

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR**

**Trumbal Townhomes Homeowners Association, Inc.**

BEXAR COUNTY, TEXAS

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

**TRUMBAL TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

This Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made by **Trumbal Land Development, LLC**, a Texas limited liability corporation (the "**Declarant**"), and is as follows:

**RECITALS:**

A. This Declaration is filed with respect to that certain real property located in Bexar County, Texas, described on **Exhibit "A"**, attached hereto and incorporated herein by reference (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 these covenants, conditions and restrictions are set out in full or by reference in said contract or deed.

**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 all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Property in effect at the time this Declaration is recorded in the official public records of Bexar County, Texas, and as such may be respectively replaced, amended and/or superseded, and all other ordinances and any other applicable building codes, zoning restrictions and permits or other applicable regulations.

**“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. 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 6.9.2*.

**“Association”** or **“HOA”** means **TRUMBAL TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**, a Texas non-profit corporation, which will be created by the 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, which may be initially adopted and Recorded by Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. Any amendment to the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Upon expiration of the Development Period, the Bylaws may be amended 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.

**"Common Area"** means any property and/or facilities conveyed to the Association, or otherwise expressly designated by the Association, as property or facilities to be use for the common benefit of the Association or its Members. Unless otherwise specifically provided in the respective conveyance document, Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association.

**"Community Systems"** means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennas, 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 within the Property.

**"Declarant"** means Trumbal Land Development, LLC, a Texas limited liability corporation, its successors or assigns; provided that any assignment(s) of the rights of Trumbal Land Development, LLC, as Declarant, must be expressly set forth in writing and Recorded.

**"Design Guidelines"** means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot adopted pursuant to *Section 7.2.3*, 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 twenty-four (24) months after the date that Declarant no longer owns any portion of the Property, unless earlier terminated 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.

**"HOA Surplus Property"** means any property and/or facilities conveyed to the Association, or otherwise expressly designated by the Association, as property or facilities to be use for any purpose other than the common benefit of the Association or its Members.

**"Homebuilder"** means any Owner (other than the Declarant) who acquires a Lot for the construction of a multi- family residential unit for resale to a third party.

**"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, mailboxes, poles, signs, antennas, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities. Specific mention in this paragraph does not mean that the HOA or ACC approves of any such improvement.

**"Lot"** means any portion of the Property designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat. A Lot does not include property that is Common Area or HOA Surplus Property.

**"Majority"** means more than half.

**"Manager"** has the meaning set forth in *Section 4.5.8*.

**"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"** means that certain real property located in Bexar County, Texas, described on **Exhibit "A"**, attached hereto and incorporated herein by reference, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 11.3* and *Section 11.4* of this Declaration.

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

**"Resident"** means an occupant or tenant of a Unit on a Lot pursuant to a lease, regardless of whether the person owns the Unit or Lot.

**"Restrictions"** means the restrictions, covenants, and conditions contained in this Declaration, Bylaws, or in any other rules and regulations promulgated by the Association 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, the Common Area, or the HOA Surplus Property, including any amendments to those instruments.

**"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.

**"Unit"** means an individual multi-family residential dwelling unit constructed by Declarant and any Homebuilder on a Lot pursuant to these Restrictions. Each Lot may contain between three and eight Units or "doors". For purposes of this Declaration, "residence" shall also mean Unit.

<b>TABLE 1: RESTRICTIONS</b>	
<b>Declaration</b> (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
<b>Certificate of Formation</b> (Recorded)	Establishes the Association as a Texas nonprofit corporation.
<b>Bylaws</b> (Recorded)	Governs the Association's internal affairs, such as elections, meetings, etc.
<b>Rules and Regulations</b> (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property, the Common Area, or the HOA Surplus Property.
<b>Board Resolutions</b> (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners and Association.
<b>Notice of Withdrawal of Land</b> (Recorded)	Withdraws and removes land from the Property so that such land is no longer burdened by the terms of this Declaration and no longer under the jurisdiction of the Association.
<b>Notice of Addition of Land</b> (Recorded)	Adds additional land to the Property, so such land will be considered part of the Property and subject to the terms of this Declaration and under the jurisdiction of 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:

**2.1     General.**

2.1.1     Conditions and Restrictions. All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Restrictions.

2.1.2     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 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.

**2.2     Conceptual Plans.** All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property, the Common Area, or the HOA Surplus 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, the Common Area, or the HOA Surplus Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other developer of any portion of the Property, the Common Area, or the HOA Surplus Property makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property, the Common Area, or the HOA Surplus Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, proposed or planned Improvements in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property, the Common Area, or the HOA Surplus 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, the Common Area, or the HOA Surplus Property or

changes in the Conceptual Plans as they may be amended or modified from time to time.

**2.3 Residential Use.** The Lots shall be used solely for private residential purposes.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any 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 home constructed in the Lot; (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 on any Lot, 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 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 of 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 or a Homebuilder.

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

- (i) Declarant and/or its assignees may construct and maintain upon portions of the Common Area, the HOA Surplus Property, 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 residences or other Improvements constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices.

Declarant and/or its assignees shall have an easement over and across the Common Area and the HOA Surplus Property for access and use of such facilities at no charge; and

- (ii) Declarant and/or its assignees will have an access easement over and across the Common Area and the HOA Surplus Property for the purpose of making, constructing and installing Improvements upon the Common Area and the HOA Surplus Property.

