

Declarations-CC&Rs
Augusta Landing Condominium Association

AMENDED AND RESTATED CONDOMINIUM DECLARATION

FOR

AUGUSTA LANDING

20080175714

THE STATE OF TEXAS

§

4/8/2008

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§

COUNTY OF HARRIS

§

WHEREAS, Westview 8, Inc., a Texas corporation, as Declarant, caused that certain instrument entitled "Condominium Declaration for Augusta Landing" (the "Declaration") to be recorded in Volume 47, Page 1, et seq. of the Condominium Records of Harris County, Texas, which instrument established the property described in Exhibit "A" attached thereto as a condominium regime and subjected such property to the provisions of the Declaration; and

WHEREAS, the Declaration was previously amended by that certain instrument entitled "First Amendment to the Condominium Declaration and Bylaws for Augusta Landing" recorded in Volume 49, Page 137, of the Condominium Records of Harris County, Texas; and

WHEREAS, the Declaration was further amended by the certain instrument entitled "Second Amendment to Condominium Declaration for August Landing" recorded under Film Code No. 199135 of the Condominium Records of Harris County, Texas; and

WHEREAS, the Declaration provides for amendment by owners representing an aggregate ownership interest of eighteen (18) condominium units, or more; and

WHEREAS, owners representing an aggregate ownership interest of eighteen (18) condominium units, or more, desire to amend and restate the Declaration;

NOW, THEREFORE, the undersigned hereby amend and restate the Declaration as follows:

1. DEFINITIONS. Unless the context shall expressly provide otherwise:
 - (a) "Condominium unit" means one individual air space unit together with the interest in the general common elements appurtenant to such unit.

- (b) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units.
- (c) "General Common Elements" means and includes:
 - (1) The land on which the buildings are located;
 - (2) The foundations, columns, girders, beams, supports, main walls and roofs.
 - (3) The yards, gardens, open parking areas, fences, storage spaces, streets, service drives, walks, service easements, and recreation area and swimming pool and pool house;
 - (4) The installations consisting of the equipment and materials making up central services such as electric power, swimming pool, and the like;
 - (5) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- (d) "Limited Common Elements" means a part of the general common elements reserved for the exclusive use of the owner of a condominium unit; garage parking areas, and patio, attic and storage areas indicated on map as appurtenant limited elements to a specific unit only shall be deemed limited common elements.
- (e) "Entire Premises" or "Property" means and includes the land, the buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.
- (f) "Common Expenses" means and includes:
 - (1) All sums lawfully assessed against the general common elements by the Managing Agent or Board of Managers;
 - (2) Expenses of administration and management, maintenance, repair or replacement of the general common elements;
 - (3) Expenses agreed upon as common expenses by the owners; and

Shirley B. Longman
COUNTY CLERK
HARRIS COUNTY

(4) Expenses declared common expenses by provisions of this Declaration and by the By-Laws.

(g) "Association of Unit Owners" or "Association" means Augusta Landing Condominium Association, a Texas non-profit association, the By-Laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.

(h) "Map", "Survey Map" or "Plans" means and includes the engineering survey of the land locating thereon all of the improvements the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements attached to the original Declaration as Exhibits "A" through "B", inclusive, and incorporated herein.

2. CONDOMINIUM MAP. (intentionally deleted)

3. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS. The real property is hereby divided into the following separate fee simple estates:

(a) Twenty-one (21) fee simple estates consisting of twenty-one (21) separately designated condominium units, each such unit identified by number and by building symbol or designation on the map, the condominiums in each building being described as follows:

BUILDING A – Containing six (6) condominium units, numbered 1 through 6, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building A attached to the original Declaration and marked Exhibit "B".

BUILDING B – Containing six (6) condominium units, numbered 7 through 12, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building Two attached to the original Declaration and marked Exhibit "B".

BUILDING C – Containing four (4) condominium units, numbered 13 through 16, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building Three attached to the original Declaration and marked Exhibit "B".

BUILDING D – Containing three (3) condominium units, numbered 17 through 19, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of

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Building Four attached to the original Declaration and marked Exhibit "B".

BUILDING E – Containing two (2) condominium units, numbered 20 through 21, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building Five attached to the original Declaration and marked Exhibit "B".

- (b) The remaining portion of the entire premises, referred to as the general common elements, which shall be held in common by the owners, each such interest being an undivided one twenty one of the general common elements, and each such undivided interest being appurtenant to one of the twenty-one (21) condominium units.
4. COMMON ELEMENTS: A portion of the general common elements is set aside and reserved for the exclusive use of individual owners, such areas being the limited common elements. The limited common elements reserved for the exclusive use of the individual owners are the automobile parking garage spaces, and patio spaces, which are shown on the map. Such spaces are allocated and assigned by the Declarant to the respective condominium units as indicated on Exhibits "A" through "B", inclusive, to the original Declaration, the patio assigned to each condominium unit being designated by the condominium unit number preceded by the prefix "CP" and in like manner, the garage parking spaces assigned to each unit being designated by the condominium unit number preceded by the prefix "G". Atriums by the prefix "A". Such limited common elements shall be used in connection with the particular unit, to the exclusion of the use thereof by the other owners except by invitation. A portion of the common area is intended as a recreation area, and is improved with a swimming pool, and other recreational facilities. Reasonable regulations governing the use of said recreational facilities by owners and by their guests and invitees shall be promulgated by the Declarant, and by the Board of Managers after same has been elected and by Managing Agent. Such regulations shall be permanently posted at the swimming pool and/or elsewhere in said recreational area and all owners shall be furnished with a copy thereof. Each owner shall be required strictly to comply with said Rules and Regulations, and shall be responsible to the Board of Managers for the compliance therewith by members of his or her family, relatives, guests or invitees, both minor and adult.
5. INSEPARABILITY OF A CONDOMINIUM UNIT. Each unit and the undivided twenty-first interest in and to the general common elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.

6. DESCRIPTION OF CONDOMINIUM UNIT. Every deed, lease, mortgage trust deed or other instrument may legally describe a condominium unit by its identifying unit number and building symbol or designation as shown on the map, followed by the words "AUGUSTA LANDING" and by a reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the general common elements.
7. SEPARATE ASSESSMENT AND TAXATION. Declarant shall give written notice to the assessor of the creation of condominium ownership of this property, as is provided by law, so that each condominium unit and its undivided interest in the general common elements shall be deemed a separate parcel and subject to separate assessment and taxation.
8. OWNERSHIP-TITLE. A condominium unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.
9. NON-PARTITIONABILITY OF COMMON ELEMENTS. The general common elements shall be owned in common by all of the owners of the condominium units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.
10. OCCUPANCY. Each owner shall be entitled to exclusive ownership and possession of his condominium unit. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners. Nothing shall be altered or constructed on or removed from the Common Elements, except upon written consent of the Board of Managers.
11. USE. Each condominium unit shall be occupied and used by the owner only as and for a single family residential dwelling for the owner, his family, his social guests or his tenants.
12. EASEMENTS AND ENCROACHMENTS. If any portion of the general common elements encroaches upon a condominium unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of an adjoining condominium unit or units encroaches upon the general common elements, a valid easement for the encroachment and for the maintenance

of same, so long as it stands, shall and does exist. For title or other purposes, such encroachment(s) and easement(s) shall not be considered or determined to be encumbrances either on the general common elements or the condominium units.

13. TERMINATION OF MECHANIC'S OR MATERIALMEN'S LIENS AND INDEMNIFICATION. Subsequent to the completion of the improvements described on the map, no labor performed or materials furnished and incorporated in a condominium unit with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the general common elements owned by such other owners. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the condominium unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request.
14. ADMINISTRATION AND MANAGEMENT. The administration of this condominium property shall be governed by Board of Managers and by the duly recorded By-Laws of the Association. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership.
15. ACCESS FOR MAINTENANCE AND REPAIR. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each condominium unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to another unit or units.
16. OWNER'S RESPONSIBILITY FOR MAINTENANCE OF UNIT. An owner shall maintain and keep in repair the interior of his or her own condominium unit, including the fixtures thereof. All fixtures and equipment, including the heating and air conditioning system, plumbing system and electrical system, installed within the unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof. Without limitation on the generality of the foregoing, an owner shall maintain and keep in good repair (and replace, if so required) the air conditioning compressor and condenser, hot water heater unit, fans, ductwork, heating unit and cooling coils, light fixtures, hose bibbs, wires, conduits, pipes, floor drains, utilized in and for his or her unit; as well as all other fixtures situated

within or installed into the limited common elements appurtenant to such unit; and an owner shall be obliged to promptly repair and replace any broken or cracked windows, doors, or glass therein that might be so broken or cracked. Notwithstanding anything to the contrary contained in this Article 16, an owner when exercising his or her right and responsibility of repair, maintenance, replacement or remodeling, as herein defined, shall never alter in any manner whatsoever, the exterior appearance of his or her condominium unit.

An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his or her condominium unit, nor shall such owner be deemed to own the utilities running through his or her unit which are utilized for, or serve more than one unit, except as a tenant in common with the other owners. An owner, however, shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, gypsum board, wallpaper and other such finishing materials.

17. INTERFERENCE WITH STRUCTURAL SOUNDNESS OF BUILDING. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. No owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the common elements, save with written consent of the Board of Managers first obtained.
18. DIMENSIONS. It is expressly agreed, and each and every purchaser of a condominium unit, his or her heirs, executors, administrators, assigns, successors, and grantees hereby agree, that the square footage, size, and dimensions of each unit as set out and shown in the original Declaration or in the survey plats attached as Exhibits thereto, are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent, or guarantee that any unit actually contains the area, square footage, or dimensions shown by the plat thereof. Each purchaser and owner of a unit or interest therein, has had full opportunity and is under a duty to inspect and examine the unit purchased by him or her prior to his or her purchase thereof, and agrees that the unit is purchased as actually and physically existing. Each purchaser of a unit hereby expressly waives any claim or demand which he or she may have against the Declarant or any other person whomsoever, on account of any difference, shortage, or discrepancy between the unit as actually and physically existing and as it is shown on the respective plat thereof, which is attached as an Exhibit hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the condominium unit or of any unit reconstructed

in substantial accordance with the original plans thereof shall be conclusively presumed to be the boundaries, regardless of settling, arising, or lateral movement of the building and regardless of variances between boundaries shown of the plat and those of the building.

19. COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for (1) the imposition of reasonable fines against the owner and his/her unit and/or (2) an action for the recovery of damages or injunctive relief or both by the Association or any aggrieved owner or occupant of a unit. The Board of Managers of the Association shall have the authority to establish the amount of the fine to be imposed for a particular violation. No fine shall be levied against an owner and his/her unit without first providing notice and an opportunity to request a hearing before the Board of Managers. A fine levied against an owner and his/her unit shall be added to the owner's assessment and secured by the lien established in paragraph 24 of this Declaration.

20. REVOCATION OR AMENDMENT TO DECLARATION. This Declaration shall not be revoked unless the owners representing an aggregate ownership interest of eighteen (18) condominium units, or more, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units unanimously consent and agree to such revocation by instrument(s) duly recorded. Except as otherwise provided in subparagraphs (c) and (e) of Article 30 of this Declaration and subparagraph (d) of Article 32 of this Declaration, this Declaration may be amended by owners representing not less than an aggregate ownership interest of sixteen (16) condominium units. Provided that, the making of physical changes in the interior of a condominium unit coming into the possession of a mortgagee by virtue of foreclosure of any first mortgage, and physical changes to and alterations of the unit owned by virtue of foreclosure of any first mortgage may be made without the consent of the other owners or mortgagees, and this Declaration may be amended without other owners' or mortgagees' consent, by the owner acquiring same by foreclosure, to correspond with such physical changes; provided, however, that the fractional undivided interest of each unit owner in the general common elements as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the units owners expressed in an amended Declaration duly recorded.

