

[CORRECTION]

KNOW ALL MEN BY THESE PRESENTS

Correction: This document is being corrected to change the references to the addresses of the subject Property, mentioned in the second "whereas" paragraph on the first page hereof, to be 15502 through 15516 for the Phase One Plat, instead of the incorrect addresses stated in the original document. This correction document is otherwise identical to the original, confirms the original except as herein changed, and is effective the same date as the original, which was recorded under Doc. No. 2023018536.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SPYGLASS ON THE ISLAND TOWNHOMES HOMEOWNERS ASSOCIATION, INC. (this "Declaration"), is made on the date hereinafter set forth by DW LAND HOLDINGS, LLC, a Texas limited liability company, its successors and assigns ("Phase One Declarant") and KCR DEVELOPMENT PARTNERS, LLC, a Texas limited liability company, its successors and assigns ("Phase Two Declarant"). The Phase One Declarant and the Phase Two Declarant are herein collectively referred to as the "Declarant".

WHEREAS, Phase One Declarant is the owner of that certain real property more particularly described as Lot 9 & 10, Block 20, Ports O' Call, Corpus Christi, Nueces County, Texas, more particularly described and depicted on Exhibit "A" attached hereto and incorporated herein by this reference (collectively the "Initial Phase One Property") all in Ports O' Call Subdivision, a subdivision in NUECES COUNTY, Texas, according to the original plat thereof recorded in Volume 38, Pages 62-68, then re-platted as Volume 69, Pages 467-468, Map Records of Nueces County, Texas (the "Phase One Plat").

WHEREAS, Phase Two Declarant is the owner of that certain real property more particularly described as Lot One (1), Block 15, Ports O' Call, Corpus Christi, Nueces County, Texas, more particularly described and depicted on Exhibit "B" attached hereto and incorporated herein by this reference (collectively the "Initial Phase Two Property") all in Ports O' Call Subdivision, a subdivision in NUECES COUNTY, Texas, according to the map or plat thereof recorded in Volume 38, Pages 62-68, of the Map Records of Nueces County, Texas, which is intended to be re-platted soon, (when completed and filed, the "Phase Two Plat"). The Initial Phase One Property and the Initial Phase Two Property are herein collectively referred to as the "Initial Property"). The Phase One Plat and the Phase Two Plat are herein collectively referred to as the "Plat"). For clarity, the Phase One Property shall consist of the addresses 15502 through 15516; and the Phase Two Property and the Phase Three Property shall consist of addresses to be determined.

WHEREAS, as set forth below, Declarant may elect to annex additional property that

will be made subject to this Declaration, including without limitation the real property more Particularly described on attached Exhibit A and Exhibit B (the "Annexable Property"), which Annexable Property will then be part of the Development and governed by and subject to this Declaration. The Initial Property, together with any Annexable Property which is made subject to this Declaration as provided herein, is collectively referred to as the "Property."

WHEREAS, the Annexable Property, and possibly any additional property that may be annexed hereunto in the future, are a part of that one certain subdivision located in Nueces County, Texas, known as the PADRE ISLAND-CORPUS CHRISTI, PORTS O' CALL SUBDIVISION, which is covered and governed by that one certain document entitled Protective Covenants and Landowners' Agreement (the "Ports O' Call Restrictions"), which contains certain subdivision restrictions, covenants, and other applicable provisions (collectively, the "Provisions"). The Annexable Property and the Property are and will remain subject to and governed by the Provisions of the Ports O' Call Restrictions, as they may be from time to time properly amended. Any conflicts between these Restrictions and the Provisions of the Ports O' Call Restrictions shall be resolved in favor of the provisions which are more restrictive, otherwise the Ports O' Call Restrictions shall control.

WHEREAS, Declarant intends that the Property be subdivided into townhouse buildings and that certain areas, if any, be designated as common areas or elements, as herein described, and certain other areas, if any, be designated as limited common areas or elements, as herein described, such areas or elements to be owned by Declarant, its successors and assigns, and NOT in undivided interests by the owners of the said townhouse buildings, so that none of the Property and none of the said townhouse buildings will be defined as "condominiums" as that term is defined in Section 82.003(a)(8) of the Texas Property Code, such Chapter having the short title of the "Texas Uniform Condominium Act. Declarant intends by this declaration that the Property will NOT be covered by the Texas Uniform Condominium Act, and that the townhouse buildings will be single family residences with common walls between them, and that the Declarant, its successors and assigns will own any common areas and limited common areas as herein stated.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the Property and be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of Declarant, the Association and each owner thereof.

ARTICLE I ADDITIONAL DEFINITIONS

1.1 Association. "Association" shall mean and refer to SPYGLASS ON THE ISLAND

TOWNHOMES HOMEOWNERS ASSOCIATION, INC, a Texas not-for-profit corporation, its successors and assigns.

1.2 Areas of Common Responsibility. "Areas of Common Responsibility" shall mean those areas listed below, which the Association shall maintain, upkeep and repair:

- a. Any and all common areas as may be depicted on the Plat for the Development (the "Common Areas"). The Common Areas may also be referred to on the Plat as "Greenspace" or "Parkland".
- b. Any and all Common Area improvements, including, without limitation, entry way features, signage, monument signage, screening walls, irrigation systems, and lighting located within the Common Areas, including but not limited to the entry features and signage located within the Development.
- c. Any and all landscape, sanitary sewer and drainage easements, detention ponds, and right of ways, located within the Common Areas, but only to the extent same are not maintained by the City, any governmental agency or other entity.
- d. The Private Parking Lot (as defined below) as depicted on Exhibit A, in the records of Deeds and Plats of Nueces County, Texas, to the extent same are not maintained by the City, the County, any governmental agency or other entity.
- e. Any and all improvements on or adjacent to the Private Parking Lot including, without limitation, signage and lighting features.
- f. Any access gates as contemplated by Section 6.19.b. below.

1.3 Declarant, Rights, and Indemnification. The term "Declarant" shall mean the Phase One Declarant as to the Initial Phase One Property, and the Phase Two Declarant as to the Initial Phase Two Property, their respective successors and assigns, and any party to whom either shall expressly assign in writing, its rights, powers, privileges and prerogatives hereunder. Any reference to any right, duty, liability or obligation of the Declarant under this Declaration shall only refer to and be binding upon the Declarant under this Declaration at such time. As provided in Section 7.21 below, upon any release, assignment or relinquishment of any rights of either Declarant hereunder, that Declarant (in the status as Declarant) shall have no further right, duty, liability or obligation after such date. Each Declarant shall be deemed the Declarant for their respective portions of the Property (i.e., the Phase One Declarant shall be Declarant for the Initial Phase One Property, and the Phase Two Declarant shall be Declarant for the Initial Phase Two Property) and each Declarant shall, and hereby does, indemnify and hold the other harmless from and against any and all claims, damages, causes of action, costs and attorney's fees incurred as a result of or related to their status as a Declarant with respect to their relative portions of the Property. To be clear, the Phase One Declarant indemnifies the Phase

Two Declarant with respect to the Initial Phase One Property, and the Phase Two Declarant indemnifies the Phase One Declarant with respect to the Initial Phase Two Property. Either Declarant may delegate their duties as Declarant to the other; and in that regard, reserving the right to assert its rights as the Phase Two Declarant hereunder at any time, for any reason, upon written notice to the Phase One Declarant, the Phase Two Declarant delegates its duties as Phase Two Declarant to the Phase One Declarant upon execution of this Declaration, and the Phase One Declarant hereby accepts such delegation and agrees to act as the Phase Two Declarant hereunder in addition to acting as the Phase One Declarant hereunder. The Phase One Declarant can re-assign/re-delegate the Phase Two Declarant duties to the Phase Two Declarant at any time upon written notice to the Phase Two Declarant.

1.4 City. "City" shall mean the City of Corpus Christi, Texas.

1.5 County. "County" shall mean Nueces County, Texas.

1.6 Building. "Building" shall mean a townhouse building, and all appurtenances thereto, constructed on a the lots as described in Exhibit A or Exhibit B being a part of the Property, including the parking garage, if any, utilized in connection therewith and the Lot upon which the Building is located.

1.7 Lienholder. "Lienholder "or "Mortgagee" shall mean the holder of a first mortgage lien, either on any Lot.

1.8 Lot. "Lot" or "Lots" shall mean and refer to a portion of the Property designated as a Lot on the Plat of the Property, excluding open space, streets, alleys and any area of Common Responsibility. Where the context requires or indicates, the term Lot shall include the Building and all other improvements which are or will be constructed on the Lot.

1.9 Member. "Member" shall mean and refer to every person or entity that holds membership in the Association. The Declarant and each Owner shall be a Member in the Association.

1.10 Owner. "Owner" shall mean and refer to the record owner, other than Declarant, whether one or more persons or entities, of a fee simple title to any Lot and shall include any homebuilder, but shall exclude those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot which is a part of the Property, through deed in lieu of foreclosure or through judicial or non-judicial foreclosure.

ARTICLE II PROPERTY RIGHTS

2.1 Maintenance of Areas of Common Responsibility by the Declarant and the Association.

Initially, the Declarant will maintain and improve the Areas of Common Responsibility in a manner determined solely by the Declarant to enhance the overall appearance of the Development at any time and at the Declarant's sole discretion, the Declarant can assign the maintenance of the Areas of Common Responsibility to the Association. Upon the assignment of the Areas of Common Responsibility to the Association, the Declarant will be released and the Association will be solely obligated to maintain and improve the Areas of Common Responsibility in a prudent manner to enhance the safety, security and overall appearance of the Development. As such, the Declarant and Association shall not, except as the Declarant or Association may reasonably deem appropriate to comply with applicable laws or to protect the health, safety or welfare of the Development or the Members, cause any buildings or permanent structures to be constructed within the Areas of Common Responsibility which are not present at the time an area of Common Responsibility is deeded to the Association. The Declarant or Association shall have the following rights with regard to the Areas of Common Responsibility:

- a. the right to dedicate or transfer all or any part of the Areas of Common Responsibility to any public agency or authority subject to such conditions as may be agreed to by the Members as provided below. No such dedication or transfer shall be effective unless (a) a written notice of proposed action under this Section is sent to every Owner not less than fifteen (15) days, nor more than thirty (30) days in advance of said action; (b) an instrument of agreement is executed by Members holding at least sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to Section 3.2 hereof) at a meeting of Members at which a quorum is present; (c) said instrument of agreement is properly recorded in the Real Property Records of the County; and (d) the public agency or authority consents in writing to the dedication or transfer. Notwithstanding the foregoing, as long as Declarant is a Class B Member pursuant to Section 3.2 hereof, Declarant shall have the right to dedicate or transfer, or cause the owner of the particular Area of Common Responsibility to dedicate or transfer, all or any part of the Areas of Common Responsibility to any public agency or authority, and on such conditions as the Declarant may determine, without the consent or approval of any other party or Member;
- b. the right to borrow money to be secured by a lien against the Areas of Common Responsibility; however, the rights under such improvement mortgage shall be subordinate and inferior to the rights of the Owners hereunder;
- c. the right to enter upon and make rules and regulations relating to the use of the Areas of Common Responsibility and the right to enter upon any access, maintenance or other easements or other area of the Property, including any Lot, for the purposes of maintaining the Areas of Common Responsibility; and
- d. the right to enter into agreements with third parties regarding the use, improvement, maintenance, restriction, and funding of the costs regarding the

THE AREAS OF COMMON RESPONSIBILITY OR ANY IMPROVEMENTS THEREIN OR THERETO, OR (H) ANY OTHER MATTER WITH RESPECT TO THE AREAS OF COMMON RESPONSIBILITY. IF THE ASSOCIATION OR ANY OWNER REQUESTS ANY INFORMATION WITH RESPECT TO THE AREAS OF COMMON RESPONSIBILITY, THE ASSOCIATION OR OWNER SHALL ACKNOWLEDGE THAT SUCH INFORMATION SHALL NOT HAVE BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY DECLARANT AND THAT THE ASSOCIATION OR OWNER MUST RELY ON ITS OWN INDEPENDENTLY INVESTIGATION OR VERIFICATION OF SUCH INFORMATION. DECLARANT SHALL MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, AND DECLARANT SHALL NOT BE LIABLE OR BOUND IN ANY MANNER OR ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS, PLATS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE AREAS OF COMMON RESPONSIBILITY, OR THE OPERATION THEREOF, FURNISHED TO THE ASSOCIATION OR AN OWNER BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATIONS, REAL ESTATE BROKERS OR AGENTS.

The Association shall and hereby does agree to indemnify and hold harmless Declarant from and against all liability, damages, suits, actions, costs and expenses of whatsoever nature (including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Association or any of the Owners upon or within the Areas of Common Responsibility.

ARTICLE III ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. The Association shall have Members. Any person or entity, on becoming an Owner, will automatically become a Member of the Association. The rights of the Members in the Association shall be determined as provided in this Declaration and the Bylaws of the Association, and, except as provided in this Declaration, such Bylaws shall define the voting rights, powers and privileges of the Members. In the event of a conflict or inconsistency between this Declaration and the Bylaws, this Declaration shall control.

3.2 Voting Rights. The Association shall have two classes of voting membership.

- a. Class "A". Members shall be all Owners of Property subject to the Declaration, other than Declarant. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Each Class "A" Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. In the event that Members jointly entitled to cast

one (1) vote do not agree as to how their vote is to be cast, their vote shall be void and of no effect. Notwithstanding anything to the contrary set forth in this Declaration, until such time the Building is completed on a Lot (which shall be evidenced by a certificate of occupancy for the Building) the vote attributed to such Lot shall be suspended and not be included for any purposes under this Declaration, and the Owner(s) of the Lot shall not be entitled to a vote with respect to such Lot.

- b. Class "B". Member shall be Declarant. The Class "B" Member shall be entitled to ten (10) votes for each Lot it owns. Declarant shall cease to be a Class "B" Member and shall automatically become a Class "A" Member on the happening of any of the following events:
 - (1) When, that Declarant, in its sole and absolute discretion, may elect to convert to a Class "A" Member; or
 - (2) The expiration of ten (10) years from the recording date of the Declaration in the Real Property Records the County.

3.3 No Cumulative Voting. No Member of the Association shall have the right of cumulative voting at any election of Directors or upon any other matter.

3.4 Association Powers. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint, in accordance with the Articles and the By-laws. The Board of Directors shall have the powers granted in this Declaration, the Articles, the By-laws, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein. In addition to the rights of the Association set forth in other sections of this Declaration, and subject to the applicable provisions of the Texas Business Organizations Code ("TBOC"), the Board of Directors of the Association, acting on behalf of the Association, shall have all power allowed by the law of Texas to be exercised by nonprofit corporations, including, without limitation:

- a. the power and responsibility to maintain and administer the Areas of Common Responsibility and any additional properties which may come within the jurisdiction of the Association;
- b. to administer and enforce this Declaration and any other covenants restrictions filed of record in the Real Property Records of the County and encumbering the Property;
- c. to collect and disburse the Assessments and charges thereof;
- d. to similarly deal with all additional properties which may come within the

jurisdiction of the Association by annexation or otherwise, and all other property, real, personal and mixed, which the Association may acquire;

- e. to make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association;
- f. to keep books and records of all Association's affairs, and to make such books and records, together with current copies of this Declaration available for inspection by the Owners and Mortgagees, upon request during normal business hours; and
- g. the power and authority from time to time, in its own name and on its own behalf or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin and breach or threatened breach of this Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Declaration.

ARTICLE IV ASSESSMENTS MAINTENANCE FUND AND ASSESSMENT LIENS

4.1 Creation of the lien and Personal Obligation of Assessments. Each Owner of an Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (i) annual assessments or charges, (ii) charges in connection with the transfer of a Lot, and (iii) special assessments for capital improvements or other costs or expenses incurred or anticipated to be incurred by the Association. Such assessments (an "Assessment" and collectively, the "Assessments") are to be fixed, established and collected as provided herein. Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be secured by a continuing lien which is hereby created and impressed for the benefit of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest costs and reasonable attorney's fees shall also constitute a personal obligation of the person or entity that was the record Owner of such Lot at the time of the Assessment. The personal obligation for delinquent Assessments, together with interest and costs of collection, shall not pass to successors in title unless expressly assumed by such successors; however, the lien upon the Lot shall continue until paid.

4.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners

of the Lots, the improvement and maintenance of the Areas of Common Responsibility and any other property owned by the Association, and the performance and/or exercise of the rights and obligations of the Association arising hereunder. Assessments shall include, but not be limited to, funds to cover actual Association costs (including reasonable reserves) for all taxes, insurance, repair, replacement, maintenance and other activities as may from time to time be authorized by the Board of Directors or be required to be performed by the terms of this Declaration; legal and accounting fees, and any fees for management services; expenses in complying with any laws, ordinances or governmental requirements applicable to the Association, the Areas of Common Responsibility or the Property; reasonable replacement reserves and the cost of other facilities and service activities, including, but not limited to, mowing grass, grounds care, sprinkler system, landscaping, and other charges required or contemplated by this Declaration and/or that which the Board of Directors of the Association shall determine to be necessary to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein.

4.3 Basis and Maximum of Annual Assessments and Community Enhancement Fees on the Sale of Lots.

- a. Upon the recording of this Declaration, the regular maximum annual Assessment shall be an amount not to exceed \$1,800.00 per Lot, subject to increase pursuant to the terms of Section 4.3(b) below.
- b. From and after January 1 of the first full year after the date of recordation of this Declaration and each year thereafter, the maximum regular annual Assessment may be increased by an amount up to ten percent (10%) over the preceding year's regular annual Assessment solely by the Board of Directors of the Association. Any increase over and above 10% of the previous year's regular annual Assessment shall be done only upon prior written approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to Section 3.2 hereof) held by the Members at a meeting at which a quorum is present.
- c. In addition to the regular annual Assessment, as a condition to the sale of every Lot, every purchaser and seller (other than the Declarant) shall be assessed a community enhancement fee of \$100.00 that shall be paid by each seller and purchaser at every closing of such sale (the "Community Enhancement Fee"), provided that if there are multiple sellers or purchasers in a particular transaction, such multi-party seller and/or multi-party purchaser shall each only be assessed one (1) Community Enhancement Fee. The Community Enhancement Fee shall be for the sole benefit of the Association. Upon the fifth anniversary of the recording of this Declaration, the Community Enhancement Fee that will be payable at every closing by every purchaser and seller (other than Declarant), shall be the greater of \$100.00 or .15% of the sales price of the Lot. By way of

example, if the Lot sells for \$100,000.00, the Community Enhancement Fee that will be paid by the seller and purchaser at closing shall be \$150.00 by each party. For purposes of this Section 4.3©, a "closing" shall occur upon any delivery and acceptance of a deed conveying an interest in a Lot.

4.4 Special Assessments. In addition to the regular annual Assessment and the Community Enhancement Fee, the Association may levy, in any assessment year, a special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs incurred by the Association pursuant to the provisions of this Declaration, provided that any such Assessment shall have the prior written approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to Section 3.2 hereof) held by the Members at a meeting at which a quorum is present. Any special Assessments shall be prorated based on the period of time the Owner owns the Lot during such year.

4.5 Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered by the Secretary of Assistant Secretary of the Association not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears in the records of the Association, with postage thereon prepaid. Business transacted at any special meeting shall be confined to the purposes stated in the notice or waiver thereof. The holders of one-tenth (1/10) of the votes of each class of membership, represented in person or by proxy, shall constitute a quorum for any meetings of Members. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, except that such reduction in the quorum requirement shall not be applicable if the subsequent meeting is held more than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both the regular annual and special Assessment shall be fixed at a uniform rate for all Lots, and shall commence and be due in accordance with the provisions of Section 4. 7 hereof, Each Owner (other than Declarant), shall pay one hundred percent (100%) of the established Assessment for each Lot he or it owns.

4.7 Date of Commencement of Annual Assessments; Due Dates.

- a. The obligation to pay regular annual Assessments provided for herein shall commence no earlier than the date this Declaration is recorded. Assessments shall then be due on such payment dates as may be established by the Association.
- b. Declarant shall not be required to pay Assessments of any type levied against Lots owned by Declarant. Notwithstanding anything to the contrary herein, at any time

before Declarant is converted to a Class "A" Member, Declarant may, at its sole option and without obligation to do so, loan funds to the Association to cover an actual or anticipated deficiency arising from maintenance or other costs in excess of Assessments collected or anticipated to be collected by the Association, the payment of which may be secured against the Common Areas or other assets of the Association. Any such Declarant loan (i) may be evidenced by written instruments customarily associated with loans of this type, such as promissory notes, deeds of trust, conditional assignment of Assessments, and other security agreements; and (ii) provide for commercially reasonable rates of interest, not to exceed ten percent (10%) per annum. The payment of a subsidy or making of a loan in any given year will not obligate Declarant to continue payment of a subsidy or make a loan to the Association in future years.

- c. Unless provided above, the annual Assessments for the first Assessment year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first Assessment year, the Association shall fix the amount of the annual Assessment at least thirty days in advance of each Assessment year, which shall be the calendar year; provided, however, that the Association shall have the right to adjust the regular annual Assessment upon thirty days written notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted pursuant to Section 4.3 hereof. Written notice of the regular annual Assessment shall be given as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed either by the President, Vice President or the Treasurer of the Association or the Association's managing agent setting forth whether the annual and special Assessments on a specified Lot have been paid and the amount of any delinquency. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- d. No Owner may exempt himself from liability for Assessments by waiver of the use or enjoyment of any portion of the Development or Areas of Common Responsibility or by abandonment of their Lot.
- e. Notwithstanding anything to the contrary set forth in this Declaration, no Assessments shall be due with respect to a Lot until completion of a Building on the Lot.

4.8 Effect of Non-Payment of Assessments; Remedies of the Association.

- a. All payments of the Assessments shall be made to the Association at its principal place of business or at such other place as the Association may otherwise direct or permit. Payment shall be made in full regardless of whether any Owner has any

dispute with Declarant, the Association, any other Owner or any other person or entity regarding any matter to which this Declaration relates or pertains. Payment of the Assessments shall be both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

- b. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the date of delinquency, the Assessment shall bear interest from the date of delinquency (with no notice required to be given), until paid, at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is the lesser. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or, upon compliance with the notice provisions hereof, foreclose the lien against the Lot as provided in Subsection 4.8(d) hereof. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include said interest and a reasonable attorney's fees and court costs. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity foreclosing such lien against such Owner, and the expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default. Under no circumstances, however, shall Declarant or the Association be liable to any Owner or to any other person or entity for failure or inability to enforce any Assessments.
- c. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided in less than thirty (30) days after the date a notice of claim of lien is deposited with the postal authority, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of the County; said notice of claim must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid Assessment at the maximum legal rate, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association.
- d. Any such sale provided for above is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Property Code of the State of Texas (as it may be amended from time to time), or in any other manner permitted by law. The Association may appoint a trustee to administer and conduct such sale by a written instrument signed by an officer of the Association, provided there shall be no requirement for the Association to record any such instrument in the real

property records of the County. Each Owner, by accepting a deed to a Lot, expressly grants to the Association a power of sale through non-judicial foreclosure as set forth in said Section 51.002 of the Property Code, in connection with the Assessment lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

- e. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a FCC, to be determined by the Association but not to exceed the actual cost of preparing and filing or recording the lien and the release, including attorney's fees. The Assessment lien and the right to non-judicial foreclosure sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including the right of suit to recover a money judgment for unpaid Assessments and/or a suit for judicial foreclosure, as above provided.

4.9 Subordination of Lien to First Mortgages. The lien securing the Assessments provided for herein shall be expressly subordinate to the lien of any first lien mortgage on any Lot. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot, pursuant to a decree of foreclosure or a non-judicial foreclosure under a first lien mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to amounts thereof which became due prior to such sale or transfer. No sale or transfer shall relieve the new Lot Owner from liability for any Assessment thereafter becoming due, in accordance with the terms herein provided, or relieve a former Owner from personal liability for any Assessment accruing prior to such sale or transfer.

4.10 Management Agreements. The Association shall be authorized to enter into management agreements with third parties in connection with the operation and management of the development and the performance of its obligations hereunder. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled with or without cause and without penalty by either party with thirty (30) days written notice. Any and all management agreements shall be for a term not to exceed one year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type. The Association may, at its discretion, assume self-management of the Development by the Association.

4.11 Insurance Requirements. The Association shall obtain insurance policies covering the Areas of Common Responsibility covering all damage or injury caused by the negligence of the Association, any of its employees, officers, directors and/or agents, including, but not limited

to, commercial general liability insurance, directors and officers liability insurance, and such other insurance as the Association may from time to time deem necessary or appropriate.

4.12 Independent Accounting Firm Review. The Association shall have its income and expense statements, balance sheets and other books and records reviewed by an independent accounting firm annually (beginning the first full calendar year that new Lots are sold), such review to be performed within 90 days following the end of the Association's fiscal year. The review shall be performed in accordance with guidelines established by the American Institute of Certified Public Accountants.

4.13 Areas of Common Responsibility Exempt. All Areas of Common Responsibility, and all portions of the Property owned by or otherwise dedicated to any political subdivision, shall be exempted from the Assessments and liens created herein.

ARTICLE V ARCHITECTURAL REVIEW COMMITTEE

5.1 Appointment of Members. The Declarant shall appoint an Architectural Control Committee (the "Committee"), which shall consist of three members who shall be natural persons and may be employed by Declarant. All matters before the Committee shall be decided by majority vote of its members. Upon the earlier of (a) termination of Declarant as a Class B Member under Section 3 .2.b above or (b) execution of a written instrument by Declarant expressly stating that it has released its rights to appoint the members of the Committee under this Section 5.1, the members of the Committee shall thereafter be appointed, terminated and/or replaced by the Board of Directors. In the event of death, incapacity, or resignation of a member of the Committee, the successor for such member shall be appointed by the majority of the remaining members of the Committee, or by the Declarant if before termination or release of Declarant's rights as provided above, or by the Board of Directors if after such termination or release.

5.2 Submission of Plans to Architectural Control Committee. No building, fence, wall, parking area, swimming pool, spa, pole, mail box, exterior door hardware (excluding the internal locking mechanism of such hardware), driveway, fountain, pond, tennis court, sign, exterior color or shape, or new or modification of a structure shall be commenced, erected or maintained upon any Lot or the patio or garage used in connection with any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same are submitted to and approved by the Committee. Plans and specification shall be submitted to the Committee at least thirty (30) days prior to the commencement of any construction or modification. The following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, and floor plan and elevations of all faces of the proposed structure; and a description of all exterior construction materials. A copy of the above described plans and specifications may be retained by Declarant and/or the Association.

5.3 Approval of Plans. The Committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specifications within thirty (30) days after the same has been submitted to it, they will be deemed to have been approved by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons therefor. The judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and the Owner shall promptly collect the plans and specifications (if disapproved) and resubmit them for approval. No construction, alteration, change or modification shall commence until approval of the Committee is obtained. The Committee may approve any deviation from these covenants and restrictions as the Committee, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the Committee's denial or approval of any plans, specifications or deviations submitted by an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Approval by the Committee of the plans and specifications or its determination that the completed construction or modification has been constructed in accordance with the plans and specifications shall be deemed to be an acknowledgment by the Committee that such are in accordance with this Declaration and such acknowledgment shall be binding against the Owners of the Lots and the Property.

5.4 Committee Members' Liability. Neither the Declarant, the Association, the Board of Directors, the Committee, nor any employees, officers, directors or members of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Any errors in or omissions from plans or from the site plan submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, City codes, County codes, state statutes or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

5.5 Homebuilder Plans. Notwithstanding anything to the contrary contained herein once a particular set of plans and specifications submitted by a homebuilder (which for purposes of this Declaration shall be defined as any entity or person in the business of constructing Buildings for the purpose of sale to third parties) has been approved by the Committee or deemed approved, such homebuilder may construct Buildings in the Development on any Lot in accordance with such plans and specifications without the necessity of obtaining subsequent approvals therefor, as long as there are no material changes in the plans and specifications. Notwithstanding the foregoing, the Committee shall continue to have the right to approve the location of individual Building exterior plans and elevations on each Lot to prevent unnecessary duplication thereof

within the Development, if desired.

5.6 Design Guidelines. The Committee has the right to issue Design Guidelines from time to time which will contain the specific provisions applicable to all of the Lots regarding style, basic site design issues, aesthetics of each Building, the use of quality exterior finish materials and minimum landscaping plans for the Buildings. The Design Guidelines will be used by the Committee with the Declaration to determine the approval of all plans.

5.7 General Compliance. In addition to the terms of this Declaration, the Property will also be subject to any additional covenants, conditions, restrictions, and easements filed of record in the Official Public Records of Bexar County, Texas. Ordinances, requirements and regulations imposed by applicable governmental and quasi-governmental authorities are also applicable to all Lots within the Development, including but not limited to the Deed. Compliance with this Declaration and any Design Guidelines is not a substitute for compliance with such ordinances, requirements and regulations. Please be advised that neither this Declaration nor any Design Guidelines purport to list or describe each restriction that may be applicable to a Lot located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans for approval.

5.8 No Approval Required. Committee approval is not required for (i) any improvements constructed, erected, altered, added onto, or repaired by Declarant; (ii) any improvements to the interior of a Building, except as provided herein; (iii) the painting or re-bricking of the exterior of the Building in accordance with the same color or design as originally constructed by Declarant or in accordance with the approved color and design scheme approved by the Committee; (iv) improvements for which the Declaration expressly states that the Committee's prior approval is not required; or (v) repair or replacement of worn out or damaged improvements if such repair or replacement is with substantially similar materials. Any improvement pursuant to clauses (iii) and (v) immediately preceding must be in compliance with any applicable Design Guidelines. In addition, the Declarant shall be allowed to conduct the business of the Developer and the business of the Association, during the Development Period as determined by the Declarant in its sole discretion, including but not limited to action by the President of the Declarant only, where allowed by applicable law, including the ability for the President to act in lieu of a Committee during the Development Period.

ARTICLE VI CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

6.1 Residential Use. The Property shall be used for single-family residential purposes only.

6.2 Single Family Use. Each shall be limited to occupancy by only one family consisting of persons related by blood, adoption or marriage or no more than two unrelated persons residing together as a single housekeeping unit, in addition to any household or personal servant staff.

6.3 Garage Required. Each Lot shall have an enclosed garage suitable for parking a minimum of one standard size automobile, which garage shall conform in design and materials with the main structure.

6.4 Restrictions on Re-subdivision. No Lot shall be subdivided into smaller Lots.

6.5 Driveways. All driveways shall be surfaced with concrete or similar substance approved by the Committee.

6.6 Burglar Bars. No bars or obstructions intended for use as burglar bars or sold as devices intended to prohibit forced entry into a residence may be placed on the exterior of Building, including but not limited to windows and doors.

6.7 Uses Specifically Prohibited.

- a. No temporary dwelling shop, trailer or mobile units of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which may be placed on a Lot only in places which are not visible from any street on which the Lot fronts) shall be permitted on any Lot except that the builder or contractor may have, with the prior written consent of the Committee, temporary improvements (such as a sales office and/or construction trailer) on a specifically permitted Lot. Declarant may have construction or sales trailers or other temporary structures as Declarant determines to be necessary or convenient for Declarant's activities. No building material of any kind or character shall be placed or stored upon the Property until construction is ready to commence, and then such material shall be placed totally within the property lines of the Lot upon which the improvements are to be erected.
- b. No boat, marine craft, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor units, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Property, nor shall any such vehicle or equipment be parked for storage in the side or rear yard of any Lot unless properly concealed from public view. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked while in use for the construction, maintenance or repair of a residence in the Development. Notwithstanding the above, Owners or their invitees shall be allowed to park no more than one (1) boat, jet-ski trailer, or similar water craft ("Watercraft") in one parking space per residence on the Property, in addition to the vehicles. Additional Watercraft may be parked on the Property for no more than three (3) consecutive days, with the Board's prior written consent, which may be withheld for any reason in the

Board's discretion. Temporary parking on the Property of any Watercraft or vehicles that are not owned by any owner or current occupant shall be prohibited.

- c. Trucks with tonnage in excess of one and one-half (1.5) tons and any commercial vehicle with painted advertisement shall not be permitted to park overnight on the Property except those used by Declarant or a builder or contractor during the construction of improvements.
- d. No vehicle of any size which transports flammable or explosive cargo may be kept on the Property at any time.
- e. No motorized vehicle or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (including those with attached bed campers) that are in operating condition and have current license plates and inspection stickers and are in current use.
- f. No structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure or other out-building shall be used on the Property at any time as a dwelling house; provided, however, that Declarant or any builder or contractor may maintain and occupy model houses, sales offices and construction trailers during the construction period, but not as a residence.
- g. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in my part of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.
- h. No animals, livestock or poultry of any land shall be raised, bred or kept on the Property except that dogs, cats or other qualified animals may be kept as household pets. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the Property cows, horses, bees, hogs, sheep, goats, guinea, fowls, ducks, chickens, turkeys, skunks, reptiles, exotic animals or any other animals that may interfere with the peace and quiet and health and safety of the community. No more than four pets will be permitted on each Lot. Pets must be restrained or confined to the Owner's rear yard within a secure fenced area or within the Lots. It is the pet owner's responsibility to keep the Lot clean and free of pet debris or odor noxious to adjoining Lots. All animals must be properly registered and tagged for identification in accordance with local ordinances.

- i. No Lot or other area of the Property shall be used as a dumping ground for rubbish or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and furniture. Trash, garbage or other waste shall be kept in sanitary containers stored out of public view except on designated trash collection days. All containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may only be stored on Lots during construction of the improvement thereon.
- j. No individual water supply system shall be permitted on any Lot.
- k. No individual sewage disposal system shall be permitted on any Lot.
- l. No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a Lot.
- m. No air-conditioning apparatus shall be installed on the ground in front of a Building. No air-conditioning apparatus shall be attached to any front wall or any window of a Building. No evaporative cooler shall be installed on the front wall or any window of a Building.
- n. Except with the written permission of the Committee or as preempted by the FCC or other governmental agency, no antennas, satellite dishes or other equipment for receiving or sending sound or video signals shall be permitted in or on the Property except antennas for AM or FM radio reception and UHF and VHF television reception, except that one satellite dish or similar antenna that must be no greater than one (1) meter in diameter and must be placed in the least conspicuous location on the Lot where an acceptable quality signal can be received as long as it is completely screened from view from any adjacent street or other public area, and in no event may any such dish or antenna be placed on the roof of a Building.
- o. No Lot or improvement thereon shall be used for a business, professional, commercial or manufacturing purposes of any kind for any length of time. No business activity shall be conducted on the Property which is not consistent with single family residential purposes. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit Declarant's or a builder's temporary use of a residence as a sales/construction office for as long as, in the case of a builder, such builder is actively engaged in construction on the Property. Nothing in this subparagraph

shall prohibit an Owner's use of a residence for quiet, inoffensive Lots-based business activities such as tutoring, giving art lessons or music lessons as long as such activities do not materially increase the number of cars parked on the street or interfere with adjoining Owners' peaceful use and enjoyment of their residences and yards.

- p. No fence, wall, hedge or shrub planting which obstructs sight lines at an elevation between three and six feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area fanned by the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within an area that is ten feet from the intersection of a street right-of-way with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a minimum run height of six feet above the adjacent ground line.
- q. Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected on the Property.
- r. Within those easements on each Lot as designated on the Plat of the Development, no improvement, structure, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water through drainage channels. The general grading slope and drainage plan of a Lot as established by the Declarant's approved development plans may not be altered without the approval of Declarant and the City and/or other appropriate agencies having authority to grant such approval.
- s. Only one professionally fabricated "for-sale" or "for-lease" sign of not more than five square feet shall be temporarily displayed to the public view on any Lot or from any Lot. All such signs shall be maintained in good condition and repair, with a neat and orderly appearance, and shall comply with all applicable local ordinances and state or federal laws and regulations. Declarant - the Association shall have the right, without notice, to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. The failure to comply with this restriction will also subject any Owner to a fine of Two Hundred Fifty and No/100 Dollars (\$250.00) per day (to be collected by Declarant) for each day that such Owner fails to comply with this

restriction. The non-payment of such fine can result in a lien against said Lot, which lien may be foreclosed on in accordance with the terms set forth in this Declaration. The restriction on signage in this Section 6.7(s) shall not apply to Declarant. No other sign, advertisement, billboard, or advertising structure of any kind (excluding any political signs endorsing a candidate or ballot item) may be erected or maintained on a Lot or within the Property as a whole, except as specifically provided herein. Any political signs placed on a Lot may be erected no earlier than 90 days before the election and must be removed no later than 10 days after the election.

- t. Outdoor clothes lines and drying racks visible to adjacent Lots are prohibited. Owners or residents of Lots where the rear yard is not screened by solid fencing or other such enclosures, shall construct a drying yard or other suitable enclosure or screening to shield from public view clothes drying racks, yard maintenance equipment and/or storage of materials.
- u. Except within fireplaces in the main residential dwelling and equipment for outdoor cooking, no burning of anything shall be permitted anywhere on the Property.
- v. Patio covers are not allowed, except as approved and permitted as part of the original construction of a Building, unless the patio covers are otherwise approved by the ACC. To obtain approval of the patio covers, please follow the process as outlined in the requirements for submitting requests to the ACC.
- w. Car ports of any kind are not allowed.
- x. Basketball goals/hoops and other athletic equipment may be used, subject to ACC approval, but are subject to the following restrictions below. The restrictions for athletic equipment are as follows:
 - i. Athletic equipment must not block common areas or sidewalks and must not be permanently stored in a location that blocks the flow of traffic.
 - ii. To prevent unsightly conditions, portable basketball hoops should be stored out of sight from the street when not currently in use. If moving the hoop for storage between uses is impractical, then it may be left in place, but subject to the conditions in this section regarding athletic equipment.
 - iii. Visible basketball goals or other equipment (e.g. soccer goals) must be mechanically sound, clean, and well maintained. Owners may not permit visible hoops to become an unsafe or unsightly nuisance, and the Board,

in its sole judgment, may require the removal of such hoops.

- iv. Players or balls/ other athletic equipment must not damage the surrounding landscape, structures, vehicles, or signage in common areas or other owners' property.
- v. Athletic equipment is permitted in common areas only with prior written permission from the Association. Unauthorized hoops are subject to removal and disposal by the Association, with costs charged to owners
- vi. Non-portable goals are equipment, like any other exterior change are subject to advance written approval of the architectural control committee. Hoops erected without prior approval might not be approved by the ACC; Owners could be required to remove unapproved hoops, and may be subject to fines.

IF AN OWNER RECEIVES PERMISSION TO USE ATHLETIC EQUIPMENT ON ANY PROPERTY, THE ASSOCIATION SHALL NOT BE HELD LIABLE IN THE EVENT THAT AN INJURY IS SUSTAINED FROM SUCH USE OF APPROVED ATHLETIC EQUIPMENT. EACH OWNER USES ATHLETIC EQUIPMENT AT HIS OR HER OWN RISK.

- y. No aluminum foil, reflective film, newspaper, or similar treatment shall be placed on any windows or glass doors.

6.8 Minimum Floor Area. The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls (but exclusive of open porches, garages, patios and detached accessory buildings), shall not be less than Nine Hundred (900) square feet, or the minimum floor area as specified by the City, whichever is greater.

6.9 Building Materials. The total exterior wall area (excluding windows, doors and gables of each residence constructed on a Lot) shall not be less than the minimum percentage as established by the City and/or County by ordinance or building code requirement of brick, black veneer, stone, stone veneer, stucco, cement plank, fiber cement siding, or other masonry material approved by the Committee.

6.10 Setback Requirements. No dwelling shall be located on any Lot nearer to the front lot line or nearer to the side lot line than the minimum setback lines shown on the Deed or as required by the City.

6.11 Waiver of Setback Requirements. With the written approval of the Committee and subject to plat and zoning restrictions, any building may be located further back from the front

property line of a Lot than provided above, where, in the sole discretion of the Committee, the proposed location of the building will enhance the value and appearance of the Lot and will not negatively impact the appearance of adjoining Lots.

6.12 Fences and Walls. All fences and walls shall be constructed of masonry, brick, wood or other material approved by the Committee. No fence or wall on any Lot shall extend nearer to any street than the front of the residence thereon. Except as otherwise specifically approved by the Committee, all streetside side yard fencing on corner Lots shall be set no closer to the abutting side street than the property line of such Lot. In addition to limitations set forth in Section 6. 7 (p) hereof, no portion of any fence on a Lot shall exceed eight (8) feet in height. Any fence or portion thereof that faces a public street shall be constructed so that all structural members and, unless the Committee determines otherwise, support posts will be on the side of the fence away from the street and are not visible from any public right-of-way. The appearance of all fences on a Lot shall be uniform.

6.13 Sidewalks. All walkways along public right-of-ways shall conform to the minimum property standards of the City, FHA and VA.

6.14 Mailboxes. Mailboxes shall be standardized and shall be constructed of a material and design approved by the Committee (unless gang-boxes are required by the U.S. Postal Service).

6.15 Windows. Windows, jambs and mullions shall be composed of anodized aluminum or wood. All front elevation windows shall have baked-on painted aluminum windows (no mill finish).

6.16 General Maintenance of Lots. Following occupancy of the Lot, each Owner shall maintain and care for the water, electricity, telephone, satellite, cable television, telecommunications, sewer, heating, ventilation, and/or air conditioning, lines, pipes, and/or equipment serving only that Owner's Lots, fireplaces, foundations, slabs, roofs, patios, patio covers, fences, gutters, downspouts, exterior doors, exterior door hardware, exterior door frames, exterior lighting, exterior windows, exterior window frames, exterior walls and surfaces, chimneys, column, beams, girders, and/or other structural or load-bearing components of residential dwelling merits, interior walls, ceilings, floor coverings, window treatments, backyard (other than structural items) and all improvements on the Lot (except for those Areas of Common Responsibility, if any, which the Association shall maintain as set forth in Section 1.2 above), including regular mowing and edging of lawn, vegetation and grass areas in the backyard, and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, the Declarant or the Association, or either of them, at its option and discretion, but without any obligation to do so, but only after 15 days written notice to such Owner to comply herewith, may enter upon such Owner's Lot and undertake to maintain, mow, edge and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented

with an itemized statement, to reimburse said Declarant and/or Association for the cost of such work within ten days after presentment of such statement. This provision, however, shall in no manner be construed to create a lien in favor of any party on any Lot for the cost or charge of such work or the reimbursement for such work.

6.17 No Alteration of Areas of Common Responsibility. No Owner shall do any act or any work that will impair the structural soundness or integrity of the Areas of Common Responsibility. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the Areas of Common Responsibility

6.18 Seasonal Lighting. Seasonal lighting, such as Christmas-type lights, shall be permitted beginning on Thanksgiving Day of each year, and provided further that such lights must be removed by January 15 of each year.

6.19 Private Parking Lot. The parking lot, curb cuts, and driveways within the Property (collectively, the "Private Parking Lot") are private, are part of the Area of Common Responsibility and shall be owned and maintained by the Association. Vehicular access to the Property will be through controlled entry gates. The Association may make rules governing access to the Property and the use (including parking, parking spaces, cross-walks, and speed limits) of the Private Parking Lot.

- a. Unless Declarant agrees in writing to the contrary, after the gates to the Property are installed, the gate(s) shall remain open to the public each day from 7:00 a.m. through 6:00p.m. (or during daylight savings time, 7:00p.m.), for at least six (6) months after Declarant ceases to be a Class B Member.
- b. Each Owner is notified that the Private Parking Lot within the Property is not a public area, but is a private parking lot. The Association, and not any governmental entity, must maintain, repair and if necessary, replace the Private Parking Lot. The cost of such maintenance, repair and/or replacement shall be included within the Assessments for each Lot.
- c. The Association may make reasonable rules and regulations, and may prescribe fines and penalties, as it determines reasonable and necessary, in order to promote safety within the Property, including without limitation, establishing rules for parking, driving, and other uses of the Private Parking Lot. Imposition of fines and suspensions of rights to use the Private Parking Lot shall be in accordance with the requirements of applicable law.
- d. Declarant hereby reserves unto itself, its agents, employees, successors, and assigns a perpetual nonexclusive easement over the Private Parking Lot for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Development and for performing

any other work within the Development which Declarant deems reasonably necessary, in its discretion, or which Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Development.

6.20 Solar Energy Systems.

- a. **Shading Restrictions.** The provisions of this Section 6.20 are referred to as the "Shading Restrictions". In connection with the residential development of the Lots, Declarant may offer fixed devices, structures or devices or structures that are used primarily to transform solar energy into thermal, chemical or electrical energy including roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices that collect solar energy and generate energy by exposure to the sun ("Solar Energy Systems"). The generation of energy will be reduced or even eliminated if trees, shrubs other landscaping, structures or other improvements are allowed to cause shading of the Solar Energy Systems. Therefore, for optimal operation and efficiency it is essential that the Solar Energy Systems have direct access to sunlight. To ensure optimal operation of the Solar Energy Systems, Declarant desires to set forth herein certain restrictions relating to the Solar Energy Systems and restrictions on obstruction to the Solar Energy Systems. Subject to Section 6.20.b., neither the Association nor any Owner shall allow any improvement(s) to be installed or maintained within the Property, which cast or may at any time in the future cast a shadow over greater than ten percent (10%) of a solar collector absorption area upon the solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local standard time ("Prohibited Shading"). Before constructing or installing any improvements on a Lot or any Common Area, the Owner, or the Association as the case may be, shall ensure all improvements comply with the Shading Restrictions. In addition, each Owner shall comply with the architectural review and other requirements set forth in the Declaration and the requirements set forth in Section 6.21 below. All Owners and the Association must consider the height at maturity of all trees, shrubs and other landscaping and the location and the height of all improvements installed on their respective Lots, in order to prevent Prohibited Shading of any Solar Energy Systems. Each Owner and the Association shall not permit the planting of any tree or other landscaping on any portion of the Property, that, at its generally-accepted mature height, will likely cause Prohibited Shading whether the Solar Energy Systems are located on the Owner's Lot or on a neighboring Lot.
- b. **Application of Restrictions.** The Shading Restrictions shall not apply to improvements that were installed or constructed by an Owner in compliance with the Shading Restrictions, prior to the installation of the Solar Energy Systems that

are being shaded ("Existing Improvements"). Notwithstanding the foregoing, if an Owner has Existing Improvements which are causing shading on Lots being developed by Declarant, such Existing Improvement shall be subject to the Shading Restrictions and Declarant shall have the right to require such Existing Improvements be removed at the sole cost and expense of the Owner on whose property the Existing Improvements are located. The Shading Restrictions are intended to apply, control and be enforceable regardless of the fact that an applicable local governmental agency or the Committee has issued an approval, authorization or permit for the improvement causing the Prohibited Shading. These Prohibited Shading restrictions do not apply to shading caused by the residential structures or any other improvements constructed or installed by Declarant within the Community.

- c. Maintenance Requirements. Each Owner and the Association shall continually prune, cut-back and otherwise limit the height and fullness of trees, shrubs and other landscaping located within the Property owned or required to be maintained by the respective Owner and/or the Association to prevent Prohibited Shading within the Property.
- d. Impact of Shading Restrictions. The Shading Restrictions mean that the dimensions of some Lots may not accommodate (a) the planting of any trees, or the planting of medium or large trees, in the yard area of the Lots, (b) the installation of any upper-floor additions, roof-top structures or other tall improvements, and/or (c) the growth of trees and shrubs to mature heights. For example, the planting of shade trees and the construction of upper-floor additions may be prohibited as a result of the restriction against Prohibited Shading. Also, the Shading Restrictions may have the foregoing impacts on Lots on which no Solar Energy Systems are installed or constructed. Each Owner must carefully review and comply with the Shading Restrictions, in connection with the planning of all improvements.
- e. Tree Selection. Once the planned height and distance of trees has been determined, the Owner and the Association, in making any selection of trees to be planted on their respective Lots, shall select a tree species that has that has the appropriate mature height restriction.
- f. No Restriction on Adjacent Property. In some cases the Lots may be adjacent to other real property that is not encumbered by this Declaration, similar prohibited shading covenants, or similar prohibitions against shading imposed by law. In such cases, adjacent real property might not be restricted from causing Prohibited Shading of any roof-mounted Solar Energy System installed on one or more of the Lots.

6.21 Design and Approval for Shading Restrictions.

- a. **Limited Scope of Review of Improvements.** As provided under this Declaration, all improvements installed by Owners other than Declarant shall be approved by the Committee prior to installation in accordance with the procedures set forth in this Declaration. As part of such review, the Committee shall consider whether the improvements will result in a violation of the Shading Restrictions, including without limitation, whether any trees or shrubs which have the potential to grow to a height that would result in a violation of the Shading Restrictions. The Committee's obligation shall be limited to requiring the Owner to obtain a certification from a landscape architect or solar or other consultant otherwise acceptable to the Committee ("Shading Certification"), as applicable, that the proposed improvement will not result in Prohibited Shading of existing Solar Energy Systems, and the Committee shall be entitled to rely upon such Shading Certification and shall have no obligation to conduct any other independent review and shall have no liability to any Owner or the Association for any inaccuracies in the Solar Certification. The Committee shall not issue any approval to any Owner if the improvements planned would result in Prohibited Shading of any Solar Energy Systems, including, without limitation, Declarant Installed Solar Energy Systems. The Committee shall not be allowed to issue variances from the Shading Restrictions.
- b. **Declarant Exemptions.** Declarant shall be exempt from any Shading Restrictions relating to improvements constructed by Declarant.
- c. **Declarant Solar Energy Systems.** Neither the Board of Directors nor the Committee as applicable shall approve and the Association shall not allow to be maintained any improvement in the Property, which would result in Prohibited Shading of any Solar Energy Systems installed by Declarant or that may be constructed at a later date. Therefore the Board of Directors or Committee shall consider, as part of the application process under this Declaration, whether the improvements proposed to be installed within a Lot will result in a violation of the Shading Restrictions, including without limitation, improvements planned to be installed by Declarant on future Lots that could be shaded by the improvements planned by the Owner.

ARTICLE VII GENERAL PROVISIONS

7.1 Additional Easements.

- a. **Continued Maintenance Easement.** In the event that an Owner fails to maintain a Lot as required herein, or in the event of emergency, or in the event the Association requires entry upon any Lot to repair or maintain any Area of

Common Responsibility, the Association shall have the right, without notice in an emergency or otherwise after 24 hours written notice, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary to enforce this Declaration or for the proper maintenance and operation of the Property. Entry upon a Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence. EACH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 7.1.a (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

- b. **Drainage Easements.** Easements for installation and maintenance of utilities, storm water retentions/detention ponds, and/or drainage easement areas are reserved as may be shown on the Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which is not permitted as set forth in the Plat or that may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. Declarant hereby reserves for the benefit of Declarant and any builder a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and Declarant or the Association shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose my duty upon Declarant or any builder to correct or maintain any drainage facilities within the Property.
- c. **Temporary Completion Easement.** All Lots shall be subject to an easement of

ingress and egress for the benefit of the Declarant and any builder, their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lot as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent thereto, provided that such easement shall terminate twelve (12) months after the date such burdened Lot is conveyed to the Owner by the Declarant or a builder.

- d. Universal Easements. The Owner of each Lot (including Declarant as long as Declarant is the Owner of any Lots) is hereby granted an easement not to exceed four (4) foot in width over all adjoining Lots for the purpose of accommodating any encroachment or protrusion due to engineering or fence line errors, trees, landscaping, or retaining wall located along property lines, errors in original construction, surveying, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachment, protrusion, settling or shifting; provided, however, that in no event shall an easement for encroachment or protrusion be created in favor of an Owner or Owners if said encroachment or protrusion occurred due to willful misconduct of said Owner or Owners. In addition, the Owner of each Lot is hereby granted an easement for encroachments not to exceed four (4) feet in width by misplaced fences or fence lines and overhanging roofs, eaves or other improvements as originally constructed over each adjoining Lots and for the maintenance thereof. Each of the easements herein above referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.
- e. Utility and Telecommunication Utility Easements. Declarant hereby reserves and also grants to each Owner (provided that any work to be performed by an Owner pursuant to this easement requires the prior written discretionary consent of the Committee), a blanket easement upon, across, over and under the Development for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Development without conflicting with the terms hereof; provided, however, that such right and authority shall automatically terminate at such time as Declarant becomes a Class "A" Member. The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Area. Declarant, for itself and its

designees, reserves the right to retain or transfer title to any all wires, pipes, conduits, lines, cables, transmission towers or other improvements installed on or in such easements and to enter into franchise or other agreements with private or public providers of the communication type packages that are designed to provide such services to the Development.

- f. **Public Easements.** An express easement is hereby reserved across the Private Roadways for the use of the surface for all governmental functions, vehicular and non- vehicular, including fire and police protection, for U.S. Postal Service delivery vehicles and personnel, solid and other waste material pickup and any other purpose any governmental authority deems necessary, but no governmental entity or its agents or employees shall be responsible or liable for any damage to the Surface of Private Roadways because of governmental vehicles traversing over same, and provided further that such easement shall not authorize any such persons to enter the Property except while acting in their official capacities. Additionally, an express easement is hereby reserved on, over and across each Lot within ten feet (10') of each Private Roadway for installing, replacing, repairing, maintaining, removing and reinstalling traffic and directional signs and one or more mailbox centers, which easement shall be for the benefit of the Association.

7.2 Enforcement. The Declarant or the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the By-Laws and Certificate of Formation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party. The failure of any Owner to comply with any restrictions or covenants will result in irreparable damage to Declarant, the Association and/or other Owners of Lots in the Subdivision; thus, the breach of any provisions of this Declaration may not only give rise to an action for damages at law, but also may be made the subject of an action for injunctive relief and/or specific performance in equity in any court of competent jurisdiction. In the event enforcement actions are instituted and the enforcing party recovers, then, in addition to the remedies specified above, court costs and reasonable attorney's fees shall be assessed against the violator. In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or Rules and Regulations promulgated by the Board of Directors, by an Owner, his family, guests, lessees or licensees, shall authorize the Board of Directors (in the case of all of the following remedies) or any Owner (in the case of the remedies provided in (d) below), to avail itself of any one or more of the following remedies:

- a. The imposition of a special charge not to exceed Two Hundred Fifty Dollars (\$250.00) per violation;

- b. The suspension of the Owner's right to use any Association property for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy;
- c. The right to cure or abate such violation, including the right to enter any Lot upon which such violation exists without liability for trespass, and to charge the expense thereof, if any to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy;
- d. The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to, attorney's fees and court costs. Before the Board of Directors invokes the remedies provided in subparagraphs {a), (b), ©, and (d) above, it shall give written notice of such alleged violation to the Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board of Directors' right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Declarant, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default. All charges assessed against an Owner shall constitute a continuing lien on the Lot of such Owner as fully as if such charge were an unpaid annual or special assessment.

7.3 Severability. If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

7.4 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant (during the time it owns any Lots), the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods often (10) years, unless at least sixty-six and (two-thirds percent (66-2/3 %) of then Owners of the Lots (and the City, if then a party hereto) agree in writing to terminate or change this Declaration in whole or in part and such writing is recorded in the Real Property Records of the County.

7.5 Amendment.

- a. This Declaration may be amended or modified upon the express written consent of at least sixty-six and two-thirds percent (66-2/3 %) of the outstanding votes

(determined pursuant to Section 3.2 hereof) held by Members at a meeting of Members at which a quorum is present. Any and all amendments, if any, shall be recorded in the Real Property Records of the County. Notwithstanding the foregoing, as long as Declarant is a Class B Member pursuant to Section 3.2 hereof, Declarant shall have the right to execute and record amendments to this Declaration without the consent or approval of any other party. This Section does not authorize termination of any easement (including the Private Roadways) created in this Declaration without the consent of the holder or any beneficiary of such easement.

- b. Declarant intends that this Declaration may be amended to comply (if not in compliance with all requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), FHA and VA. Notwithstanding anything to the contrary contained herein, if this Declaration does not comply with FHLMC, FNMA, VA or FHA requirements, the Board of Directors and/or the Declarant shall have the power in its discretion (on behalf of the Association and each and every Owner) to amend the terms of this Declaration or to enter into any agreement with FHLMC, FNMA, VA, and FHA, or their respective designees, reasonably required by FHLMC, FNMA, VA or FHA to allow this Declaration to comply with such requirements. Should the FHLMC, FNMA, VA or FHA subsequently delete any of their respective requirements which necessitate any of the provisions of this Declaration or make any such requirements less stringent, the Board of Directors and/or the Declarant, without approval of the Owners, may, upon reasonable justification, cause an amendment to this Declaration to be executed and recorded to reflect such changes.

7.6 Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, in all cases shall be assumed as though fully expressed in each case.

7.7 Remedies. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and that the Declarant's and/or the other Owner's remedies at law for any breach of the Owners' obligations contained herein would be inadequate. Enforcement may be commenced by the Association, the Declarant, the City, or any Owner against any person or persons violating or attempting to violate them, and failure by the Association, the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The rights created herein are unique and enforceable by specific performance. In addition to the remedies set forth herein, the Association will also have the right

and power to levy fines against any Owner in breach of their obligations set forth in this Declaration.

7.8 Notices to Member/Owner. All notices to Members of the Association shall be given by delivering the same to each Member in person or by depositing the notices in the U. S. Mail, postage prepaid, addressed to each Member at the address last given by each Member to the Secretary of the Association or its managing agent. If a Member shall fail to give an address to the Secretary of the Association's managing agent for mailing of such notices, all such notices shall be sent to the street address of the Lot owned by such Member. All Members shall be deemed to have been given notice of the meetings upon the proper mailing of the notices to such addresses irrespective of the actual receipt of the notices by the Members.

7.9 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender and Words in the singular, shall be held to include the plural and visa versa unless the context requires otherwise.

7.10 Formation of Association; Inspection of Documents, Books and Records. The Association shall be formed by Declarant as a non-profit corporation in accordance with the laws of the State of Texas. Management and governance of the Association shall be implemented and/or undertaken in accordance with its Certificate of Formation, in accordance with this Declaration, and in accordance with the Bylaws which shall be adopted by the Association following its formation. The Association shall make available copies of the Declaration, Bylaws, Certificate of Formation, rules and regulations; governing the Association as well as the books, records and financial statements of the Association for inspection by Owners or any Mortgagee during regular business hours or other reasonable times.

7.11 Indemnity. Neither the Declarant nor any officer, director, employee or agent of the Association, nor any member of the Committee, shall be liable to any person or entity, including any Owner, for any act or omission in the performance of the duties of the Declarant or such officer, director or agent, or member of the Committee, unless such act or omission is finally determined to constitute fraud or intentional willful misconduct. The Association and the Owners, individually and collectively, shall indemnify, defend and hold harmless Declarant and any person who is or was a director, officer, agent or employee of the Association or member of the Committee (each an "Indemnified Party"), individually and collectively, from any and all claims, damages and expenses including, without limitation, attorney's fees, arising or resulting from, sustained or incurred by any Indemnified Party, or which can or may arise, result, be sustained or incurred in connection with the (i) an Indemnified Party's exercise of or failure to exercise or the use or misuse of any such party's rights or duties set forth in the Declaration, Bylaws or other governing documents of the Association; or (ii) the breach by an Owner or Owners of any provision of the Declaration, Bylaws or other governing documents of the Association. In the event the provisions of indemnification set forth above or in the Bylaws of the Association are more restrictive than the provisions of indemnification allowed under the

TBOC, then such persons named above shall be indemnified to the full extent permitted by the TBOC as it may exist from time to time. Additionally, subject to the limitations and requirements of the TBOC, as amended, and in the Bylaws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Declarant or the Association, against and liability asserted against such person in that capacity and arising out of that capacity.

7.12 "FHA/VA Approval Requirement. As long as there remains any Class B membership and any first lien mortgage is in effect with respect to any Lot which is insured by FHA or VA, the following actions shall require a prior approval of FHA or VA if such approval is required under the then applicable FHA or VA regulations: amendment of the Certificate of Formation; Declaration or Bylaws; annexation of additional property; mortgaging or dedication of the Areas of Common Responsibility; and dissolution of the Association.

7.13 Binding Effect. Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the Property, it being understood that such conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except land in the Development. This Declaration, when executed, shall be filed of record in the Real Property Records of the County so that each and every owner or purchaser of any portion of the Development is on notice of the conditions, covenants, restrictions and agreements herein contained.

7.14 Recorded Plat: Other Authorities. All dedications, limitations, restrictions and reservations that are shown on the Plats are deemed to be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by the Declarant, conveying the Lots, whether specifically referred to therein or not. If other authorities, such as the City or the County, impose more demanding, expensive, extensive or restrictive requirements than those that are set forth herein (through zoning or otherwise), the Association and Owners shall comply with any such requirements. Other authorities' imposition of lesser requirements than those that are set forth herein shall not supersede or diminish the requirements that are set forth herein.

7.15 Additions to or Withdrawals from the Development. Additional property may become subject to this Declaration and portions of the Property may be withdrawn from the Declaration in any of the following manners:

- a. The Declarant may add or annex additional real property, including without limitation the Annexable Property described on Exhibit "A" attached hereto, to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of this Declaration to such property, provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the

covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

- b. In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation must have the prior written consent and approval of sixty-six and two-thirds percent (66-2/3 %) of the outstanding votes (determined pursuant to Section 3.2 hereof) held by the Members at a meeting at which a quorum is present. Any additions made pursuant to paragraphs (a) and (b) of this Section, when added, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.
- c. The Declarant shall have the right and option, without the joinder, approval or consent of any person(s) or entity(ies) to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located (in whole or part) within one mile of any real property then subject to the jurisdiction of this Association. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme.
- d. Declarant, acting in its sole discretion, without the joinder, approval or consent of any person(s) or entity (ies), except all owners of any portion of the Property to be withdrawn, may at any time and from time to time withdraw from the Property any real property by recording a "Notice of Withdrawal" in the Real Property Records of the County. Upon the recording of a Notice of Withdrawal, this Declaration shall no longer apply or have any force or effect with respect to those portions of the Property withdrawn.

7.16 No Warranty of Enforceability. While the Declarant has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot in the Development in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant and the Committee harmless therefrom. The Declarant shall not be responsible for the acts or omissions of any individual,

entity or other Owners.

7.17 Right of Enforcement. The failure by Declarant or the Committee to enforce any provision of this Declaration shall in no event subject Declarant or the Committee to any claims, liability, costs or expense; it being the express intent of this Declaration to provide Declarant with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration for the benefit of any Owner(s) of any Lot(s) in the Development.

7.18 Residential Construction Liability Act. Without waiving any rights under law or equity, all Owners acknowledge, covenant and agree that residential construction defect claims regarding any Lot against the Declarant or any builder in Texas are controlled by the Texas Residential Construction Liability Act (Tex. Prop. Code §27.001 et seq., as amended) which preempts the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.41 et seq., as amended) and any other law.

7.19 EPA Compliance. The Owner of each Lot agrees to comply with all EPA rules and regulations regarding erosion control and compliance with a Storm Water Pollution Prevention Plan affecting the Lot (the "Plan") which will include elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA under the National Pollutant Discharge Elimination System. Each Owner acknowledges that the Declarant and any builder will not bear any responsibility for complying with a Plan on any Lot upon the sale of such Lot in the Subdivision.

7.20 Disclosures. In order to preserve property values in the Development, it is in every Owner's best interest to be fully aware of any and all adjacent land uses, objectionable land uses or nuisances, or prior land uses that might impact someone's decision to live in the Development. Accordingly, the Declarant has the right at any time to file an instrument of record in the county that will reference this Declaration and will serve the purpose of putting all existing, potential and future Owners of any Lot on actual notice of any such land use(s) or nuisance(s).

7.21 Resignation of Declarant; Assignment of the Declarant's Rights. Declarant may resign at any time, without or without reason, and without prior notice to any Owner or to the Association. Simultaneous with a resignation by Declarant, Declarant shall become a Class A Member. In addition, Declarant, at its option and without obligation to do so, may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status. Upon resignation of Declarant hereunder, all rights, obligations, liabilities, duties and responsibilities of the former Declarant arising out of or related the status as "Declarant" shall cease (but in the case of a partial assignment, only to the extent assigned); provided, however, the former Declarant shall continue to be afforded the protections and indemnifications granted herein to Declarant for actions performed by former Declarant during the time period that the

former Declarant was Declarant. If Declarant shall resign but shall not elect to assign its rights as Declarant, thereafter there shall not be a "Declarant" under this Declaration for that Declarant's portion of the Property, and the rights of that Declarant shall thereafter be exercised by the Board of Directors of the Association.

7.22 Dispute Resolution of Lot Owner and other Complaints. Before a lot owner or Class A Member of the Association, of any lessee, invitee, employee, or other person related thereto ("Claimant"), may institute a legal proceeding against the Association, the Declarant, the Board, any Board member, any committee or subcommittee, or any member of any committee or subcommittee, or any officer of the Association, or any property management company, or any of their owners, directors, officers, employees, or other related thereto, regarding any provision of, enforcement of, application of, or directly or indirectly related to, any provision of, the Declaration, the Bylaws, the Rules, or any action of any of them (the "Claim"), such Claimant shall be required to attempt resolution of any issues or disputes using the following mechanisms, or similar mechanisms provided by the Board from time to time for this purpose:

- a. Claimant may not initiate any proceeding before any administrative tribunal or court seeking redress or resolution of its Claim until Claimant has complied with the procedures of this section.
- b. Meeting with Committee. If a Committee (the "Claim Committee") has been created that deals, directly or indirectly, with the subject matter of the Claim, the Claimant is required to first provide written notice of the Claim to the Board and the said Claim Committee, if any, with details of the Claim and any supporting documents in the Claimant's possession related to the Claim, and requesting a meeting with the Claim Committee, if any, or with the Board, if no Claim Committee exists for the Claim. Upon receipt of the said written notice, the Claim Committee, if any, and the Board, if no Claim Committee exists for the Claim, will schedule a meeting with the Claimant within thirty (30) days, for the purpose of discussing the Claim and to attempt in good faith to resolve the Claim at the said meeting.
- c. Meeting with the Board. If a Claim Committee exists for the Claim, and the Claim is not resolved at the meeting required by subsection (b) above, the Claim Committee and/or the Claimant will so notify the Board. If Claimant desires to continue the Claim, Claimant is required to provide written notice to the Board of the Claim, with any supporting documents in the Claimant's possession related to the Claim, and requesting a meeting with the Board regarding the Claim. Upon receipt of the said written notice, the Board will schedule a meeting with the Claimant within thirty (30) days, for the purpose of discussing the Claim and to attempt in good faith to resolve the Claim at said meeting. To be clear, a second meeting, with the Board this time rather than with the Claim Committee, is only required if a Claim Committee exists for the Claim and Claimant has participated

in a meeting with the said Claim Committee. If no Claim Committee exists, only one meeting with the Board is required.

- d. Mediation. If the Claim was not resolved at either of the meetings described in subsections (b) and (c) above, and the Claimant desires to continue the Claim, Claim is required to so notify the Board within thirty (30) days after the meeting with the Board. Upon receipt of said written notice from Claimant, the Board will coordinate to schedule a formal one day mediation, with a third party mediator chosen by the Board in its sole discretion. The third party mediator is required to be a practicing, professional mediator, who has no relation to the Board or the Association, or Claimant or Claimant's legal counsel, if any. Claimant shall have no input as to the choice of a mediator. Claimant agrees to negotiate in good faith to resolve the Claim at mediation, and Claimant agrees to pay one-half ($\frac{1}{2}$) of the mediator's fee for an all day mediation.
- e. If all of the above dispute resolution measures fail to resolve the Claim, the parties agree that the Claim will be submitted to binding arbitration with an arbitrator chosen by the Board, and using AAA rules. Claimant is required to pay all fees, not including attorney's fees of anyone other than Claimant, associated with the arbitration proceeding during the course of the arbitration proceeding, and the Board, the Association, or anyone else involved in the Claim, or named by Claimant in the arbitration proceeding will only contribute to, pay, or reimburse any such fees to Claimant if ordered to do so by the arbitrator, after the conclusion of the arbitration proceeding.
- f. The above process is in addition to, and not in replacement of, any other or additional process or appeal of any disputes with the Association as may be provided by applicable law. In other words, Claimant is required to follow all of the above procedures, and also any other or further procedures provided by applicable law.
- g. The procedures in this section do not apply to claims asserted against any Lot owner, Tenant or occupant, by the Board, the Association, the Declarant, or any board member, officer, director, employee, committee member, or other person employed by or associated with those persons or entities.

7.23 Short-Term Rentals. Lot owners are advised that, as of the effective date of this Declaration, the Property appears to be zoned in such a manner as to prohibit rental periods of shorter than thirty (30) days. Therefore, this section shall only apply if (a) any Lot owner is successful in obtaining a variance from the applicable governmental authority to allow rental of shorter than thirty (30) days, or (b) if the zoning for the Property is changed to allow rental of shorter than thirty (30) days for any of the Property, or (c) if, despite such prohibition, a Lot owner nevertheless makes, creates,

agrees to, or acquiesces to, a Short Term Rental. “Short term rental”, for the purposes of this Declaration, is defined as a rental/lease/or other occupancy agreement for all of the improvements located on a Lot for a period of shorter than three (3) months. Room rentals, or rentals of less than the whole of a building/improvement located on a Lot, shall not be allowed without prior written consent from the Board, which may be withheld by the Board in its sole discretion. Short term rentals shall be allowed, subject to the terms of this section. Each Lot owner covenants and agrees that any lease of any Lot, including any Short Term Rental, shall contain the following provisions, and they are expressly incorporated therein by this reference as well:

- a. any tenant or other occupant (the “Tenant”), by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of this and the following language into the lease.
- b. Tenant shall comply with all provisions of the Declaration, the Bylaws, and any rules or regulations promulgated by the Board, the Declarant, or any committee appointed for that purpose (collectively, the “Documents”).
- c. Tenant shall control the conduct of all persons occupying the Lot (the “Occupants”, which includes Tenant) and will cause all Occupants to control their conduct so as to comply with the Documents.
- d. The Lot owner shall cause Tenant and all Occupants to comply with the provisions of the Documents and the Lot owner and Tenant shall be responsible for any and all violations by any person during the term of the said lease.
- e. If the Tenant or Occupant violates the Documents or a rule for which a fine is imposed, notice of the violation shall be given to the Lot owner and the tenant, if known to the Board, and such fine may be assessed against the Owner or the Tenant. Unpaid fines shall constitute a lien against the Lot.
- f. The Lot owner hereby assigns the rents from any Tenant or Occupant to the Association and, upon request by the Board, such rents shall be payable to the Board rather than to the Lot owner, but only in the event of a default by the Lot owner in paying any assessments or other charges on the Lot during the term of any occupancy of the Lot by Tenant or Occupants. All payments received by the Board from any Tenant or Occupant shall reduce, by the same amount, the assessments, charges and other amounts owed to the Association, and shall also reduce, by the same amount, Tenant’s or Occupant’s, as the case may be, obligation to make rental payments to the Lot owner.
- g. Failure by the Tenant or any Occupant to comply with the Documents or applicable law is deemed to be a default under the lease, and under the

Documents. When the Association notifies the Lot owner of such violation, the Lot owner will promptly obtain compliance or exercise its rights as a landlord for Tenant's or Occupant's breach of lease. If necessary, the Board shall be authorized to take action against the Lot owner, the Tenant, or the Occupants, to obtain compliance with the terms of the lease and the Documents, and the Lot owner hereby appoints the Association and its agent and attorney in fact, coupled with an interest, to act in this regard under the lease.

- h. The Lot owner is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against the Lot owner's Tenant or Occupant. The Association is not liable to the Lot owner for any damages, including lost rents, suffered by the Lot owner in relation to the Association's enforcement of the Documents against the Lot owner's Tenant or Occupant.

Executed to be in compliance with the Declaration of Covenants, Conditions, and Restrictions
SPYGLASS ON THE ISLAND TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand
this the 28th day of March, 2023

ASSOCIATION:

SPYGLASS ON THE ISLAND TOWNHOMES
HOMEOWNERS ASSOCIATION, INC

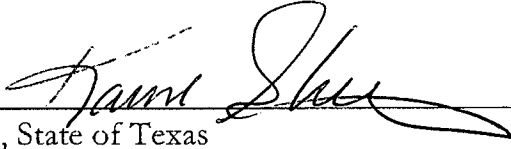
By: Christine Banks

Name: Christine Banks

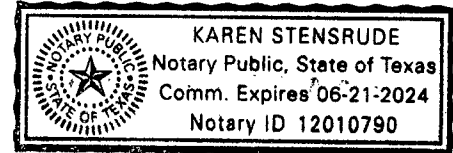
Title: President

THE STATE OF TEXAS §
 §
COUNTY OF Bexar §

This instrument was acknowledged before me on the 28th day of March, 2023 by Christine Banks, President, of SPYGLASS ON THE ISLAND TOWNHOMES HOMEOWNERS ASSOCIATION, INC, a Texas Not-For-Profit Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she has executed the same for the purposes therein expressed on behalf of said corporation.




Notary Public, State of Texas



DECLARANT:

PHASE ONE DECLARANT:

DW LAND HOLDINGS, LLC,
a Texas limited liability company

By:  _____

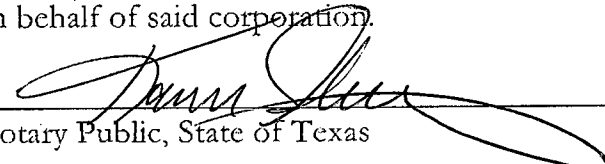
Name: Kimberly Alexander

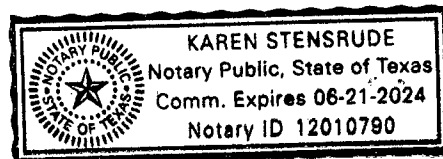
Title: President

THE STATE OF TEXAS §

COUNTY OF Bexar §

This instrument was acknowledged before me on the 28th day of
March, 2023 by Kimberly Alexander,
President, of DW Land Holdings, LLC, a Texas limited liability
company, known to me to be the person whose name is subscribed to the foregoing instrument
and acknowledged to me that he/she has executed the same for the purposes therein expressed
on behalf of said corporation.


Notary Public, State of Texas



PHASE TWO DECLARANT:

KCR DEVELOPMENT PARTNERS, LLC,
a Texas limited liability company

By: Christine Banks

Name: Christine Banks

Title: President

THE STATE OF TEXAS §
 §
COUNTY OF Bexar §

This instrument was acknowledged before me on the 28th day of
March, 2023 by Christine Banks,
President, of KCR Development Partners, LLC, a Texas limited
liability company, known to me to be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that he/she has executed the same for the purposes therein
expressed on behalf of said corporation.

Karen Stensrude
Notary Public, State of Texas

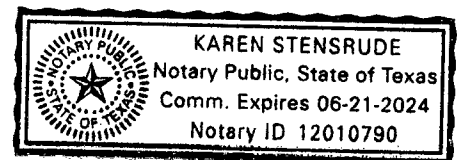


EXHIBIT A

(Together with the Property described on Exhibit B attached hereto,
the "Annexable Property")

LOT NINE (9) AND TEN (10), BLOCK TWENTY (20), PADRE ISLAND, CORPUS CHRISTI, PORTS O CALL, A SUBDIVISION OF THE CITY OF CORPUS CHRISTI, NUECES COUNTY, TEXAS AS SHOWN BY THE PLAT THEREOF RECORDED IN VOLUME 38, PAGES 62-68, MAP RECORDS OF NUECES COUNTY, TEXAS, AND RE-PLATTED BY THE PLAT THEREOF RECORDED IN VOLUME 69, PAGES 467-468, MAP RECORDS OF NUECES COUNTY, TEXAS, TO WHICH REFERENCE IS HERE MADE FOR ALL PERTINENT PURPOSES.

EXHIBIT B

(Together with the Property described on Exhibit A attached hereto,
the "Annexable Property")

**LOT ONE (1), BLOCK FIFTEEN (15), PADRE ISLAND, CORPUS CHRISTI, PORTS
O CALL, A SUBDIVISION OF THE CITY OF CORPUS CHRISTI, NUECES
COUNTY, TEXAS AS SHOWN BY THE PLAT THEREOF RECORDED IN
VOLUME 38, PAGES 62-68, MAP RECORDS OF NUECES COUNTY, TEXAS, TO
WHICH REFERENCE IS HERE MADE FOR ALL PERTINENT PURPOSES.**

**Nueces County
Kara Sands
Nueces County
Clerk**

Instrument Number: 2023028063

eRecording - Real Property

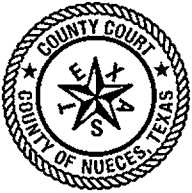
DECLARATION

Recorded On: July 31, 2023 02:20 PM

Number of Pages: 46

" Examined and Charged as Follows: "

Total Recording: \$197.00



**STATE OF TEXAS
NUECES COUNTY**

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Nueces County, Texas.

Kara Sands
Nueces County Clerk
Nueces County, TX



******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2023028063
Receipt Number: 20230731000146
Recorded Date/Time: July 31, 2023 02:20 PM
User: Maria H
Station: CLERK05

Record and Return To:

Simplifile
484 North 300 West, Suite 202
Provo UT