**2.4 [Reserved]**

**2.5 Rentals.** Nothing in this Declaration shall prevent the rental of any Lot or Unit and the Improvements thereon by the Owner thereof for residential purposes. All leases shall be in writing. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease for a terms of at least six (6) months, 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. Any lease entered into which contains terms in violation of these Restrictions and/or Declaration is VOIDABLE by the HOA.

**2.6 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.

**2.7 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.

**2.8 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 HOA Surplus Property, or the Improvements located thereon, without the prior written approval of the Board.

**2.9 Mining and Drilling.** Except for the Third Party Oil, Gas and Mineral Interests defined below, no portion of the Property, the Common Area, or the Special Common Area 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, the Common Area, or the HOA Surplus Property by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells by the Declarant or otherwise 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. This *Section 2.9* shall not apply to minerals, resources and groundwater, or some portion thereof or some interest therein, that may have been conveyed or reserved by third parties prior to Declarant's ownership of the Property (the "**Third Party Oil, Gas and Mineral Interests**"). No representation or warranty, express or implied, is made as to the ownership of the minerals, resources and groundwater or any portion thereof or any interest therein.

**2.10 Noise.** 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.

**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 as pot-bellied pigs, miniature horses, chickens, exotic snakes or lizards, ferrets, monkeys, or other exotic animals). The Board may 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 on such Owner's Lot more than one (1) cats and/or dogs per Unit on any Lot, in the aggregate. 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, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. If the Board determines, in its sole discretion, that a 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.** As determined by the Board, 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 in one of the following locations:

- (i) inside the garage of the residence constructed on the Lot; or
- (ii) behind the residence, retaining wall, or fence constructed on the Lot in such a manner that the trash container and recycling bin is not visible or partially visible from any street, alley, or adjacent 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 Drainage.** No structures, fences, walls or other obstructions that impede drainage shall be placed within the limits of the drainage easements shown on the Plat. No landscaping or other type of modifications which alter the cross-sections of the drainage easement, as approved, shall be allowed without the approval of the Director of Public Works. The City of Live Oak and Bexar County shall have the right to ingress and egress over and Owner's adjacent property to remove any impending obstructions placed within the limits of the drainage easements and to make any modifications or improvements within said drainage easement.

**2.15 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 this *Section 2.15* 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 of lawn and landscaping.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn, xeriscape, 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.
- (xi) Repair and/or cleaning of exterior damage, mildew, mold, and wear and tear to Improvements.

**2.16 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 unless the responsibility for maintaining said area is performed by the Association.

**2.17 Antennas.** Except as expressly provided below, no exterior radio or television antennas 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;
- (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.

**2.18 Location of Permitted Antennas.** A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, HOA Surplus Property, 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 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 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.

**2.19 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 expressly permitted pursuant to the Design Guidelines or Rules and Regulations;
- (ii) signs which are part of Declarant's or Homebuilder's overall marketing, sale, or construction plans or activities for the Property;
- (iii) one (1) temporary "For Sale" sign per Unit 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 the finished grade of the Lot 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) political signs may be erected provided the sign: (a) is erected no earlier than the 90<sup>th</sup> day before the date of the election to which the sign relates; (b) is removed no later than the 10<sup>th</sup> 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;
- (v) 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;
- (vi) permits as may be required by legal proceedings; and
- (vii) permits as may be required by any governmental entity.



An Owner or Resident will be permitted to post 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.

"For Lease" and "For Rent" (or similar) signs are expressly prohibited.

**2.20 Flags - Approval Requirements.** An Owner is permitted to display the flag of the United States of America or the flag of the State of Texas ("**Permitted Flag**") and is permitted to install a flagpole no more than five feet (5') in length affixed to the front of a Unit near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**"). Only one (1) permitted Flagpole is allowed per Unit. 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**"). **The ACC may approve or deny any request for a Freestanding Flagpole in its sole and absolute discretion.**

**2.21 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 (1) Permitted Flagpoles are permitted per Unit, 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) The flag of the United States of America must be displayed in accordance with 4 U.S.C. and the flag of the State of Texas must be displayed in accordance with 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, easements and setbacks of record;
- (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, and 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.

**2.22 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), and including swimming pool filter tanks. 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.

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

**2.24 Permanent 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 eighty (80) square feet; (ii) the height of the storage building, measured from the surface of the Lot, is no more than seven (7) 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.

**2.25 Vehicle Parking; Unsightly Articles; Vehicles.** All vehicles shall be parked in garages, on ACC approved driveways, and/or in HOA designated parking. No article deemed to be unsightly by the Board will 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 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 shall 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 roadway within the Property, the Common Area, or the HOA Surplus Property.

**2.26 Mobile Homes, Travel Trailers and Recreational Vehicles.** Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped Persons, mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Texas Department of Transportation), and recreational vehicles (RV's and motor homes) are also prohibited from being parked on the Property, except in areas which may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the foregoing, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Areas or HOA Surplus Property during normal business hours for the purpose of serving any Lot, Common Area, or HOA Surplus Property; provided, however, no such vehicle shall remain on the Common Area or HOA Surplus Property overnight or for any purposes unless prior written consent of the Board is first obtained.

