. An Owner or Occupant who wishes to install an Antenna/Dish one meter or less in diameter (a "**Permitted Antenna**") must submit a written notice to the Architectural Reviewer, which notice must include the Owner or Occupant's installation plans for the satellite dish.

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

11.20.4. Permitted Installation Locations – Generally. An Owner or Occupant may erect a Permitted Antenna (after written notification has been provided to the Architectural Reviewer) **if** the Owner or Occupant has an exclusive use area in which to install the antenna. An "exclusive use area" is an area in which only the Owner or Occupant may enter and use to the exclusion of all other Owners and Occupants. Unless otherwise approved by the Architectural Reviewer, the Permitted Antenna must be entirely within the exclusive use area of the Owner's Unit.

A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Occupants of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or Occupant of the Unit. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify

the Architectural Reviewer and the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Architectural Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

11.20.5. Preferred Installation Locations. A Permitted Antenna may be installed in a location within the Unit from which an acceptable quality signal can be obtained and where least visible from the street and the Regime, other than the Unit. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Architectural Reviewer are as follows:

(i) attached to the back of the Building, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; then

(ii) attached to the side of the Building, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street.

11.21. **Solar Energy Device and Energy Efficiency Roofing**. A "**Solar Energy Device**" means a system of or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. Approval by the Architectural Reviewer is required prior to installing a Solar Energy Device.

The Architectural Reviewer is not responsible for: (a) errors in or omissions in the application submitted to the Architectural Reviewer for approval; (b) supervising the installation or construction to confirm compliance with an approved application; or (c) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

11.21.1. Approval Application. To obtain approval of a Solar Energy Device, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application.

11.21.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10*. The Architectural Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 11.21.3* below **UNLESS** the Architectural Reviewer makes a written determination that placement of the Solar

Energy Device, despite compliance with *Section 11.21.3*, will create a condition that substantially interferes with the use and enjoyment of the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Architectural Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Units immediately adjacent to the Owner/applicant's Unit provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 11.21* when considering any such request.

Each Owner is advised that if the Solar Application is approved by the Architectural Reviewer, installation of the Solar Energy Device must: (i) strictly comply with the Solar Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Solar Energy Device to be installed in accordance with the approved Solar Application, the Architectural Reviewer may require the Owner to: (i) modify the Solar Application to accurately reflect the Solar Energy Device installed on the Unit; or (ii) remove the Solar Energy Device and reinstall the device in accordance with the approved Solar Application. Failure to install a Solar Energy Device in accordance with the approved Solar Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this *Section 11.21* and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Solar Application or remove and relocate a Solar Energy Device in accordance with the approved Solar Application shall be at the Owner's sole cost and expense.

11.21.3. Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located within the Owner's Unit, entirely within a fenced area within the Owner's Unit, or entirely within a fenced patio located within the Owner's Unit. If the Solar Energy Device will be located on the roof of the residence located within the Owner's Unit, the Architectural Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the Architectural Reviewer. If the Owner desires to contest the alternate location proposed by the Architectural Reviewer, the Owner should submit information to the

Architectural Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of or the patio located within the Owner's Unit, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located within the Owner's Unit, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Energy Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

11.21.4. Energy Efficient Roofing. For the proposes of this *Section 11.21.4* "**Energy Efficient Roofing**" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The Architectural Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in *Article 10*.

11.22. **Rainwater Harvesting Systems**. Rain barrels or rainwater harvesting systems (a "**Rainwater Harvesting System**") may be installed with the advance written approval of the Architectural Reviewer.

11.22.1. Application. To obtain Architectural Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

11.22.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10* of the Declaration. Any proposal to install a Rainwater Harvesting System on Common Elements must be approved in advance and in writing by the Architectural Reviewer, and the Architectural Reviewer need not adhere to this policy when considering any such request.

11.22.3. Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Rain System Application and Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed within the Owner's Unit, as reasonably determined by the Architectural Reviewer.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed within the Owner's Unit and any adjoining or adjacent street.

(iv) There is sufficient area within the Owner's Unit to install the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

(v) If the Rainwater Harvesting System will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common Element, or another Owner's Unit, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 11.22.4* for additional guidance.

11.22.4. Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common Element, or another Owner's Unit, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Element, or another Owner's Unit. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common Element, or another Owner's Unit, any additional regulations imposed by the Architectural Reviewer to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

11.23. **Flags.** An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States

Military ("**Permitted Flag**") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence located within the Owner's Unit near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**") located within an Owner's Unit. Only one (1) Permitted Flagpole is allowed per residence located within the Owner's Unit. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural Reviewer.

Approval by the Architectural Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Unit ("**Freestanding Flagpole**"). The Architectural Reviewer is not responsible for: (i) errors in or omissions in the application submitted to the Architectural Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

11.23.1. Approval Application. To obtain Architectural Reviewer approval of any Freestanding Flagpole, the Owner shall provide a request to the Architectural Reviewer in accordance with *Article 10*, including the following information: (i) the location of the flagpole to be installed on the Unit; (ii) the type of flagpole to be installed; (iii) the dimensions of the flagpole; and (iv) the proposed materials of the flagpole (the "**Flagpole Application**"). A Flagpole Application may only be submitted by an Owner UNLESS the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Flagpole Application.

11.23.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10*. Any proposal to install a Freestanding Flagpole on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 11.23* when considering any such request.

Each Owner is advised that if the Flagpole Application is approved by the Architectural Reviewer, installation of the Freestanding Flagpole must: (i) strictly comply with the Flagpole Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Freestanding Flagpole to be installed in accordance with the approved Flagpole Application, the Architectural Reviewer may require the Owner to: (a) modify the Flagpole Application to accurately reflect the Freestanding Flagpole installed on the Unit; or (b) remove the Freestanding Flagpole and reinstall the flagpole in accordance with the approved Flagpole Application. Failure to install a Freestanding Flagpole in accordance with the approved Flagpole Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this *Section 11.23* and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Flagpole Application or remove and relocate a Freestanding Flagpole in accordance with the approved Flagpole Application shall be at the Owner's sole cost and expense.

11.23.3. Installation, Display and Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(i) No more than one (1) Freestanding Flagpole OR no more than one (1) Permitted Flagpole is permitted per residence located within the Owner's Unit, on which only Permitted Flags may be displayed;

(ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');

(iv) With the exception of flags displayed on Common Elements and any Unit which is being used for marketing purposes by a builder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) The display of a flag, or the location and construction of the flagpole must comply with Applicable Law;

(vi) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(vii) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;

(viii) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

(ix) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

11.24. **Xeriscaping**. Drought-resistant landscaping or water-conserving turf known as xeriscaping ("**Xeriscaping**") may be installed on a Unit. Approval by the Architectural Reviewer is required prior to installing Xeriscaping:

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11.24.1. Application. To obtain Architectural Reviewer approval of Xeriscaping, the Owner shall provide a request to the Architectural Reviewer in accordance with *Article 10*, including the following information: (i) the proposed site location of the Xeriscaping on the Owner's Unit; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application.

11.24.2. Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 10*. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

11.24.3. Approval Conditions. Each Owner is advised that if the Xeriscaping Application is approved by the Architectural Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Architectural Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

11.24.4. Aesthetically Compatibility. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must be aesthetically compatible with other landscaping in the Regime as reasonably determined by the Architectural Reviewer. For purposes of this Xeriscaping policy, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the Regime. For example, an Owner's Unit plan may be denied if the Architectural Reviewer determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall Regime; and/or b) the use of specific turf or plant materials

would result in damage to or cause deterioration of the turf or landscaping of an adjacent Owner, resulting in a reduction of aesthetic appeal of the adjacent Owner's Unit.

11.25. **Department of Veterans Affairs Financing**. To the extent that any provision set forth in this Declaration and related documents regarding leasing and a restriction on sale is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("DVA Financing"), such provision shall not apply to any Unit that is: (i) encumbered by DVA Financing or; (ii) owned by the Department of Veterans Affairs.

ARTICLE 12
UNIT LEASING AND RESTRICTION ON MARKETING

12.1. **Leasing**. The leasing of Units is subject to the following conditions: (i) all leases must be in writing and must be made subject to the Documents; (ii) an Owner is responsible for providing the Owner's tenant with copies of the Documents and notifying the tenant of changes thereto; and (iii) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law. The Board may adopt additional Rules which further limit the leasing of Units, and shall have the express power and authority to adopt a leasing permit system which limits the number of Units which may be leased at any one time, provided, that the leasing rules and leasing permit system is not otherwise prohibited by the requirements and/or guidelines promulgated by an Underwriting Lender. Notwithstanding the foregoing provision, any additional leasing restrictions and any leasing permit system must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

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

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

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

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

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

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

12.3. **Unit Marketing Restrictions**. Unless otherwise approved in writing and in advance by Declarant, which approval may be withheld in the sole discretion of Declarant, an Owner may in no event offer the Unit for sale, including but, not limited to, listing the Unit or advertising the Unit for sale in any real estate listing service and/or publication, on any online electronic medium and on any newspaper, radio, television or any other medium for advertising, or otherwise market or attempt to market the Unit for sale in any way prior to such time as Owner has acquired fee title to the Unit.

12.4. **Restriction on Resale of Units**. No Owner shall offer any Unit for sale or advertise or otherwise market or attempt to market a Unit for sale in any way during the Sales Restriction Period. Each Owner agrees that the breach of this provision during the Sales Restriction Period shall entitle Declarant or the Association to exercise the remedy of specific performance or damages against the Owner. This restriction shall not apply to any foreclosure or exercise of the power of sale by any Mortgagee.

ARTICLE 13
ASSOCIATION OPERATIONS

13.1. **Board**. Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through a Majority of its Board of Directors."

13.2. **The Association**. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under Applicable Law, but expressly subject to any limitations on such powers set forth in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist at least as long as this Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

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

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

13.5. **Governance**. The Association will be governed by a Board of Directors elected by the Members. Unless the Bylaws or Certificate provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Documents and Applicable Law. Unless the Documents provide otherwise, any action requiring approval of

the Members may be approved in writing by Owners representing at least a Majority of the total votes in the Association, or at a meeting by Owners' representing at least a Majority of the votes in the Association that are represented at the meeting.

13.6. **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by the Owners holding at least two-thirds (2/3) of the votes allocated to Units. On the merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

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

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

13.9. **Books and Records**. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of Applicable Law. The Association, upon the request of a prospective purchaser of a Unit, will provide the prospective purchaser with a copy of the Documents and the most recent audited financial statements of the Association. The Association will be permitted to charge a reasonable fee for copies of such Documents and statements.

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

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

13.11.1. Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this *Section 13.11.1*, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the Recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address, phone number, and driver's license number, if any; (iii) any Mortgagee's name, address, and loan number; (iv) the name and phone number of any Occupant other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

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

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

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

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

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

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

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

13.12.3. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This *Section 13.12.3* does not obligate the Board or the manager to levy transfer-related fees. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

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

ARTICLE 14
ENFORCING THE DOCUMENTS

14.1. **Notice and Hearing**. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine – unless the Owner was given notice and a

reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another Person or by a written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with the requirements of Applicable Law.

14.2. **Remedies**. The remedies provided in this *Article 14* for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following rights to enforce the Documents:

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

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

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

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

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

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

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

14.5. **Recovery of Costs**. The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

14.6. **Release**. Subject to the Association's obligations under this Declaration, except as otherwise provided by the Documents, each Owner hereby releases, acquits and forever discharges the Association, and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Units, or the Common Elements. This release shall release and forever discharge the Association and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns, from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

14.7. **Right of Action by Association**. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for: (i) a Construction Claim, as defined in *Section 20.1.4* below, in the name of or on behalf of any Unit Owner (whether one or more); or (ii) a Unit Construction Claim, as defined in *Section 20.1.6*

below. The foregoing sentence is expressly intended to remove from the power of the Association the right, under Section 82.102 of the Act, to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on behalf of two (2) or more Unit Owners on matters affecting the Regime. This *Section 14.7* may not be amended or modified without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

ARTICLE 15
INSURANCE

15.1. **General Provisions.** The broad purpose of this *Article 15* is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Units. Because the insurance requirements of mortgage underwriters are subject to change, as are State-promulgated insurance regulations and policies, this *Article 15* tries to balance the need for certain minimum insurance requirements with the desire to adapt to a periodically changing insurance environment. The Board will make every reasonable effort to comply with the requirements of this *Article 15*.

15.1.1. Unavailability. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this *Article 15* or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

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

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

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

15.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Mortgagees at least ten (10) days prior notice of cancellation, termination, expiration, or material modification.

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

15.2. **Property Insurance.** The Association will obtain blanket all-risk insurance, if reasonably available, for all Common Elements insurable by the Association. 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 one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

15.2.1. Common Property Insured. If insurable, the Association will insure: (i) General Common Elements; (ii) Limited Common Elements assigned to more than one (1) Unit; and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

15.2.2. Units Not Insured by Association. In no event will the Association maintain property insurance on the Units. Accordingly, each Owner of a Unit will be obligated to maintain property insurance on such Owner's Unit and any Limited Common Elements assigned exclusively to such Owner's Unit, including any betterments and Improvements constructed within or exclusively serving such Unit, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. In

addition, the Association does not insure an Owner or Resident's personal property. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON SUCH OWNER'S OR RESIDENT'S PERSONAL BELONGINGS.

15.2.3. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender, such as Inflation Guard Endorsement, Building Ordinance or Law Endorsement, and a Special Condominium Endorsement.

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

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

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

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

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

ARTICLE 16
RECONSTRUCTION OR REPAIR AFTER LOSS

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

16.2. **Restoration Funds**. For purposes of this *Article 16*, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Property. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Association directors or that of an agent duly authorized by the Board.

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

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

16.2.3. Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board in the Board's sole and absolute discretion.

16.3. **Costs and Plans**.

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

16.3.2. Plans and Specifications. Unless otherwise approved by the Board, Common Elements will be repaired and restored substantially as they existed

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

16.4. **Owner's Duty to Repair**.

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

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

16.4.3. Failure to Repair. If an Owner fails to repair or restore damage as required by this *Section 16.4*, the Association may effect the necessary repairs and levy an Individual Assessment against the Owner and Unit for the cost thereof, after giving an Owner of the Unit reasonable notice of the Association's intent to do so.

16.5. **Owner's Liability for Insurance Deductible**. If repair or restoration of Common Elements or Units is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 17
TERMINATION AND CONDEMNATION

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

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

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

ARTICLE 18
MORTGAGEE PROTECTION

18.1. **Introduction**. This *Article 18* is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this *Article 18* controls. A provision of the Documents requiring the approval of a specified percentage of Mortgagees will be based on the number of Units subject to mortgages held by Mortgagees. For example, "51 percent of Mortgagees" means Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Mortgagees.

18.2. **Notice of Mortgagee**. As provided in this *Article 18*, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in *Section 18.8*, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in *Section 18.9* or the termination of this Declaration as described in *Section 18.4*. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this *Section 18.2* after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

18.3. **Amendment**. This *Article 18* establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or Mortgagees, may amend this *Article 18* and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

18.4. **Termination**. Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 82.068 of the Act, subject to the following

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

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

18.6. **Other Mortgagee Rights**.

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

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

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

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

18.6.5. Management Contract. If professional management of the Association is required by this *Article 18*, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

18.6.6. Audit. A majority of Mortgagees shall be entitled to demand an audit of the Association's financial records

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

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

(i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit and any eminent domain proceeding affecting the General Common Elements which would result in a loss of more than ten percent (10%) of the estimated operational and reserve expenses as reflected on the then-current annual budget of the Association.

(ii) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit.

(iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.

(v) Any proposed amendment of a material nature, as provided in this *Article 18*.

(vi) Any proposed termination of the condominium status of the property or dissolution of the Association at least thirty (30) days prior to the proposed termination or dissolution, as applicable.

The Association will send written notice for meetings to approve a Material Amendment or an Extraordinary Action at least twenty-five (25) days in advance to all Members. The notice must state the purpose of the meeting and contain a summary of any material amendments or extraordinary actions.

18.9. **Material Amendments**. Except as provided herein, Material Amendments to the Declaration 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 First Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS FILED BY THE DECLARANT AS PERMITTED IN APPENDIX "A" ATTACHED HERETO**. A change to any of the provisions governing the following would be considered material (hereafter a "**Material Amendment**"):

(i) Voting rights;

(ii) Any method of imposing or determining any charges to be levied against individual unit owners;

(iii) Assessment liens or the priority of assessment liens;

(iv) Reserves for maintenance, repair, and replacement of Common Elements;

(v) Responsibility for maintenance;

(vi) Reallocation of rights to use General Common Elements; except that when General Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A";

(vii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property;

(viii) Reduction of insurance requirements;

(ix) Restrictions affecting the leasing of Units;

(x) Restrictions on Owners' right to sell or transfer their Units;

(xi) Restoration or repair of the Regime, in a manner other than that specified in the Documents, after hazard damage or partial condemnation;

(xii) Imposition of a new scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units other than those specified in the Declaration; or

(xiv) Any provision that expressly benefits mortgage holders.

ARTICLE 19
AMENDMENTS

19.1. **Consents Required for Certain Amendments and Actions**. As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association. All amendments made to the Declaration, Bylaws or Certificate during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to recording such document in the Official Public Records of Comal County, Texas if Veterans Affairs has guaranteed any loans secured by Units in the Regime. All Material Amendments made to the Declaration, Bylaws or Certificate and all Extraordinary Actions taken during the Declarant Control Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to recording such document in the Official Public Records of Comal County, Texas if Veterans Affairs has guaranteed any loans secured by Units in the Regime. Further, if Veterans Affairs has guaranteed any loans secured by Units in the Regime the Secretary of Veterans Affairs or its authorized agent must consent to any termination of the Declaration, dissolution of the Association (except by consolidation or

merger), and any conveyance of Common Elements. In addition, a change to any provision in the Declaration governing the following items (each an "**Extraordinary Action**") must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association:

(i) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association).

(ii) Determining not to require professional management if that management is required by the Declaration or the Association.

(iii) The addition of land to the Declaration if the addition would increase the overall land area then subject to the Declaration by more than ten percent (10%).

(iv) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements with the exception of: (i) granting easements over and across the Common Elements otherwise permitted by this Declaration or the Act; (ii) dedicating all or any portion of a Common Element to the extent required by any governing authority or regulatory authority; (iii) adjustments to the boundary line of Common Elements if made in accordance with the provisions of this Declaration; or (iv) transferring Common Elements pursuant to a merger or consolidation with another entity.

(v) Using insurance proceeds for purposes other than construction or repair of the insured improvements.

(vi) Any capital expenditure, other than for the maintenance, operation, repair or replacement of any existing Improvement, if the capital expenditure exceeds more than twenty percent (20%) of the annual operating budget during any period of twelve (12) consecutive months.

19.2. **Amendments Generally**. For amendments requiring the consent of Mortgagees, the Association will send each Mortgagee a detailed description, if not the exact wording, of any proposed amendment. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits the Declarant, the Architectural Reviewer or the Association; (ii) rights, privileges, easements, protections, or defenses of the Declarant, the Architectural Reviewer or the Association; or (iii) rights of the Owners or the Association in relationship to the Declarant, the Architectural Reviewer or the Association without the written consent of the Declarant, the Architectural Reviewer or the Association, as applicable, attached to and Recorded with such amendment.

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

19.4. **Declarant Provisions**. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix "A". An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because Appendix "A" of this Declaration is destined to become obsolete upon expiration of the Development Period, the Board may restate, rerecord, or publish this Declaration without Appendix "A". The automatic expiration and subsequent deletion of Appendix "A" does not constitute an amendment of this Declaration. This *Section 19.4* may not be amended without Declarant's written and acknowledged consent.

ARTICLE 20
DISPUTE RESOLUTION

This Article 20 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Units, Common Elements, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Units, prevent or jeopardize approval of the Units by Underwriting Lenders, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Unit and the Common Elements, this Article 20 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, the proposed arrangement between the Association and any inspection company who will prepare the Common Element Report (as defined below) or perform any other investigation or inspection of the Common Elements and/or Improvements related to the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

For the avoidance of doubt, nothing in this Article 20 is intended to limit the Association's right or obligation to obtain inspection services related to the maintenance, repair and physical condition of the Regime pursuant to Section 9.3 of this Declaration provided that such inspection services are not commissioned by the Association in conjunction with a Unit Construction Claim or a Common Element Construction Claim.

20.1. **Introduction and Definitions**. The Association, the Owners, Declarant, all Persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 20* by written instrument delivered to the Claimant, as defined hereinbelow, which may include, but is not limited to, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Units, Common Elements or any Improvement within, serving, or forming a part of the Regime (individually a "**Party**" and collectively, the "**Parties**"), agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. **Accordingly, each Party hereby covenants and agrees that this *Article 20* applies to all Claims as hereafter defined.** This *Article 20* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding one hundred percent (100%) of the votes in the Association. As used in this *Article 20* only, the following words, when capitalized, have the following specified meanings:

20.1.1. "**Claim**" means:

(i) Claims relating to the rights and/or duties of Declarant or the Association under the Documents or the Act;

(ii) Claims relating to the acts or omissions of the Declarant or the Board during its control and administration of the Association and/or Regime, any claim asserted against the Architectural Reviewer, and any claims asserted against the Declarant, the Board or a Person serving as a Board member or officer of the Association, or the Architectural Reviewer;

(iii) Claims relating to the design or construction of the Units, Common Elements or any Improvement located within, serving, or forming a part of the Regime; and

(iv) Claims relating to any repair or alteration of the Units, Common Elements, or any Improvement located within, serving, or forming a part of the Regime, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

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

20.1.3. "**Common Element Construction Claim**" means a Claim relating to: (i) the design or construction of the Common Elements or any Improvement located thereon; or (ii) any repair or alteration of the Common Elements, or any Improvement located thereon, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

20.1.4. "**Construction Claim**" means a Claim defined in *Section 20.1.1(iii)* or *Section 20.1.1(iv)*.

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

20.1.6. "**Unit Construction Claim**" means a Claim relating to: (i) the design or construction of a Unit (whether one or more) or any Improvement located thereon; or (ii) any repair or alteration of a Unit (whether one or more), or any Improvement located thereon, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

20.2. **Mandatory Procedures: All Claims**. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any other judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the mandatory procedures of this *Article 20*. As provided in *Section 20.9* below, a Claim must be resolved by binding arbitration.

20.3. **Mandatory Procedures: Construction Claims**. Failure of a Claimant to comply with the procedures of this *Article 20* for a Construction Claim may result in significant expenses incurred by the Respondent to respond to a Construction Claim that would not have been otherwise incurred had the Claimant followed the procedures and dispute resolution process set forth herein, including attorney fees, court costs and other administrative expenses (the "**Response Costs**"). Notwithstanding any provision contained herein to the contrary, failure by a Claimant to comply with any of the procedural or dispute resolution requirements for a Construction Claim set forth in this *Article 20* shall constitute a material breach of this Declaration and any warranty agreement, entitling the Respondent to recover, from the Claimant, all actual and reasonable Response Costs incurred by Respondent. Moreover, strict compliance with the procedural and dispute resolution requirements of this *Article 20* shall be a condition precedent to any recovery for a Construction Claim.

20.4. **Common Element Construction Claim by the Association**. In accordance with *Section 14.7* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings for: (i) a Construction Claim in the name of or on behalf of any Unit Owner (whether one or more); or (ii) a Unit Construction Claim. Additionally, no Unit Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. Each Unit Owner, by accepting an interest in or title to a Unit, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. In the event the Association asserts a Common Element Construction Claim, as a precondition to providing the Notice defined in *Section 20.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 20*, or taking any other action to prosecute a Common Element Construction Claim, the Association must:

20.4.1. Obtain Owner Approval of Law Firm, Attorney and Inspection Company.

The requirements related to Owner approval set forth in this Section 20.4.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm and/or attorney engaged by the Association to prosecute a Common Element Construction Claim, and any financial arrangements between the Association and the Inspection Company (defined below) or a law firm and/or attorney and the Inspection Company. The agreement between the Association, the law firm or attorney, and/or the Inspection Company may include requirements that the Association pay costs, fees, and expenses to the law firm, attorney or the Inspection Company which will be paid through Assessments levied against Owners. The financial agreement between the Association, the law firm or attorney, and/or the Inspection Company may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association, the law firm or attorney, and/or the Inspection Company is terminated, the Association elects not to engage the law firm or attorney or Inspection Company to prosecute or assist with the Common Element Construction Claim, or if the Association agrees to settle the Common Element Construction Claim. In addition, the financial arrangement between the Association, the law firm or attorney, and/or the Inspection Company may include additional costs, expenses, and interest charges. These financial obligations can be significant. The Board may not engage or execute an agreement with a law firm or attorney to investigate or prosecute a Common Element Construction Claim, or engage or execute an agreement between the Association and a law firm or attorney, for the purpose of preparing a Common Element Report or performing any other investigation or inspection of the Common Elements related to a Common Element Construction Claim unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 20.4.1. In addition, the Board may not execute an agreement with an Inspection Company to prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, unless the Inspection Company and the financial arrangements between the Association and the Inspection Company are approved by the Owners in accordance with this Section 20.4.1. For the purpose of the Owner approval required by this Section 20.4.1, an engagement, agreement or arrangement between a law firm or attorney and an Inspection Company, if such engagement, agreement or arrangement could result in any financial obligations to the Association, irrespective of whether the Association and law firm or attorney have entered into an engagement or other agreement to prosecute a Common Element Construction Claim, must also be approved by the Owners in accordance with this Section 20.4.1. An engagement or agreement described in this paragraph is referred to herein as a "Claim Agreement".