21. ASSESSMENTS FOR COMMON EXPENSES – UTILITIES – INSURANCE. The assessments made shall be based upon the cash

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requirements deemed to be such aggregate sum as the Managing Agent or Board of Managers of the Association shall from time to time determine is to be paid by all of the owners, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things cost of management, taxes, assessments, repairs and renovations, swimming pool maintenance, garbage collections, wages, water charges, gas charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus funds as well as other costs and expenses relating to the general common elements. The limited common elements shall be maintained as general common elements and owners having exclusive use thereof shall not be subject to any special charges or assessments for the repair or maintenance thereof. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification, or a release of the owners from the obligation to pay.

Each owner shall pay for his or her own utilities which are separately metered on and billed to each unit by the respective utility companies. Utility expenses which are not separately billed or metered shall be part of the common expenses and each unit owner shall pay his pro-rata share thereof as in the case of other common expenses.

The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind appropriate for a condominium property and as required by the Texas Uniform Condominium Act as amended from time to time, and issued by responsible insurance companies authorized to do business in the State of Texas. The insurance shall be carried in blanket policy form naming the Association as the insured, which policy or policies shall for a standard non-contributory mortgagee clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after thirty (30) days prior written notice to the Association and to each first mortgagee. Said Managing Agent or Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligency or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance

under such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Each owner may obtain additional insurance at his or her own expense for his or her own benefit. Insurance coverage on the furnishings and other items of personal property belonging to the owner, and casualty and public liability insurance coverage within each individual unit, are specifically made the responsibility of the owner thereof.

22. OWNER'S OBLIGATION FOR PAYMENT OF ASSESSMENTS. All owners shall be personally obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet common expenses. Except for insurance premiums, the assessments shall be made pro-rata according to each owner's fractional interest in and to the general common elements. Assessments for insurance premiums shall be based upon that proportion of the total premium(s) that the insurance carried on a condominium unit bears to total coverage. Assessments for the estimated common expenses, excluding insurance, shall be due monthly in advance on or before the fifth (5th) day of each month. Failure to pay by the tenth (10th) day of each month shall require the imposition and assessment of a reasonable late charge as determined by the Board of Managers from time to time.

The assessment of insurance will be made annually once the premium is determined and each owner will be billed directly by the Board.

Contribution for monthly assessments shall be prorated if the ownership of condominium unit commences on a day other than the first day of a month.

23. WAIVER OF USE OF GENERAL COMMON ELEMENTS OR ABANDONMENT OF CONDOMINIUM UNIT BY OWNER. No owner may exempt himself or herself from liability for this contribution towards the common expenses by waiver of the use or enjoyment of any of the general common elements or by abandonment of his or her unit.
24. ASSESSMENT LIEN. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit, including interest thereof at ten (10%) per cent per annum, shall constitute a lien on such unit superior (prior) to all other liens and encumbrances, except only for:
- (a) Tax and special assessment liens in favor of any assessing unit, and
 - (b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such

encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lien the Board of Managers or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in the Office of the County Clerk of Harris County, Texas. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association a reasonable rental for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each condominium unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expense payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

Each owner, by acceptance of a deed to a condominium unit, hereby expressly vests in the Association or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Chapter 51 of the Texas Property Code, and such owner hereby expressly grants to the Association a power of sale in connection with said lien.

25. STATEMENT OF INDEBTEDNESS – JOINT LIABILITY FOR COMMON EXPENSE UPON TRANSFER OF CONDOMINIUM UNIT.

Upon payment to the Association of a reasonable fee as determined by the Board of Managers from time to time, and upon the written request of any owner or any encumbrancer or prospective encumbrancer of a condominium unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or her proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment to the Association of a reasonable fee as determined by the Board of Managers from time to time, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers, setting forth the amount of the unpaid assessment, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association.