**2.27 Basketball Goals: Permanent and Portable.** Permanent basketball goals are not permitted on any Lot or in any street right of way. Portable basketball goals are permitted on a Lot, but must only be used and stored in the rear of the Lot/Unit within a fenced area. Basketball goals must be properly maintained and painted, with the net in good repair. All portable basketball goals must be approved by the ACC prior to being placed on any Lot.

**2.28 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 6.14* 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 2.28* (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.**

**2.29 Liability of Owners for Damage to Common Area or HOA Surplus Property.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area or HOA Surplus Property without the prior written approval of the Board and the Declarant during the Development Period. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area or HOA Surplus Property 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 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 6.12* of this Declaration.

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

**2.31 Party Wall.** 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 2.31*, 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.

**2.31.1 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 2.31*. 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.

2.31.2 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. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the ACC in accordance with *Article 7* of this Declaration.

2.31.3 Maintenance Costs. The Owners of the adjoining Lots share equally (50/50) the responsibility and 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 Bexar 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 2.31* is appurtenant to the Lot and passes to the Owner's successors in title.

2.31.4 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. 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.

2.31.5 Dispute Resolution. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section (the "**Dispute**"), the parties shall submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board shall appoint a mediator. If the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration. Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board, the Board shall appoint an arbitrator. The decision of the arbitrator shall be binding upon the parties and shall be in lieu of any right of legal action that either party may have against the other. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable. If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for the cost of obtaining the all

costs and expenses incurred by the Association in conjunction therewith. 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) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

2.31.6 Fencing Shared with Common Area and/or HOA Surplus Property. Any fence located on the property line between any Lot and Common Area, or any Lot and/or HOA Surplus Property, shall be owned by the Lot Owner and shall be the responsibility of said Owner to maintain said fence, at Owner's sole expense, in a manner consistent with this Section 2.31.

2.32 Playscapes, Sports Courts, Clothes Lines. Playscapes and sport courts are permissible at the sole discretion of the ACC. If allowed, these facilities must be: (i) properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties; (ii) the height of a playscape, measured from the surface of the Lot, is no more than ten (10) feet; (iii) the canopy cover of any playscape shall be constructed of earth tone materials; and (iv) sport courts may not be lighted or enclosed with netting. Tennis courts are not permitted. Outdoor clothes drying lines are not permitted on any Lot.

2.33 Decorations and Lighting. Unless otherwise permitted by Section 2.19, no decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the residence or on the front yard or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Customary seasonal decorations for holidays are permitted without approval by the ACC but shall be removed within thirty (30) days of the applicable holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding residences or yards. No mercury vapor, sodium or halogen light shall be installed on any Lot which is visible from any street unless otherwise approved by the ACC.

2.34 Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Property may include, now or in the future, 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 Owner 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 Owner

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 Rules and Regulations.

**2.35 Model Home.** The Declarant may construct, or the ACC may approve, a model home constructed on a Lot with exterior finishes, fencing and other components that do not conform to the requirements imposed on other residences within the Property. Declarant's construction, or approval by the ACC, of a model home which differs from the requirements imposed on other residences within the Property shall in no event constitute a waiver of the terms and provisions of the Restrictions.

**2.36 Removal of Soil and Trees.** The digging and removal of soil from any Lot by any party other than the Declarant is expressly prohibited except as necessary in conjunction with the landscaping or construction of Improvements upon a Lot in accordance with plans and specifications approved by the ACC in accordance with *Article 7* of this Declaration. Unless otherwise approved in writing by the ACC, no tree shall be removed from a Lot except by the Declarant unless otherwise approved in advance and in writing by the ACC.

**2.37 Limited or Restricted Driveway Parking.** The Association reserves the right to adopt parking Rules and Regulations within the Property and on any street adjacent thereto. 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 edge of one sidewalk (edge of the sidewalk closest to the residential improvement) adjacent to the driveway to the rear edge of the other sidewalk adjacent to the driveway. This provision will not apply to Declarant or its designee during the Development Period.

**2.38 Public Streets.** Public streets are not Common Areas, but may be maintained and/or regulated by the Association to the extent they are not maintained or regulated by the City of Live Oak, Texas or Bexar County, Texas. As to public streets, the Association, acting through the Board, is specifically authorized: (i) to accept from applicable governmental authorities any delegation of street-related duties; and (ii) to act as attorney in fact for the Owners in executing instruments required by Applicable Law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets serving and adjacent to the Property.

### ARTICLE 3 CONSTRUCTION RESTRICTIONS

**3.1 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.

**3.2 Garages.** Each residential Unit constructed upon a Lot shall have a private garage for not less than one (1) automobile. The location, orientation and opening of each garage to be located on a Lot shall be approved in advance of construction by the ACC. No garage may be permanently enclosed or otherwise used for habitation.