Unless otherwise approved by Members holding sixty-seven percent (67%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to enter into a Claim Agreement if the Claim Agreement includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm

or attorney and/or the Inspection Company, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the Claim Agreement or engages another firm or third-party to assist with the Common Element Construction Claim; (ii) if the Association elects not to enter into a Claim Agreement; (iii) if the Association agrees to settle the Common Element Construction Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iv) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney or the Inspection Company; and/or (v) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney or the Inspection Company. For avoidance of doubt, it is intended that Members holding sixty-seven percent (67%) of the votes in the Association must approve the law firm and attorney who will prosecute a Common Element Construction Claim and the Inspection Company who will prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, and each Claim Agreement. All Claim Agreements must be in writing. The Board shall not have the authority to pay any costs, expenses, fees, or other charges to a law firm, attorney or the Inspection Company unless the Claim Agreement is in writing and approved by the Owners in accordance with this *Section 20.4.1*.

The approval of the Members required under this *Section 20.4.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney and/or the Inspection Company; (b) a copy of each Claim Agreement; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association under any Claim Agreement; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association under any Claim Agreement; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment under the Claim Agreement occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm, attorney and/or the Inspection Company will use to evaluate the Common Element Construction Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Building, Systems, Common Elements, Units, or Improvements). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Units or the Common Elements will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Building, Systems, Common Elements, Units, or Improvements affected by such testing, the estimated costs thereof, and an estimate of Assessments that may be levied against the Owners for such repairs. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed Claim Agreement being approved by the Members. In the event Members holding sixty-seven percent (67%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Common Element Construction Claim, and the Inspection Company who will prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, and the

Claim Agreement(s), the Board shall have the authority to engage the law firm and/or attorney, and the Inspection Company, and enter into the Claim Agreement approved by the Members.

20.4.2. Provide Notice of the Investigation or Inspection.

As provided in *Section 20.4.3* below, a Common Element Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Common Element Report, the Association must have provided at least ten (10) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Element Report, the specific Common Elements to be investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

20.4.3. Obtain a Common Element Report.

The requirements related to the Common Element Report set forth in this Section 20.4.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Element Report and recommendations are not affected by influences that may compromise the professional judgment of the party preparing the Common Element Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Element Report is compromised.

Obtain a written independent third-party report for the Common Elements (the "**Common Element Report**") from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Comal County, Texas (the "**Inspection Company**"). The Common Element Report must include: (i) a description with photographs of the Common Elements subject to the Common Element Construction Claim; (ii) a description of the present physical condition of the Common Elements subject to the Common Element Construction Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Elements performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Elements subject to the Common Element Construction Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Element Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Comal County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Element Report must be obtained by the Association. The Common Element Report will not satisfy the requirements of this *Section 20.4.3* and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Element Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Element Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Element Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Element Report is finalized and delivered to the Association.

20.4.4. Provide a Copy of Common Element Report to all Respondents and Owners. Upon completion of the Common Element Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Element Report, the Association will provide a full and complete copy of the Common Element Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Element Report which will include the date the report was provided. The Common Element Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

20.4.5. Provide a Right to Cure Defects and/or Deficiencies Noted on Common Element Report. Commencing on the date the Common Element Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Element Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Element Report; and (iii) correct any condition identified in the Common Element Report. As provided in *Section 3.8* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Element Report.

20.4.6. Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of any Claim Agreement, the Association must obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 20.6*, initiate the mandatory dispute resolution procedures set forth in this *Article 20*, or take any other action to prosecute a Common Element Construction

Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Common Element Construction Claim, the relief sought, the anticipated duration of prosecuting the Common Element Construction Claim, and the likelihood of success; (ii) a copy of the Common Element Report; (iii) a copy of any Claim Agreement between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Common Element Construction Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Common Element Construction Claim; (v) a summary of the steps previously taken by the Association to resolve the Common Element Construction Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Common Element Construction Claim may affect the market value, marketability, or refinancing of a Unit while the Common Element Construction Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Common Element Construction Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Common Element Construction Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Common Element Construction Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Common Element Construction Claim. In the event Members approve providing the Notice described in *Section 20.6*, or taking any other action to prosecute a Common Element Construction Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Common Element Construction Claim.

20.5. **Unit Construction Claim by Owners**. Class action proceedings are prohibited, and no Unit Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration. In the event an Owner asserts a Unit Construction Claim, as a precondition to providing the Notice defined in *Section 20.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 20*, or taking any other action to prosecute a Unit Construction Claim, the Owner must:

20.5.1. Provide Notice of the Investigation or Inspection.

As provided in *Section 20.5.2* below, a Unit Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Unit Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Unit Report, the Unit and areas of the Unit to be investigated or inspected, and the date and time the

investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

20.5.2. Obtain a Unit Report.

The requirements related to the Unit Report set forth in this Section 20.5.2 are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Unit Report and recommendations are not affected by influences that may compromise the professional judgment of the party preparing the Unit Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Unit Report is compromised.

Obtain a written independent third-party report for the Unit (the "**Unit Report**") from an Inspection Company. The Unit Report must include: (i) a description with photographs of the Unit and portions of the Unit subject to the Unit Construction Claim; (ii) a description of the present physical condition of the Unit; (iii) a detailed description of any modifications, maintenance, or repairs to the Unit performed by the Owner or a third-party, including any Respondent; (iv) specific and detailed recommendations regarding remediation and/or repair of the Unit. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Unit Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Comal County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Unit Report must be obtained by the Owner. The Unit Report will not satisfy the requirements of this *Section 20.5.2* and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (b) the costs and expenses for preparation of the Unit Report are not directly paid by the Owner to the Inspection Company no later than the date the Unit Report is finalized and delivered to the Owner; or (c) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner's agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Unit Report. For avoidance of doubt, an "independent" report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Unit Report is finalized and delivered to the Owner.

20.5.3. Provide a Copy of Unit Report to all Respondents. Upon completion of the Unit Report, and in any event no later than three (3) days after the Owner has been provided a copy of the Unit Report, the Owner will provide a full and complete copy of the Unit Report to each Respondent. The Owner shall maintain a written record of each Respondent who was provided a copy of the Unit Report which will include the date the report was provided. The Unit Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

20.5.4. Right to Cure Defects and/or Deficiencies Noted on Unit Report. Commencing on the date the Unit Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Unit Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Unit Report; and (iii) correct any condition identified in the Unit Report. As provided in *Section 3.8* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Unit Report.

20.5.5. Common Element Construction Claim. Pursuant to *Section 20.4* above, a Unit Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. In the event that a court of competent jurisdiction or arbitrator determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim, such Unit Owner shall be required, since a Common Element Construction Claim could affect all Owners, as a precondition to providing the Notice defined in *Section 20.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 20*, or taking any other action to prosecute a Common Element Construction Claim, to comply with the requirements imposed by the Association in accordance with *Section 20.4.2* (Provide Notice of Inspection), *Section 20.4.3* (Obtain a Common Element Report), *Section 20.4.4* (Provide a Copy of Common Element Report to all Respondents and Owners), *Section 20.4.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Element Report), *Section 20.4.6* (Owner Meeting and Approval), and *Section 20.6* (Notice).

20.6. **Notice**. Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (*i.e.*, the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 20.6*. For Construction Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 20.7* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Construction Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with

Section 20.7, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 20.7* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Construction Claim. The one hundred twenty (120) day period for mediation set forth in *Section 20.8* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 20.8* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association and for a Common Element Construction Claim, the Notice will also include: (a) a true and correct copy of the Common Element Report, and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Elements; (b) a copy of any Claim Agreement; (c) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 20.4.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 20.4.6* above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and the Claim is a Unit Construction Claim, the Notice will also include a true and correct copy of the Unit Report.

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

20.8. **Mediation**. If the parties negotiate but do not resolve the Claim through negotiation within one hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this *Section 20.8*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 20.9*.

20.9. **Binding Arbitration - Claims**. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 20.9*.

20.9.1. Governing Rules. If a Claim has not been resolved by mediation in accordance with *Section 20.8*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 20.9* and the American Arbitration Association (the "**AAA**") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 20.9*, this *Section 20.9* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows: (i) one (1) arbitrator shall be selected by the Respondent, in its sole and absolute discretion; (ii) one (1) arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and (iii) one (1) arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

20.9.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 20.9* will limit the right of Claimant or Respondent, and Claimant and Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

20.9.3. Statute of Limitations. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 20.9*.

20.9.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 20.9* and subject to *Section 20.10*; **provided, however, attorney's fees and costs may not be awarded by**

the arbitrator to either Claimant or Respondent. In addition, for a Construction Claim, or any portion of a Construction Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, **except that the arbitrator may not award attorney's fees and/or costs to either Claimant or Respondent**. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. **In no event may an arbitrator award speculative, special, exemplary, treble or punitive damages for any Claim.**

20.9.5. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Comal County, Texas. Unless otherwise provided by this *Section 20.9*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree 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. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

20.10. **Allocation of Costs**. Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

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

20.12. **Period of Limitation**.

20.12.1. For Actions by an Owner or Occupant of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim shall be the earliest of: (i) for a Construction Claim, two (2) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Construction Claim; (ii) for Claims other than Construction Claims, four (4) years and one (1) day from the date that the Owner or Occupant

discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim, the exclusive period of limitation for such Common Element Construction Claim, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Common Element Construction Claim; or (b) the applicable statute of limitations for the Common Element Construction Claim. In no event shall this *Section 20.12.1* be interpreted to extend any period of limitations.

20.12.2. <u>For Actions by the Association</u>. The exclusive period of limitation for the Association to bring any Claim shall be the earliest of: (i) for a Common Element Construction Claim, two (2) years and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Common Element Construction Claim; (ii) for Claims other than a Common Element Construction Claim, four (4) years and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 20.12.2* be interpreted to extend any period of limitations.

20.13. **<u>Funding the Resolution of Claims</u>**. The Association must levy a Special Assessment to fund estimated costs to resolve a Construction Claim pursuant to this *Article 20*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Construction Claim unless the Association has previously established and funded a dispute resolution fund.

ARTICLE 21
<u>GENERAL PROVISIONS</u>

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

21.2. **<u>Interpretation</u>**. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in

this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

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

21.4. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

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

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

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

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL

EXECUTED on this 17th day of November, 2022.

DECLARANT:

HCH DEVELOPMENT, LLC,
a Texas limited liability company

By: _____
Printed Name: Bart Swider
Title: Member

STATE OF TEXAS §
§
COUNTY OF Bexar §

This instrument was acknowledged before me on November 17, 2022, by Bart Swider, the Member of HCH Development, LLC, a Texas limited liability company, on behalf of such limited liability company.

_____
Notary Public Signature

[SEAL]

ALLYSON WALTERS
Notary ID #129531158
My Commission Expires
April 13, 2026

UNOFFICIAL

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien and security interest created by that certain Deed of Trust recorded as Document No. 202106055633 in the Official Public Records of Comal County, Texas (the "**Deed of Trust**"), securing a Promissory Note of even date therewith, executes this Consent of Mortgagee solely for the purposes of (i) evidencing its consent to the Declarant's execution of the Declaration required pursuant to Section 82.051(b) of the Texas Property Code, and (ii) subordinating the lien and security interest granted by the Deed of Trust to the Declaration, both on the condition that the lien and security interest granted by the Deed of Trust is and shall remain superior to any Assessment lien granted or created by the Declaration in all events.

