

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

**MALONE PARK
TRAVIS COUNTY, TEXAS**

Declarant: CALATLANTIC HOMES OF TEXAS, INC., a Delaware corporation

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
MALONE PARK**

This Declaration of Covenants, Conditions and Restrictions (the “**Declaration**”) is made by **CALATLANTIC HOMES OF TEXAS, INC.**, a Delaware corporation (the “**Declarant**”), and is as follows:

R E C I T A L S:

A. This Declaration is filed with respect to certain real property located in Travis County, Texas, described on Exhibit “A” attached hereto and incorporated herein (the “**Property**”). Declarant is the owner of the Property.

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

C. By the Recording of this Declaration, Declarant serves notice that the Property is subject to the terms and provisions of this Declaration.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

**ARTICLE 1
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

“**Applicable Law**” means the statutes and public laws and ordinances in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision, including but not limited to, the Small Lot Subdivision Requirements, all ordinances and any other applicable building codes, zoning restrictions and permits or other

applicable regulations. Statutes and ordinances specifically referenced in the Restrictions are "Applicable Law" on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"Architectural Control Committee" or **"ACC"** means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot or residence. As provided in *Article 7* below, the Declarant acts as the ACC and the ACC is not a committee of the Association until the Declarant has assigned its right to appoint and remove all ACC members to the Association in a Recorded written instrument.

"Assessment" or **"Assessments"** means all assessments imposed by the Association under this Declaration.

"Assessment Unit" has the meaning set forth in *Section 6.07(b)*.

"Association" means **MALONE PARK COMMUNITY, INC.**, a Texas non-profit corporation, which has been created by Declarant to exercise the authority and assume the powers specified in *Article 4* and elsewhere in this Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

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

"Bulk Rate Contract" or "Bulk Rate Contracts" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property. Each Bulk Rate Contract must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"Bylaws" means the Bylaws of the Association as adopted and as amended from time to time by a Majority of the Board.

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

"City" means the City of Austin, Texas.

"Common Area" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of the Association or its Members. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, Residents, and their guests, tenants and invitees, while other portions of the Common Area may be for the use and enjoyment of the Owners, Residents, their guests, tenants and invitees, and members of the public.

"Community Manual" means the community manual, which may be initially adopted and recorded by the Declarant as part of the initial project documentation for the benefit of the Association and the Property or otherwise adopted by a Majority of the Board. The Community Manual may include the Bylaws, Rules and Regulations and other policies governing the Association. The Rules and Regulations and other policies set forth in the Community Manual may be amended, from time to time, by the Declarant during the Development Period. Any amendment to Bylaws, Rules and Regulations and other policies governing the Association prosecuted by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

"Community Systems" means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant pursuant to any grant of easement or authority by Declarant or the Association within the Property.

"Declarant" means CALATLANTIC HOMES OF TEXAS, INC., a Delaware corporation, its successors or assigns; provided that any assignment(s) of the rights of CALATLANTIC HOMES OF TEXAS, INC., as Declarant, must be expressly set forth in writing and Recorded.

Declarant enjoys special rights and privileges to help protect its investment in the Property. These special rights are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has conveyed all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot, adopted pursuant to *Section 7.02(c)*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. At Declarant's option, Declarant may adopt or amend from time to time the Design Guidelines for the Property or any

portion thereof. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines for the Property or any portion thereof.

“Development Period” means the period of time beginning on the date when this Declaration has been Recorded, and ending at such time as Declarant no longer owns any portion of the Property, unless earlier terminated by the Declarant by a Recorded written instrument executed by the Declarant. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

“Improvement” means all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, alteration of drainage flow, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, alteration of drainage flow, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

“Lot” means any portion of the Property designated by Declarant or as shown as a subdivided Lot on a Plat other than Common Area.

“Majority” means more than half.

“Manager” has the meaning set forth in *Section 4.05(h)*.

“Members” means every person or entity that holds membership privileges in the Association.

“Mortgage” or **“Mortgages”** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

“Mortgagee” or **“Mortgagees”** means the holder(s) of any Mortgage(s).

“Owner” means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

"Plat" means a Recorded subdivision plat of any portion of the Property and any amendments thereto.

"Property" has the meaning given in the recitals subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 11.03* and *Section 11.04* of this Declaration.

"Record, Recordation, Recorded, and Recording" means recorded or to be recorded in the Official Public Records of Travis County, Texas.

"Resident" means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

"Restrictions" means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Community Manual, Rules and Regulations, or in any other rules and regulations promulgated by the Board pursuant to this Declaration, as adopted and amended from time to time. *See Table 1* for a summary of the Restrictions.

"Rules and Regulations" means any instrument, however denominated, which is adopted by the Board for the regulation and management of the Property, including any amendments to those instruments.

"Small Lot Subdivision Requirements" means the small lot subdivision requirements set forth in Section 30-2-232(C)(1) through Section 30-2-232(C)(14) of the City of Austin Land Development Code, as in effect on the date of Recording, which requirements are set forth on Exhibit B attached hereto and are incorporated into this Declaration. For the avoidance of any doubt, the Small Lot Subdivision Requirements do not include the requirements of Section 30-2-232(C)(15) through Section 30-2-232(C)(22) of the City of Austin Land Development Code.

"Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

"Standby Electric Generator" means a device that converts mechanical energy to electrical energy and is: (1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen; (2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure; (3) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and (4) rated for a generating capacity of not less than seven kilowatts.

TABLE 1: RESTRICTIONS	
Declaration (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Certificate of Formation (Recorded)	Establishes the Association as a Texas nonprofit corporation.
Bylaws (Recorded)	Governs the Association's internal affairs, such as elections, meetings, etc.
Community Manual (Recorded)	Establishes Rules and Regulations and policies governing the Association.
Design Guidelines (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto. The Declarant shall have no obligation to adopt the Design Guidelines
Rules and Regulations (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property.
Board Resolutions (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners, and the Association.

ARTICLE 2 GENERAL AND USE RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 General.

(a) Conditions and Restrictions. The Property and all Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Restrictions.

NOTICE

The Restrictions are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.

(b) Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction or ordinance or regulation which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations, or encumbrances which may affect the Owner's

Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

2.02 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the “**Conceptual Plans**”) are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Declarant makes no representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot acknowledges that development of the Property will likely extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.03 Single-Family Residential Use. The Lots shall be used solely for private detached one-family residential dwellings (expressly excluding mobile homes); accessory uses permitted in the City of Austin SF-3 zoning classification and not otherwise prohibited by the Restrictions; parks, playgrounds, open space, and common areas providing recreational amenities to the Property; and growing agricultural crops.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of a Lot, except an Owner or Resident may conduct business activities within a residence so long as: (i) such activity complies with all Applicable Law; (ii) the business activity is conducted without the employment of persons other than the Residents of the residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight, (i.e., no sign may be erected advertising the business within the Property), sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board’s judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents within the Property as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the residence nor Lot will be considered open to the public. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis

which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant.

Notwithstanding any provision in this Declaration to the contrary, until the earlier to occur of expiration or termination of the Development Period:

- (i) Declarant and/or its licensees may construct and maintain upon portions of the Common Area, any Lot, or portion of the Property owned by the Declarant, such facilities and may conduct such activities, which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees shall have an easement over and across the Common Area for access and use of such facilities at no charge; and
- (ii) Declarant and/or its licensees will have an access easement over and across the Common Area for the purpose of making, constructing and installing Improvements upon the Common Area and the Property.