**3.3 Walls, Fences and Hedges.** Unless otherwise approved in advance and in writing by the Architectural Control Committee:

- (i) All walls, fences, planters and hedges shall be maintained and constructed in accordance with this Declaration and any rules or Design Guidelines adopted by the Declarant or the Architectural Control Committee pursuant to *Section 7.2.3*. The design, type, and materials of all fences, including but not limited to ornamental fencing, must be approved by the Architectural Control Committee prior to construction pursuant to the approval requirements of *Article 7* of this Declaration.
- (ii) No wall, fence, planter or hedge in excess of two feet (2') in height shall be erected or maintained on a side lot line forward of point located three feet (3') back from the front exterior corners of the main residential structure located on a Lot. For the purpose of this provision, the front wall of the main residential structure excludes bay or box windows, chimney structures or any other similar appendage.
- (iii) No wall, fence, or hedge in excess of six feet (6') in height shall be erected and maintained on a side lot line from a point located three feet (3') back from the front exterior corner of the main residential structure, backward to the rear property line on a Lot.
- (iv) On corner lots, side yard fences must be set back from the side property line one-half( $\frac{1}{2}$ ) of the side building line setback shown on the Plat. If no side building setback is shown on the Plat, then side yard fences must be set back from the side property line halfway between the building line and the property line.
- (v) Perimeter fencing on all Lots shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and any rules or Design Guidelines adopted by the Declarant or the Architectural Control Committee pursuant to *Section 7.2.3*.
- (vi) Fences of wire or chain link construction are prohibited.

**3.4 Building Restrictions.** All building materials must be approved in advance by the ACC. 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. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.



**3.5 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 or a Homebuilder) 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.

**3.6 Roofing.** The roofs of all buildings shall be constructed or covered with fiberglass, asphalt or dimensional shingles of a weathered wood color or other color approved by the ACC. Any other type of roofing material shall be permitted only with the advance written approval of the ACC. In addition, roofs of buildings may be constructed with "**Energy Efficiency Roofing**" with the advance written approval of the ACC. For the purpose of this Section 3.6, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) 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. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth the Restrictions. 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 3.6. Any other type of roofing material shall be permitted only with the advance written approval of the ACC.

**3.7 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 3.7 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. Unless otherwise approved in advance by the ACC, above-ground or temporary swimming pools are not permitted on a Lot.

**3.8 Compliance with Setbacks.** No residence or any other permanent structure or

Improvement may be constructed on any Lot nearer to a street than the minimum building setback lines shown on the Plat or as required by Applicable Law, and no building shall be located on any utility easements. The ACC may require additional setbacks in conjunction with the review and approval of proposed Improvements in accordance with *Article 7* of the Declaration.

**3.9 Solar Energy Device.** Solar Energy Devices may be installed with the advance written approval of the ACC in accordance with plans and specifications approved by the ACC in accordance with *Article 7* of this Declaration.

3.9.1 [Reserved]

**3.10 Rainwater Harvesting Systems.** Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed only with the advance written approval of the ACC in accordance with plans and specifications approved by the ACC in accordance with *Article 7* of this Declaration.

**3.11 Xeriscaping.** As part of the installation and maintenance of landscaping on an Owner's Lot, drought tolerant landscaping ("**Xeriscaping**") may be installed only with the advance written approval of the ACC in accordance with plans and specifications approved by the ACC in accordance with *Article 7* of this Declaration.

#### **ARTICLE 4**

#### **TRUMBAL TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

**4.1 Organization.** The Association will be 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 Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**4.2 Membership.**

**4.2.1 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: (i) a copy of the recorded deed by which the Owner has acquired title to the Lot; (ii) the Owner's address, email address, phone number, and driver's license number, if any; (iii) any Mortgagee's name and address; and (iv) the name, phone number, and email address of any Resident other than the Owner.

4.2.2 Easement of Enjoyment - Common Area. Every Member and resident 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, subject to applicable Texas law, of the Association to suspend the Member or resident'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 this Declaration;
- (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) With the advance written approval of the Declarant during the Development Period, the right of the Board 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 Board 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, with the advance written approval of the Declarant during the Development Period, 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.

4.3 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 120 days after 75% of the Lots in the Property have been conveyed to Owners. Not later than 120 days after the date 75% of the Lots in the Property**

have been conveyed to Owners, or sooner as determined by Declarant, the Board shall hold a meeting of Members of the Association for the purpose of electing one-third 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 of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

**4.4 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 4.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

4.4.1 Owner Votes. The Owner of each Lot will have one (1) vote for each Unit in the Lot so owned.

4.4.2 Declarant Votes. In addition to the votes to which Declarant is entitled by reason of *Section 4.4.1*, 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.

4.4.3 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 4.4*.

**4.5 Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have 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, will have the following powers at all times:

4.5.1 Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, policies, and Bylaws, as applicable, which are not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property, the Common Area or the HOA Surplus Property (including the operation, maintenance and preservation thereof) or the Association. Any Rules and Regulations, policies, and the Bylaws 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.

4.5.2 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.

4.5.3 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.

4.5.4 Assessments. To levy and collect assessments, as provided in *Article 6* below.

4.5.5 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 or HOA Surplus Property 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 4.5.5 (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.**

4.5.6 Legal and Accounting: Services. To retain and pay for legal and

accounting services necessary or proper in the operation of the Association.

4.5.7 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 or HOA Surplus Property 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;
- (v) Any similar Improvements or facilities; and/or
- (vi) Any lawful purpose.

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 4.5.7* must be approved in advance and in writing by the Declarant. In addition, the Association is (with the advance written approval of the Declarant during the Development Period) and the Declarant are expressly authorized and permitted to convey easements over and across Common Area or HOA Surplus Property for the benefit of property not otherwise subject to the terms and provisions of this Declaration.