TEXAS COMMUNITY BANK

By: _____
Printed Name: George Kozen
Title: Executive V.P.

THE STATE OF Texas §
§
COUNTY OF Bexar §

This instrument was acknowledged before me on this 21st day of November, 2022 by George Kozen, Exec. VP, of Texas Community Bank, a/an _____, on behalf of said entity.

(seal)

GISELLE JUAREZ
Notary Public, State of Texas
Comm. Expires 01/11/2024
Notary ID # 12471426-5

_____
Notary Public Signature

EXHIBIT "A"
PROPERTY DESCRIPTION

Lot 1 through 5 Benclare Estates Subdivision, according to the plat recorded in Document No. 202106060252 of the Official Public Records of Comal County, Texas.

UNOFFICIAL

ATTACHMENT 1

[CONDOMINIUM PLAT AND PLANS]

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

Printed Name: Tim C. Pappas
RPLS or License No.: 5543

BOUNDARIES OF UNIT

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

SEE NEXT PAGE FOR ORIGINAL CERTIFICATION

UNOFFICIAL

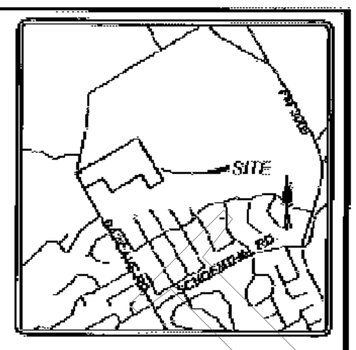
NOTES:

1. BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED FOR THE TEXAS SOUTH CENTRAL ZONE 4204, NORTH AMERICAN DATUM (NAD) OF 1983.
2. THE TRACT SHOWN HEREON IS SUBJECT COMAL COUNTY ORDINANCES AND RESTRICTIONS.
3. METES AND BOUNDS WERE PREPARED FOR THIS EXHIBIT.
4. ADJOINERS SHOWN HEREON ARE PER CURRENT COMAL COUNTY APPRAISAL DISTRICT RECORDS AND OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS.
5. 1/2" DIAMETER REBAR WITH BLUE PLASTIC CAP STAMPED "KFW SURVEYING" SET AT ALL CORNERS UNLESS NOTED OTHERWISE

SEE SHEET 12 FOR ADDITIONAL NOTES

SYMBOL LEGEND

FIR	FOUND 1/2" IRON ROD OR AS NOTED
SIR	SET 1/2" IRON ROD WITH A BLUE CAP STAMPED "KFW SURVEYING"
O.P.R.	OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF COMAL COUNTY, TEXAS
M.R.	MAP RECORDS OF COMAL COUNTY, TEXAS



LOCATION MAP
NOT-TO-SCALE

EASEMENT TO CROWN CASTLE TOWERS 09, LLC
CALLED 0.175 ACRES
DOC. NO. 201506045626 O.P.R.
(VESTING DEED FOR TITLE NOT FOUND)

RIEDEL FAMILY PARTNERS
REMAINDER OF CALLED 306.18 ACRES
(78.270 ACRES IN A-678)
VOL. 824, PAGE 325, O.P.R.
RECORDED 06/01/1992

COMAL INDEPENDENT SCHOOL DISTRICT
CALLED 218.24 ACRES
DOC. NO. 201706035940, O.P.R.
RECORDED 07/31/2017

N59° 31' 07"E 18.34'
N59° 30' 09"E 1959.60'
N30° 21' 32"W 75.00'
N59° 31' 07"E 113.65'
S30° 29' 51"E 237.14'
N29° 43' 36"W 445.24'
S59° 08' 54"W 606.50'
S30° 29' 51"E 229.27'
N59° 30' 09" E 902.71'
N31° 14' 14"W 486.01'
N30° 29' 51"W 214.47'
S59° 07' 32"W 1041.57'
N30° 52' 28"W 473.81'
S59° 07' 31"W 456.45'
S31° 07' 36"E 1466.42'

LOT 1 BENCLARE ESTATES DOC. NO. 202106060252 M.P.R
LOT 2 BENCLARE ESTATES DOC. NO. 202106060252 M.P.R
LOT 3 BENCLARE ESTATES DOC. NO. 202106060252 M.P.R
LOT 4 BENCLARE ESTATES DOC. NO. 202106060252 M.P.R
LOT 5 BENCLARE ESTATES DOC. NO. 202106060252 M.P.R

BENCLARE (PUBLIC 50' R.O.W.)
MELNORA (PUBLIC 50' R.O.W.)
HEIMER PASS (PUBLIC 50' R.O.W.)
CLARBEN (PUBLIC 50' R.O.W.)
CARY CRAIG (PUBLIC 50' R.O.W.)
BAT CAVE ROAD (VARIABLE WIDTH R.O.W.)

101 102 103 104 105 106 107 108 109 110 111 112 113 201 202 203 204 205 206 207 208 209 210 211 212 213 214 301 302 303 304 305 306 307 308 309 310 311 312 313 314 401 402 403 404 405 406 407 408 409 410 411 412 413 414 501 502 503 504 505 506 507 508 509 510 511 512 513 514

CLARINE L. SYAMKEN
BENNIE E. SYAMKEN
UNDIVIDED 1/2 INTEREST
REMAINDER OF CALLED 160 ACRES
DOC. NO. 467180, O.P.R.
RECORDED 06/01/1995

SCALE : 1"=300'
0' 300'

LOT 1 THROUGH 5 BENCLARE ESTATES SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN DOCUMENT NUMBER 202106060252, OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS

STATE OF TEXAS REGISTERED TIM C. PAPPAS 5543 PROFESSIONAL LAND SURVEYOR

THE ATTACHED PLAT AND PLANS CONTAIN THE INFORMATION REQUIRED BY SECTION 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT.

18 AUG 2022

TIM C. PAPPAS
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5543
EMAIL: TPAPPAS@KFWENGINEERS.COM
DATE OF SURVEY: 01/31/22
PROJECT NO.: 20-066

ANY COMPLAINTS REGARDING THE SERVICES YOU HAVE RECEIVED CAN BE DIRECTED TO:
THE TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS (TBPELS)
1917 S INTERSTATE 35, AUSTIN, TEXAS 78741
PHONE: 512-440-7723; FAX: 512-440-1464; EMAIL: INFO@PELS.TEXAS.GOV

KFW SURVEYING
3421 Paesanos Pkwy, Suite 101, San Antonio, TX 78231
Phone # (210) 979-8444 • Fax # (830) 249-0099
TBPELS FIRM # 10124700

EXHIBIT OF
CONDOMINIUM PLAN FOR
LOTS 1-5 OF
HEIMER ESTATES

REVISIONS:	ISSUE DATE:
REVISED PER COMMENTS	02/08/2022
REVISED PER COMMENTS	02/14/2022
REVISED PER COMMENTS	02/23/2022
REVISED PER COMMENTS	05/16/2022
REVISED PER COMMENTS	08/03/2022
REVISED PER COMMENTS	08/18/2022

JOB NO. 20-066
DATE: 01/31/2022 DESIGNER:
DRAWN: RM CHECKED: TCP

SHEET: 1 OF 12

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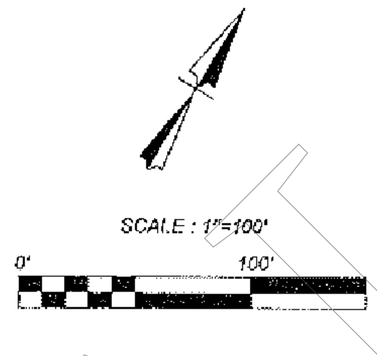
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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

SYMBOL LEGEND
SEE SHEET 1



RIEDEL FAMILY PARTNERS
REMAINDER OF CALLED 306.18 ACRES
(78.270 ACRES IN A-678)
VOL. 824, PAGE 325, O.P.R.
RECORDED 06/01/1992

JACOB WEILBACHER SURVEY
A-678

EASEMENT TO CROWN
CASTLE TOWERS 09, LLC
CALLED 0.175 ACRES
(DOC. NO. 201506045626 O.P.R.)
(VESTING DEED FOR TITLE NOT FOUND)

OSTENSIBLE
SURVEY LINE

N59° 30' 09"E 1322.02'

FIR
42.02'
120.00'
100.00'
100.00'
120.00'
100.00'

N30° 21' 32"W
75.00'

FIR
RPLS
4020

N59° 31' 07"E 113.65'

WILHELM BOEHM
SURVEY NO. 747
A-91

92.25'
21.40'
UNIT
101

UNIT
102

UNIT
103

UNIT
104

UNIT
105

UNIT
106

N30° 29' 51"W
237.14'

UNIT
110
HOA
UNIT

N30° 29' 51"W 157.17'
31.19'
27.39'

N29° 43' 36"W 119.82'

BAT CAVE ROAD
(VARIABLE WIDTH R.O.W.)

LOT 1
BENCLARE ESTATES
DOC. NO. 202106060252 M.P.R

55.80'
120.00'
100.00'
100.00'
120.00'
100.00'

S59° 30' 09"W 1335.80'

L2
C2
L1
C1

BENCLARE
(PUBLIC 50' R.O.W.)

LOT 5
BENCLARE ESTATES
DOC. NO. 202106060252 M.P.R

UNIT
514
UNIT
513
UNIT
512
UNIT
511
UNIT
510
UNIT
509

UNIT
515
HOA
UNIT

MATCHLINE A: SEE SHEET 3

Date: Aug 18, 2022, 1:23pm User ID: rmartin
File: S:\Drew 2022\20-066 22420 Bat Cave Road\20-066 22420 Bat Cave Road.dwg

KFW SURVEYING
3421 Paesanos Pkwy, Suite 101, San Antonio, TX 78231
Phone # (210) 979-8444 • Fax # (210) 979-8441
TBPLS Firm # 10122500

EXHIBIT OF
CONDOMINIUM PLAN FOR
LOTS 1-5 OF
HEIMER ESTATES

REVISIONS:	ISSUE DATE:
REVISED PER COMMENTS	02/06/2023
REVISED PER COMMENTS	03/14/2023
REVISED PER COMMENTS	02/23/2023
REVISED PER COMMENTS	05/18/2022
REVISED PER COMMENTS	08/03/2022
REVISED PER COMMENTS	08/18/2022

