

**RESIDENTIAL CONDOMINIUM DECLARATION**  
**FOR**  
**THE RICCHI LUXURY CONDOMINIUMS**

This Residential Condominium Declaration is made and established on March 14, 2013, by Residential Declarant;

**RECITALS:**

- A. Residential Declarant is the fee simple owner of the Residential Property.
- B. Pursuant to the provisions of the Act, Residential Declarant desires to create a Residential Condominium.
- C. Residential Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of Residences and the appurtenant undivided interests in the Residential Common Elements.

NOW, THEREFORE, Residential Declarant does hereby submit the Residential Property to the provisions of the Act and the Residential Condominium established hereby, and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations and obligations are hereby established and shall be deemed to run with the Residential Property and shall be a burden and benefit to Residential Declarant, the Residential Association, the Residence Owners and their respective heirs, legal representatives, successors and assigns:

**ARTICLE I**

**Definitions:**

**Section 1.1 Terms Defined.** As used in this Residential Declaration, the following terms shall have the meanings set forth below:

**"Act."** The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time,

**"Acquired Property."** Shall have the meaning set forth in Section 13.2 of this Residential Declaration.

**"Affiliate."** As defined in Section 82.003(a)(1) of the Act.

**"Building."** Collectively and individually, the Residential Tower, including the structure thereof and any other structure located on the Land.

"CGL." The broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form approved by the Board of Directors and reasonably acceptable to Residential Declarant's Mortgagee.)

"Charges." Any costs, expenses, dues, interest fees, late fees, collection costs, attorney's fees and any other sums arising under the Residential Governing Documents owing to the Residential Association or an Owner from one or more Owners or a Tenant, other than Common Expenses.

"Condominium Records." The records and books maintained by the County Clerk in the County where the condominium declarations and condominium plats and plans are filed in accordance with Section 82.051(d) of the Act.

"County." Bexar County, Texas.

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, state, county, district, municipal, city or otherwise) whether now or hereinafter in existence.

"Improvements." The Building and its infrastructure, and the pavement, fencing, landscaping, facilities, Residential Systems and man-made objects of every type, existing or in the future placed on the Land, including, but not limited to, all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Individual Assessments." The assessments levied by the Residential Association against one or more Residence Owners pursuant to Section 7.3 of this Residential Declaration.

"Land." That certain real property located in the County and more particularly described as Ricchi Hills Subdivision MPCD, Bexar County, Texas, as recorded in Volume 9635, Page 67, in the Deed and Plat Records of Bexar County, Texas, together with all and singular the rights and appurtenances pertaining thereto, including any additional real property that becomes a part of the Residential Property, but excluding, to the extent appurtenant, the Residential Easements.

"Monthly Residential Assessment." Residential Assessments established and collected by the Residential Board of Directors pursuant to Article VII of this Residential Declaration for payment, when due, of the Residential Common Expenses.

"Past Due Rate." The maximum lawful rate of interest under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any Governmental Authority and any

fiduciary acting in such capacity on behalf of any of the foregoing.

"Priority Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon the Residential Property and/or a Residence and which shall also include subordinate financing in connection with a purchase or refinancing of a Residence or home equity loan or reverse mortgage loan secured by a Residence, and such other indebtedness as is approved by the Residential Association on a case by case basis as Priority Lien Indebtedness.

"Private Areas." The physical portion of the Residential Condominium that is designated as Private Areas, except for Fire Fighting Equipment, is retained by Residential Declarant.

"Real Property Records." The records of the office of the county clerk of the County where instruments concerning real property are recorded.

"Recreational Facilities." The Pool Areas, Grilling Area, and Internet Room, as shown on the Residential Map.

"Residence." A physical portion of the Residential Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Residential Map), which is contained within the perimeter walls, floor, ceiling, windows and doors of a Residence depicted on the Residential Map, and includes (i) the finish materials, fixtures and appliances contained in the Residence and (ii) all Residential Systems which exclusively serve such Residence, but excludes any Residential Systems that serve more than one Residence.

"Residence Owner." Any Person (including Residential Declarant) owning fee title to a Residence, but excluding any Person having an interest in a Residence solely as security for an obligation.

"Residential Access Easement." An easement as more particularly described in Section 3.6(a) of this Residential Declaration.

"Residential Allocated Interests." The undivided interests of each Residence Owner in the Residential Common Elements and the Residential Common Expenses allocated to each Residence, as reflected on Exhibit "B" to this Residential Declaration, as may be reallocated in accordance with the Residential Reallocation Percentages as required from time to time pursuant to the provisions of this Residential Declaration.

"Residential Assessments." Monthly Residential Assessments, Special Residential Assessments and Individual Assessments owing to the Residential Association by a Residence Owner or levied against a Residence by the Residential Association.

"Residential Association." The Ricchi Luxury Condominiums Association, Inc., a Texas non-profit corporation organized under the Act and the Texas Non-Profit Corporation Act and created for the purposes and possessing the rights, powers and authority set forth in the Residential Governing Documents.

"Residential Board of Directors." The board of directors of the Residential Association named in the Residential Certificate of Formation and their successors, as duly elected and qualified from time to time.

"Residential Budget." A budget prepared by the Residential Association and delivered to each Residence Owner that includes the anticipated Residential Common Expenses for the Residential Property for the ensuing year and a statement setting forth each Residence Owner's monthly share thereof.

"Residential Bylaws." The bylaws of the Residential Association, as amended from time to time, adopted by the Residential Board of Directors.

"Residential Certificate of Formation." The Certificate of Formation of the Residential Association filed with the Secretary of State of Texas, as amended from time to time.

"Residential Common Elements." All portions of the Residential Condominium, including the Residential General Common Elements and Residential Limited Common Elements, but excluding the Residences.

"Residential Common Elements Easement." An easement as more particularly described in Section 3.6(b) of this Residential Declaration.

"Residential Common Expenses." Expenses for which the Residential Association is responsible, including, but not limited to: (i) maintenance and repair of the applicable Residential Common Elements; (ii) those insurance coverages as may be maintained by the Residential Association as described in Section 6.2 of this Residential Declaration or elsewhere under the Governing Documents; (iii) professional services for the Residential Association, such as management, accounting and legal services; (iv) costs associated with phone systems, video systems and other audio, visual, computer and other communication systems servicing the Residential Property; (v) Governmental Impositions levied against the Residential Common Elements; (vi) utilities relating to the Residential Common Elements; (vii) maintenance of security; and (viii) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation, management and administration of the Residential Association and the Residential Common Elements.

"Residential Condominium." The form of real property established by this Residential Declaration with respect to the Residential Property, in which portions of the Residential Property are designated for individual ownership or occupancy



and the remainder of the Residential Unit is designated for common ownership or occupancy solely by the Residence Owners of such remainder, containing a maximum of 87 Residences.

"Residential Corridor, Elevators and Staircase Easement." An easement as more particularly described in Section 3.6(g) of this residential Declaration.

"Residential Declarant." Infinity San Antonio Investments, LLC, a Texas limited liability company, whose address for notice is 17902 La Cantera Parkway, San Antonio, Texas 78256, and any successor or assignee of Residential Declarant having the rights, powers, authority and obligations described in this Residential Declaration evidenced by a written instrument filed for record in the Condominium Records assigning the rights, powers, authority and obligations of Residential Declarant hereunder.

"Residential Declarant Control." The period commencing on the date of this Residential Declaration and continuing until the earlier to occur of the date which is: (i) three years from the date that the first deed from Residential Declarant to a Residence Owner is recorded in the Real Property Records or (ii) 30 days after the date that deeds to not less than 75% of the Residences have been recorded in the Real Property Records.

"Residential Declarant's Mortgagee." Any Person that is the holder of any bona fide indebtedness which is the result of an arm's length negotiation that is secured by a first lien or encumbrance upon any portion of the Residential Declarant.

"Residential Declaration." This Residential Condominium Declaration for The Ricchi Luxury Condominiums and all amendments thereto, which shall be recorded in the Condominium Records.

"Residential Development Rights." A right or combination of rights: (i) to create, relocate or properly designate Residences or Common Elements within the Condominium and to make and record corrections to the Residential Map to conform the Residential Map to the actual location of the Residences and/or the proper designation of the elements of the Residential Condominium as Residences or Common Elements; (ii) to convert Residences into Common Elements or convert Common Elements into Residences; (iii) to withdraw or add real property (including Future Development Area) from or to the Condominium; (iv) to subdivide Residences within the Condominium; or (v) to convert General Common Elements to Limited Common Elements.

"Residential Dispute." Any claim, grievance or other dispute arising out of or relating to: (i) the interpretation, application or enforcement of the Residential Governing Documents; (ii) any conflict or dispute arising between or among two or more Residence Owners; (iii) the proper party to bear a maintenance cost or expense or a

capital expenditure or the proper amount of the expense, fee of Residential Assessment to be charged or collected; (iv) the rights, obligations and duties of any Residence Owner under the Residential Governing Documents; (v) the authority of the Residential Association or Residential Declarant under any Residential Legal Requirement or under the Residential Governing Documents to: (a) require any Residence Owner to take any action or not to take any action involving such Residence Owner's Residence; or (b) alter, subtract from or add to the Residential Common Elements or the Residential Condominium; (vi) the interpretation or enforcement of any warranty, or (vii) the failure of the Residential Association, in accordance with Residential Legal Requirements and the Residential Governing Documents to: (a) properly conduct elections; (b) give adequate notice of meetings or actions; (c) properly conduct meetings; or (d) allow inspection of books or records. The following shall not be considered "Residential Disputes" unless all parties shall otherwise agree to submit the matter to arbitration pursuant to Article XI of this Residential Declaration: (i) any suit by the Residential Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Residential Association's ability to enforce the provisions of the Residential Governing Documents; (ii) any suit between Residence Owners that does not include Residential Declarant or Residential Association if such suit asserts a dispute that would constitute a cause of action independent of any of the Residential Governing Documents; (iii) any disagreement that primarily involves title to any Residence or the Residential Common Elements; or (iv) any suit in which the applicable statute of limitations would expire within 180 days of the giving of notice as provided in Article XI of this Residential Declaration unless the Persons against whom the Residential Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with Article XI of this Residential Declaration.