4.5.8 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.** Each seller (other than Declarant) of a Lot will pay a one-time resale certificate fee (the "Resale Certificate Fee") to the Association's management company in such amount which shall not exceed \$500.00, as may be determined by the Declarant or the Board until expiration or termination of the Development Period, and the Board thereafter. The Resale Certificate Fee hereunder will be due and payable to the Association's management company upon the transfer of a Lot from one Owner of a Lot to a

subsequent Owner of a Lot (not including transfers from Declarant to the initial Owner). Each Resale Certificate Fee will be collected from the transferee of a Lot upon the conveyance of the Lot from one Owner (not including Declarant) to another (expressly including any reconveyance of the Lot upon resale or transfer thereof).

4.5.9 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, HOA Surplus Property, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

4.5.10 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.

4.5.11 Construction on Common Area and HOA Surplus Property. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, including but not limited to the Common Area and the HOA Surplus Property, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

4.5.12 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, HOA Surplus Property, Improvement, 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.

4.5.13 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.

4.5.14 Allocation of Votes. To determine votes when permitted pursuant to *Section 4.4* above.

4.5.15 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 4.5.15* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

4.5.16 Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Area, HOA Surplus Property, and any Improvements thereon. All Rules and Regulations governing and limiting the use of the Common Area, HOA Surplus Property, and any Improvements thereon must be approved in advance and in writing by the Declarant during the Development Period.

4.5.17 Emails of Members and Residents. Each Lot Owner, Member, and resident shall provide to the Manager, a valid email to be used by the Manager for communication and providing any Notice required hereunder, unless said Notice is required to be provided by law using another means.

**4.6 Conveyance of Common Area and HOA Surplus Property to the Association.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant, and its assignees, reserves the right, from time to time and at any time, to designate, convey, assign or transfer by written and Recorded instrument property being held by the Declarant for the benefit of the Association. Upon the Recording of a designation, the portion of the property identified therein will be considered Common Area or HOA Surplus Property for the purpose of this Declaration and the Association shall have an easement over and across the Common Area or HOA Surplus Property necessary or required to discharge the Association's obligations under this Declaration, subject to any terms and limitations to such easement set forth in the designation. Declarant and its assignees may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, for the Property and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Recordation, and without further action by the Association, and shall be considered Common Area or HOA Surplus Property without regard to whether such real or personal property is designated by the Declarant as Common Area or HOA Surplus Property. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. 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.

**4.7 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 such person is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by such person 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.

**4.8 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.

**4.9 Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 4.5* 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 (Regular, Special, Service Area, HOA Surplus Property, or Individual, as the case may be) 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 Systems.** The Association is specifically authorized to provide, or to enter into contracts with other persons or entities to provide Community Systems. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community 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 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 or any other portion of the Property 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.

**4.12 Administration of Common Area and the HOA Surplus Property.** The administration of the Common Area or the HOA Surplus Property 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 the HOA Surplus Property or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

**4.13 Maintenance Provided by Association.** The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Resident of any Lot or any other person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of Common Area, HOA Surplus Property, or Service Area, or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner or Resident of any Lot for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Area, HOA Surplus Property, or Service Area or any Lot. The Association shall not be liable to any Owner or Resident, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Declaration. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

**4.14 Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by at least two-thirds of the votes of Members present in person or by proxy at the meeting at which the action to merge or consolidate with another association is submitted for a vote. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Restrictions within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

**4.15 Right of Action by Association.** The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 12.1* below, relating to the design or construction of Improvements on a Lot (whether one or more). This *Section 4.15* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the Recorded amendment instrument.

**4.16 Right to Fund HOA using Deficit Funding.** If and when necessary, the HOA shall be permitted to fund the HOA using deficient funding in any manner consistent with Texas law.

**ARTICLE 5  
INSURANCE**

**5.1 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.

**5.2 Restoration.** In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner will (i) promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof, or (ii) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Property within thirty (30) days after the occurrence of such damage. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration, removal, 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 the 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, than at the rate of one and one-half percent (1½%) 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 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. **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 5.2, 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 SHORT OF ACTUAL GROSS NEGLIGENCE.

**5.3 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.

## ARTICLE 6 COVENANT FOR ASSESSMENTS

### **6.1 Assessments.**

**6.1.1 Established by the Board.** All Regular and Special Assessments established by the Board pursuant to the provisions of this *Article 6* (together "Assessments" whether one or more) will be levied against each Lot in amounts determined by the Board pursuant to this *Section 6*. The total amounts of Assessments will also be determined by the Board pursuant to this *Section 6*.

**6.1.2 Personal Obligation; Lien.** Each Assessment, together with interest thereon, late charges, and costs of collection, including without limitation attorneys' fees and court costs, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and are secured by a continuing lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article and applicable law.

**6.1.3 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. Any subsidy and the characterization thereof will be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. 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.

**6.2     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.

**6.3     Regular Assessments.** Prior to the beginning of each fiscal year, or in no case more than semi-annually if the Board in its sole discretion determines such semi-annual assessments necessary, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association (the "**Regular Assessments**") which sets forth: (i) an estimate of 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 (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and giving due consideration to any expected income and any surplus from the prior year's fund; and which (iii) excludes the operation, maintenance, repair and management costs and expenses associated with any Service Area and HOA Surplus Property. Regular Assessments sufficient to pay such estimated net expenses will then be levied at the level of 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 by any Owner, 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, or in such other manner as the Board may designate in its sole and absolute discretion.