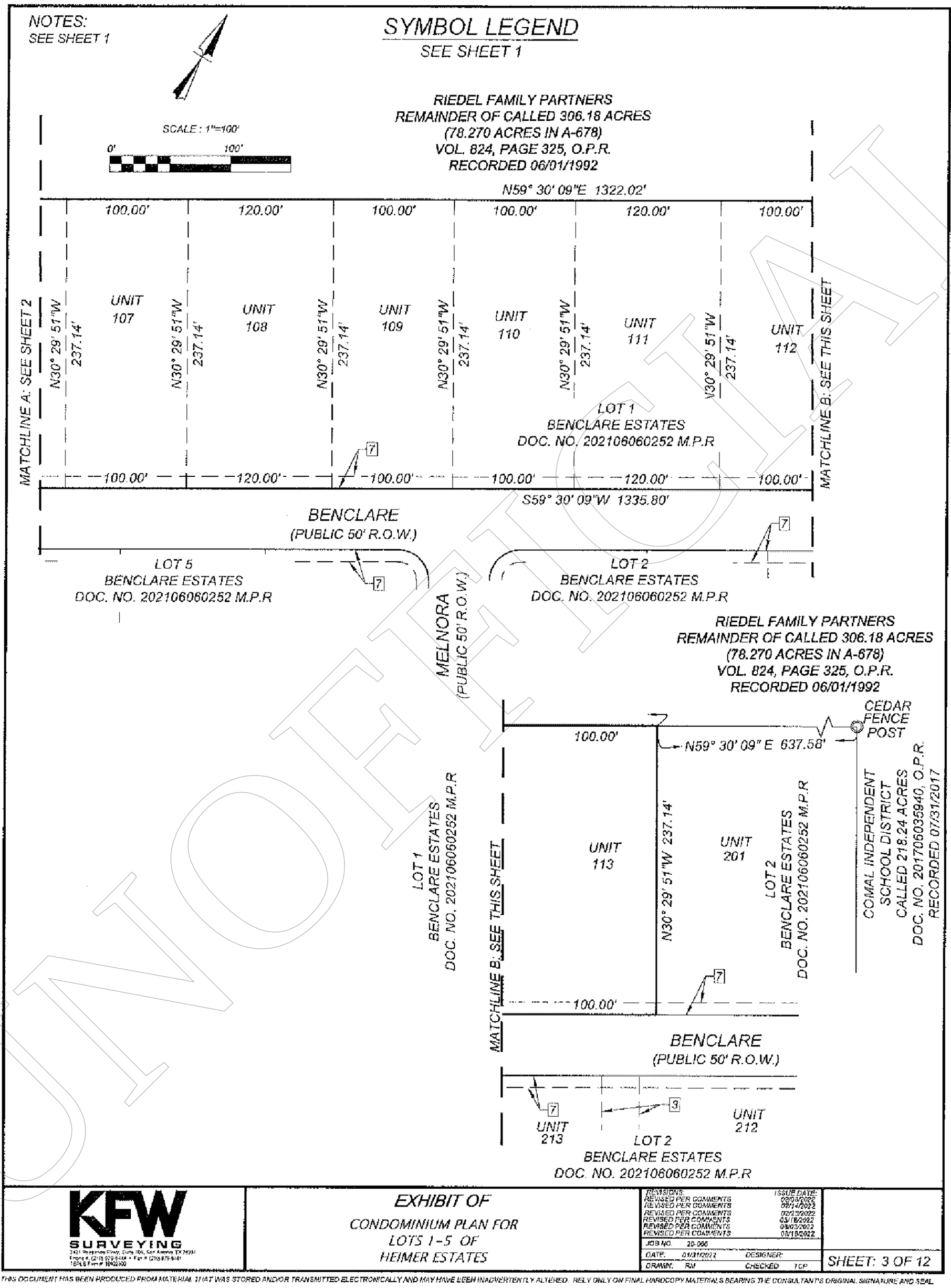
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DATE: 01/31/2022 DESIGNER:
DRAWN: RM CHECKED: TCP

SHEET: 2 OF 12

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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

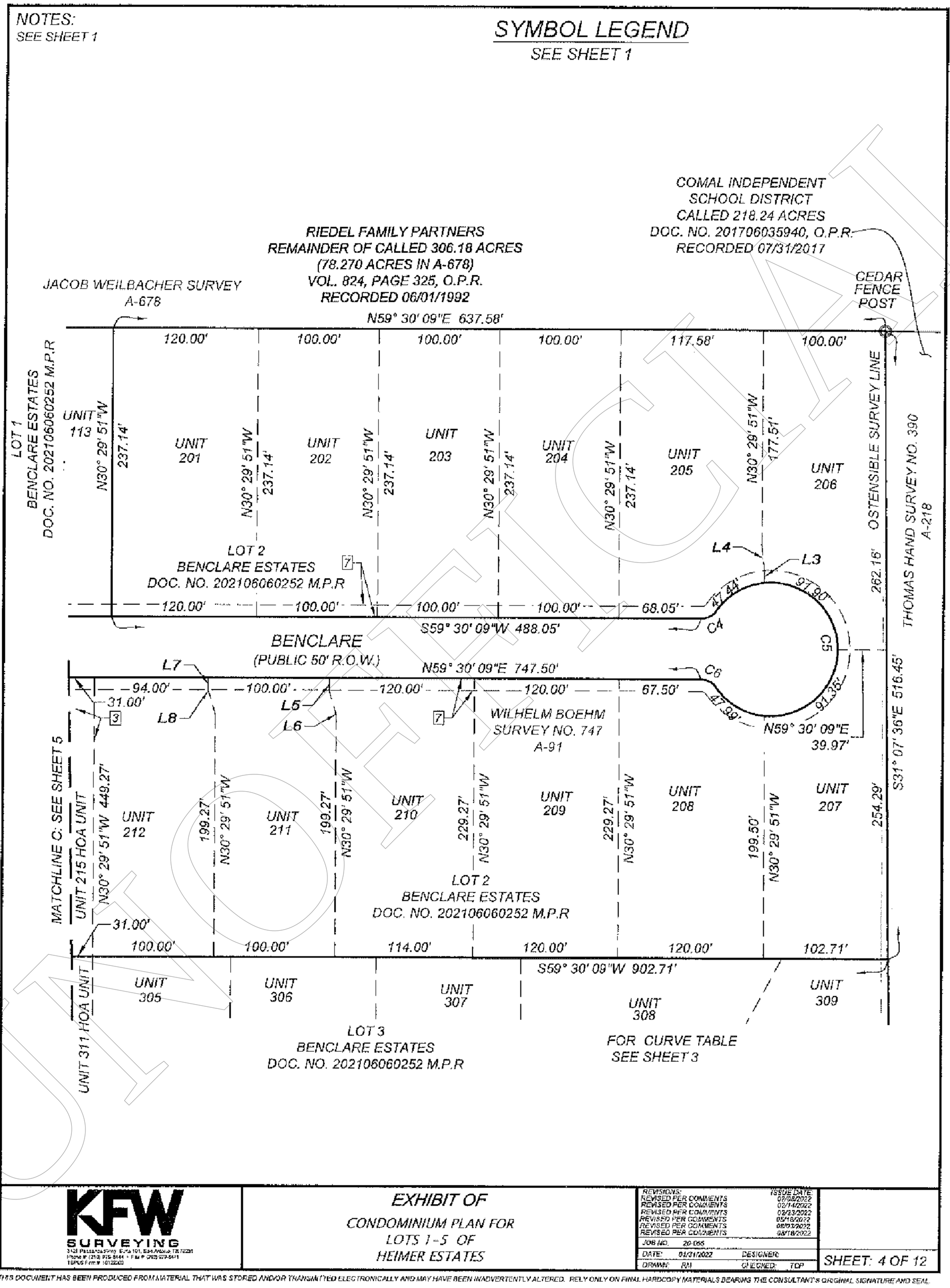


ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

SYMBOL LEGEND
SEE SHEET 1



Date: Aug 18, 2022, 1:23pm User ID: rmartin
File: S:\Drew 2020\20-055 22420 Bat Cave Road\20-055 22420 Bat Cave Road.dwg

KFW SURVEYING
3421 Paesanos Pkwy Suite 101, San Antonio, TX 78231
Phone # (210) 979-8444 • Fax # (210) 979-8441
TBPLS Firm # 10122000

EXHIBIT OF
CONDOMINIUM PLAN FOR
LOTS 1-5 OF
HEIMER ESTATES

REVISIONS:	ISSUE DATE:
REVISED PER COMMENTS	09/08/2022
REVISED PER COMMENTS	02/14/2022
REVISED PER COMMENTS	02/23/2022
REVISED PER COMMENTS	05/18/2022
REVISED PER COMMENTS	06/03/2022
REVISED PER COMMENTS	08/18/2022
JOB NO. 20-055	
DATE: 01/31/2022	DESIGNER:
DRAWN: RM	CHECKED: TDP

SHEET: 4 OF 12

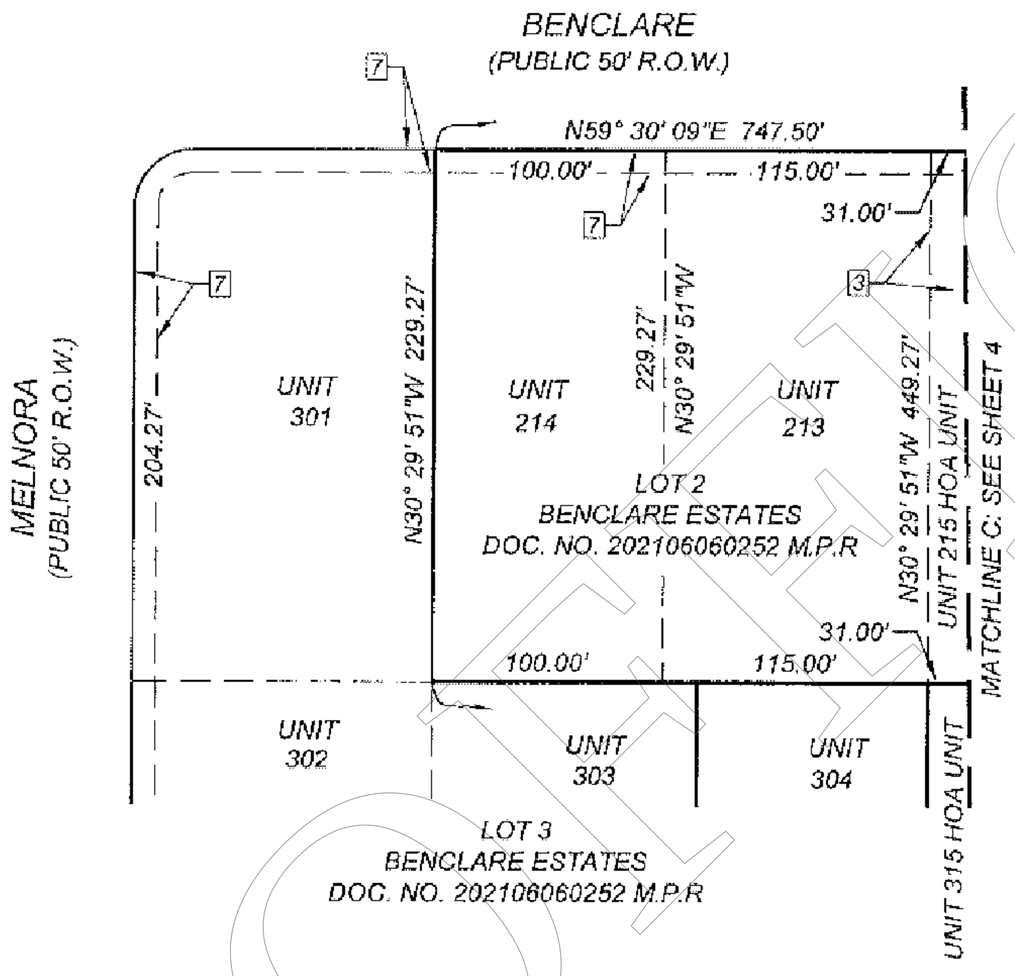
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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

SYMBOL LEGEND
SEE SHEET 1



Date: Aug 18, 2022, 1:24pm User ID: rmartin
File: S:\Drawings\2020\20-066 22420 Blat Cave Road\20-066 22420 Blat Cave Road.dwg

KFW SURVEYING
3101 Bee Cave Pkwy. Suite 104, San Antonio TX 78231
Phone # (210) 979 8444 • Fax # (210) 979 8441
TBPLS Firm # 10022900

EXHIBIT OF
CONDOMINIUM PLAN FOR
LOTS 1-5 OF
HEIMER ESTATES

REVISIONS:	ISSUE DATE:
REVISED PER COMMENTS	02/07/2022
REVISED PER COMMENTS	02/14/2022
REVISED PER COMMENTS	02/23/2022
REVISED PER COMMENTS	03/18/2022
REVISED PER COMMENTS	08/03/2022
REVISED PER COMMENTS	08/18/2022

JOB NO. 20-066
DATE: 08/31/2022 DESIGNER:
DRAWN: RM CHECKED: TGP

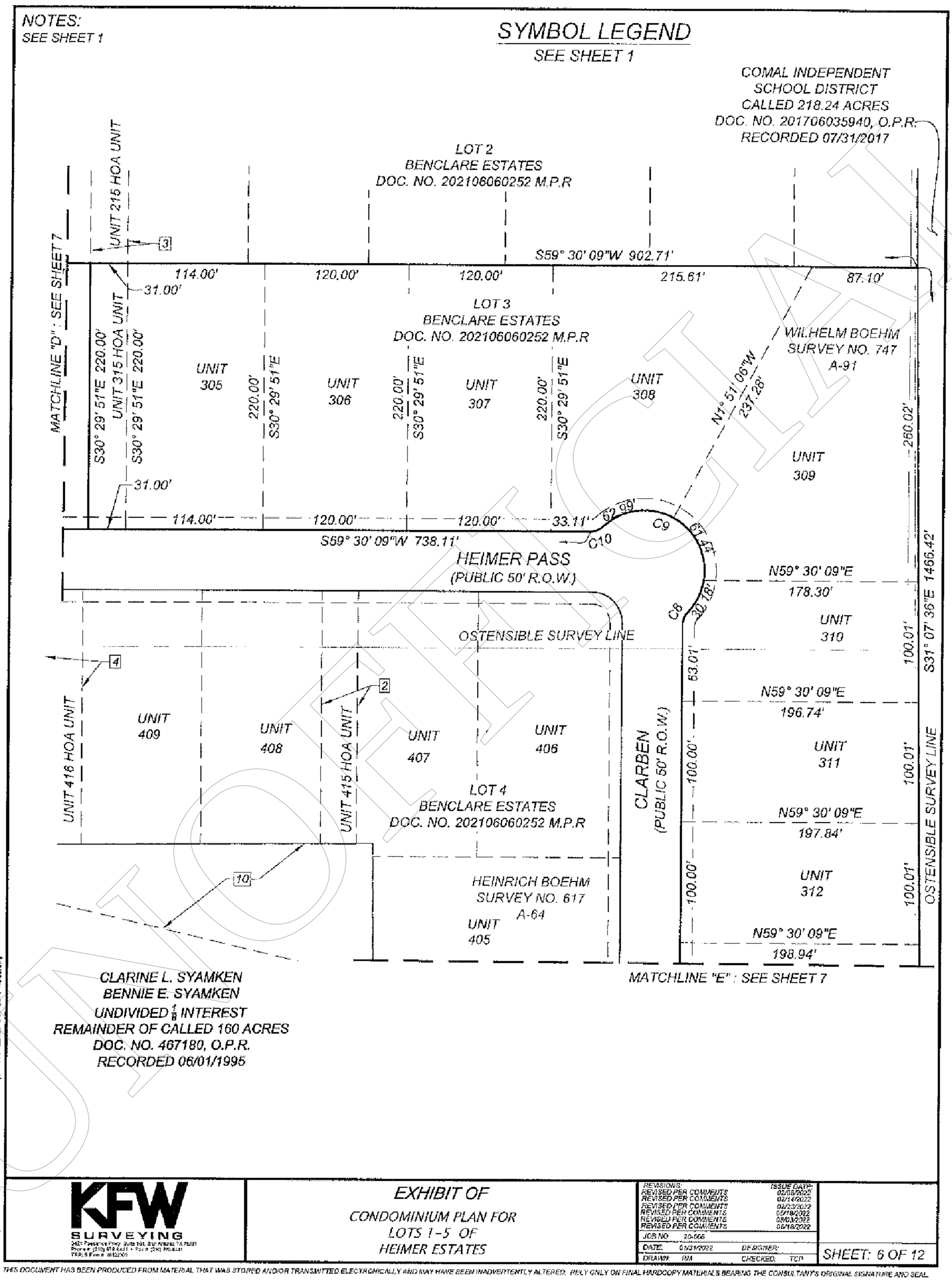
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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

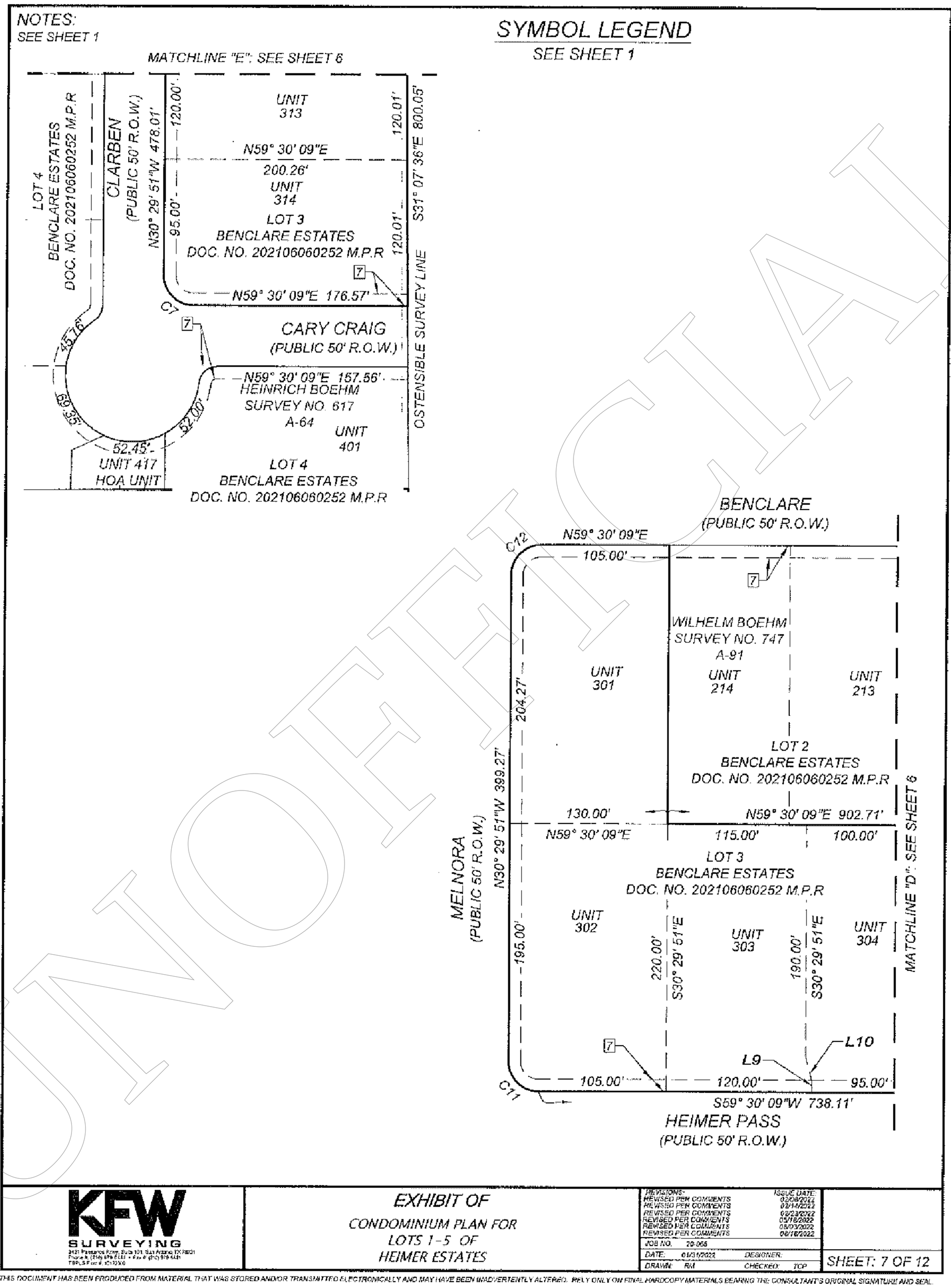


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DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

SYMBOL LEGEND
SEE SHEET 1



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EXHIBIT OF
CONDOMINIUM PLAN FOR
LOTS 1-5 OF
HEIMER ESTATES

REVISIONS:	ISSUE DATE:
REVISED PER COMMENTS	02/08/2022
REVISED PER COMMENTS	02/14/2022
REVISED PER COMMENTS	02/23/2022
REVISED PER COMMENTS	05/18/2022
REVISED PER COMMENTS	08/03/2022
REVISED PER COMMENTS	08/16/2022

JOB NO. 20-056
DATE: 01/31/2022 DESIGNER:
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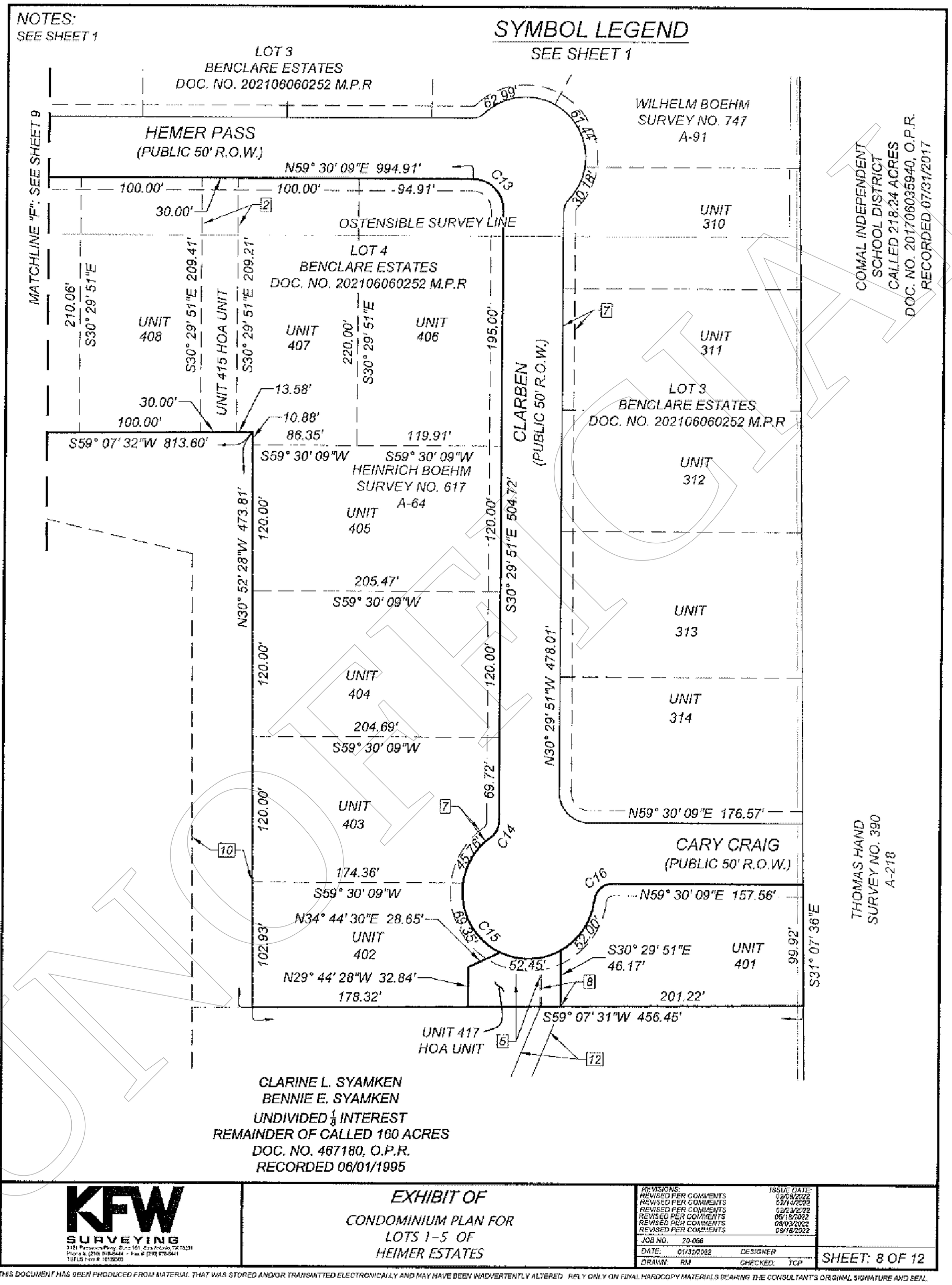
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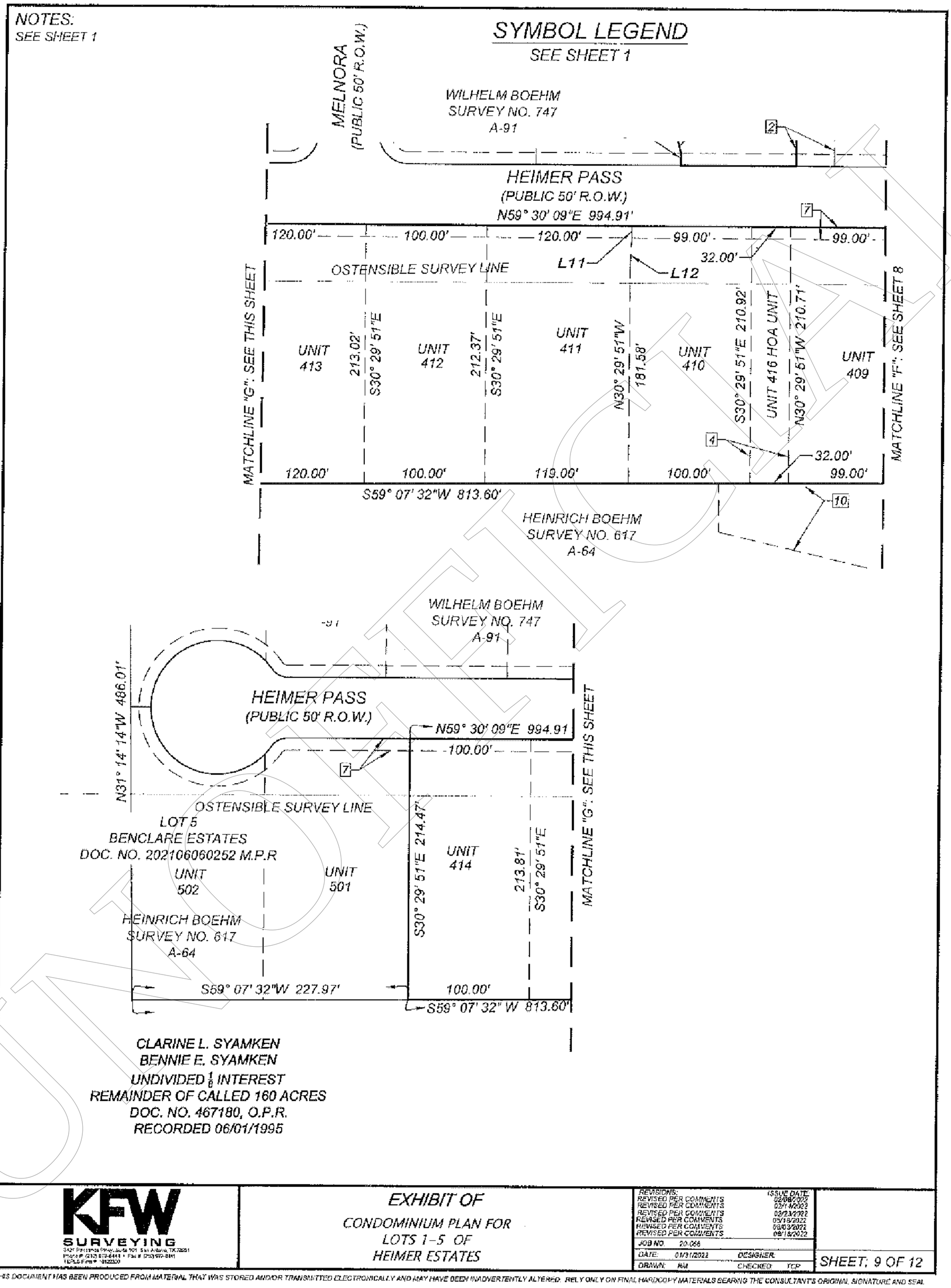
DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS



ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
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EXHIBIT OF
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SHEET: 9 OF 12

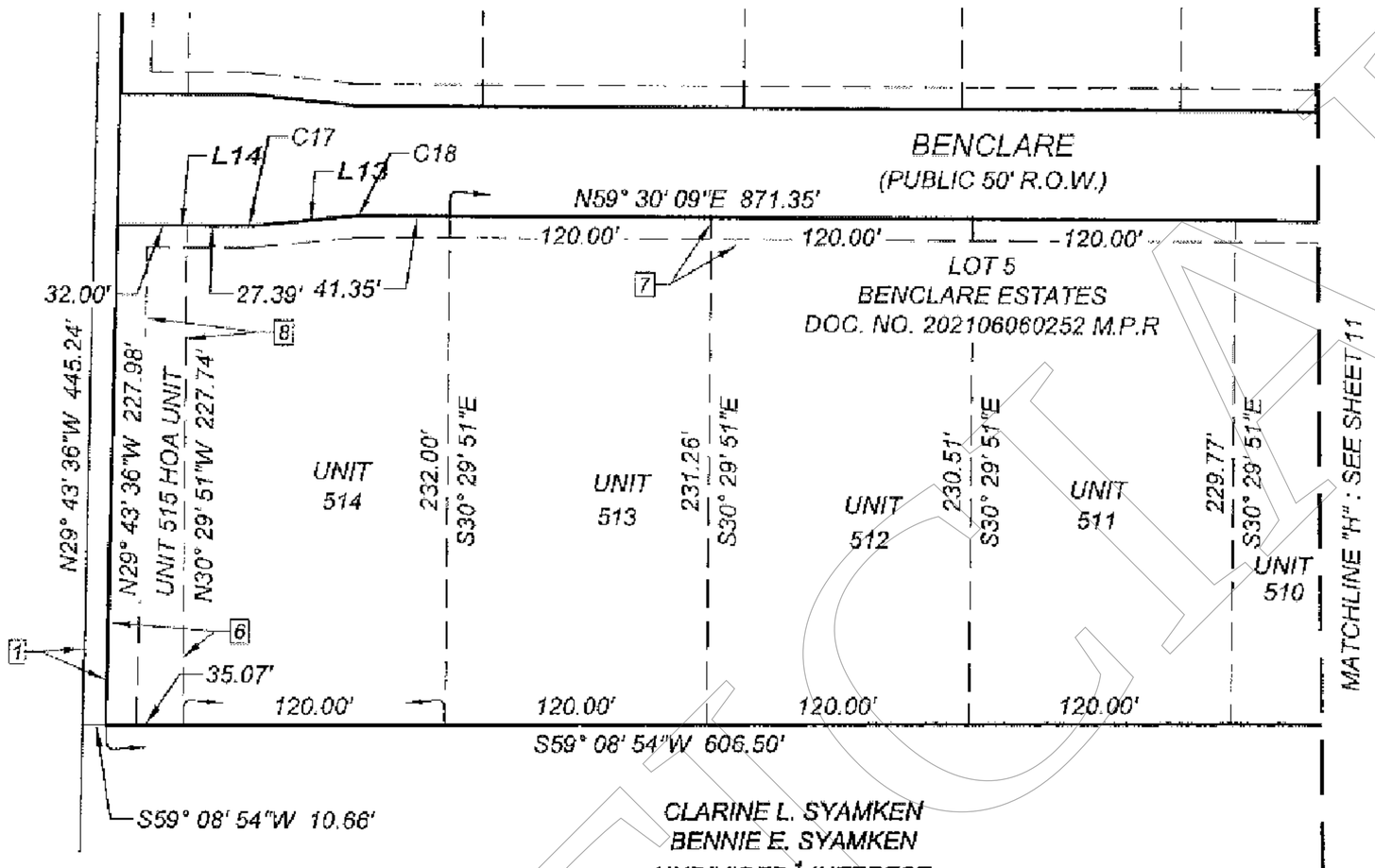
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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

SYMBOL LEGEND
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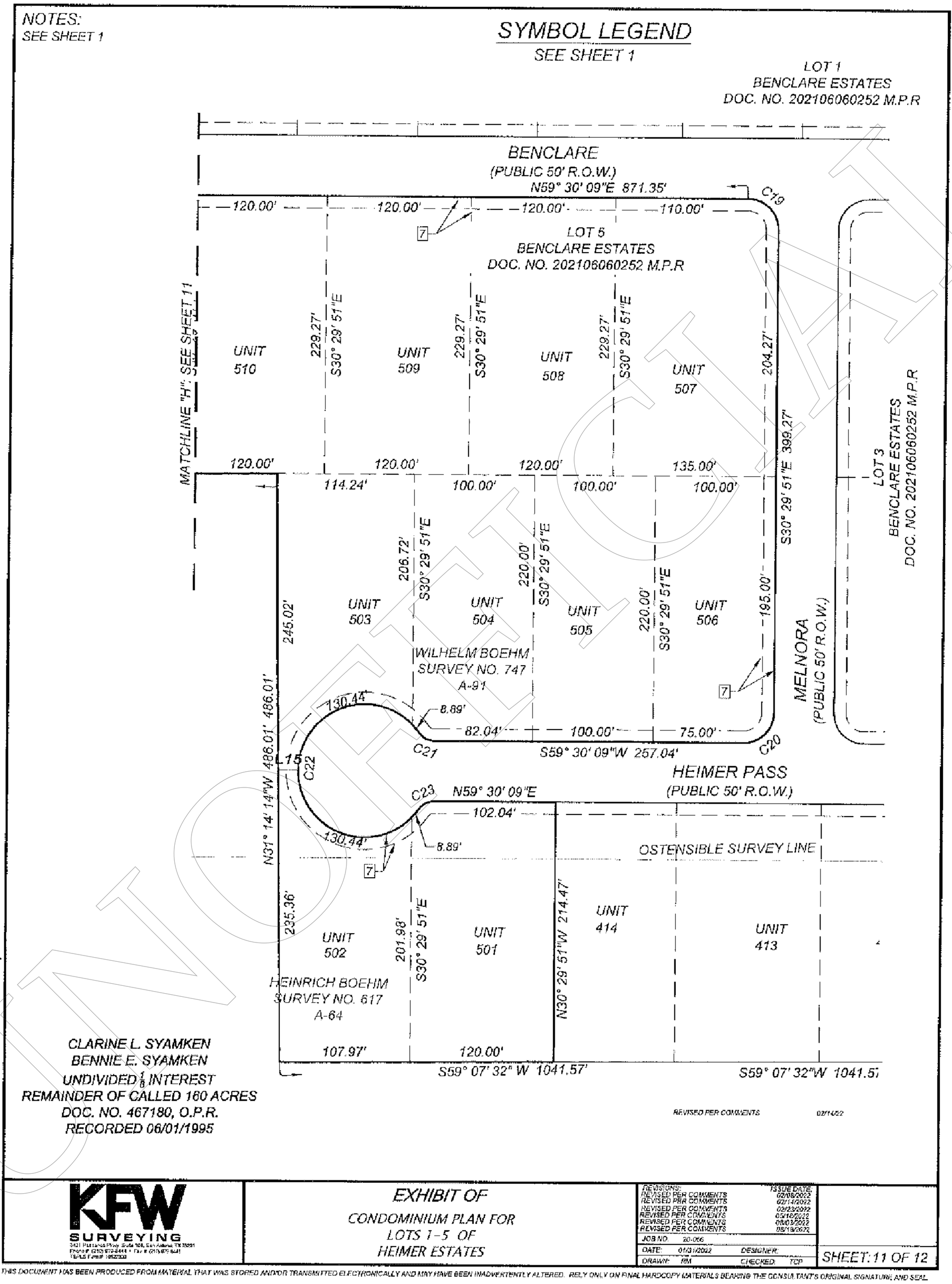
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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

SYMBOL LEGEND
SEE SHEET 1



CLARINE L. SYAMKEN
BENNIE E. SYAMKEN
UNDIVIDED 1/6 INTEREST
REMAINDER OF CALLED 160 ACRES
DOC. NO. 467180, O.P.R.
RECORDED 06/01/1995

REVISED PER COMMENTS 02/1/022

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EXHIBIT OF
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REVISED PER COMMENTS	08/19/2022
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SHEET: 11 OF 12

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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

NOTES:
SEE SHEET 1

ADDITIONAL NOTES:

a. ALL IMPROVEMENTS AND LAND REFLECTED ON THE PLAT ARE DESIGNATED AS GENERAL COMMON EASEMENTS, SAVE AND EXCEPT PORTIONS FOR THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS OR UNITS: (i) IN THE DECLARATION OF CONDOMINIUM REGIME FOR BENCLARE ESTATES CONDOMINIUMS (THE "DECLARATION") OR (ii) ON THE PLATS OR PLANS OF THE REGIME.

b. OWNERSHIP AND USE OF CONDOMINIUM UNITS ARE SUBJECT TO THE TERMS OF AND PROVISIONS OF THE DECLARATION.

c. THE REGIME IS SUBJECT TO SPECIAL RIGHTS RESERVED BY THE DECLARANT AS PROVIDED IN THE DECLARATION.

d. VERTICAL BOUNDARIES ARE DEFINED IN THE DECLARATION.

SYMBOL LEGEND

SEE SHEET 1

Curve Table

Curve #	LENGTH	RADIUS	DELTA	CHORD BRG	CHORD DIST
C1	1.50'	15.00'	005°44'21"	N62°22'19"E	1.50'
C2	1.50'	15.00'	005°44'21"	S62°22'19"W	1.50'
C3	38.52'	95.30'	023°09'22"	N18°08'55"W	38.25'
C4	14.44'	15.00'	055°09'00"	S31°55'39"W	13.89'
C5	278.67'	55.00'	290°18'01"	N30°29'51"W	62.86'
C6	14.44'	15.00'	055°09'00"	N87°04'39"E	13.89'
C7	39.27'	25.00'	089°59'32"	N75°29'51"W	35.36'
C8	11.43'	15.00'	043°39'22"	N08°40'10"W	11.15'
C9	154.61'	50.00'	177°09'58"	N75°26'30"W	99.97'
C10	11.40'	15.00'	043°32'40"	S37°43'49"W	11.13'
C11	39.27'	25.00'	090°00'00"	N75°29'51"W	35.36'
C12	39.27'	25.00'	090°00'00"	N14°30'09"E	35.36'
C13	39.27'	25.00'	090°00'00"	S75°29'51"E	35.36'
C14	14.44'	15.00'	055°09'00"	S02°55'21"E	13.89'
C15	219.56'	55.00'	228°43'13"	S89°42'27"E	100.21'
C16	21.88'	15.00'	083°33'25"	N17°43'03"E	19.99'
C19	39.27'	25.00'	090°00'00"	S75°29'51"E	35.36'
C20	39.27'	25.00'	090°00'00"	S14°30'09"W	35.36'
C21	14.44'	15.00'	055°09'00"	S87°04'39"W	13.89'
C22	278.67'	55.00'	290°18'01"	S30°29'51"E	62.86'

EASEMENT LEGEND

1. 11' R.O.W. DEDICATION TO COMAL COUNTY
   DOC NO. 202106060252 M.P.R.C.C.T.
2. 30' PUBLIC DRAINAGE EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
3. 31' PUBLIC DRAINAGE EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
4. 32' PUBLIC DRAINAGE EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
5. 20' PUBLIC DRAINAGE EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
6. VARIABLE WIDTH PUBLIC OPEN SPACE & DRAINAGE EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
7. 10' PUBLIC UTILITY EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
8. 14' PUBLIC UTILITY EASEMENT
   DOC NO. 202106060252 M.P.R.C.C.T.
9. 16' SAWS WATER EASEMENT
   DOC # 202106060240 O.P.R.C.C.T.
10. VARIABLE WIDTH DRAINAGE EASEMENT
    DOC # 202006058348 O.P.R.C.C.T.
11. VARIABLE WIDTH WATER EASEMENT
    DOC # 202006058347 O.P.R.C.C.T.
12. 16' SAWS WATER EASEMENT
    DOC # 202106060241 O.P.R.C.C.T.

Line Table

LINE #	LENGTH	DIRECTION
L1	48.50'	N65°14'30"E
L2	58.59'	N59°30'09"E
L3	10.04'	N30°29'51"W
L4	20.01'	N37°26'52"W
L5	10.00'	S30°29'51"E
L6	20.88'	N47°11'48"W
L7	10.00'	S30°29'51"E
L8	20.88'	S47°11'48"E
L9	10.00'	S30°29'51"E
L10	20.62'	N44°32'02"W
L11	10.00'	N30°29'51"W
L12	20.02'	S27°38'06"E
L13	48.50'	S53°45'48"W
L14	59.39'	S59°30'09"W
L15	16.59'	N59°30'09"E

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Texas Firm # 10120000

EXHIBIT OF
CONDOMINIUM PLAN FOR
LOTS 1-5 OF
HEIMER ESTATES

REVISIONS:	ISSUE DATE:
REVISED PER COMMENTS	03/04/2022
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REVISED PER COMMENTS	05/18/2022
REVISED PER COMMENTS	08/03/2022
REVISED PER COMMENTS	08/16/2022

JOB NO. 20-066
DATE: 03/31/2022 DESIGNER:
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SHEET: 12 OF 12

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ATTACHMENT 1

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

ATTACHMENT 2

ENCUMBRANCES

1. Terms and conditions of that certain agreement recorded on October 26, 2021, in Document No. 202106055634, Official Public Records, Comal County, Texas.

2. Terms and conditions of that certain agreement recorded on October 26, 2021, in Document No. 202106055633, Official Public Records, Comal County, Texas.

3. Water line easement granted to the Green Valley Water Supply Corporation, by instrument dated August 7, 1987, recorded in Volume 585, Page 7, Deed Records, Comal County, Texas.

4. Water line easement granted to the Central Texas Regional Water Supply Corporation, by instrument dated August 19, 2016, recorded under Document No. 201606032324, Official Public Records, Comal County, Texas.

5. Water easement granted to the City of San Antonio, by instrument dated August 1, 2017, recorded under Document No. 201706036230, Official Public Records, Comal County, Texas.

6. Drainage easement granted to the Property Owners' Association for George Ranch, Inc. and the City of Garden Ridge, by instrument dated February 1, 2002, recorded under Document No. 200206003875, Official Public Records, Comal County, Texas.

7. Public utility easement granted to the City of Garden Ridge, by instrument dated February 3, 2004, recorded under Document No. 200406003892, Official Public Records, Comal County, Texas.

8. Recreational easement granted to the Property Owners' Association for George Ranch, Inc., by instrument dated February 3, 2004, recorded under Document No. 200406003893, Official Public Records, Comal County, Texas.

9. Electric easement granted to the City of San Antonio, by instrument dated May 4, 2006, recorded under Document No. 200606017896, Official Public Records, Comal County, Texas.

10. Electric easement granted to the City of San Antonio, by instrument dated February 21, 1979, recorded in Volume 278, Page 338, Deed Records, Comal County, Texas.

11. Terms, conditions, and stipulations of that certain Drainage Easement Agreement dated December 22, 2020, recorded under Document No. 202006058348, Official Public Records of Comal County, Texas.

12. Terms, conditions, and stipulations of that certain Water Easement Agreement dated December 22, 2020, recorded under Document No. 202006058347, Official Public Records of Comal County, Texas.

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ATTACHMENT 2

DECLARATION OF CONDOMINIUM REGIME
HEIMER ESTATES CONDOMINIUMS

ATTACHMENT 3

COMMON INTEREST ALLOCATION

The Common Interest Allocation and Common Expense Liability for each Unit is 1/69. Each Unit is allocated one (1) vote.

THE COMMON INTEREST ALLOCATION ASSIGNED TO A PARTICULAR UNIT WILL CHANGE IF THERE IS AN INCREASE OR DECREASE IN THE NUMBER OF UNITS SUBJECT TO THIS DECLARATION.

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ATTACHMENT 4

AREA OF COMMON RESPONSIBILITY AND MAINTENANCE CHART

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

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Fences, screening walls, and retaining walls around perimeter of property.	None.	All aspects.
Exterior Lighting within a Unit.	None.	All aspects.
Sidewalks located within a Unit.	None.	All aspects.
Exterior street addresses or Unit numbers.	None.	All aspects.
Exterior landscaping	None.	All aspects.
Exterior components of each Building.	None.	All aspects.
Exterior painting.	None.	All aspects.
Foundation of each Building.	None.	All aspects.
Unit interior, including improvements, fixtures, partition walls and floors within the Unit.	None.	All aspects.
Exterior Unit Doors, include the Garage Door.	None.	All aspects.
Exterior Building Windows.	None.	All aspects.
Driveways.	None.	All aspects.
HVAC System.	None.	All aspects.

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COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Intrusion alarms, fire alarms, smoke/heat detectors, monitoring equipment	None.	All aspects.
Rainwater Harvesting Systems.	None.	All aspects.
Solar Energy Devices.	None.	All aspects.
Permitted Antennas.	None.	All aspects.
Water, wastewater, electrical lines and system.	All aspects of common lines & systems serving more than one Unit, none for those serving an individual Unit.	All aspects of lines, pipes, fixtures, and appliances serving only that Owner's Unit.

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

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

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

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ATTACHMENT 5

GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose of maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The annual examination is required by *Section 9.3* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 6.11* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

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

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

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

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

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

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists, "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 9.3* of the Declaration, the Board must reevaluate its funding level periodically based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

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ATTACHMENT 6

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

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

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
FINANCIAL MANAGEMENT To adopt annual budget and levy Assessments, per Declaration. Prepare annual operating budget, periodic operating statements, and year-end statement. Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule for 5, 10, and 20-year periods. Annually update same. Collect Assessments and maintain Association accounts. Pay Association's expenses and taxes. Obtain annual audit and income tax filing. Maintain fidelity bond on whomever handles Association funds.		

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MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Report annually to Members on financial status of the Association.		
PHYSICAL MANAGEMENT Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility. Contract for services, as needed to operate or maintain the property. Prepare specifications and call for bids for major projects. Coordinate and supervise work on the property, as warranted.		
ADMINISTRATIVE MANAGEMENT Receive and respond to correspondence from Owners, and assist in resolving Owners' problems related to the Association. Conduct hearings with Owners to resolve disputes or to enforce the Documents. Obtain and supervise personnel and/or contracts needed to fulfill Association's functions. Schedule Association meetings and give owners timely notice of same. Schedule Board meetings and give directors timely notice of same. Enforce the Documents.		

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MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Maintain insurance and bonds as required by the Documents or Applicable Law, or as customary for similar types of property in the same geographic area. Maintain Association books, records, and files. Maintain Association's corporate charter and registered agent & address.		
OVERALL FUNCTIONS Promote harmonious relationships within the community. Protect and enhance property values in the community. Encourage compliance with the Documents and Applicable Law and ordinances. Act as liaison between the community of Owners and governmental, taxing, or regulatory bodies. Protect the Association and the property from loss and damage by lawsuit or otherwise.		

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APPENDIX "A"

DECLARANT RESERVATIONS

A.1. General Provisions.

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

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

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "**Development Period**", as specifically defined in the *Section 1.17* of the Declaration, means the fifteen (15) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination. Declarant Control Period is defined in *Section 1.14* of the Declaration.

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

A.2.1. Appointment of Board and Officers. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitations: (i) within one hundred twenty (120) days after fifty percent (50%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third (1/3) of the Board must be elected by the Owners other than Declarant; and (ii) within one hundred twenty (120) days after seventy-five percent (75%) of the total number of Units that may be created have been conveyed to Owners

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

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

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

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

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

A.3.1. Annexation. The Property is subject to expansion by phasing for up to fifteen (15) years from the date this Declaration is Recorded. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by Recording an amendment or supplement of this Declaration, executed by Declarant, in the Official Public Records of Comal County, Texas.

A.3.2. Creation of Units. When created, the Property contains sixty-nine (69) Units; Declarant reserves the right to create up to and including sixty-nine (69) Units upon full buildout of all phases of the project which may include land added by the Declarant in accordance with *Section 2.2* of the Declaration. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit within the Property at the

time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests.

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

A.3.4. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control.

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

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

A.3.7. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Regime; (ii) to modify Units, General Common Elements, and Limited Common Elements within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

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

(i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.

(ii) To correct any defects in the execution of this Declaration or the other Documents.

(iii) To add real property to the Property, in the exercise of statutory Development Rights.

(iv) To modify and/or create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.

(v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.

(vi) To withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or 'Subject to Development Rights" in the exercise of statutory Development Rights.

(vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.

(viii) To change the name or entity of Declarant.

A.4. **Special Declarant Rights**. As permitted by the Act, Declarant reserves the following described Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Property during the Development Period:

A.4.1. The right to complete or make Improvements indicated on the Plat and Plans.

A.4.2. The right to exercise any Development Right permitted by the Act and this Declaration.

A.4.3. The right to make the Property part of a larger condominium or planned community.

A.4.4. The right to use Units owned or leased by Declarant or Common Elements as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.

A.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, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Occupants. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves

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the right to sponsor marketing events – such as open houses, MLS tours, and broker parties – at the Property to promote the sale of Units.

A.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.

A.4.7. The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

A.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.5.1. 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.

A.5.2. The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained in the Documents.

A.5.3. 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.

A.5.4. 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 no later than one hundred twenty (120) days after termination of the Development Period.

A.5.5. An easement over the entire Property, including the Units, to inspect the Common Elements and all Improvements thereon and related

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thereto to evaluate the maintenance and condition of the Common Elements.

A.5.6. The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with the active marketing of Units by Declarant.

A.6. **<u>Common Elements</u>.** 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. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

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Official Public Records
Bobbie Koepp, County Clerk
Comal County, Texas
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Bobbie Koepp