26. MORTGAGING A CONDOMINIUM UNIT – PRIORITY. An owner shall have the right from time to time to mortgage or encumber his/her interest in a unit by deed of trust, mortgage or other security instrument. Provided that, the Association's lien securing the payment of sums due the Association, per paragraph 24 of this Declaration, has priority over any other lien except:

- a. a lien for real property taxes and other governmental assessments or charges against the Unit, except as otherwise provided by Section 32.05 of the Texas Tax Code; and
- b. a mortgage for the purpose of purchasing a unit and any renewal extension, rearrangement or refinancing thereof.

27. RIGHT OF FIRST REFUSAL. In the event any owner of condominium unit shall wish to sell, lease or rent the same, and shall have received a

bona fide offer thereof from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. Such notice and copy shall be given to the Board of Managers for all of the owners. The remaining owners through the Board of Managers, or a person named by them, shall have the right to purchase or lease or rent the subject unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the ten (10) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any owner shall attempt to sell, rent or lease his or her condominium unit without affording to the other owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee. Possession of or residence in a condominium unit by any other person than the record owners, their lineal descendants or lineal descendant relatives, continuing for a period of ten (10) days shall be deemed, for this purpose, to constitute a leasing or renting of the condominium unit, whether or not any consideration has been paid therefor; and in such event, the Board of Managers may require the removal of such occupant(s), it being hereby agreed that the Board of Managers may take possession of the condominium unit upon demand therefor of and from such occupant, with or without notice to the record owner(s) thereof; and in the event of failure to surrender such possession, the Board of Managers may institute its action in starting Forcible Entry and Detainer Proceedings for the possession of such unit, and have and retain such possession until the record owner thereof, or his purchaser (in event of sale, all prerequisites of this paragraph having been complied with) retakes physical possession of such premises. During any time when the Board of Managers shall have possession of such unit hereunder the record owner and all his or her guests, licensees and invitees, shall be deemed to waive any claim for damages to person or property in or on the unit.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he or she may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his or her interest in the project parcel to a trust deed, mortgage, or other security instrument.

The failure of or refusal by the Board of Managers to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

The provisions of this Article 27 shall extend and run for the period of the lives of the now living children of Robert F. Kennedy, formerly Attorney General of the United States, and the now living children of Bob Casey, formerly a member of the House of Representatives, from Houston, Texas whichever of said children shall live the longer, plus the period of twenty-one years from the date of death of whichever of such children shall live the longer.

Except as is otherwise provided in Article 28, and except upon a transfer of title to a Public Trustee or to the first mortgagee, each grantor of a condominium unit, upon transferring or conveying his or her interest, shall incorporate in such instrument of conveyance an agreement that the grantee shall carry out provisions of the 'right of first refusal' as provided in this paragraph.

The Board of Managers shall have authority, on behalf of, and in the name of the Association to elect not to exercise such right of first refusal and elect not to purchase, lease, or rent any condominium unit, and to give written notice of such election. The Board of Managers shall also have the authority and right, on behalf of and in the name of the Association to waive the provisions of this Article 27 in respect to any one or more condominium units provided that such waiver shall be in writing, duly executed and acknowledged by an officer of the Board of Managers or any authorized member thereof. Whenever any such waiver may be given by the Board of Managers in respect to any condominium unit, the owner or owners thereof may sell, lease, or rent the same without complying with the provisions of this Article 27.

28. EXEMPTIONS FROM RIGHT OF FIRST REFUSAL. In the event of any default on the part of any owner under any first mortgage which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Article 27, and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium unit shall be thereupon and thereafter subject to the provisions of this Declaration and By-Laws.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his

heirs at law under intestacy laws shall not be subject to the provisions of Article 27.

If an owner of a condominium unit can establish to the satisfaction of the Managing Agent or Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Article 27.

29. CERTIFICATE OF COMPLIANCE. Upon payment to the Association of a reasonable fee as determined by the Board of Managers from time to time, and upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium unit, the Managing Agent or Board of Managers of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certification in recordable form, evidencing that:

- (a) With respect to a proposed lease or sale under Article 27, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;
- (b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to Article 28, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Article 27;
- (c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of Article 27;

Such a certificate shall be conclusive evidence of the facts contained therein.

30. ASSOCIATION AS ATTORNEY-IN-FACT. This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association or its successor non-profit corporation, if same be hereafter organized, their true and lawful attorney in their name, place, and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a

condominium unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding sub-paragraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

- (a) In event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.
- (b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than fifty per cent of all the general common elements, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense made pro-rata according to each owner's fractional interest in and to the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Article 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For the payment of the balance of the lien of any first mortgage;

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- (2) For payment of taxes and special assessments liens in favor of any assessing entity;
 - (3) For payment of unpaid common expenses;
 - (4) For payment of junior liens and encumbrances in order of and to the extent of their priority; and
 - (5) The balance remaining, if any, shall be paid to the condominium unit owner.
- (c) If more than fifty per cent of all of the general common elements, not including land, are destroyed or damaged, and if the owners representing an aggregate ownership interest of eighteen (18) condominium units, or more, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into twenty-one (21) units. Each such account shall be in the name of the Association, and shall be further identified by the number of the condominium unit and the name of the owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the condominium unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's fractional interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this Article 30.

If the owners representing an aggregate ownership interest of eighteen (18) condominium units, or more, adopt a plan for

reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro-rata according to each owner's fractional interest in the general common elements and shall be due and payable as provided by the terms of such plan but not sooner than thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Article 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this Article 30.

- (d) The owners representing an aggregate ownership interest of eighteen (18) condominium units, or more, may agree that the general common elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that any owner not agreeing to such renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), an appraiser who shall be a member of the Houston Real Estate Board. If either party fails to make such a nomination, the appraiser nominated shall within five (5) days after default by the other party appoint and associate with him another appraiser (to be selected from the Houston Real Estate Board) to be umpire

between them, if they can agree on such person. If they are unable to agree upon such umpire, then the appraiser previously appointed shall nominate two persons (each of whom shall be a member of the Houston Real Estate Board) and from the names of the four persons so nominated, shall be drawn by lot by any judge of any court of record in Texas, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days after the failure of the two appraisers to agree, which in any event shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owners. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in sub-paragraph (b) (1) through (5) of this Article 30.

- (e) The owners representing an aggregate ownership interest of eighteen (18) condominium units, or more, may agree that the general common elements of the property are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact, for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's fractional interest in the general common elements, and such apportioned proceeds shall be paid into twenty-one (21) separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the condominium and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) if this Article 30.

- 31. PERSONAL PROPERTY FOR COMMON USE. Upon date defined in Article 14 herein, Declarant shall execute and delivery a bill of sale to the Association transferring all items of personal property located on the entire premises and furnished by Declarant, which property is intended for the common use and enjoyment of the condominium units owners and

occupants. The Association shall hold title to such property for the use and enjoyment of the condominium unit owners and occupants. No owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the owner's termination of possession of his or her condominium unit.

32. PROTECTION OF MORTGAGEE.

- (a) Notice to Association. An owner who mortgages his or her condominium shall notify the Board of Managers giving the name and address of his or her mortgagee,
- (b) Notice of Default. The Association shall notify a first mortgagee in writing, upon request of such mortgagee, of any default by the mortgagor in the performance of such mortgagor's obligations as set forth in the Declaration which is not cured within sixty (60) days.
- (c) Examination of Books. The Association shall permit first mortgagees to examine the books and records of the Association during normal business hours.
- (d) Approval for Amendments to Declaration, etc. The prior written approval of each first mortgagee shall be required for the following: (i) abandonment or termination of AUGUSTA LANDING as a Condominium Regime, except for abandonment or termination provided by law, in case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; and (ii) any change in the fractional ownership interest in the common elements appurtenant to a unit.
- (e) Leases. With the exception of a lender in possession of a condominium unit following foreclosure, or any deed or other arrangement in lieu of foreclosure, no owner shall be permitted to lease his or her unit for transient or hotel purposes. No owner may lease less than the entire unit. The Association shall require that all leases of any condominium units must (i) be in writing, and (ii) provide that such leases are specifically subject in all respects to the provisions of this Declaration and By-Laws of the Association, and that any failure by the lessee to comply with the terms and conditions of such documents shall be a default under such leases. Other than the foregoing, there shall be no restriction on the right of any owner to lease his or her unit.

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- (f) Management Agreements. Any management agreement entered into by the Association will be terminable by the Association for cause upon not more than thirty (30) days' written notice, and the term of such management agreement will not exceed the period of one (1) year, renewable by agreement on the parties to such agreement for successive one (1) year periods.
- (g) Exemption From Right of First Refusal. When any first mortgagee comes into possession of a condominium unit pursuant to the remedies provided in the mortgage, such as foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure, such mortgagee shall be exempt from any "right of first refusal" or other restriction on the sale or rental of the mortgaged condominium unit which the Association might have, including, but not limited to, restrictions on the age of unit occupants and restrictions on the posting of signs pertaining to the sale or rental of the unit.
- (h) Right to Partition. No unit may be partitioned or subdivided without the prior written approval of at least the holder of the first mortgage lien on such property and the Board of Managers.

33. NOTICES. (intentionally deleted)

34. GENERAL.

- (a) The Board of Managers of the Association shall establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing information in connection with the sale of a unit and changing the ownership records of the Association ("Transfer Fee"). A Transfer Fee shall be paid to the Association or the Managing Agent of the Association, if agreed to by the Association, upon each transfer of title to a unit. The Transfer Fee shall be paid by the purchaser of the unit, unless otherwise agreed by the seller and purchaser of the unit. The Association shall also have the authority to establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing a Resale Certificate in connection with the sale of a unit. The fee for a Resale Certificate shall be paid to the Association or the Managing Agent of the Association, if agreed to by the Association. The fee for a Resale Certificate shall be in addition to, not in lieu of the Transfer Fee.
- (b) If any of the provisions of this Declaration or any Article, paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the

application of any such provision, paragraph, sentence, clause, phrase or word, in any other circumstances shall not be affected thereby.

- (c) The provisions of this Declaration shall be in addition and supplemental to the Texas Uniform Condominium Act and to all other provisions of applicable law.
- (d) That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural and/or singular, and the use of any gender shall include all genders.


Executed on the dates set forth in the attached consents, to be effective upon recording in the Condominium Records of Harris County, Texas.

CERTIFICATE

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

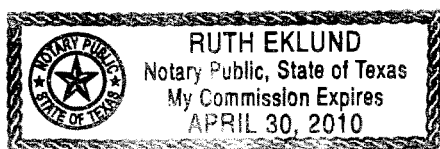
BEFORE ME, the undersigned authority, on this day personally appeared Fred J. Heidecker, known to me to be the person whose name is subscribed below, who, upon oath, did depose and state as follows:


My name is Fred J. Heidecker. I am the President of Augusta Landing Condominium Association (the "Association"). I am over the age of twenty-one (21) years, I have never been convicted of a crime and I am fully competent to make this affidavit. Attached hereto are consents executed by the owners of units in Augusta Landing Condominium Association, a condominium regime in Harris County, Texas. I certify that the attached consent forms represent the written agreement of owners representing an aggregate ownership interest of not less than eighteen (18) condominium units to amend and restate the Condominium Declaration for Augusta Landing. This certification is based upon the ownership records of the Association.


Fred J. Heidecker, President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Given under my hand and seal of office this 3 day of April, 2008.




Notary Public in and for the
State of Texas