2.04 Rentals. Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for terms of at least six (6) months; and (ii) no portion of a Lot (other than the entire Lot) may be rented. All leases shall be in writing. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions. Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Lot to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant of such Lot or for the acts or omissions of the tenant(s) of such Lot which constitute a violation of, or non-compliance with, the provisions of the Restrictions. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions

of same shall be deemed expressly incorporated into any lease of a Lot. This *Section 2.04* shall also apply to assignments and renewals of leases.

2.05 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the ACC.

2.06 Hazardous Activities. No activities may be conducted on or within the Property and no Improvements may be constructed on or within any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.07 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, or the Improvements located thereon, without the prior written approval of the Board.

2.08 Mining and Drilling. No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the ACC which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by the ACC and any applicable regulatory authority.

2.09 Noise. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.10 Clotheslines; Window Air Conditioners. No clotheslines and no outdoor clothes drying or hanging shall be permitted within the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the residence, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of residences, or any part thereof, nor relocated or extended, without the prior written consent of the ACC. Window air conditioners are prohibited.

2.11 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, ferrets, goats, exotic snakes or lizards, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep more than three (3) cats and dogs, in the aggregate, of which no more than two (2) may be dogs, unless otherwise approved by the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large on the Property, and all animals must be kept within the Owner's residence, or the fenced yard space associated therewith. The fenced yard space must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet other than dogs may be left unattended in the fenced yard space, porches or other outside confined area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and vaccinated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

2.12 Rubbish and Debris. No rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.13 Trash Containers. Trash containers and recycling bins must be stored inside the garage of the single-family residence constructed on the Lot. The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

2.14 Maintenance. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in the *Section 2.14* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the board, in its sole discretion:

- (i) prompt removal of all litter, trash, refuse, and wastes;
- (ii) lawn mowing;
- (iii) tree and shrub pruning;
- (iv) watering;
- (v) keeping exterior lighting and mechanical facilities in working order;
- (vi) keeping lawn and garden areas alive, free of weeds, and attractive;
- (vii) keeping planting beds free of turf grass;
- (viii) keeping sidewalks and driveways in good repair;
- (ix) complying with Applicable Law;
- (x) repainting of Improvements; and
- (xi) Repair of exterior damage, and wear and tear to Improvements.

2.15 Street Landscape Area-Owner's Obligation to Maintain Landscaping. Each Owner will be responsible, at such Owner's sole cost and expense, for maintaining, mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the curb of any adjacent right-of-way, street or alley (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area is performed by the Association.

2.16 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television or radio broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

2.17 Location of Permitted Antennae. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

- (i) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- (ii) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirecTV or dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules may be modified by the ACC from time to time. Please contact the ACC for the current rules regarding installation and placement.

2.18 Signs. Unless otherwise prohibited by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC, except for:

- (i) signs which are permitted pursuant to the Design Guidelines or Rules and Regulations;
- (ii) signs which are part of Declarant's overall marketing, sale, or construction plans or activities for the Property;
- (iii) one (1) temporary "For Sale" or "For Lease" sign placed on the Lot. The sign must be professionally made and shall be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot;
- (iv) permits as may be required by Applicable Law;
- (v) political signs may be erected provided the sign: (a) is erected no earlier than the 90th day before the date of the election to which the sign relates; (b) is removed no later than the 10th day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited;
- (vi) a religious item on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches;

- (vii) a “no soliciting” and “security warning” sign near or on the front door to their residence, provided, that the sign may not exceed twenty-five (25) square inches.

2.19 Flags – Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university (“**Permitted Flag**”) and is permitted to install a flagpole no more than five feet (5’) in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence (“**Permitted Flagpole**”). Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot (“**Freestanding Flagpole**”).

2.20 Flags – Installation and Display. Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

- (i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;
- (ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;
- (iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');
- (iv) With the exception of flags displayed on Common Area or any Lot which is being used for marketing purposes by Declarant, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
- (v) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole must comply with all Applicable Law;
- (vi) Each Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction thereof and harmonious with the residence;

- (vii) Any Permitted Flag, Permitted Flagpole or Freestanding Flagpole must be maintained in good condition and any deteriorated Permitted Flag or deteriorated or structurally unsafe Permitted Flagpole or Freestanding Flagpole must be repaired, replaced or removed;
- (viii) A Permitted Flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring Lot; and
- (ix) Any external halyard of a Permitted Flagpole or Freestanding Flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

2.21 Tanks. The ACC must approve any tank used or proposed in connection with a Residence, including tanks for storage of fuel, water, oil, or liquid petroleum gas (LPG). No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the ACC. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the ACC. This provision will not apply to a tank used to operate a standard residential gas grill.

2.22 Temporary Structures. No tent, shack, or other temporary building, or Improvement, or structure shall be placed upon the Property without the prior written approval of the ACC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for Declarant, architects, and foremen during actual construction may be maintained with the prior approval of the Declarant, approval to include the nature, size, duration, and location of such structure.

2.23 Outside Storage Buildings Outside storage buildings located in a fenced rear yard of a Lot are allowed with the prior written approval of the ACC. One (1) permanent storage building will be permitted if: (i) the surface area of the pad on which the storage building is constructed is no more than one hundred twenty (120) square feet; (ii) the height of the storage building, measured from the surface of the Lot, is no more than eight (8) feet; (iii) the exterior of the storage building is constructed of the same or substantially similar materials and of the same color as the principal residential structure constructed on the Lot; (iv) the roof of the storage building is the same material and color as the roof of the principal residential structure constructed on the Lot; and (v) the storage building is constructed within all applicable building setbacks. No storage building may be used for habitation.

2.24 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor

scooters, all-terrain vehicles and garden and lawn maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view and, no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any street, driveway, or roadway within the Property.

Parking of commercial vehicles or equipment, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than: (a) in enclosed garages; and (b) behind a fence so as to not be visible from any other portion of the Property is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

Mobile homes are prohibited. Notwithstanding the foregoing, sales trailers or other temporary structures installed by the Declarant or expressly approved by the ACC shall be permitted.

2.25 Garages. All garages shall be maintained for the parking of automobiles, may not be used for storage or other purposes which preclude its use for the parking of automobiles, and no garage may be permanently enclosed or otherwise used for habitation.

2.26 On Street Parking. Unless otherwise approved by the Declarant or the Board, no vehicle may be parked on any road or street within the Property for longer than five (5) consecutive days or in excess of ten (10) days in any given month. **"Parked"** as used herein shall be defined as a vehicle left unattended by a licensed operator. This provision will not apply to Declarant or its designee during the Development Period.

2.27 Limited or Restricted Driveway Parking. As a result of the required design of the project, driveways constructed on a Lot may not be able to accommodate the parking of vehicles. No vehicle may be parked on a driveway constructed on a Lot if the vehicle, when parked, would obstruct or otherwise block ingress and egress to and from sidewalks adjacent to the driveway, i.e., no portion of the vehicle may extend over a line extended from the rear of one sidewalk adjacent to the driveway to the rear of the other sidewalk adjacent to the driveway.

2.28 Basketball Goals; Permanent and Portable. Permanent and portable basketball goals are permitted in the front of the residence on a Lot provided the basketball goal

is located approximately twenty feet (20') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground or factory weighted base for portable goals. Neither permanent nor portable basketball goals are permitted in any street right of way. Portable basketball goals are permitted on a Lot, but must be located as described above and be kept upright and properly positioned at all times for ready use. If to be stored, portable goals shall be stored out of view from the street. Only the factory weighted base may be used as ballast for portable goals. Sand bags, cement blocks or other alternate forms of ballast shall not be placed on top of the factory base. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the ACC prior to being placed on any Lot.