**6.4     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 sole discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment 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 or HOA Surplus Property. Any Special Assessment 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. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any HOA Surplus Property will be levied against all Owners who have been assigned the obligation to pay HOA Surplus Property Assessments based on Assessment Units.

**6.5     [Reserved]**

**6.6 [Reserved]**

**6.7 [Reserved]**

**6.8 Amenity Fee.** Each Owner to whom Declarant conveys any Lot ("Initial Owner") will pay a one-time amenity fee (the "**Amenity Fee**") to Declarant in the amount of \$250.00 per Unit located on said Lot. The Amenity Fee hereunder shall be collected at closing and paid directly to Declarant. The Amenity Fee hereunder will be due and payable upon the transfer of a Lot from Declarant to the initial Owner only. The Amenity Fee is intended to reimburse Declarant for the cost of playground improvements and other amenities located on Common Area. The levy of this Amenity Fee will be effective upon the Recordation of this Declaration. The Amenity Fee will be in addition to, not in lieu of, any Assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such Assessments.

**6.9 Amount of Regular Assessments.**

**6.9.1 Assessments to be Levied.** The Board shall levy Regular Assessments against each Lot Owner based on the number of "Assessment Units" (as defined in *Section 6.9.2* below) in the Lot. Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 6.3* and *Section 6.4* shall be levied uniformly against each Lot Owner based on the number of Assessment Units in the Lot. Notwithstanding anything to the contrary herein, the initial annual Regular Assessment shall be \$200 per Assessment Unit, which shall thereafter be the amount of such Regular Assessment until and unless modified by the Board.

**6.9.2 Assessment Unit.** Each Unit of each Lot shall constitute one "Assessment Unit" unless otherwise provided in *Section 6.9.3* or *Section 6.9.4*. Until a Lot contains one or more Units, a Lot shall constitute one Assessment Unit, unless otherwise provide in *Section 6.9.3* or *Section 6.9.4*.

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

**6.9.4 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.

**6.10 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.

**6.11 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 (1½%) per month), together with all late charges, if any, 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.

**6.12 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this Article 6 is, together with late charges as provided in *Section 6.10* and interest as provided in *Section 6.11* hereof and all costs of collection, including without limitation attorney's fees and court costs, are secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.1.2* 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; (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; or (iv) as otherwise required by Applicable Law; provided that, in the case of subparagraphs (ii), (iii), and (iv) 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 shall 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 6.12*, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of notice of assessment 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, equity or otherwise, 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 Owner's tenant 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.

**6.13 Exempt Property.** The following areas will be exempt from the Assessments provided for in this Article:

- (i) All area dedicated and accepted by public authority;
- (ii) The Common Area and the HOA Surplus Property; and
- (iii) Any portion of the Property owned by Declarant.

**6.14 Fines and Damages Assessment and Forced Maintenance.**

6.14.1 **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 pursuant to the Fine and Collection Policy adopted by the Board, if any. Any fine and/or charge levied in accordance with this *Section 6.14* 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, HOA Surplus Property, 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.

6.14.2 **Lien Created.** To the extent permitted by law, 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 6.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.1.2* of this Declaration. To the extent permitted by law, 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*.

6.14.3 **Forced Maintenance.** The Board may, in addition to levying a fine for violations of these Restrictions, approve a policy whereby the HOA shall have the right to conduct any maintenance and/or repair of any improvement, and shall assess the cost of same to the respective Owner.

**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 7.2.1* 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. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 7* and need not be approved in accordance herewith.

**7.1 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.

**7.2 Architectural Control Committee.**

**7.2.1 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 twenty-four (24) 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 twenty-four (24) 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.

**7.2.2 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 7.2.3* to the ACC at the offices of Declarant, 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.

7.2.3 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 7.2.1*, 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.

7.2.4 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.

7.2.5 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.

7.2.6 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.

7.2.7 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 7.2.7* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

7.2.8 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.

7.2.9 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 THE ARCHITECTURAL CONTROL COMMITTEE'S 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.

**8.1 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:

- (i) 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;
- (ii) 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
- (iii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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

**8.3 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**

**9.1     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.

**9.2     Eminent Domain.** In the event it becomes necessary for any public authority or other entity with the power of eminent domain to acquire all or any part of the Common Area or HOA Surplus Property 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 Association. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, at the sole discretion of the Board, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of any Mortgages or deeds of trust on the respective Lots.

**9.3     Amendment.** This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone 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 total 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 correct

scrivener's errors; (c) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (d) 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 (e) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

**9.4 Enforcement.** Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce, by a proceeding at law or in equity, the Restrictions. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of the Restrictions. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. 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. Failure of the Declarant or the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE RESTRICTIONS.

**9.5 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.

**9.6 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.

**9.7 Conflicts.** If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any Rules and Regulations adopted pursuant to the terms of such documents, the provisions of this Declaration, the Certificate, the Bylaws, and the Rules and Regulations, in such order, will govern.



**9.8 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.

**9.9 Acceptance by Grantees.** Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, 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 grantee 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 Damage and Destruction.** The Association shall undertake the following actions subsequent to damage or destruction to all or any part of the Common Area or HOA Surplus Property covered by insurance:

9.10.1 **Claims.** Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or the HOA Surplus Property 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 this *Section* 9.10.1, means repairing or restoring the Common Area or HOA Surplus Property to substantially the same condition as existed prior to the fire or other casualty.