"Residential Easements." Collectively, those Residential Easements described in Section 3.6 and Section 3.7 of this Residential Declaration.

"Residential General Common Elements." All portions of the Residential Common Elements that are not Residential Limited Common Elements, including, but not limited to, those Easements granted to the Residences in Section 3.6 of this Residential Declaration, the Recreational Facilities, Lobby, Common Restrooms, Motor Lobby, Bars and Gated Parking Lot.

"Residential Governing Documents." Individually and collectively, the Act, Residential Certificate of Formation, Residential Bylaws, this Residential Declaration, and the Residential Regulations.

"Residential Governmental Impositions." All real estate and personal property taxes, charges, assessments, standby fees, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution hereof, may be assessed, levied or imposed upon the Residential Condominium or any Residence therein by any Governmental Authority.

"Residential Insurance Proceeds." Any and all proceeds that the Residential Association or a Residence Owner is entitled to receive from an insurance company as a result of a casualty loss, including such proceeds in connection with a casualty loss to a Residence or the Residential Common Elements.

"Residential Insurance Trustee." The Residential Association acting in the capacity of a trustee in accordance with the provisions of Section 6.5 of this Residential Declaration to negotiate losses under any property insurance policies required to be obtained by the Residential Association in this Residential Declaration.

"Residential Legal Requirements." The Restrictive Covenants and any other matters of record and any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to any Residence Owner's use and enjoyment of the Residential Condominium, any Residence or the Residential Property, including zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier, health and environmental laws and regulations.

"Residential Limited Common Elements." Those portions of the Residential Common Elements that are allocated by this Residential Declaration and the Residential Map for the exclusive use of less than all of the Residences, including the following: Covered Parking Spaces, Balconies appurtenant to individual Residences, Storage Spaces (not otherwise designated) as shown on the Residential Map.

"Residential Maintenance Standard." In good condition and repair, and in a first class condition, including the operation, upkeep, repair and restoration, ordinary wear and tear excepted, to the extent necessary to maintain the Residential Condominium or Residences in a condition reasonably suitable for its intended purpose and shall include without limitation, (a) regular and timely removal of litter, trash and waste; (b) maintenance of structural components, mechanical facilities and lighting in good working order and repair; (c) keeping walks, driveways, ramps, stairwells and all other facilities clean and in good repair including maintaining surface areas in smooth condition by repatching holes and resurfacing from time to time; and (d) repainting stripes (indicating Parking Spaces and/or traffic lanes) as necessary from time to time and in any event every five years.

"Residential Map." The plats and plans described in Exhibit "A" attached to this Residential Declaration and made a part of this Residential Declaration, including a survey plat of the Residential Property and dimensional drawings that horizontally and vertically identify and describe the Residences and the Residential Common Elements.

"Residential Mortgagee." Any Person, including Residential Declarant's Mortgagee, that is the holder, insurer or guarantor of any bona fide indebtedness which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon the Residential Property and/or a Residence and which has provided the



Residential Association with written notice of its name, address and description of the Residence encumbered thereby.

"Residential Property." The Land and the Improvements, including the Residences and the Residential Common Elements.

"Residential Reallocation Percentage." The percentage, as set forth on a Supplemental Residential Declaration, of the undivided interest of each Residence Owner in the Residential Common Elements determined by Residential Declarant consistent with the method used to establish the initial Residential Allocated Interests as more fully described in Section 2.2 of this Residential Declaration.

"Residential Regulations." The rules and regulations of the Residential Association initially adopted by the Residential Board of Directors and as amended from time to time, relating to the appearance, use and occupancy of the Residential Property, including the exterior appearance, use and occupancy of the Residences and certain construction on the Residential Property.

"Residential Rents." Any and all rental or other income received by a Residence Owner in connection with the leasing of such Residence Owner's Residence or the granting or licensing of a right to use all or any portion of such Residence.

"Residential Roof Easement." An easement as more particularly described in Section 3.7(e) of this Residential Declaration.

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

"Residential Systems Easement." An easement as more particularly described in Section 3.7(c) of this Residential Declaration.

"Residential Support Easement." An easement as more particularly described in Section 3.7(f) of this Residential Declaration.

"Residential Tenant." Any Person having the right to occupy a Residence pursuant to a lease or other occupancy agreement of such Residence, to the extent allowed by the Residential Governing Documents.

"Residential Tower." The five-story building which will contain 87 Residences, as shown on the Residential Map.



"Residential Utility Easement." An easement as more particularly described in Section 3.6(d) of this Residential Declaration.

"Residential Working Capital Contribution." An amount equal to the Residential Monthly Assessment multiplied by twelve to be contributed to the Residential Association by each Residence Owner, not including Residential Declarant as provided in Section 10.3 of this Residential Declaration.

"Restrictive Covenants." Collectively, (i) this Residential Declaration, including any amendments thereto; and (ii) all other items filed of record in the Real Property Records affecting title to the Land.

"Roof Easement Area." The area shown and designated as the Roof Easement Area on the Residential Map.

"Sales Restriction Period." A period commencing on the date that a Residence is conveyed to a Residence Owner by Residential Declarant and ending on the date that sales by Residential Declarant of 98% of the Residences have closed.

"Special Residential Assessments." Residential Assessments established and collected from time to time by the Residential Association pursuant to Section 7.2 of this Residential Declaration, when due.

"Special Residential Declarant Rights." Rights reserved for the benefit of Residential Declarant to: (i) complete the Improvements shown on the Residential Map; (ii) exercise any Residential Development Right; (iii) maintain sales and construction offices and models and use signs advertising the Residences or the Residential Condominium; (iv) use any Residential Easement for the purpose of making improvements within the Residential Condominium; (v) appoint or remove any officer or board member of the Residential Association during the period of Residential Declarant Control; (vi) retain Private Areas for use and conveyance; and (vii) make the Condominium a part of a larger condominium or planned community.

"Structure." All foundations, footings, columns, flat slabs, sheer walls, girders, support beams, roof, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building.

"Supplemental Residential Declaration." An instrument executed by Residential Declarant and recorded in the Condominium Records for the purpose of (i) modifying the Residential Allocated Interests; (ii) adding to the Condominium; (iii) withdrawing any portion of the Condominium from the effect of this Residential Declaration or (iv) for such other purposes as are provided in the Residential Governing Documents.

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

Doc# 20130068245  
# Pages 34  
04/08/2013 9:51AM  
e-Filed & e-Recorded in the  
Official Public Records of  
BEXAR COUNTY  
GERARD C. RICKHOFF  
COUNTY CLERK  
Fees \$144.00

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*Gerard C. Rickhoff*

## **ARTICLE II**

### **General Provisions**

#### **Section 2.1 Creation of Residences, Residential Map.**

Division of Property. The Residential Property is hereby divided into fee simple estates composed of separately designated Residences and each such Residence's undivided interest in and to the Residential Common Elements. Each Residence, together with such Residence's undivided interests in the Residential Common Elements, is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Residential Declaration in the Condominium Records and shall continue until this Residential Declaration is revoked or terminated in the manner provided in this Residential Declaration. Residential Declarant has the right (but not the obligation), by Supplemental Declaration, to supplement or modify the Residential Property by adding additional facilities or deleting facilities, to designate additional portions of another Condominium as part of the Residential Property or Residential Condominium, or to combine the Residential Property with another Property or Condominium. Nothing in this Residential Declaration, however, shall obligate Declarant to add to the Residential Condominium.

Residential Map. The Residential Map sets forth the following: (i) a general description and diagrammatic plan of the Residential Condominium; (ii) the location and dimension of all real property subject to the Residential Development Rights; (iii) all major improvements to the Residential Property, including each Residence, showing its location within the Residential Property, the floor(s) and the number of the Residences, the Residential Common Elements and the Residential Limited Common Elements; and (iv) such other information as is desirable or required pursuant to the Act, including a certification as to compliance with the Act. The measurements set forth on the Residential Map as to each Residence are approximate values taken from the plans and specifications for the Residential Property and may not be precisely accurate as to any Residence due to variances in construction and interior floor plans. THE RESIDENTIAL DECLARANT, SHALL NOT BE LIABLE TO ANY RESIDENCE OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL RESIDENTIAL MEASUREMENTS FROM THOSE SET FORTH ON THE RESIDENTIAL MAP OR IN ANY RESIDENTIAL CONDOMINIUM PURCHASE CONTRACT TO WHICH RESIDENTIAL DECLARANT, OR ANY RESIDENCE OWNER IS OR WAS A PARTY, AND EACH RESIDENCE OWNER, BY ACCEPTING A DEED TO A RESIDENCE, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION. Upon completion of the construction of Improvements contemplated by Residential Declarant, Residential Declarant, (without the joinder of

any Residence Owner) may file a Supplemental Residential Declaration amending the Residential Map to reflect the actual measurements for each Residence and any other appropriate changes.

**Obligations of Residence Owners and Residences.** Upon the filing of this Residential Declaration and acceptance of a deed to a Residence, any and all obligations (including the obligations to pay Residential Assessments), liabilities, limitations, rights, waivers, benefits or burdens that are vested or that may in the future become vested in or upon the Residential Declarant in relation to the Residence, are hereby assumed by such Residence Owners and Residential Declarant, with respect to Residences retained by Residential Declarant, until Residential Declarant sells such Residences to other Residence Owners, and shall automatically be the obligations (including the obligations to pay Residential Assessments), liabilities, limitations, rights, waivers, benefits or burdens of the Residence Owners (including Residential Declarant, as applicable) and the Residences, except as otherwise provided herein. EACH RESIDENCE OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE RESIDENTIAL DECLARANT FROM SUCH RESIDENCE OWNER'S SHARE OF ANY AND ALL LIABILITIES, COSTS, EXPENSES (COMMON OR OTHERWISE), AND RESIDENTIAL ASSESSMENTS RELATING OR APPERTAINING TO SUCH RESIDENCE OWNER'S RESIDENCE.

**Section 2.2 Allocation of Interests in Residential Common Elements.** The initial Residential Allocated Interests, which are shown on Exhibit "A," have been established so that each Residence has a proportionate Residential Allocated Interest. The Residential Common Elements shall remain undivided.

**Section 2.3 Inseparability of Residences; No Partition.** Each Residence shall be inseparable and shall be acquired, owned, conveyed, transferred, leased and encumbered only as an entirety. In no event shall a Residence be subject to physical partition and no Residence Owner shall bring or be entitled to maintain an action for the partition or division of a Residence or the Residential Common Elements. Any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Residential Common Elements without the Residence to which such Residential Common Elements are allocated is void *ab initio*.



#### **Section 2.4 Permissible Relationships: Description.**

**Ownership of Residences.** A Residence may be acquired and held by more than one Person in any form of ownership recognized by the Residential Legal Requirements.

**Description of Units.** Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Residence shall legally describe such Residence as follows: "Unit \_\_\_\_\_ of The Ricchi Luxury Condominiums, located in Bexar County, Texas," with further reference to the recording data for this Residential Declaration (including the Residential Map and any amendments to the Residential Declaration in the Condominium Records). Every such description shall be good and sufficient for all purposes to acquire, own convey, transfer, lease, encumber or otherwise deal with such Residence, and any such description shall be construed to include all incidents of ownership relating to a Residence.

**Section 2.5 Mortgage of Residence.** A Residence Owner shall be entitled from time to time to mortgage or encumber its Residence by creating a lien or liens covering such Residence under the provisions of this Residential Declaration and any mortgagee or other lienholder which acquires a Residence through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of the Residential Declaration. A Residence Owner that mortgages its Residence shall notify the Residential Association, giving the name and address of said Residence Owner's mortgagee, and the Residential Association shall maintain such information.

### **ARTICLE III**

#### **Uses, Reservations and Restrictions**

**Section 3.1 Permitted Use.** Except as otherwise provided in the Governing Documents, no Residence shall be used or occupied for other than residential purposes. Each Residence shall also be subject to limitations on use, occupancy, architectural standards and such other matters as are set forth in the Residential Governing Documents.

**Section 3.2 Leases.** Residences may be leased; however: (i) such lease shall be in writing, shall state that it is subject in all respects to the provisions of the Residential Governing Documents and shall provide that any failure by the Residential Tenant thereunder to comply with the terms and provisions of the Residential Governing Documents shall constitute a default under such lease, (ii) each lease shall be subject to leasing restrictions set forth by the Residential Association in the Residential Governing Documents, (iii) an executed copy of each lease shall be submitted to the Residential Association promptly following execution, and (iv) all leases shall be on forms approved by the Residential Association.

**Section 3.3 Compliance with Residential Governing Documents.**

Each Residence Owner, by accepting a deed conveying title to a Residence and any Residential Tenant, by execution of a lease or by occupancy of a Residence, shall automatically be deemed to have agreed to strictly comply with the provisions of the Residential Governing Documents and all Residential Legal Requirements. A failure or refusal of a Residence Owner or Residential Tenant to so comply with the provisions, after written notice, shall constitute a Residential Dispute (to the extent so included within the definition of "Residential Dispute" set forth in Section 1.1 of this Residential Declaration), that shall be resolved in accordance with Article XI of this Residential Declaration. In addition, a Residence Owner's voting rights in the Residential Association may by written notice be suspended by the Residential Association during the period of such noncompliance.

**Section 3.4 Rights of Residential Declarant.** In accordance with, and only if permitted by the Act, Residential Declarant reserves the following rights:

(a) the Residential Development Rights and the Special Residential Declarant Rights, at all times while Residential Declarant or any Affiliate of Residential Declarant owns any Residence or any other real property interest in the Residential Condominium. Residential Declarant will not assign the Residential Development Rights or the Special Residential Declarant Rights without obtaining prior written consent to such assignment by Residential Declarant's Mortgagee;

(b) the right (but not the obligation), by a Supplemental Residential Declaration, to supplement or modify any Residence by adding additional facilities or deleting facilities, to designate additional portions of the Residential Condominium as part of any Residence, or to combine Residences; provided, however, Residential Declarant may not add or delete facilities from any Residence or combine Residences, unless Residential Declarant or an Affiliate of Residential Declarant is the owner of such Residence or Residences. No such addition or deletion to any such Residence or combination of Residences shall affect the interest in the Residential Common Elements, the share of Residential Common Expenses or the voting rights appurtenant to the Residences. Any Residences which are combined shall be treated for all such purposes as separate Residences. Residential Declarant may separate any Residences it has combined, at its sole expense, into separate and distinct Residences as originally set forth in the survey and the Residential Map. Nothing in this Residential Declaration, however, shall obligate Residential Declarant to add to the Residential Condominium or otherwise take any of the actions to which Residential Declarant is entitled pursuant to this Section 3.4(b);

(c) the right to maintain a model unit and a sales, leasing and/or management office within any Residence on the Residential Common Elements or in the Residential Tower in connection with the sale, leasing and/or management of Residences, in such location as determined by Residential Declarant (Private Areas). No such model residence or office shall be larger than 2,500 square feet and Residential Declarant shall have the right to relocate such model residence and/or

office from time to time. Residential Declarant shall have the right to authorize placement, upon the Residential Common Elements, of signs designating any such model residence and/or sales, leasing and/or management office and advertising the sale or leasing of the Units. Such signs may be placed in such locations and shall be of such size and character as Residential Declarant may determine;

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

(e) the right, without the vote or consent of the Residential Association or any other Residence Owner, to: (i) make alterations, additions or improvements in, to and upon any Residences owned by Residential Declarant or its Affiliates, whether structural or non-structural; (ii) change the floor plan and layout of any Residence owned by Residential Declarant or its Affiliates. However, in no event shall any such alteration, improvement or change interfere with any structural support of any Residence or the Residential Common Elements or the provision of utility service to any Residence or the Residential Common Elements. All work done in accordance with the provisions of this Section 3.4(e) shall be done in compliance with the Residential Governing Documents and all applicable Residential Legal Requirements; and

(f) for as long as Residential Declarant or its Designees remain liable under any warranty, whether statutory, express or implied, for any act or omission of Residential Declarant or its Designees in the development, construction, sale and marketing of any portion of the Residential Condominium, the right, for itself and its Designees, in Residential Declarant's sole discretion and from time to time, to enter the Residential Common Elements and the Residences for the purpose of making necessary inspections, tests, repairs, improvements or replacements required for Residential Declarant or its Designees to fulfill any of its warranty obligations, provided that no such entry into a Residence shall unreasonably interfere with the use of such Residence by its Residence Owner. Failure of the Residential Association or any Residential Owner to provide such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing in this Section 3.4(f) shall be deemed or construed as Residential Declarant making or offering any warranty, all of which are disclaimed.

In addition to all other rights granted or reserved to Residential Declarant in the Residential Governing Documents, in order that the development of the Residential Condominium may be undertaken and established as a fully operating development, Residential Declarant shall have the following rights, and the Residence Owners and the Residential Association shall refrain from interfering with Residential Declarant's activities in such regard: (i) Residential Declarant and its Designees shall have the right to conduct any activity or operations on or in connection with the Residential Condominium that Residential Declarant determines to be necessary or advisable in connection with the completion of the development of the Residential Condominium including the right to alter its construction plans and designs as Residential Declarant

deems advisable in the course of development or enlargement of any Improvements; (ii) Residential Declarant and its Designees shall have the right to erect, construct and maintain on any of the Residential Property owned by Declarant or its Affiliates, such structures as may be reasonably necessary for the conduct of its or their business of completing said development and establishing the Residential Condominium as a community and disposing of the same by sale, lease, or otherwise; (iii) Residential Declarant and its Designees shall have the right to conduct on the Residential Property its business of developing, subdividing, grading and constructing Improvements in the Residential Condominium and of disposing of the Residences thereon by sale, lease or otherwise; (iv) Residential Declarant shall have the right to determine in its sole discretion the nature of and the types of Improvements to be constructed as part of the Residential Condominium; (v) Residential Declarant shall have the right to file any amendments or any Supplemental Declarations to this Residential Declaration; (vi) Residential Declarant and its Designees shall have the right to modify, change, re-configure, remove and otherwise alter any Improvements located on the Residential Common Elements, except as prohibited or limited elsewhere by the Residential Governing Documents; and (vii) Residential Declarant and its Designees shall have the right to enter upon the Residential Property and operate thereon such vehicles and equipment as shall be necessary in the sole discretion of Residential Declarant or its Designees for such purposes. In general, Residential Declarant shall be exempt from all restrictions set forth in this Residential Declaration to the extent such restrictions interfere in any manner with Residential Declarant's plans for construction, development, use, sale, lease or other disposition of all or any portion of the Residential Property.

**Section 3.5 Restriction on Resale of Residences.** No Residence Owner shall offer any Residence for sale or advertise or otherwise market or attempt to market a Residence for sale in any way during the Sales Restriction Period. Each Residence Owner agrees that the breach of this provision during the Sales Restriction Period shall entitle the Residential Association to exercise the remedy of specific performance or damages against the Residence Owner. This restriction shall not apply to any foreclosure or exercise of the power of sale by the holder of any Priority Lien Indebtedness.

**Section 3.6 Residential Easements.** Each Residence Owner accepts a deed conveying title to a Residence subject to all Easements granted to the Owners and the Residential Easements granted and reserved, as applicable, in this Section 3.6, which Residential Easements (and all related rights and obligations related to such Residential Easements arising on or after the date of any transfer) shall run with the Residential Condominium.

(a) **Residential Access Easement.** Residential Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Residential Access Easement over, on and across each Residence as may reasonably be necessary for its own benefit and for the employees and representatives as applicable, as may be reasonably necessary for: (i) the maintenance, repair or replacement of any of the Residential Common Elements thereon or accessible therefrom; (ii) the use of a



Residence by its Residence Owner, provided no other reasonable means of access exists; (iii) the exercise by Residential Declarant of the Special Residential Declarant Rights or the performance of any obligations of Residential Declarant under the Residential Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Residential Common Elements or to any Residence; (v) the evacuation of all or any part of the Residential Property in the event of an emergency and (vi) such other reasonable purposes as are deemed by the Residential Association to be necessary for the performance of the obligations of the Residential Association as described herein and in the Residential Bylaws.

The Residential Association, its agents, employees and representatives, may enter a Residence to the extent reasonably necessary in case of an emergency originating in or threatening the Residence or any other Residence whether or not the Residence Owner or Residential Tenant of such Residence is present at the time. The Person making such entry shall take reasonable precautions to protect such premises and any inventory, fixtures and other personal property contained therein from damage and theft. This right of entry may be exercised by all police officers, firefighters and other emergency personnel in the performance of their respective duties. Also, the Residential Association, its agents, employees and representatives may enter a Residence to perform installations, alterations or repairs to the mechanical, electrical or utility services which, if not performed, would affect the use of other Residences or the Residential Common Elements; provided that, if possible, requests for any entry shall be made in advance and at a time convenient to the Residence Owner and further subject to the foregoing limitations. In case of emergency, the right of entry is immediate and if a Residence Owner refuses to provide entry, such Residence Owner is liable for the cost of repairs to the Residence or the Residential Common Elements caused by the chosen method of access under such circumstances.

(b) Residential Common Elements Easement. Residential Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Residential Common Elements Easement over, on and across the Residential Common Elements for its own benefit and for the benefit of each Residence which is an intended beneficiary of such Residential Common Element and the Residential Association for ingress and egress from each Residence and for the use of the Residential Common Elements. The Residential Common Elements Easement shall be maintained by the Residential Association in accordance with the Residential Maintenance Standard and Section 5.1 of this Residential Declaration.

(c) Residential Systems Easement. Residential Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Residential Systems Easement over, on and across the Residential Systems for its own benefit and for the benefit of each Residence Owner and the Residential Association for the use of and the connection to any portion of the Residential Systems intended for such Residence Owner's or the Residential Association's use.

(d) Residential Utility Easement. Residential Declarant hereby grants

and reserves a perpetual, assignable and non-exclusive Residential Utility Easement over, on and across the Residential Common Elements for its own benefit and for the benefit of utility companies supplying utility service to the Residential Condominium for supplying utility service to any part of the Residential Condominium. Residential Declarant hereby reserves for Residential Declarant, prior to the termination of Residential Declarant Control, and grants to the Residential Association, after the termination of Residential Declarant Control, the right to grant easements for purpose of utilities over any and all of the Residential Common Elements. Residential Declarant may record an easement agreement or easement relocation agreement in the Condominium Records, specifically locating or relocating any Residential Utility Easement subsequent to the recordation of this Residential Declaration, and each Residence Owner, by acceptance of the deed to a Residence, hereby grants Residential Declarant an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Residential Utility Easement.

(e) Residential Roof Easement. Residential Declarant hereby grants a perpetual and non-exclusive Residential Roof Easement over, on and across the Roof Easement Area: (i) for the benefit of the Residential Declarant or Residential Association for the placement, use and maintenance of plumbing, electrical and mechanical equipment on the roof of the Residential Tower, the location of which must be approved in writing by the Residential Association; and (ii) for the benefit of the Residences, for the placement, use and maintenance of satellite and telecommunications equipment on the roof of the Residential Tower (including the right of each Residence Owner to retain any income generated by such Residence Owner in connection therewith, the location of which must be approved in writing by the Residential Association). The portions of the Roof Easement Area used by a Residence Owner shall be maintained by such Residence Owner and the remaining portions of the Roof Easement Area shall be maintained by the Residential Association in accordance with the Residential Maintenance Standard and Section 5.1 of this Residential Declaration.

(f) Residential Support Easement. Residential Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Residential Support Easement over, on and across the Structure for its own benefit and the benefit of the Residential Association for support of all portions of the Improvements. The Structure shall be maintained by the Residential Association in accordance with the Residential Maintenance Standard and Section 5.1 of this Residential Declaration.

(g) Residential Corridor, Elevator and Staircase Easement. Residential Declarant hereby grants a perpetual, assignable and non-exclusive Residential Corridor, Elevator and Staircase Easement over, on and across: (i) the corridors, hallways, elevators and stairways on all floors of the Residential Tower for the benefit of the Residence Owners for use thereof. The corridors, hallways, elevators and stairways subject to such easement shall be maintained by the Residential Association in accordance with the Residential Maintenance Standard and Section 5.1 of this Residential Declaration.

(h) Miscellaneous. None of the Residential Easements granted or reserved in this Section 3.6 shall be used in a manner which materially adversely affects the structural integrity of the Improvements. Except as otherwise provided by this Section 3.9, notwithstanding the assignability of the Residential Easements, no Residential Easement may be assigned to any Person that is not a Tenant of the Residence that is benefited by the respective Residential Easement nor shall any Residence Owner that is benefited by a Residential Easement grant a sub-easement or a license to any area covered by any Easement. Use and availability of any facilities or areas covered by the Residential Easements are subject to the Residential Regulations.

**Section 3.7 Encroachments.** If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of the Residential Common Elements encroaches upon a Residence, a perpetual easement over, on and across such Residence for such encroachment and for the maintenance of same is hereby granted and conveyed to the Residential Association by each Residential Owner at the time each Residence is conveyed to the Residence Owner. If as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance any portion of a Residence encroaches upon the Residential Common Elements, or upon any adjoining Residence, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same over, on and across such Residence, or such portion of the Residential Common Elements, as applicable, is hereby granted to the Residence Owner of such Residence. Such encroachments and easements shall not be considered or determined to be encumbrances either upon a Residence or upon the Residential Common Elements.

## **ARTICLE IV**

### **Matters Regarding the Residential Association**

**Section 4.1 General.** The Residential Association has been incorporated as a non-profit corporation under the Texas Non-Profit Corporation Act. In addition to the powers conferred on the Residential Association under the Texas Non-Profit Corporation Act, the Residential Association may take all actions authorized by the Residential Governing Documents. Any and all actions taken by the Residential Association pursuant to the Residential Governing Documents are binding on all Residence Owners. This Residential Declaration is not intended to place any limitations or restrictions on the power of the Residential Association or the Residential Board of Directors, except as set forth in this Residential Declaration or the Residential Governing Documents.

**Section 4.2 Allocation of Votes In the Residential Association.** Each Residence Owner shall automatically be a member of the Residential Association. Each member shall be entitled to cast one vote with respect to any matter on which members of the Residential Association are entitled to vote. In the event that a Residence is acquired and held by more than one Person, the Persons collectively are entitled to cast one vote.

**Section 4.3 Suspended Voting Rights.** All voting rights of a Residence Owner may be suspended during any period that such Residence Owner is delinquent in the payment of any Residential Assessment duly established pursuant to this Residential Declaration, or is otherwise in default under the terms of the Residential Governing Documents. Following a Residence Owner's cure of any such delinquency or default in full, its voting rights shall be completely reinstated 24 hours after such cure is effected.

**Section 4.4 Right of Action by Residence Owners. Limitation of Liability of Officers and Directors of Residential Association.** Residence Owners, acting collectively or individually, shall have the right to maintain actions against the Residential Association for its willful failure to perform its duties and responsibilities hereunder; provided, however, no other action shall be brought against the Residential Association or its affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns by the Residence Owners. The Residential Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings in the name of any Residence Owner, unless otherwise provided in this Residential Declaration. **SUBJECT TO THE RESIDENTIAL ASSOCIATION'S OBLIGATIONS UNDER THIS RESIDENTIAL DECLARATION, EACH RESIDENCE OWNER HEREBY RELEASES, ACQUITS AND FOREVER DISCHARGES THE RESIDENTIAL SUBSIDIARIES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PREDECESSORS, SUCCESSORS, CONTRACTORS, CONSULTANTS, INSURERS, SURETIES AND ASSIGNS AND AGREES TO HOLD SUCH PERSONS HARMLESS OF AND FORM 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 RESIDENCE OWNERS OF THE RESIDENCES OR THE RESIDENTIAL COMMON ELEMENTS. THIS RELEASE SHALL RELEASE AND FOREVER DISCHARGE THE RESIDENTIAL 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, INCLUDING, BUT NOT LIMITED TO, THE RELEASE FROM LIABILITY FOR NEGLIGENT HIRING OF SECURITY SERVICE PROVIDERS AND THE FUNCTIONING OF MECHANICAL GATES AND OTHER SECURITY DEVICES.**