2.29 Compliance with Restrictions. Each Owner, his or her family, Residents of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner in accordance with *Section 6.12* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the ACC or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **Each such Owner shall release and hold harmless the Association and 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 2.29* (including any cost, loss, damage, 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" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.**

2.30 Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner shall be liable to the Association for any and

all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be levied as an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in *Section 6.10* of this Declaration.

2.31 Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Common Area may include one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property and are inspected, maintained and administered by the Association in accordance with Applicable Law. Access to these facilities and ponds is limited to persons engaged by the Association to periodically maintain such facilities. Each Resident is advised that the water quality facilities, sedimentation, drainage and detention facilities and ponds are an active utility feature integral to the proper operation of the Property and may periodically hold standing water. Each Resident is advised that entry into the water quality facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Restrictions.

2.32 Party Walls. A fence or wall located on or near the dividing line between two (2) Lots and intended to benefit both Lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this *Section 2.32*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions and are subject to the following:

(a) **Encroachments & Easement.** If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 2.32*. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

(b) **Right to Repair.** If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

(c) **Maintenance Costs.** The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for

damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Travis County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner's successors in title.

(d) Roofs, Foundation, Fences. Common roofs and foundations which form a part of single family residences will be dealt with in the same fashion as Party Walls, as set forth in this Section.

(e) Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot or residence. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the ACC.

2.33 Playscapes and Sports Courts. Playscapes and sport courts are permissible at the sole discretion of the ACC. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties. Sport courts may not be lighted or enclosed with netting. Tennis courts are not permitted.

2.34 Injury to Person or Property. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Lot or Common Area; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Lot, each Owner agrees that the limitations set forth in this Section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. **EACH OWNER AGREES TO RELEASE AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT, AND DECLARANT'S AGENTS FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE PROPERTY TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, HIS TENANT, HIS GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.**

2.35 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the Declarant, the ACC, nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other

landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

2.36 Safety and Security. Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Residents of such Owner's Lot that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

2.37 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any Restrictions. Any Owner acquiring a Lot in reliance on the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE 3 CONSTRUCTION RESTRICTIONS

3.01 Approval for Construction. Unless prosecuted by the Declarant, no Improvements shall hereafter be placed, maintained, erected, or constructed upon any Lot without the prior written approval of the ACC in accordance with *Article 7* of this Declaration.

3.02 Fences; Sidewalks. All fences and walls shall comply with all Applicable Law. Unless otherwise approved by the ACC, no fence, wall or hedge will be erected or maintained on any Lot nearer to the street than the front elevation of the residence constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices. The ACC will have the sole discretion to determine the front elevation of the residence for the purpose of this *Section 3.02*. All Lots shall be fenced so that any portion of the wood fence facing any existing or proposed road, street, other public right-of-way, greenbelt, drainage, common area, or open space areas shall be constructed with the finished side facing outward from the Lot. No chain-link, metal cloth or agricultural fences may be installed or maintained on a Lot.

3.03 Building Restrictions. All building materials must be approved in advance by the ACC, and only new building materials shall be used for constructing any Improvements. All projections from a residence or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the ACC, match the color of the surface from which they project.

3.04 Construction Activities. The Restrictions will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon or within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of the Restrictions by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole and reasonable judgment, the ACC will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith.

3.05 Drainage. There shall be no interference with the established drainage patterns over any of the Property, including the Lots, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in advance by the ACC. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Lots or within the Property.

3.06 Roofing. Roofs of buildings may be constructed with Energy Efficiency Roofing with the advance written approval of the ACC. For the purpose of this *Section 3.06*, “**Energy Efficiency Roofing**” means shingles that are designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in this *Section 3.06*. Any other type of roofing material shall be permitted only with the advance written approval of the ACC.

3.07 Swimming Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all Applicable Law and be approved in advance by the ACC. Nothing in

this *Section 3.07* is intended or shall be construed to limit or affect an Owner's obligation to comply with any Applicable Law concerning swimming pool enclosure requirements. Above-ground or temporary swimming pools are not permitted on a Lot.

3.08 Solar Energy Device. Solar Energy Devices may be installed on an Owner's Lot with the advance written approval of the ACC, which approval will be granted so long as the Owner complies with this *Section 3.08*.

(a) Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application. The Solar Application shall be submitted in accordance with the provisions of *Article 7* of this Declaration.

(b) Approval Process. The ACC will review the Solar Application in accordance with the terms and provisions of *Article 7* of this Declaration. The ACC will approve a Solar Energy Device if the Solar Application complies with *Section 3.08(c)* below **UNLESS** the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.08(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on Common Area or property maintained by the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.08* when considering any such request.

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

- (i) The Solar Energy Device must be located on the roof of the residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the residence, the ACC may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool

provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

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

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

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

(b) Approval Process. The decision of the ACC will be made in accordance with *Article 7* of this Declaration. Any proposal to install a Rainwater Harvesting System on Common Area must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.09* when considering any such request.

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

- (i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed on the Owner's Lot, as reasonably determined by the ACC.

- (ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.
- (iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner's Lot and any adjoining or adjacent street.
- (iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACC.
- (v) If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner's Lot, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.09(d)* for additional guidance.

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

3.10 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("**Xeriscaping**") upon written approval by the ACC. All Owners implementing Xeriscaping shall comply with the following:

- (a) Application. Approval by the ACC **is required** prior to installing Xeriscaping. To obtain the approval of the ACC for Xeriscaping, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of

submission that the Owner consents to the Xeriscaping Application. The ACC is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

(b) Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

- (i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the ACC. For purposes of this *Section 3.10*, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. **For example**, an Owner's Lot plan may be denied if the ACC determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.
- (ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over ten percent (10%) of such Owner's front yard.
- (iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the ACC.

(c) Process. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 3.10* when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the ACC, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be

installed in accordance with the approved Xeriscaping Application, the ACC may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the Property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.11 Standby Electric Generator. A Standby Electric Generator may be installed on an Owner's Lot with the advance written approval of the ACC, which approval will be granted so long as the Owner complies with this *Section 3.11*.

(a) Application. To obtain ACC approval of a Standby Electric Generator, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Standby Electric Generator; (ii) a description of the Standby Electric Generator, including the dimensions, manufacturer, and photograph or other accurate depiction; and (iii) the type of screening to be used if required by the Approval Conditions set forth below (the "**Standby Electric Generator Application**"). A Standby Electric Generator Application may only be submitted by an Owner. The Standby Electric Generator Application shall be submitted in accordance with the provisions of Article 7 of the Declaration.

(b) Approval Process. The ACC will review the Standby Electric Generator Application in accordance with the terms and provisions of Article 7 of the Declaration. The ACC will approve a Standby Electric Generator if the Standby Electric Generator Application complies with this *Section 3.11(b)* and *Section 3.11(c)* below. Any proposal to install a Standby Electric Generator on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.11* when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Standby Electric Generator Application and any Standby Electric Generator to be installed in accordance therewith must comply with the following parameters: (i) Standby Electric Generators must be installed and maintained in compliance with the manufacturer's specifications and applicable governmental health, safety, electrical, and building codes; (ii) all electrical, plumbing, and fuel line connections for Standby Electric Generators shall be installed only by licensed contractors; (iii) all electrical connections for Standby Electric Generators shall be installed in accordance with applicable governmental health, safety, electrical, and

building codes; (iv) all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections for Standby Electric Generators shall be installed in accordance with applicable governmental health, safety, electrical, and building codes; (v) all liquefied petroleum gas fuel line connections for Standby Electric Generators shall be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes; (vi) non-integral Standby Electric Generator fuel tanks shall be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes; (vii) all Standby Electric Generators and their electrical lines and fuel lines shall be maintained in good condition; (viii) any deteriorated or unsafe component of a Standby Electric Generator, including electrical or fuel lines, shall be repaired, replaced, or removed, as appropriate; (ix) a Standby Electric Generator shall be screened if it is: (1) visible from the street that the residential dwelling faces, (2) located in an unfenced side or rear yard of a residential dwelling and is visible either from an adjoining residential dwelling or from adjoining property owned by the Association, or (3) located in a side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining residential dwelling or from adjoin property owned by the Association; (x) periodic testing of Standby Electric Generators should be in accordance with the manufacturer's recommendations, and shall occur no more than once a month, between the hours of 10:00 a.m. and 4:00 p.m; and (xi) The preferred location for Standby Electric Generators is: (1) at the side or back plane of the residential dwelling, (2) outside of any easements located upon such Lot; and (3) outside of all side setback lines for such Lot. However, in the event that the foregoing preferred location either (X) increases the cost of installing the Standby Electric Generator by more than ten percent (10%), or (Y) increases the cost of installing and connecting the electrical and fuel lines for the Standby Electric Generator by more than twenty percent (20%), then the Standby Electric Generator shall be located on the Lot in a position that complies as closely as possible with the preferred location without violating either (X) or (Y) set forth above.

(d) Prohibitions. Standby Electric Generators shall not be used to generate all or substantially all of the electrical power to a residential dwelling, except when utility-generated electrical power to the residential dwelling is not available or is intermittent due to causes other than nonpayment for utility service to the residential dwelling. Owners are prohibited from locating Standby Electric Generators on property owned or maintained by the Association.

3.12 Small Lot Subdivision Requirements. The Property must be developed in accordance with the Small Lot Subdivision Requirements.

ARTICLE 4 **ASSOCIATION**

4.01 Organization. The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor the Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership.

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, if requested by the Board, an Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, email address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name, phone number, and email address of any Resident other than the Owner.

**If you acquire a Lot you automatically become a member of the Association.
Membership is Mandatory!**

(b) Easement of Enjoyment – Common Area. Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) the right of the Declarant, or the Declarant's designee, to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;
- (ii) the right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of the Restrictions;
- (iii) the right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

- (iv) the right of Declarant, during the Development Period, and the Board thereafter to grant easements or licenses over and across the Common Area;
- (v) with the advance written approval of the Declarant during the Development Period, the right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- (vi) the right of the Declarant, during the Development Period, and the Board, thereafter, to promulgate Rules and Regulations regarding the use of the Common Area and any Improvements thereon; and
- (vii) the right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

4.03 Governance. As more specifically described in the Bylaws, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the tenth (10th) anniversary of the date this Declaration is Recorded. Not later than the tenth (10th) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board shall hold a meeting of Members of the Association for the purpose of electing one-third ($\frac{1}{3}$) of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds ($\frac{2}{3}$) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.**

4.04 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 4.03*) and on all other matters to be voted on by the Members will be calculated as set forth below.

- (a) **Owner Votes.** The Owner of each Lot will have one (1) vote for each Lot so owned.
- (b) **Declarant Votes.** In addition to the votes to which Declarant is entitled by reason of Section 4.04(a), for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) **Co-Owner Votes.** When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this Section 4.04.

4.05 Powers. The Association has powers of a Texas nonprofit corporation. It further has the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, has the following powers at all times:

(a) **Rules and Regulations, Bylaws and Community Manual.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules and Regulations, policies, Bylaws and Community Manual, as applicable, which are not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof) or the Association. Any Rules and Regulations, policies, the Bylaws and the Community Manual and any modifications thereto proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(b) **Insurance.** To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) **Records.** To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) **Assessments.** To levy and collect assessments, as provided in *Article 6* below.

(e) **Right of Entry and Enforcement.** To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be

enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have 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, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL RELEASE 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 4.05(e) (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.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) parks, parkways or other recreational facilities or structures;
- (ii) roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

- (v) any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 4.05(g)* must be approved in advance and in writing by the Declarant.

(h) Manager. To retain and pay for the services of a person or firm (the “**Manager**”), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Property, Common Area, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property, services, permits or other governmental approvals, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the

Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

(n) Allocation of Votes. To determine votes when permitted pursuant to *Section 4.04* above.

(o) Authority with Respect to the Restrictions. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Restrictions. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 4.05(o)* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

(p) Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Area and any Improvements thereon. All Rules and Regulations governing and limiting the use of the Common Area and any Improvements thereon must be approved in advance and in writing by the Declarant during the Development Period.

4.06 Acceptance of Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the filing of such designation, the portion of the Property identified therein will be considered Common Area for the purpose of this Declaration. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, or the Property and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of the Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Declaration. Such property will be accepted by the Association and thereafter will be maintained as Common Area by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines, as determined in the sole and absolute discretion of the Declarant.

4.07 Indemnification. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (i) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

4.08 Insurance. The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability or otherwise.

4.09 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 4.05* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in

addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

4.10 Community Services and Systems. The Declarant, or any affiliate of the Declarant with the Declarant's consent, during the Development Period, and the Board, with the Declarant's consent during the Development Period, is specifically authorized to provide, or to enter into contracts with other persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve all or any portion of the Property ("**Community Services and Systems**"). In the event the Declarant, or any affiliate of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Property, the Declarant or affiliate of the Declarant may enter into an agreement with the Association with respect to such services. In the event Declarant or any affiliate of the Declarant, enters into a contract with a third party for the provision any Community Services and Systems to serve all or any portion the Property, the Declarant or the affiliate of the Declarant may assign any or all of the rights or obligations of the Declarant or the affiliate of the Declarant under the contract to the Association. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or the Board, as applicable, determines appropriate. Each Owner acknowledges that interruptions in Community Services and Systems and services will occur from time to time. The Declarant and the Association, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control. In addition, until expiration or termination of the Development Period, any contracts entered pursuant to this *Section 4.10* must be approved in advance and in writing by the Declarant.

4.11 Declarant's Right to Contribute to Revenues of the Association. Declarant shall have the right, but not the obligation, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date

of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

4.12 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

4.13 Administration of Common Area. The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area. Declarant and/or its assignees may construct and maintain upon portions of the Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

4.14 Association's Obligation to Maintain Water Quality/Detention Ponds. The Association shall be obligated to continuously maintain and service the water quality/detention ponds (the "**Detention Ponds**") located within the subdivision, if any, in accordance with applicable governmental regulations and in a good and functioning condition. The Detention Ponds, if any, are hereby designated as Common Area.

ARTICLE 5 INSURANCE

5.01 Insurance. Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a

common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance. During the Development Period, Declarant reserves the right to satisfy the insurance obligations of the Association with a master insurance program controlled by Declarant.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot or any Improvements or personal property located on a Lot.

5.02 Restoration. In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of one one-half percent (1 ½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, 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 5.02, EXCEPT FOR SUCH COST, LOSS DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHOR TO F ACTUAL GROSS NEGLIGENCE.**

5.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

5.04 Damage and Destruction.

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in the *Section 5.04*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessments, as provided in *Article 6*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on their Lots.

ARTICLE 6 COVENANT FOR ASSESSMENTS

6.01 Assessments.

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied against each Lot in amounts determined pursuant to *Section 6.07* below. The total amount of Assessments will be determined by the Board pursuant to *Section 6.03, 6.04, 6.05, 6.06 and/or 6.07.*

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

6.02 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose authorized by the Restrictions and Applicable Law.

6.03 Regular Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Regular assessments (the "**Regular Assessments**") sufficient to pay such estimated net expenses will then be levied at the level of Regular Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Assessments will be due and payable to the Association annually on or before the first day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.

6.04 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the “**Special Assessments**”) whenever in the Board’s opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any Special Assessments levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units.

6.05 Individual Assessments. In addition to any other Assessments, the Board may levy an individual assessment (the “**Individual Assessment**”) against an Owner and the Owner’s Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner’s Lot into compliance with the Declaration; fines for violations of the Restrictions; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner’s guests, invitees or Residents of the Owner’s Lot; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and “pass through” expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to the benefit received.

6.06 Working Capital Assessment. Each Owner (other than Declarant and except as provided below) of a Lot will pay a one-time working capital assessment (the “**Working Capital Assessment**”) to the Association in the amount of \$250.00 against the Lots, provided that such amount may be adjusted as determined by the Board from time to time in its sole and absolute discretion. Such Working Capital Assessment need not be uniform among all Lots, and the Board is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy. Any adjustment of the Working Capital Assessment will be effective only upon the Recordation of a written notice, signed by a duly authorized officer of the Association, setting forth the new amount of the Working Capital Assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association’s assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner’s spouse, child, or parent. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, the Declarant during the Development Period, and thereafter the Board, determination

regarding the application of the exception will be binding and conclusive without regard to any contrary interpretation of this *Section 6.06*. The Working Capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such Assessments. The Working Capital Assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.07 Amount of Assessment.

(a) Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in *Section 6.07(b)* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 6.03* and *Section 6.04* shall be levied uniformly against each Assessment Unit allocated to a Lot.

(b) Assessment Unit. Each Lot shall constitute one "Assessment Unit" unless otherwise provided in *Section 6.07(c)* and *(d)*.

(c) Assessment Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this *Article 6*; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

6.08 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

6.09 Owner's Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated

to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1 1/2%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

6.10 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in *Section 6.08* and interest as provided in *Section 6.09* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.01(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens and governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question, and (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized officer, agent, or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the authorized officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the

indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.10*, the Association will upon the request of the Owner , and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an authorized officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Resident of the Owner's Lot can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

Yes, the Association *can* foreclose on your Lot!

If you fail to pay assessments to the Association, you may lose title to your Lot if the Association forecloses its assessment lien.

6.11 Exempt Property. The following area within the Property will be exempt from the Assessments provided for in this Article:

- (a) all area dedicated and accepted by a public authority;
- (b) the Common Area; and
- (c) any portion of the Property owned by Declarant.

6.12 Fines and Damages Assessment.

(a) Board Assessment. The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Residents guests, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.12* will be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities caused by the Owner, Resident, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and Regulations and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

(b) Procedure. Before levying a fine, the Association will give the Owner a written violation notice via certified mail, return receipt requested, and an opportunity to be heard, if requested by the Owner. This requirement may not be waived. The Association's written violation notice will contain the following items: (1) the date the violation notice is prepared or mailed; (2) a description of the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due to the Association from the Owner; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation; (5) the timeframe in which the violation is required to be cured to avoid the fine or suspension; (6) the amount of the fine; (7) a statement that no later than the thirtieth (30th) day after receiving the notice, the Owner may request a hearing pursuant to Section 209.007 of the Texas Property Code, and further, if the hearing held pursuant to Section 209.007 of the Texas Property Code is to be held by a committee appointed by the Board, a statement notifying the Owner that he or she has the right to appeal the committee's decision to the Board by written notice to the Board; and (8) a statement informing the Owner that they may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. section *et seq.*), if the Owner is serving on active military duty. The notice sent out pursuant to this paragraph is further subject to the following:

- (i) First Violation. If the Owner has not been given notice and a reasonable opportunity to cure the same or similar violation

within the preceding six (6) months, the notice will state those items set out in (1) - (8) above, along with a specific timeframe by which the violation must be cured to avoid the fine. The notice must state that any future violation of the same rule may result in the levy of a fine.

- (ii) Repeat Violation – No Cure within 6 Months. If the Owner has been given notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months but commits the violation again, the notice will state those items set out in (1) - (3), (6) and (8) above, but will also state that because the Owner has been given notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months but has not cured the violation, then the Owner will be fined pursuant to the *Schedule of Fines* described in the Community Manual.
- (iii) Continuous Violation. After an Owner has been notified of a violation as set forth herein and assessed fines in the amounts set forth in the *Schedule of Fines* described in the Community Manual, if the Owner has never cured the violation in response to either the notices or the fines, in its sole discretion, the Board may determine that such a circumstance is a continuous violation which warrants a levy of a fine based upon a daily, monthly, or quarterly amount as determined by the Board.

(c) Due Date. Fine and/or damage charges are due immediately after the later of: (1) the date that the cure period set out in the First Violation notice ends and the Owner does not attempt to cure the violation or the attempted cure is unacceptable to Association, or (2) if a hearing is requested by the Owner, such fines or damage charges will be due immediately after the Board's final decision on the matter, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

(d) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.09* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.01(b)* of this Declaration. Unless otherwise provided in this *Section 6.12*, the fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

ARTICLE 7 ARCHITECTURAL CONTROL COMMITTEE

Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 7.02(a)* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC.

7.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC. Anything to the contrary notwithstanding, Improvements erected, placed, constructed, painted, altered, modified or remodeled by Declarant do not require ACC approval.

7.02 Architectural Control Committee.

(a) **Composition.** The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration of six (6) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration of six (6) months after the expiration of the Development Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 7.02(c)* to the ACC at the offices of Declarant or at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Design Guidelines. Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to *Section 7.02(a)*, will have the power, from time to time, to amend, modify, or supplement the Design Guidelines, if any; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is

assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.

(e) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

(f) Variances. The ACC may grant variances from compliance with any of the provisions of the Design Guidelines, if any, or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC. Each variance must also be Recorded; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, including the Declarant or its designee, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines, if any, will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines, if any, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines, if any.

(g) Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and

specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval. Declarant is exempt from the terms of this paragraph.

(h) No Waiver of Future Approvals. The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

(i) Non-Liability of Committee Members. NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THEIR DUTIES UNDER THIS DECLARATION.

ARTICLE 8 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

8.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an “**Eligible Mortgage Holder**”), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of Assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions

relating to such Lot or the Owner or Resident which is not cured within sixty (60) days;
or

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

8.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

8.03 Taxes, Assessments and Charges. All taxes, Assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 9 GENERAL PROVISIONS

9.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2065, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 9.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date of the Recording of this document, descendants of Elizabeth II, Queen of England.

9.02 Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments

will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Lot.

9.03 Amendment. This Declaration may be amended or terminated by the Recording, of an instrument executed and acknowledged by: (i) Declarant acting alone and unilaterally during the Development Period; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any Applicable Law; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

9.04 Enforcement. The Association and Declarant will have the right to enforce, by a proceeding at law or in equity, the Restrictions. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

9.05 Higher Authority. The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

9.06 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

9.07 Conflicts. If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any Rules and Regulations, the provisions of this Declaration, the Certificate, the Bylaws, and the Rules and Regulations, in such order, will govern.

9.08 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

9.09 Acceptance by Owners. Each Owner of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each Owner agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

9.10 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property in question has been removed from the provisions of this Declaration pursuant to *Section 11.04* below. This *Section 9.11* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

9.11 Notices. Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

ARTICLE 10 EASEMENTS

10.01 Right of Ingress and Egress. Declarant, its agents, employees, designees, will have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area and the right to such other temporary uses of the Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read, meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the

facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either (a) directly through the Association and paid for as part of the Assessments; or (b) directly to Declarant, any affiliate of Declarant, or third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

10.02 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third party prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

10.03 Roadway and Utility Easements. Declarant hereby reserves unto itself and its agents and employees, a perpetual non-exclusive easement over, under, and across the Property, or any areas owned or maintained by the Association, or any areas reserved or held as Common Area, for the installation, operation, maintenance, repair, relocation, removal and/or modification of any Improvements, roadways, walkways, pathways, street lighting, sewer lines, water lines, utility lines, drainage or storm water lines, and/or other pipelines, conduits, wires, and/or any public utility function on, beneath or above the surface of the ground that serve the Property, and any other property owned by Declarant, with the right of access to the same at any time. Declarant will be entitled to unilaterally assign the easements reserved hereunder, or grant or assign permits or licenses over, under, and across the easement areas reserved hereunder, to any third party who owns, operates or maintains the facilities and Improvements described in this *Section 10.03*. The exercise of the easement reserved herein will not extend to

permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

10.04 Subdivision Entry and Fencing Easement. Declarant reserves for itself and the Association, an easement over and across the Property for the installation, operation, maintenance, repair, relocation, removal and/or modification of certain subdivision entry facilities, walls, and/or fencing which serves the Property. Declarant will have the right, from time to time, to Record a written notice which identifies the subdivision entry facilities fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities, walls, and/or fencing as Common Area by Recorded written notice. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

10.05 Landscape and Monument Sign Easement. Declarant hereby reserves for itself and the Association, an easement over and across the Property for the installation, operation, maintenance, repair, replacement, relocation, removal, and/or modification of landscaping, signs, and/or monument signs which serve the Property, and any other property owned by the Declarant. Declarant will have the right, from time to time, to Record a written notice, which identifies those portions of the Property to which the easement reserved hereunder applies. Declarant may designate all or any portion of the easement areas reserved hereunder as Common Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

10.06 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development Period, whichever occurs first. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the

Common Area, any such agreements, documents, amendments or supplements to the Restrictions which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

10.07 Easement to Inspect and Right To Correct. For a period of 10 years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any building, Improvement, residence, or condition that may exist on any portion of the Property, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a retaining wall may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with Applicable Law. This Section may not be construed to create a duty for Declarant, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot or Condominium Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, each Lot or Condominium Unit, building, and residence, and all Improvements thereon for the purposes contained in this Section.

ARTICLE 11 DEVELOPMENT RIGHTS

11.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate Lots and Common Areas and to subdivide all or any portion of the Property, subject to any limitations imposed on portions of the Property by any applicable Plat. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "**Development Rights**", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions set out in *Section 4.03*. These rights may be exercised with respect to any portions of the Property. As each portion of the Property is developed or dedicated, Declarant may

designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such Property.

11.02 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 11.02* until twenty-four (24) months after expiration or termination of the Development Period.

11.03 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property. Upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Declaration, and such added lands will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant will be required only to Record a notice of addition of land containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is Recorded;
- (b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and
- (c) A legal description of the added land.

11.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number wherein this Declaration is Recorded;

(b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

11.05 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

ARTICLE 12 DISCLOSURES

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

12.01 Service Contracts. Declarant may have contracted, on behalf of the Owner, for one or more services to be provided by vendors to the residences on a contract basis, such as intrusion monitoring and cable television. In that event, whether or not an Owner chooses to use the service, the Owner is required its share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

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

12.03 Adjacent Use. No representations are made regarding the use of adjacent property.

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

12.05 Concrete.

(a) Cracks. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of buildings.

(b) Exposed Floors. This Section applies to residences with exposed concrete floors. This notice is given because Owners may be inexperienced with concrete and expect it to be as forgiving as wood or sheetrock. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, an Owner is hereby made aware that any specification for polished concrete means that the concrete will be polished, but this does not mean an Owner will be able to actually see their reflection in the floor.

12.06 Construction Activities. Declarant will be constructing portions of the Property and engaging in other construction activities related to the construction of residences and Common Area. Such construction activities may, from time to time, produce certain conditions on the Property, including, without limitation: (a) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of persons within the Property. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Property resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

12.07 Moisture. Improvements within a building may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Residents, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

12.08 Mold and/or Mildew. Mold and/or mildew can grow in any portion of a building and/or residence that is exposed to elevated levels of moisture including, but not limited to, those portions of a building and/or residence in which HVAC condenser units are located. Each Owner is advised to regularly inspect the Owner's residence for the existence of mold, mildew and/or water intrusion (except when the water intrusion is part of the normal functioning of Improvements and appliances such as showers, sinks, dishwashers and other similar appliances and Improvements) and/or damage.

12.09 Encroachments. Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by any such encroachments.

12.10 Budgets. Any budgets of the Association provided by the Declarant are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

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

12.12 Schools. No representations are being made regarding which schools may now or in the future serve the Property.

12.13 Urban Environment. The Property is located in an urban environment. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, and other generators of sound and vibrations typically found in an suburban area. In addition to sound and vibration, there may be odors and light in urban areas.

12.14 Water Runoff. The Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. In addition, water may pond on various portions of the Property having impervious surfaces, such as rooftop terraces, patios, and balconies, as applicable.

12.15 Photography of the Property. Declarant retains the right to obtain and use photography of the Property for publication and advertising purposes.

12.16 Changes to Street Names and Addresses. Declarant retains the right to change, in its sole discretion, the Property name and the street names and addresses in or within the Property including the street address of the residences and/or Lots before or after conveyance to any third-party.

12.17 Plans. Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed on any Lot are merely approximations and do not necessarily reflect the actual as-built conditions of the same.

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

12.19 Wood. Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations in wood that add to its aesthetic appeal. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination. Wood floors may require more maintenance than some man-made materials. Owners of residences with wood floors should educate themselves about wood floor care.

12.20 Stone. Veins and colors of any marble, slate or other stone if any, within a residence, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, granite, slate and other stone and it is the Owner's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

12.21 Chemicals. Each building and residence will contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner to keep their residence clean, dry, well ventilated and free of contamination.

12.22 Marketing. Declarant's use of a sales center and/or model homes or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the residences available for purchase. A building and/or residence may not conform to any model in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model of a building and/or residence is intended only to demonstrate approximate size and basic architectural features. The Buildings

and/or residences, as completed, may not conform to the models displayed by Declarant. Declarant may also have shown prospective purchasers model homes, floor plans, sketches, drawings, and scale models of Buildings and/or residences ("**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Buildings and/or residences.

ARTICLE 13 DISPUTE RESOLUTION

13.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Bound Parties. Declarant, the Association and its officers, directors, and committee members, Owners and all other parties subject to this Declaration ("**Bound Party**", or collectively, the "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 13.02* in a good faith effort to resolve such Claim.

(b) Claim(s). As used in this Article, the term "**Claim**" or "**Claims**" will refer to any claim, grievance or dispute arising out of or relating to:

(i) Claim relating to the rights and/or duties of Declarant under the Restrictions; or

(ii) Claims against the Declarant relating to the design or construction of Improvements on the Common Areas or Lots.

13.02 Claims Process. In the event the Association or an Owner asserts a Claim, as a precondition to providing the Notice defined in *Section 13.03*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim, the Association or an Owner, as applicable, must:

(i) Independent Report, on the Condition. Obtain an independent third-party report (the "**Condition Report**") from a licensed professional engineer which: (A) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (B) describes any modification, maintenance, or repairs to the Improvements performed by the Owner(s) and/or the Association; (C) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or an Owner and paid for by the Association or an Owner, as applicable, and not prepared by a person employed by or otherwise

affiliated with the attorney or law firm that represents or will represent the Association or an Owner in the Claim. As a precondition to providing the Notice described in *Section 13.03*, the Association or Owner must provide at least ten (10) days prior written notice of the inspection to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Condition Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Condition Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 13.03*, the Association or the Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Condition Report.

(ii) Claims by Association - Owner Meeting and Approval. If the Claim is brought by the Association, obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 13.03*, initiate the mandatory dispute resolution procedures set forth in this *Article 13*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (A) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (B) a copy of the Condition Report; (C) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "**Engagement Letter**"); (D) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not to proceed with the Claim; (E) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (F) an estimate of the impact on the value of each Lot and Improvements if the Claim is prosecuted and an estimate of the impact on the value of each Lot and Improvements after resolution of the Claim; (G) an estimate of the impact on the marketability of each Lot and Improvements if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot and Improvements during and after resolution of the Claim; (H) the manner in which the Association proposes to fund the cost of prosecuting the Claim; (I) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section*

13.03, or taking any other action to prosecute a Claim, the -Members holding a Majority of the votes in the Association, at special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

13.03 Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (A) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (B) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (C) what Claimant wants Respondent to do or not do to resolve the Claim; and (D) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 13.04* below, is equivalent to the sixty (60) day period under Section 27.4 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 13.04*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 13.04* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code, Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 13.05* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 13.05* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (I) a true and correct copy of the Condition Report; (II) a copy of the Engagement Letter; (III) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Improvements which form the basis of the Claim; (IV) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 13.02(a)(ii)* above; and (V) and reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice.

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

13.05 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or

individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 13.05*.

13.06 Termination Of Mediation. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

13.07 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 13.07*.

(a) **Governing Rules.** If a Claim has not been resolved after Mediation as required by *Section 13.05*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 13.07* and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Travis County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of the Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 13.07*, this *Section 13.07* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) one arbitrator shall be selected by mutual agreement of the arbitrators

having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(b) Exceptions to Arbitration: Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 13.07* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or *exercise* of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 13.07*.

(d) Scope of Award: Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 13.07* but subject to *Section 13.08* below; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

(e) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Travis County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for

disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

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

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

13.10 Approval & Settlement. The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 13* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

[Signature Page Follows]

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Travis County, Texas.

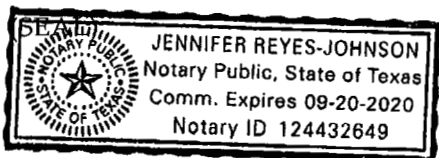
DECLARANT:

CALATLANTIC HOMES OF TEXAS, INC.,
a Delaware corporation

By: [Signature]
Name: KEVIN M. Forader
Title: Director of Land Development

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 8th day of September, 2017 by Kevin M. Forader, Director of Land Development of CALATLANTIC HOMES OF TEXAS, INC., a Delaware corporation, on behalf of said corporation.



[Signature]
Notary Public Signature

EXHIBIT "A"

Legal Description of Property

(legal description on following page)

FIELD NOTES

BEING ALL OF THAT CERTAIN TRACT OF LAND OUT OF THE STEPHEN F. SLAUGHTER SURVEY NUMBER 1, ABSTRACT NUMBER 20, SITUATED IN TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 36.315 ACRE TRACT OF LAND CONVEYED TO DAVID ARTHUR MALONE, IN DOCUMENT NUMBER 2015067625, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, ALSO BEING ALL THAT CERTAIN 0.821 ACRE TRACT OF LAND CONVEYED TO DAVID A. MALONE AND DIANE ROSE MALONE, IN DOCUMENT NUMBER 1999146847, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, AND ALSO BEING ALL OF THAT CERTAIN 3.24 ACRE TRACT OF LAND CONVEYED TO DAVID A. MALONE AND WIFE DIANE MALONE IN DEED RECORDED IN VOLUME 4122, PAGE 1330, DEED RECORDS, TRAVIS COUNTY, TEXAS SAID 40.483 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2" capped iron rod found marked "CBD SETSTONE" in the western right-of-way line of Billbrook Place (64' R.O.W.), also being in the western boundary line of Texas Oaks 4, a subdivision recorded in Book 86, Page 53C, Plat Records of Travis County, Texas, also being the southeastern corner of Lot S1, Block A, The Hollow at Slaughter Creek Section 1, a subdivision recorded in Document No. 200800072, Official Public Records of Travis County, Texas, also being the northeastern corner of said 36.315 acre tract, for the northeastern corner and **POINT OF BEGINNING** of the herein described tract,

THENCE, with the common boundary line of said remainder of 36.315 acre tract, said 3.24 acre tract, said Texas Oaks 4, said Billbrook Place right-of way, and Texas Oaks 5, a subdivision recorded in Book 86, Page 87C, Plat Records of Travis County, Texas, the following six (6) courses and distances, numbered 1 through 6,

1. S00°39'30"E, a distance of 247.03 feet to a 1/2" capped iron rod set, at a point of curvature to the left, at the southwestern corner of said Texas Oaks Four, also being the northwestern corner of said Texas Oaks 5
2. with said curve to the left having a radius of 332.06 feet, an arc length of 216.28 feet and whose chord bears S19°14'16"E, a distance of 212.48 feet to a 5/8" iron rod found, in the western right-of way line of said Billbrook Place, also being the northernmost corner of Lot 17, Block G, of said Texas Oaks 5 and also being in the eastern line of said 36.315 acre tract,
3. S01°24'31"E, a distance of 204.49 feet to a 1/2" capped iron rod set,
4. S00°25'46"E, a distance of 419.65 feet to a 1/2" capped iron rod set,
5. S00°03'31"E, a distance of 289.11 feet to a 1/2" capped iron rod SET, in the western line of Lot 2, Block G, of said Texas Oaks 5, also being the southeastern corner of said 36.315 acre tract and also being the northeastern corner of said 3.24 acre tract, and
6. S00°00'34"W, a distance of 156.00 feet to a 1/2" iron pipe found for the southeastern corner of said 3.24 acre tract, and being in the western right-of way line of La Crosse Avenue, and also being the northeastern corner of Lot 5, Resubdivision of Lots 1, 2, and 3, Block A, Slaughter Creek Acres, a subdivision recorded in Volume 55, Page 4, Plat Records of Travis County, Texas,

THENCE, with the common boundary line of said 3.24 acre tract, and said Resubdivision of Lots 1, 2, and 3, Block A, Slaughter Creek Acres, N89°50'49"W, a distance of 926.64 feet to a 1/2" capped iron rod set, for the southwestern corner of said 3.24 acre tract, and the northwestern corner of Lot 1, of said Resubdivision of Lots 1, 2, and 3, Block A, Slaughter Creek Acres, also being in the eastern right-of-way line of said Slaughter Creek Drive (R.O.W. varies), for the southernmost southwestern corner of the herein described tract,

THENCE, with the common boundary line of said 3.24 acre tract, said 0.821 acre tract, said 36.315 acre tract, and said Slaughter Creek Drive, the following four (4) courses and distances, numbered 1 through 4,

1. N05°10'32"W, a distance of 112.82 feet to a 1/2" iron rod found, at a point of curvature to the left,

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2. With said curve to the left, having a radius of 114.61 feet, an arc length of 88.06 feet, and whose chord bears N27°11'12"W, a distance of 85.91 feet to a ½" capped iron rod set, at a point of curvature to the left, being the northwestern corner of said 0.821 acre tract, and a southern corner of said 36.315 acre tract,
3. with said curve to the left having a radius of 114.61 feet, an arc length of 69.67 feet and whose chord bears N66°36'42"W, a distance of 68.60 feet to a capped iron rod found,
4. N84°01'32"W, a distance of 285.47 feet to a ¼" capped iron rod set, at the southwestern corner of said 36.315 acre tract and also being in the northern right-of-way line of said Slaughter Creek Drive, for the westernmost corner of the herein described tract,

THENCE, with the common boundary line of said 36.315 acre tract, said Slaughter Creek Drive right-of-way, Lot 4, Malone Addition Section 4, a subdivision recorded in Book 79, Page 112, Plat Records of Travis County, Texas, and Lots 1-4, Malone Addition Section 3, a subdivision recorded in Book 75, Page 147, Plat Records of Travis County, Texas, N12°10'02"E, a distance of 503.76 feet to a ½" capped iron rod set, for the northeastern corner of said Lot 1, Malone Addition Section 3, also being in the southern line of that certain 1.710 acre tract conveyed to Molly Sue Malone Denham in Document Number 2015067624, Official Public Records, Travis County, Texas, and also being a western corner of said 36.315 acre tract,

THENCE, with the common boundary line of said 36.315 acre tract, , said 1.710 acre tract, and that certain 1.000 acre tract conveyed to Molly Sue Malone Denham in Document Number 2015067622, Official Public Records, Travis County, Texas the following three (3) courses and distances, numbered 1 through 3,

1. S77°45'58"E, a distance of 151.18 feet to a ¼" capped iron rod set,
2. N09°36'14"E, a distance of 330.08 feet to a ½" capped iron rod set, and
3. N79°43'34"W, a distance of 178.99 feet to a ¼" capped iron rod set, for the southeastern corner of that certain 1.000 acre tract of land conveyed to Jimmye Jo Malone in Document Number 2015067626, Official Public Records, Travis County, Texas, also being in the northern line of said 1.710 acre tract,

THENCE, with said 1.000 acre Malone tract, N35°32'09"E, a distance of 237.82 feet to a ½" capped iron rod set, for a western corner of said 36.315 acre tract and also being the southeastern corner of Lot 1, Malone Addition Section 5, a subdivision recorded in Book 79, Page 220, Plat Records of Travis County, Texas, also being the northwestern corner of said 1.000 acre Malone tract,

THENCE, with the common boundary line of said 36.315 acre tract, and said Lot 1, Malone Addition Section 5, the following two (2) courses and distances, numbered 1 and 2,

1. N15°54'51"E, a distance of 100.00 feet to a ½" capped iron rod set,
2. N74°05'09"W, a distance of 222.88 feet to a ½" capped iron rod set, at western corner of said 36.315 acre tract, and also being in the eastern right-of-way line of said Slaughter Creek Drive, also being the northwestern corner of Lot 1, Malone Addition, Section 5,

THENCE, with the common boundary line of said 36.315 acre tract, and said Slaughter Creek Drive right-of-way, the following three (3) courses and distances, numbered 1 through 3,

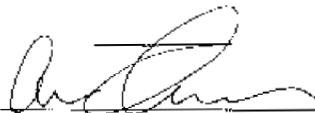
1. N15°54'51"E, a distance of 25.01 feet to a ½" capped iron rod set, at a point of curvature to the right,
2. with said curve to the right having a radius of 1013.20 feet, an arc length of 101.39 feet and whose chord bears N18°46'51"E, a distance of 101.34 feet to a ½" capped iron rod set, and

3. N21°40'03"E, a distance of 199.13 feet to a 1/2" capped iron rod set, for the northwestern corner of said 36.315 acre tract, also being the southwestern corner of said Lot 51, also being the northeastern corner of the herein described tract,

THENCE, with the common boundary line of said 36.315 acre tract, said Slaughter Creek Drive right-of-way, and said Lot 51, Block A, the following five (5) courses and distances, numbered 1 through 5,

1. S59°11'27"E, a distance of 342.14 feet to a 1/2" capped iron rod set,
2. N89°37'13"E, a distance of 282.64 feet to a 1/2" capped iron rod set,
3. N69°14'06"E, a distance of 202.31 feet to a 1/2" capped iron rod set,
4. S80°53'24"E, a distance of 151.17 feet to a 1/2" capped iron rod set, and
5. S58°38'26"E, a distance of 152.81 feet to the **POINT OF BEGINNING** and containing 40.483 acres of land.

Surveyed by:



15 Oct 2015

AARON V. THOMASON, R.P.L.S. NO. 6214
Carlson, Brigance and Doering, Inc.
5501 West William Cannon
Austin, TX 78749
Ph: 512-280-5160 Fax: 512-280-5165
aaron@cbdeng.com



BEARING BASIS: TEXAS COORDINATE SYSTEM CENTRAL ZONE (4203)

EXHIBIT "B"
Small Lot Subdivision Requirements

§ 30-2-232 - SMALL LOT SUBDIVISIONS.

(C) A small lot subdivision must comply with the following requirements:

- (1) Minimum lot area is:
 - (a) 3,600 square feet, except for a corner lot; and
 - (b) 4,500 square feet for a corner lot.
 - (2) Minimum lot width is:
 - (a) 40 feet for an interior lot;
 - (b) 50 feet for a corner lot; and
 - (c) 40 feet for a lot on a cul-de-sac or curved street, except it may be 33 feet at the front lot line.
 - (3) Minimum front yard setback is 20 feet.
 - (4) Minimum street side yard setback is ten feet.
 - (5) A lot may have one zero lot line.
 - (6) The combined side yard setbacks of a lot may be not less than ten feet.
 - (7) Except for a patio or patio cover, the minimum distance between structures on adjoining lots is ten feet. The minimum distance between a patio or patio cover and the roof line of a structure on an adjoining lot is six feet.
 - (8) The wall of a structure built adjacent to a zero lot line or within five feet of a common side lot line must be solid and opaque and may not contain an opening.
 - (9) Minimum rear yard setback is five feet, excluding drainage easements.
 - (10) Minimum setback is ten feet between a rear access easement and a building or fence.
 - (11) Maximum building coverage is 45 percent.
 - (12) Maximum impervious cover is 55 percent.
 - (13) Maximum building height is 35 feet.
 - (14) A lot may have not more than one dwelling unit.
-



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

September 08 2017 03:23 PM

FEE: \$ 334.00 **2017145283**