9.10.2 **Repair Obligations.** Any damage to or destruction of the Common Area or the HOA Surplus Property 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.

9.10.3 **Restoration.** In the event that it should be determined by the Board that the damage or destruction of the Common Area or HOA Surplus Property will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or HOA Surplus Property 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.

9.10.4 Special Assessment for Common Area. 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 Assessment, 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.

9.10.5 Special Assessment for HOA Surplus Property. If insurance proceeds are paid to restore or repair any damaged or destroyed HOA Surplus Property, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Common Area Assessment, as provided in *Article 6*, against all Owners who have been assigned the obligation to pay HOA Surplus Property Assessments attributable to such HOA Surplus Property. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

9.10.6 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.

9.10.7 Proceeds Payable to Owners Responsible for HOA Surplus Property. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to HOA Surplus Property, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay HOA Surplus Property Assessments attributable to such HOA Surplus Property and the holders of first Mortgages or deeds of trust on their Lots.

**9.11 No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or HOA Surplus Property 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, the Common Area, or HOA Surplus Property in question has been removed from the provisions of this Declaration pursuant to *Section 11.4* 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.

**9.12 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 (3<sup>rd</sup>) day (other than a 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.

**9.13 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 or HOA Surplus Property 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 perform other landscaping. The Association (with respect to any Common Area or Special 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.

**9.14 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 Common Area or HOA Surplus Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property, the Common Area or HOA Surplus 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 the Declarant nor their Directors, employees, or agents shall in any way be considered insurers or guarantors of safety or security within the Property, the Common Area or HOA Surplus 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 gate, mechanism or system for limiting access to the Property, the Common Area or HOA Surplus 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, its employees, agents, 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.

## **ARTICLE 10 EASEMENTS**

**10.1 Right of Ingress and Egress.** Declarant, its agents, employees, designees, successors or assigns will have a right of ingress and egress over and the right of access to the Common Area or the HOA Surplus Property to the extent necessary to use the Common Area or the HOA Surplus Property and the right to such other temporary uses of the Common Area or the HOA Surplus Property 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 of, 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 directly through the Association and paid for as part of the Assessments or paid directly to Declarant, any affiliate of Declarant, or a 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 or entity. 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 or entity 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.

**10.2 Reserved Easements.** All dedications, limitations, restrictions, easements, rights-of-way, licenses, leases, encumbrances and reservations shown on any Plat or otherwise Recorded against the Property 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 dedications, limitations, restrictions, easements, rights-of-way, licenses, leases, encumbrances, reservations and other grants for the purpose of developing the Property.

**10.3 Improvements, Roadway and Utility Easements.** Declarant hereby reserves unto itself and Declarant's agents and employees, a perpetual non-exclusive easement under, over and across the Property, or any areas conveyed or maintained by the Association, including but not limited to any Service Area, or any areas reserved or held as Common Area or the HOA Surplus Property 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 to any third party who owns, operates or maintains the facilities and Improvements described in this *Section 10.3*. 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. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, HOA Surplus Property, or a Service Area.

**10.4 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, walls, and/or 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, HOA Surplus Property, or Service 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.

**10.5 Landscape and Monument Sign Easement.** Declarant hereby reserves for itself and the Association an easement over and across the Property, the Common Area and the HOA Surplus Property for the installation, operation, maintenance, repair, relocation, removal and/or modification of signs, monument signs and/or landscaping which serve the Property, the Common Area and the HOA Surplus 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, the Common Area and the HOA Surplus Property to which the easement reserved hereunder applies. Declarant may designate all or any portion of the easement areas reserved hereunder as Common Area, HOA Surplus Property, or Service 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.

**10.6 Easement to Inspect and Right to Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for the 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 structure, Improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights 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 mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section* 10.6 may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner's Lot and all Improvements thereon for the purposes contained in this *Section* 10.6.

## **ARTICLE 11 DEVELOPMENT RIGHTS**

**11.1 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, Common Area, HOA Surplus Property, and Service 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* 4.3. These rights may be exercised with respect to any portions of the Property, the Common Area, or the HOA Surplus 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.

**11.2 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 Common Area, or the HOA Surplus 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* 11.2 until twenty-four (24) months after expiration or termination of the Development Period.

**11.3 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:

- (i) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is Recorded;
- (ii) 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
- (iii) A legal description of the added land.

**11.4 Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw land 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:

- (i) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is recorded;
- (ii) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (iii) A legal description of the withdrawn land.

**11.5 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**  
**DISPUTE RESOLUTION**

**12.1 Introduction and Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration but who agrees to submit to this Article (collectively, the "**Parties**"), agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. As used in this Article only, the following words, when capitalized, have the following specified meanings:

- (i) "**Claim**" means:
  - (A) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Association, and any claim asserted against the ACC.
  - (B) Claims relating to the design or construction of the Common Area or any Improvements located on the Property.
- (ii) "**Claimant**" means any Party having a Claim against any other Party.
- (iii) "**Respondent**" means any Party against which a Claim has been asserted by a Claimant.

**12.2 [Reserved]**

**12.3 [Reserved]**

**12.3.1 [Reserved]**

**12.4 Claim by Lot Owners - Improvements on Lots.** Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to a Lot Owner by the Declarant or a Homebuilder relating to the design or construction of any Improvements located on a Lot, then this *Article 12* will only apply to the extent that this *Article 12* is more restrictive than such Lot Owner's warranty, as determined in the Declarant's sole discretion. If a warranty has not been provided to a Lot Owner relating to the design or construction of any Improvements located on a Lot, then this *Article 12* will apply. If a Lot Owner brings a Claim, as defined in *Section 12.1*, relating to the design or construction of any Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in *Section 12.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 12*, or taking any other action to prosecute a Claim, the Lot Owner must obtain an independent third-party report (the "Owner Improvement Report") from a licensed professional engineer which: (i) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (ii) describes any modification, maintenance, or repairs to the Improvements performed by the Lot Owner(s) and/or the Association; and (iii) 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 Lot Owner and paid for by the Lot Owner, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Lot Owner in the Claim. As a precondition to providing the Notice described in *Section 12.5*, the Lot Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Improvement 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 Owner Improvement Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 12.5*, the Lot Owner 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 Owner Improvement Report.

**12.5 Notice.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) 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 12.6* below, is equivalent to the sixty (60) day period under Section 27.004 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 12.6*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 12.6* 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 12.7* 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 12.7* is required without regard to the monetary amount of the Claim.

**12.6 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.

12.7 **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 may submit the Claim to mediation in accordance with this *Section 12.7*.

12.8 **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.

12.9 **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 12.9*.

12.9.1 **Governing: Rules.** If a Claim has not been resolved after mediation as required by *Section 12.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 12.9* 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 Bexar 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 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 12.9*, this *Section 12.9* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, except as provided in *Section 12.9.4*, but may be reduced to judgment or enforced 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.

12.9.2 Exceptions to Arbitration: Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 12.9* 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.

12.9.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 12.9*.

12.9.4 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 12.9* and subject to *Section 12.10* below (attorney's fees and costs may not be awarded by the arbitrator); 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. 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.

12.9.5 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 Bexar 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. 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.

12.10 **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.

12.11 **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.

12.12 **Period of Limitation.**

12.12.1 **For Actions by an Owner.** The exclusive period of limitation for any of the Parties to bring any Claim shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; or (iii) for all Claims, the applicable statute of limitations under Texas law. In no event shall this *Section 12.12.1* be interpreted to extend any period of limitations under Texas law.

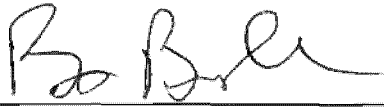
12.13 **Funding Arbitration and Litigation.** The Association may, but is not required to levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 12* or any judicial action initiated by the Association. The Association 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 for purposes that include an arbitration and litigation reserve fund.

*[Signatures to follow on next page]*

EXECUTED May 30, 2019, to be effective on the date this instrument is Recorded.

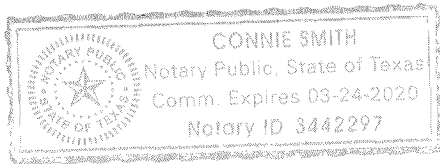
**DECLARANT:**

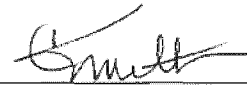
**Trumbal Land Development, LLC**, a Texas limited liability corporation

BY:   
**Bo Broll, President**

STATE OF TEXAS           §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me on this 30<sup>th</sup> day of May 2019 by Bo Broll, President of Trumbal Land Development, LLC, a Texas limited liability corporation, in said capacity and on behalf of Trumbal Land Development, LLC, a Texas limited liability corporation.



  
Notary Public, State of Texas

My commission expires \_\_\_\_\_

**WHEN RECORDED RETURN TO:**

L. Dan Eldredge, Jr.  
Attorney at Law, PLLC  
20770 Hwy 281 N, Suite #108-243  
San Antonio, Texas 78258  
(210) 390-4979- Telephone  
dan@eldredgelawtx.com

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

**Unit 1:**

Being a 4.895 acre tract (more or less) of land together with a 50 foot ingress-egress easement being 1.154 acres of land, being Tract No. 309, and an ingress-egress easement described as 1.84 acres and described in Volume 5912, Page 40, of the Real Property Records, Bexar County, Texas and being out of the Martin Friesenhahn 74.5 acre tract of land out of the Francisco Villareal Survey No. 309, Abstract No. 776, County Block 5048, City of Live Oak, Bexar County, Texas.

and

**Unit 2:**

Being a 3.587 acre tract of land, more or less, together with a 50 foot ingress-egress easement, out of the Francisco Villareal Survey No. 309, Abstract 776, County Block 5048, City of Live Oak, Bexar County, Texas, said 3.587 acre tract and easement being a part of that certain 3.726 acre tract conveyed by, and being more particularly described by metes and bounds in, a Warranty Deed from Kristy Reed to Debra L. Reed dated March 27, 2007 and recorded in Volume 13027 Page 1950, of the Official Public Records of Real Property of Bexar County, Texas save and except that certain 0.139 acre tract out of said 3.726 acre tract conveyed to Donella Scarboro by General Warranty Deed dated June 24, 2011 and recorded in Volume 15018, Page 130, of the Official Public Records of Real Property of Bexar County.

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190110745

**Recorded Date:** June 12, 2019

**Recorded Time:** 2:11 PM

**Total Pages:** 63

**Total Fees:** \$270.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 6/12/2019 2:11 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk