

PROHIBITION AGAINST CONDOMINIUM CONVERSION

THIS PROHIBITION AGAINST CONDOMINIUM CONVERSION AGREEMENT (the "**Condominium Prohibition Agreement**") is made and entered into as of the date the last Party (as herein defined) signs this Condominium Prohibition Agreement, by and between [OWNER ENTITY] a [STATE] limited partnership whose address is [ADDRESS] (hereinafter called "**Owner**") and [CONTRACTOR], a [STATE] corporation, whose address is [ADDRESS] (hereinafter called "**Contractor**"). Owner and Contractor may be collectively referred to herein as the "**Parties**."

RECITALS

WHEREAS, Owner is the fee simple owner of the [NAME] Project, all as more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter collectively called the "**Property**").

WHEREAS, Contractor will construct improvements on the Property pursuant to a construction contract between Owner and Contractor (as amended, hereinafter called the "**Contract**") between Owner and Contractor.

WHEREAS, the amount which Contractor agreed to charge, and which Owner agreed to pay, under the Contract is predicated upon Owner's agreement that for a defined period of time in the future, the Owner (as such term is further defined herein) will not subdivide the Property into condominium units for sale to residential owners and/or retail owners, and in reliance on this agreement, Contractor has agreed to charge less for the work of the Contract than Contractor would have charged in the absence of such agreement.

WHEREAS, in furtherance of such agreement, Owner and Contractor have agreed to execute this Condominium Prohibition Agreement providing for the establishment and enforcement of certain restrictions relating to the future use of the Property by Owner for a period of time after the date of this Condominium Prohibition Agreement as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth in the Contract and herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Owner and Contractor hereby agree as follows:

Section 1. Prohibited Use. The Owner hereby covenants that during the Term of this Condominium Prohibition Agreement:

- (a) Owner shall not subject the Property to any Condominium Conversion and neither shall any portion of the Property be converted to Units for sale in connection with a Condominium Conversion nor shall the title to any such Units be transferred to any party.
- (b) No part of the Property will be owned or used as a cooperative housing corporation, community apartment property or stock corporation.

Section 2. INDEMNIFICATION. IN THE EVENT THAT THE PROVISIONS OF THIS CONDOMINIUM PROHIBITION AGREEMENT ARE BREACHED BY OWNER, OWNER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CONTRACTOR, AND EACH OF ITS SUBCONTRACTORS AND THEIR RESPECTIVE PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, MANAGERS, BENEFICIARIES, EMPLOYEES, AGENTS MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, INSURERS, AND SURETIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM ANY AND ALL DEMANDS, CLAIMS, ACTIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, LOSSES, LIABILITIES, ACTUAL DAMAGES, LIENS, JUDGMENTS, AND COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, COSTS OF DEFENSE, COURT OR ARBITRATION COSTS AND REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS), ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO CLAIMS OR ACTIONS MADE OR BROUGHT BY OR ON BEHALF OF ANY PERSON OR ENTITY, AND THEIR AGENTS, EMPLOYEES AND SUCCESSORS AND ASSIGNS, WHO ACQUIRE ANY OWNERSHIP INTEREST IN THE PROPERTY OR UNITS THEREOF FOLLOWING THE DATE HEREOF AND PRIOR TO THE EXPIRATION OF THE TERM, WHERE SUCH CLAIMS OR ACTIONS ARISE IN WHOLE OR IN PART OUT OF OR RELATE TO THE PHYSICAL CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY LATENT OR PATENT DEFECTS. OWNER AND CONTRACTOR INTEND THAT THE OBLIGATIONS OF THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE PROPERTY CONDITIONS OR DEFECTS AT ISSUE ARE ALLEGED TO HAVE ARISEN OR ARISE FROM, IN WHOLE OR IN PART, THE SOLE OR CONCURRENT NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES. UNTIL ANY FINAL DETERMINATION IS MADE IN ANY APPROPRIATE LEGAL PROCEEDING CHALLENGING THE OBLIGATION OF OWNER UNDER THIS SECTION, OWNER'S OBLIGATIONS UNDER ALL THE TERMS AND PROVISIONS OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT. OWNER ACKNOWLEDGES THAT IT IS A SOPHISTICATED AND EXPERIENCED OWNER OF REAL ESTATE AND HAS REVIEWED WITH ITS COUNSEL THE FULL MEANING AND AFFECT OF THE FOREGOING INDEMNITY.

Section 3. Consideration. Owner has entered into this Condominium Prohibition Agreement in consideration of Contractor's agreement to reduce the cost to Owner of constructing the Property by reducing, among other things, the cost of Contractor's general liability insurance and the amount of fee Contractor would have otherwise charged, in reliance on the terms, conditions and restrictions set forth in this Condominium Prohibition Agreement. Owner acknowledges and agrees that such consideration is adequate and sufficient for all purposes.

Section 4. Covenants Personal. The covenants, reservations and restrictions of Owner set forth in this Condominium Prohibition Agreement shall be binding solely on Owner. Notwithstanding anything to the contrary contained herein, the covenants, reservations and restrictions set forth in this Condominium Prohibition Agreement shall not be binding on any Lender or any other future owner (unless included in the definition of Owner) of the Property, or any

portion thereof. The Owner and Contractor hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall not be deemed covenants running with the land and shall not pass to and be binding upon subsequent owners of the Property not included in the definition of Owner.

Section 5. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Condominium Prohibition Agreement then Contractor or any of the Indemnified Parties may declare an **"Event of Default"** to have occurred hereunder and may take any one or more of the following steps:

- (a) by mandamus, mandatory injunction or other suit, action or proceeding at law or in equity, to require the Owner to perform its obligations and covenants hereunder including but not limited to terminating any condominium regime resulting from a Condominium Conversion or to enjoin any acts or things which may be unlawful or in violation of the rights of Contractor hereunder; or
- (b) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

Section 6. Attorneys' Fees. In the event that a party to this Condominium Prohibition Agreement brings an action against any other party to this Condominium Prohibition Agreement to construe or enforce this Condominium Prohibition Agreement, or otherwise arising out of this Condominium Prohibition Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees and expenses to be fixed by the court which shall render a judgment, as well as the costs of suit.

Section 7. Governing Law. This Condominium Prohibition Agreement shall be governed by the laws of the State of Texas.

Section 8. Severability. If any provision of this Condominium Prohibition Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

OWNER:	CONTRACTOR:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: