

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
FLAT CREEK SUBDIVISION**

*CASTROVILLE, TEXAS*

**AFTER RECORDING, RETURN TO:**

Declarant:

KF Flat Creek, LP,  
a Texas limited partnership  
2722 West Bitters Road, Suite 106  
San Antonio, Texas 78248

Association:

Flat Creek Castroville Property Owners' Association, Inc.,  
a Texas non-profit corporation  
2611 N Loop 1604 W, Suite 100  
San Antonio, Texas 78258

*with a copy to:*

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**NOTICE**

This Declaration is subject to change from time to time. By being an Owner or Resident of a Lot, you agree to remain in compliance with the Declaration (and any amendments thereto).

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**for the**  
**FLAT CREEK SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for the Flat Creek Subdivision (the “**Declaration**”) is made, as of the date hereinafter set forth, by **KF Flat Creek, LP**, a Texas limited partnership (the “**Declarant**”), and is as follows:

**RECITALS**

**WHEREAS**, this Declaration is filed and Recorded (as defined herein) with respect to that certain real property, of approximately 254.69 acres, located within the municipal corporate boundaries of the City of Castroville (“**City**”), Medina County (“**County**”), Texas, as more particularly described on **Exhibit “A”** attached hereto and incorporated herein for all purposes (the “**Property**”); and

**WHEREAS**, Declarant is the fee-simple owner of the Property; and

**WHEREAS**, Declarant desires to create and carry out a uniform plan for the development, improvement, use, and sale of the Property for the benefit of all Owners (as defined herein); and

**WHEREAS**, Declarant imposes this Declaration on all Owners, occupants, and any other person or entity holding an interest in a Lot (as defined herein); and

**WHEREAS**, by the Recording of this Declaration, Declarant serves notice that the Property is subject to the terms and provisions of this Declaration; and

**WHEREAS**, this Declaration is intended to run with the land and bind all Owners, occupants, and any other person or entity holding an interest in a Lot; and

**WHEREAS**, all Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Property is subject to this Declaration; and

**WHEREAS**, each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments (as defined herein) and agrees that failure to comply may subject him/her to a fine, an action for amounts due to the Association (as defined herein), damages, or injunctive relief; and

**NOW, THEREFORE**, it is hereby declared: (i) that the Property (or any portion thereof) shall be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with such portions of the Property and shall 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 shall inure to the benefit of each Owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

## ARTICLE 1

### **RECITALS; CONSTRUCTION OF TERMS; DEFINITIONS**

**1.1 Recitals.** The recitals set forth above are hereby fully incorporated in and made a part of this Declaration as if set forth verbatim.

**1.2 Construction of Terms.** Unless otherwise stated herein, all terms and phrases defined in this Declaration shall have the meanings and definitions ascribed thereto. If appropriate, in the context of this Declaration, terms that have well known technical, municipal, or construction or development industry meanings shall be used in accordance with such recognized meanings, unless otherwise defined herein or unless the context clearly indicates a different meaning. The titles given to any article or section of this Declaration are for convenience or reference only and are not intended to modify the meaning of the article or section.

**1.3 Definitions.**

**“Applicable Law”** shall mean and refer to the statutes and public laws and ordinances in effect at the time a provision of the Dedicatory Instruments is applied, and pertaining to the subject matter of the provision. Statutes and ordinances specifically referenced in the Dedicatory Instruments are “Applicable Law” on the date of the Dedicatory Instruments, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

**“Architectural Control Committee”** or **“ACC”** shall mean and refer to the committee created pursuant to this Declaration (and/or Bylaws) 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 9 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”** shall mean and refer to the assessments imposed and/or levied by the Association under this Declaration, including, but not limited to, the Assessments described and payable pursuant to Article 8 of this Declaration and any other amounts or sums due by any Owner to the Association pursuant to the provisions of this Declaration, Dedicatory Instruments, and Applicable Law.

**“Association”** shall mean and refer to **FLAT CREEK CASTROVILLE PROPERTY OWNERS’ ASSOCIATION, INC.**, a Texas non-profit corporation, incorporated under the laws of the State of Texas, its successors and assigns, which was created by Declarant to exercise the authority and assume the powers

specified in Article 6 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”** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

**“Bulk Rate Contract” or “Bulk Rate Contracts”** shall mean and refer to 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 and/or the Property. 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 shall be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

**“Bylaws”** shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

**“Certificate”** shall mean and refer to the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

**“City”** shall mean and refer to the home-rule municipality of the City of Castroville, Texas.

**“Common Area”** shall mean and refer to any and all real and personal property, easements, and facilities (together with the Improvements located thereon and any and all other interests therein) that the Association owns or in which it otherwise holds rights or obligations, including any and all real and personal property, easements, and facilities (together with the Improvements located thereon and any and all other interests therein) held by the Declarant, the Association, or otherwise for the benefit of the Association or its Members. Common Area includes any and all real and personal property that the Association holds under a lease, license, or any easement in favor of the Association. “Common Area” shall also include and mean and refer to all property within any applicable Plat/Conceptual Plan not designated as a Lot on such Plat/Conceptual Plan for a Residence and that has not been accepted for maintenance by the applicable governmental body; by way of example, and without limitation, such Common Areas may include areas designated as park, open space, detention, and private streets. Declarant may convey the Common Area to the Association. Some Common Areas may be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

**“Community Manual”** shall mean and refer to the community manual, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the benefit of the Association and the Property. The Community Manual may include the Bylaws, Rules and Regulations and/or other policies governing the Association. The Community Manual may be amended or supplemented, from time to time, by the Declarant acting alone, in its sole and absolute discretion, during the Development Period. Any amendment to the Community Manual, prosecuted by the Board, shall be approved in writing by the Declarant until expiration or termination of the Development Period.

**“Community Systems”** shall mean and refer to 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”** shall mean and refer to KF Flat Creek, LP, a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of KF Flat Creek, LP, a Texas limited partnership, as Declarant, or such successor Declarant, as may hereafter be designated, shall be expressly set forth in writing and Recorded. Upon such designation of a successor Declarant and/or any such assignment of rights, all rights of the former Declarant hereunder shall cease. Pursuant to certain provisions of this Declaration, the Certificate, and the Bylaws, the Declarant is granted the right during the Declarant Control Period (as defined in the Bylaws), to appoint and remove the members of the Board and the right to disapprove any actions, policies, and programs of the Board and/or its committees in its sole and absolute discretion.

**“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for the Flat Creek Subdivision (a residential subdivision), as it may hereafter be amended in accordance with the provisions hereof.

**“Dedictory Instruments”** shall mean and refer to this Declaration, the Certificate, Bylaws, Rules and Regulations, Design Guidelines, Community Manual, standards of the ACC, any other rules and regulations promulgated by the Association and/or Declarant pursuant to this Declaration, and/or any other instrument covering the establishment, maintenance, and operation of the Flat Creek Subdivision, as each may be amended and supplemented from time to time. Any amendment to the Dedictory Instruments, governing the Association, prosecuted by the Board, shall be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. See **Exhibit D** for a summary of the Dedictory Instruments.

**“Design Guidelines”** shall mean and refer to the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot adopted pursuant to Section 9.1.3, 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 (during the Development Period), Declarant may adopt or amend from time to time the Design Guidelines for the Property or any portion thereof. The Design Guidelines also include the Landscaping Design Guidelines provided in Section 9.1.3.1.

**“Development Agreement”** shall mean and refer to that certain agreement, recorded in the Official Public Records of Medina County, Texas, under Document No. 2024007632, which encumbers the Property and imposes certain conditions and requirements associated with the development of the Property.

**“Development Period”** shall mean and refer to 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.

**“Homebuilder”** shall mean and refer to an Owner (other than the Declarant) who acquires a Lot, within the Property, for the construction of a Residence for resale to a third party.

**“Improvement”** shall mean and refer to all physical enhancements and alterations to the Property (other than a Residence), 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.

**“Lot”** shall mean and refer to any portion of the Property, other than Common Areas, either designated by Declarant or as shown as a subdivided lot (or any portion thereof) on a Plat/Conceptual Plan planned for a Residence (including any Improvements on such designated portions of the Property). More specifically, **“Lot”** shall mean and refer to any portion of the Property, whether developed or undeveloped, whether platted or un-platted, upon which a Residence has been constructed or it is intended by the Declarant that a Residence be constructed, excluding reserve tracts and areas designated as park, open space, detention, private streets, and/or other Common Areas, but including lots created by the platting/replatting or subdividing of a reserve tract for a Residence. **“Lots”** shall mean and refer to each Lot and all of them. In the case of a parcel of land planned for a Residence, which has not been formally platted or replatted into the proposed Lots, the parcel shall be deemed to contain the number of Lots designated by the Declarant on the development plan for such parcel of land unless or until a different number of Lots is platted or subdivided for a Residence.

**“Majority”** shall mean and refer to more than fifty percent (50%).

**“Manager”** shall have the meaning set forth in Section 6.5.8.

**“Member”** or **“Members”** shall mean and refer to every Owner, person, and/or entity entitled to membership in the Association, as provided herein (and the Bylaws).

**“Mortgage”** or **“Mortgages”** shall mean and refer to any mortgage(s), deed(s) of trust, or other similar security instrument granting, creating, or conveying a lien or security interest upon a Lot.

**“Mortgagee”** or **“Mortgagees”** shall mean and refer to the beneficiary(ies) or holder(s) of any Mortgage(s).

**“Owner”** shall mean and refer to the person(s), entity or entities, including Declarant, of record, holding all or a portion of the fee simple interest in any Lot (or portion thereof), but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot (or portion thereof) pursuant to foreclosure of the lien of its Mortgage, those having an interest merely as security for the performance of an obligation, and/or those owning an interest in the mineral estate.

**“Plat”** shall mean and refer to a Recorded subdivision plat of any portion of the Property, and any amendments thereto.

**“Property”** shall mean and refer to that certain real property, of approximately 254.69 acres, located in the municipal corporate boundaries of the City of Castroville, Medina County, Texas, as more particularly described on **Exhibit A** attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to Section 12.3 and Section 12.4 of this Declaration. The legal description, as of the date hereof, being, generally, described by the County Appraisal District as: A1259 L. M. COLLARD SURVEY 97; ACRES 119.628; A1269 J. FISHER SURVEY 5; 20.6 ACRES; A1269 J. FISHER SURVEY 5; 22.53 ACRES; A1269 J. FISHER SURVEY 5; ACRES 27.055; A1348 R. WITTMAN SURVEY 4; 20.861

ACRES; A1348 R. WITTMAN SURVEY 4; 21.364 ACRES; and A1348 R. WITTMAN SURVEY 4; 19.05 ACRES (*also referred to as* County Appraisal District Property ID Nos. 10599; 10669; 10660; 11093; 10659; 11092; 10671; and 11094). In the event of a conflict between the property descriptions described herein, Exhibit A shall control, subject to such additions thereto and deletions therefrom as may be made pursuant to Section 12.3 and Section 12.4 of this Declaration.

**“Record,” “Recording,” “Recordation,” or “Recorded”** shall mean and refer to the applicable document recorded or to be recorded in the Official Public Records of Medina County, Texas.

**“Renting”** shall mean and refer to granting the right to occupy and use a Residence (or portion thereof) in exchange for consideration. The term Renting shall include leasing.

**“Residence”** shall mean and refer to a detached, single-family building designed for and used as a dwelling by a Single Family and constructed on a Lot.

**“Resident”** shall mean and refer to an occupant or tenant of a Lot (or any portion thereof), regardless of whether the person owns the Lot.

**“Rules and Regulations”** shall mean and refer to any instrument, however denominated, which is adopted by the Board for the regulation and management of the Property or the Common Area (or adopted by the Declarant during the Development Period), including any amendments to those instruments. The Rules and Regulations may include, but are not limited to, the following: the Guidelines for Alternative Payment Plans, the Records Retention Policy, the Records Production and Copying Policy, the Fine and Enforcement Policy, and the Management Certificate.

**“Single Family or Single Families”** shall mean and refer to a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

**“Solar Energy Device”** shall mean and refer to 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.

## 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 shall be owned, held, encumbered, rented/leased, used, occupied and enjoyed subject to this Declaration, including the Dedicatory Instruments. Moreover, in addition to Rules and Regulations that may be established by the Board or Declarant, and penalties for violations thereof, each Lot shall be subject to the rules and restrictions of this Declaration (particularly, this Article), which may affect each Lot’s use and activities.

2.1.2 Ordinances. The Applicable Law, as well as the ordinances and requirements imposed by local governmental authorities, is applicable to all Lots within the Property. Compliance with this Declaration, including the Dedicatory Instruments, is not a substitute for compliance with Applicable Law (as well as the ordinances and requirements imposed by local governmental authorities). **PLEASE BE ADVISED THAT THIS DECLARATION AND THE DEDICATORY INSTRUMENTS 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 THE APPLICABLE LAW, 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 THE APPLICABLE LAW OR ANY ORDINANCES, REQUIREMENTS, REGULATIONS OR ENCUMBRANCES WHICH MAY AFFECT THE OWNER'S LOT.**

2.2 Conceptual Plans. All master plans, site plans, concept plans/preliminary concept plans, brochures, illustrations, information and marketing materials relating to the Property or the Common Area (collectively, the “**Conceptual Plans**”) are conceptual in nature and are intended to be used for illustrative purposes only. The land uses, Residences, 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 or the Common Area 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 or the Common Area makes any representation or warranty concerning such land uses, Residences and Improvements shown on the Conceptual Plans or otherwise planned for the Property or the Common Area and it is expressly agreed and understood that no Owner shall be entitled to rely upon the Conceptual Plans or any statements made by the Declarant or any of Declarant's representatives regarding the proposed land uses, or proposed or planned Residences/Improvements in making the decision to purchase any land, Residences, or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property and/or the Common Area shall likely extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or the Common Area or changes in the Conceptual Plans, as they may be amended or modified from time to time. The “Preliminary Concept Plan” (as may be amended from time to time) is attached hereto as Exhibit B and incorporated herein for all purposes.

2.3 Subdividing; Consolidation. 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. An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence on a Lot.

## 2.4 Use and Activities.

2.4.1 Permitted Use. Except as otherwise provided in this Declaration (or Dedicatory Instruments), a Lot may be used only for a Residence and approved Improvements associated with such Residence for Single Family 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) participation in the business activity is limited to the Owner(s) or Resident(s) of a Residence 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 noticeably greater than that which is typical of Residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents 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 the Lot shall be considered open to the public. The term "business," as used in this provision, shall be construed to have its ordinary, generally accepted meaning 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: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required.

Renting of a Residence shall not be considered a business within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Homebuilder.

2.4.2. Prohibited Activities. *Except as otherwise provided in this Declaration (or Dedicatory Instruments), activities and uses that are expressly prohibited include the following:*

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping of rubbish;
- e. any storage of—
  - i. building materials except during the construction or renovation of a Residence or Improvement;
  - ii. vehicles, except vehicles in a garage or Improvement or operable automobiles on a driveway; or
  - iii. unsightly objects unless completely shielded by an Improvement;

- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, confined to a fenced yard or within the Residence;
- h. any commercial or professional activity except reasonable home office use;
- i. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- j. moving a previously constructed house onto a Lot; and
- k. hunting and shooting.

2.4.3 Renting of Residence. The Renting of Residences is permitted subject to the following conditions:

- a. No portion of the Property may be used as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, or any similar purpose, and only the Residence constructed on a Lot may be rented/leased, which shall be only for Single Family purposes for a lease term of no less than six (6) months; and
- b. all leases shall be in writing and shall be made subject to the Dedicatory Instruments; and
- c. an Owner is responsible for providing the Owner's Resident with copies of the Dedicatory Instruments and notifying the Resident of changes thereto; and
- d. each Resident is subject to and shall comply with all provisions of the Dedicatory Instruments; and
- e. an Owner must engage with a property management company for any Renting of a Residence; and unless prohibited by Applicable Law, or otherwise approved by the Board, all Owners must utilize the same property management company, which shall be chosen and established by resolution of the Board; additionally, all signage and marketing on the Property, for any Renting of a Residence, shall be prohibited, unless prior approval by the Board is obtained; and
- f. written notice of any rental agreement/lease, together with such additional information as may be required by the Board, shall be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the rental agreement/lease.

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

- (i) Declarant and/or its licensees may construct and maintain upon portions of the Common Area, any Lot, or portion of the Property owned by the Declarant, such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required,

convenient, or incidental to the construction or sale of Residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees shall have an easement over and across the Common Area for access and use of such facilities at no charge; and

(ii) Declarant and/or its licensees shall have an access easement over and across the Common Area for the purpose of making, constructing and installing Improvements upon the Common Area.

**2.5 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 shall 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 shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. Each Owner shall 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.

**2.6 Trash Containers.** Except for consecutive twelve (12) hour periods before and after any designated waste pick-up time, trash containers and recycling bins shall be stored behind a fence or in the garage of a Residence, so as to not be visible from the street / alley or neighboring or adjoining or adjacent Residences. The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins shall be stored.

**2.7 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, tractors, boats, 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 vehicles (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 racing vehicles or any other vehicles (including, without limitation, motorcycles or motor scooters) that are inoperable or do not have a current license tag shall not be permitted to remain visible on any Lot or to be parked on any roadway within the Property or Common Area.

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

The storage of vehicles on streets or within road rights-of-way, within the Property, is specifically prohibited. Any vehicle parked or left, not in accordance with this Section, shall be considered a nuisance.

The term "vehicle," as used herein, shall refer to all vehicles including, without limitation, automobiles, trucks, motor homes recreational vehicles, boats, trailers, motorcycles, minibikes, scooters, go-carts, campers buses, and vans, including such vehicles with the motor removed.

**2.8 Outside Burning.** No exterior fires are permitted with the exception of barbecues, outside fireplaces, braziers and incinerator fires that are contained within facilities or receptacles and in areas designated and approved by the Board. No Owner may permit any condition upon its portion of the Property which creates a fire hazard or violates Applicable Law.

**2.9 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.

**2.10 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 include non-traditional pets such pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner or Resident may keep on such Owner's or Resident's Lot more than four (4) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than within the Residence, or the fenced yard space associated therewith, unless confined to a leash. The Board 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 shall be allowed. No animal may be allowed to run at large, and all animals shall be kept within enclosed areas which shall be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in front yards, porches, or other unenclosed outside areas of the Lot. All pet waste shall be removed and appropriately disposed of by the owner of the pet. All pets shall be registered, licensed and inoculated as required by Applicable Law. All pets not confined to a Residence shall wear collars with appropriate identification tags and all outdoor cats are required to have a bell on their collar. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Resident, upon written notice, may be required to remove the pet from the Property.

**2.11 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, Lot landscaping, Residence, 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 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 and edging.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vii) Keeping planting beds free of turf grass.
- (viii) Keeping sidewalks, driveways, and fences in good repair.
- (ix) Complying with Applicable Law.
- (x) Repainting of Residences and Improvements.
- (xi) Repair of exterior damage, and wear and tear to Residences and Improvements.

**2.12 Antennas.** Except as expressly provided below, no exterior radio or television antennas or aerial or satellite dish or disc, nor any Solar Energy Device, shall be erected, maintained or placed on a Lot without the prior written approval of the ACC; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel 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 broadcast signals.

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) shall 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 shall 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.

(iv) **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, 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 shall be considered least visible by the ACC are as follows:

(A) Attached to the back of the principal Residence constructed on the Lot, with no part of the Permitted Antenna any higher than the roof fascia, soffit, or bargeboard and screened from view of adjacent Lots and the street; then

(B) 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.

**2.13 Signs.** Unless otherwise permitted by Applicable Law, no sign or emblem of any kind may be displayed to the public view on any Lot, Residence, or Improvement without the prior written approval of the ACC, except for:

2.13.1 Declarant Signs. Signs erected by the Declarant or erected with the advance written consent of the Declarant;

2.13.2 Security Signs. One small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal Residence constructed upon the Lot;

2.13.3 Permits. Permits as may be required by Applicable Law;

2.13.4 Sale or Rental Signs. One (1) temporary “For Sale” or “For Lease” sign per Lot, provided that the sign shall be limited to: (i) 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; (ii) an overall height of the sign from finished grade at the spot where the sign is located may not exceed four feet (4'); and (iii) the sign shall be removed within two (2) business days following the sale or lease of the Lot;

2.13.5 Political Signs. Political signs may be erected provided the sign: (i) is erected no earlier than the ninetieth (90<sup>th</sup>) day before the date of the election to which the sign relates; (ii) is removed no later than the tenth (10<sup>th</sup>) day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected by each Owner of a Residence. In addition, signs which include any of the components or characteristics described in Section 259.002 (d) of the Texas Election Code are prohibited; and

2.13.6 No Soliciting: Signs. A “no soliciting” sign near or on the front door to the principal Residence constructed upon the Lot, provided, that the sign may not exceed twenty- five (25) square inches.

2.13.7 Homebuilders' Signs. Any Homebuilder may utilize one professional sign (of not more than five (5) square feet in size) per Lot for advertising and sales promotion of the Residence on such Lot.

2.13.8 School Spirit Signs. Signs containing information about one or more children residing in the Residence and the school they attend shall be permitted so long as the sign is not more than 36" x 36". There shall be no more than one sign for each child under the age of eighteen (18), residing in the Residence.

In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Lot to remove any sign which violates this Section provided the violating Owner has been given forty-eight (48) hours written notice by the Board of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.

**2.14** Flags. Owners are permitted to display certain flags on the Owner's Lot, as further set forth below.

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

2.14.2 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, shall comply with the following:

2.14.2.1 No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

2.14.2.2 Any Permitted Flagpole shall be no longer than five feet (5') in length and any Freestanding Flagpole shall be no more than twenty feet (20') in height;

2.14.2.3 Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');

2.14.2.4 The flag of the United States of America shall be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas shall be displayed in accordance with Chapter 3100 of the Texas Government Code;

2.14.2.5 The display of a flag, or the location and construction of the flagpole shall comply with Applicable Law, easements and setbacks of record;

2.14.2.6 Any flagpole shall be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the Residence;

2.14.2.7 A flag or a flagpole shall be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole shall be repaired, replaced or removed;

2.14.2.8 Any 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

2.14.2.9 Any external halyard of a flagpole shall be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

**2.15 Tanks.** The ACC shall 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 shall be screened from view in accordance with a screening plan approved in advance by the ACC. This provision shall not apply to a tank used to operate a standard residential gas grills, nor shall it apply to barrels used as part of a Rainwater Harvesting System with capacity of less than fifty (50) gallons, so long as such barrels are actively being used for rainwater collection and storage.

**2.16 Temporary Improvements.** No tent, shack, 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 Improvements and structures necessary for storage of tools and equipment, and for office space for Declarant, Homebuilders, architects, and foremen during actual construction may be maintained with the prior approval of Declarant (unless placed by the Declarant), approval to include the nature, size, duration, and location of such structure.

**2.17 Party Wall Fences.** 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”. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Party Walls shall also be subject to the following:

2.17.1 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. 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.

2.17.2 Right to Repair. If the Party Wall is damaged or destroyed from any cause, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the other Owner or Owners that the wall serves shall thereafter contribute to the cost of restoration thereof in equal proportions without prejudice, subject however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions. 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 9 of this Declaration.

2.17.3 Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner shall 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 Medina County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner's successors in title. If the Owners of Adjoining Lots fail to maintain the Party Wall located upon such Owner's Lot in good condition and repair, the Association may undertake such measures as may be required to maintain and/or repair the Party Wall, and, in such event, the Association shall levy an Individual Assessment on the Lot Owners responsible for maintenance of the Party Wall.

2.17.4 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 shall 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.

2.17.5 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 shall be personally liable to the Association for 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) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided herein for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

**2.18 Playscapes and Sports Courts.** Playscapes and sport courts are permissible at the sole discretion of the ACC. If allowed, these facilities shall be properly sited and screened so as to minimize the

visual and audio impact of the facility on adjacent properties. Sport courts may not be lighted or enclosed with netting. No sport court equipment authorized by this Section shall exceed twelve (12) feet in height. Tennis courts are not permitted.

**2.19 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 all Applicable Law. Access to these facilities and ponds is limited to persons engaged by the Association or its agents 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.

**2.20 Cell Tower and Telecommunications Equipment.** Telecommunications, cellular, video and digital equipment, including without limitation, broadcast antennae and related equipment, cell towers, cell tower equipment, or other wireless communication antennae and related equipment, cable or satellite television equipment and equipment for high-speed internet access (collectively, the “**CTT Equipment**”) may be located on or near the Property or may be constructed on or near the Property. As more particularly described in Section 11.9 of this Declaration, Declarant has reserved the right, for the benefit of itself and its assigns, to construct, install, use, maintain, repair, replace, improve, remove, and operate CTT Equipment upon all or any portion of the Common Area. Parties other than the Declarant or its assigns may also have easements for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment.

**2.21 Swimming Pools.** Any swimming pool constructed on a Lot shall 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 2.21 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. Pool equipment shall be screened in accordance with the Design Guidelines and Development Agreement.

**2.22 Retaining Walls.** Notwithstanding any provision in this Declaration to the contrary, the Association shall be obligated to maintain, repair, and replace the Retaining Walls (defined below) within the Property. For the purposes of this Section 2.22, “**Retaining Walls**” means walls constructed by Declarant or Declarant's designee for the purpose of adjusting the grade or elevation on or between Lots or other portions of the Property in order to construct one or more Residences, but excluding Improvements appurtenant to such Residence(s) that are constructed after initial construction of the Residence(s) (e.g., swimming pools and patios). Declarant reserves for the Association and the Association's agents and contractors, a non-exclusive easement over and across the Property for the maintenance, repair and replacement of the Retaining Walls. The Association and the Association's agents and contractors shall have the right to enter onto any portion of the Property, including any Lot, as reasonably necessary or convenient to maintain, repair, and replace the Retaining Walls; provided, however, the exercise of the easement reserved herein shall not permit entry into any Residence. The costs incurred or anticipated to be incurred by the Association to maintain, repair, and replace the Retaining Walls shall be collected through the levy of Regular Assessments. 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 maintenance responsibilities under this Section 2.22.

**2.23 Solar Energy Device.** Solar Energy Devices may be installed with the advance written approval of the ACC in accordance with the procedures set forth below.

2.23.1 Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the “**Solar Application**”). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of Article 9 of the Declaration.

2.23.2 Approval Process. The ACC shall review the Solar Application in accordance with the terms and provisions of Article 9 of the Declaration. The ACC shall approve a Solar Energy Device if the Solar Application complies with Section 2.23.3 below unless the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with Section 2.23.3, shall create a condition that substantially interferes with the use and enjoyment of the property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association shall be approved in advance and in writing by the Board, and the Board need not adhere to this Section when considering any such request.

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

- (i) The Solar Energy Device shall be located on the roof of the Residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device shall be located on the roof of the Residence, the ACC may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device shall be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.
- (ii) If the Solar Energy Device is mounted on the roof of the principal Residence located on the Owner's Lot, then: (a) the Solar Energy Device may not extend higher than or beyond the roofline; (b) the Solar Energy Device shall conform to the slope of the roof and the top edge of the Solar Device shall be parallel to the roofline; and (c) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device shall be silver, bronze or black.

**2.24 Rainwater Harvesting Systems.** Rainwater Harvesting Systems may be installed with the advance written approval of the ACC.

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

2.24.2 Approval Process. The decision of the ACC shall be made in accordance with Article 9 of this Declaration. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association shall be approved in advance and in writing by the Board, and the Board need not adhere to this Section when considering any such request.

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

- (i) The Rainwater Harvesting System shall be consistent with the color scheme of the Residences, as reasonably determined by the ACC.
- (ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.
- (iii) The Rainwater Harvesting System is in no event located between the front of the Residence constructed on the Owner's Lot and any adjoining or adjacent street.
- (iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACC.

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

**2.25 Reserved.**

**2.26 Decorations.** No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains or other decorative embellishments shall be placed on the front lawn of a Residence or on the visible side or rear yard of a Residence unless such items have been approved in writing by the ACC and are in compliance with any applicable Dedicatory Instruments. Notwithstanding the foregoing, customary seasonal decorations for national holidays are permitted for a maximum of thirty (30) days (or sixty (60) days for Christmas), subject to the right of the Board to specify other guidelines for decorations.

### **ARTICLE 3**

#### **CONSTRUCTION RESTRICTIONS**

**3.1 Construction of Improvements.** Unless prosecuted by the Declarant, no Residences or Improvements of any kind (including, but not limited to, landscaping, grading, or excavation) may hereafter be implemented, placed, maintained, erected or constructed upon any portion of the Property unless approved in advance and in writing by the ACC in accordance with this Declaration. Pursuant to Section 9.1.3 of this Declaration, the Declarant may adopt Design Guidelines applicable to the Property. If adopted, all Residences and Improvements (including, but not limited to, landscaping, grading, or excavation) shall strictly comply with the requirements of the Design Guidelines unless a variance is obtained pursuant to this Declaration. The Design Guidelines may be supplemented, modified, amended, or restated by the Declarant as authorized by this Declaration.

**3.1.2 Residences and Improvements.**

- a. Aesthetic Compatibility.* All Residences and Improvements on a Lot shall be aesthetically compatible with the Property, as determined by the ACC.
- b.* [Reserved].
- c. Location on Lot.* Each Residence shall face the front Lot line.
- e. Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- f. Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence shall be permitted, unless otherwise approved by the ACC.
- g. Mailboxes and Lot Identification.* Unless provisions are otherwise made by the Declarant for the installation of individual mailboxes for the Property, or a portion of thereof, cluster boxes shall be installed at various locations within the Property in accordance with U.S. Postal Service requirements and no Owner served by a cluster mailbox shall install an individual mailbox for his Residence. Lot address numbers and name identification shall be aesthetically compatible with the Property, as may be determined by the ACC.

**3.1.3 Development Agreement Construction Standards.** The Development Agreement imposes certain requirements associated with the development of the Property, including, but not limited to, residential construction standards as described in Exhibit I of the Development Agreement and the construction

standards in Section 3.02 of the Development Agreement. This Declaration and the Dedicatory Instruments are not intended to conflict or supersede the requirements of the Development Agreement and “Development Documents” (as that term is defined in the Development Agreement). However, the development restrictions imposed by this Declaration, any Design Guidelines, and the Dedicatory Instruments are intended to be in addition to those imposed by the Development Agreement and Development Documents while such are in full force and effect. All such documents shall be read in concert, and, generally, the terms and provisions of this Declaration, any Design Guidelines, and Dedicatory Instruments are enforceable to the extent they do not violate the Development Agreement and Development Documents while such are in full force and effect. Notwithstanding the preceding sentence, all reasonable effort shall be made to reconcile their respective provisions in the event of a direct conflict by applying the most stringent provision, where possible without violating the Development Agreement and Development Documents while such are in full force and effect.

**3.2 Utility Lines.** Unless otherwise approved by the ACC, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, may be constructed, placed or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same is contained in conduits or cables constructed, placed or maintained underground, concealed in or under buildings or other structures.

**3.3 Garages.** All garages, carports and other open automobile storage units shall be approved in advance of construction by the ACC. No garage may be permanently enclosed or otherwise used for habitation. Magnetic garage door screens or any other screens installed or affixed to the garage is strictly prohibited. Additional garage requirements for each Residence may be set forth in the Design Guidelines, if adopted.

**3.4 Fences, Walls, and Hedges.** No fence, wall, or hedge on a Lot may be located forward of the front wall line of the Residence, except as approved by the ACC. No fence may be constructed on the Property without the prior written consent of the ACC. If adopted, all fences shall strictly comply with the requirements of the Design Guidelines unless a variance is obtained pursuant to this Declaration. The fencing requirements for each Residence constructed on a Lot may be set forth in the Design Guidelines, if adopted.

**3.5 Driveways and Sidewalks.** All driveways and sidewalks shall be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock. The design, construction material, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, shall be approved by the ACC. Each Owner shall be responsible, at such Owner's sole cost and expense, for properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) maintaining and repairing the driveway on such Owner's Lot.

**3.6 Roofing.** All roofing material shall be approved in advance of construction by the ACC. In addition, roofs of buildings may be constructed with “Energy Efficient Roofing” with the advance written approval of the ACC. For the purpose of this Section, “**Energy Efficient 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 shall 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 Property; (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. Acceptable roof materials are described in the Design Guidelines and Development Agreement.

An Owner who desires to install Energy Efficient Roofing shall be required to comply with the architectural review and approval procedures set forth in the Dedicatory Instruments.

In conjunction with any such approval process, the Owner should submit information which shall enable the ACC to confirm the criteria set forth in this Section. Any other type of roofing material shall be permitted only with the advance written approval of the ACC.

**3.7 HVAC Location.** No air-conditioning apparatus may be installed on the ground in front of a Residence or on the roof of any Residence. No window air-conditioning apparatus or evaporative cooler may be attached to a Residence. All HVAC units shall otherwise be located on a Lot in a manner approved in advance by the ACC, or as otherwise set forth in the Design Guidelines. Screening shall be in accordance with the Design Guidelines and Development Agreement.

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

**3.9 Construction Activities.** The Dedicatory Instruments shall not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Residences or Improvements by the Declarant or a Homebuilder upon or within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of the Dedicatory Instruments 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. 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 shall be liable for all reasonable expenses incurred in connection therewith.

**ARTICLE 4**  
**STREET LANDSCAPE**

**4.1 Owner's Obligation to Maintain Street Landscape.** Each Owner shall 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 edge of the pavement of any adjacent right-of-way, street, alley, or Common Area (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area or any portion thereof has been assumed by the Association, in the Board's sole discretion, in a Recorded written instrument identifying all or any portion of the ST Landscape Area to be maintained (the "**Association Landscape Area**"). If the Association assumes such responsibility as set forth herein, Owner may neither perform any maintenance in the Association Landscape Area nor construct any Residences or Improvements therein. Otherwise specifically, and not by way of limitation, each Owner, at such Owner's sole cost and expense, shall be required to maintain, irrigate and replace any trees located within the ST Landscape Area. No landscaping, including trees, may be removed from or installed within the ST Landscape Area without the advance written consent of the Board. 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) mow, replace, prune, and/or irrigate any landscaping, including trees, in such Owner's ST Landscape Area, such failure shall constitute a violation of the Dedicatory Instruments and the Board may cause such landscaping, including trees, to be mowed, replaced, pruned and/or irrigated in a manner determined by the Board, in its sole and absolute discretion. If the Board causes such landscaping, including trees, to be mowed, replaced, pruned and irrigated, the Owner otherwise responsible therefor shall be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work. 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 (1½%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder shall be secured by the liens reserved herein for Assessments and may be collected by any means provided herein for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **EACH OWNER AND RESIDENT SHALL INDEMNIFY 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 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.**

## ARTICLE 5

### COMPLIANCE; LIABILITY; RELEASE

5.1 **Compliance with Restrictions.** Each Owner, his or her family, Residents of a Lot, Residents, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Dedicatory Instruments as the same may be amended from time to time. Failure to comply with any of the Dedicatory Instruments shall constitute a violation of the Dedicatory Instruments and may result in a fine against the Owner in accordance with Section 8.11 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. The result of every act or omission that violates any provision of the Dedicatory Instruments is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation. 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 the Dedicatory Instruments, 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 (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.**

5.2 **Liability of Owners for Damage to Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board 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 and any Improvements constructed thereon; or (ii) any Residences or 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 8.10 of this Declaration.

5.3 **Release.** EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, DECLARANT, THE ACC AND THEIR AFFILIATES, 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 SUCH OWNER'S USE OF ANY COMMON AREA.

Neither the Association nor Declarant shall assume any responsibility or liability for any personal injury or property damage which is occasioned by use of any Common Area, and in no circumstance shall words or actions by the Association or Declarant constitute an implied or express representation or warranty regarding the fitness or condition of any Common Area.

## **ARTICLE 6**

### **FLAT CREEK CASTROVILLE PROPERTY OWNERS' ASSOCIATION**

6.1 **Organization.** The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation and a property owners' association, established and governed by the Certificate, the Declaration, the Bylaws, and any other applicable Dedicatory Instruments. Neither the Certificate nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration (unless amended or changed by Declarant during the Development Period). Unless expressly provided in the Dedicatory Instruments, the Association acts through a Majority of the Board. Certain acts and activities of the Association and the Board shall be approved by the Declarant during the Development Period. If Declarant approval is required, Declarant's approval shall be evidenced in writing.

6.2 **Mandatory Membership.** Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall 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 shall provide the Association with: (i) a copy of the Recorded deed by which the Owner has acquired title; (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.

6.3 **Governance.** Subject to the Development Period and the Bylaws, the Board shall consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose.

6.4 **Voting Allocation.** The number of votes which may be cast to elect directors of the Board (except as provided by Section 6.3) and on all other matters the Board and Members may vote on shall be calculated as set forth in the Bylaws.

**6.5 Powers.** The Association shall have the powers of a Texas nonprofit corporation. Subject to the Development Period, the Association shall 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, shall have the following powers at all times:

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

6.5.2 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.

6.5.3 Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Dedicatory Instruments available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon written request during normal business hours. The Board shall adopt policies regarding records retention and records production and copying.

6.5.4 Assessments. To levy and collect Assessments, as provided in Article 8 below.

6.5.5 Right of Entry and Enforcement. The Association may 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 Dedicatory Instruments or for the purpose of maintaining or repairing any area, Improvement or other facility or removing any item to conform to the Dedicatory Instruments. The expense incurred by the Association in connection with the entry upon any Lot and the removal or maintenance and repair work conducted therefrom, thereon or therein shall be a personal obligation of the Owner so entered, shall be deemed an Individual Assessment against such Lot, shall be secured by a lien upon such Lot, and shall be enforced in the same manner and to the same extent as provided in Article 8 hereof for Assessments. The Association shall 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 Dedicatory Instruments. 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 Dedicatory Instruments; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Dedicatory Instruments before a judicial order authorizing such action has been obtained by the Association, or before the written consent

of the Owner(s) has been obtained. **EACH SUCH OWNER AND RESIDENT SHALL 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 (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.**

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

6.5.7 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 for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar Improvements or facilities.

Nothing set forth above, however, shall 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 Dedicatory Instruments or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this Section shall be approved in advance and in writing by the Declarant.

6.5.8 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.**

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

6.5.10 Other Services and Properties. To obtain and pay for any other property and services, 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 Dedicatory Instruments or as determined by the Board.

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

6.5.12 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 may determine, to operate and maintain any Common Area or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts shall be approved in advance and in writing by the Declarant.

6.5.13 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 shall be approved in advance and in writing by the Declarant.

6.5.14 Allocation of Votes. To determine votes when permitted pursuant to this Article.

6.5.15 Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Area and any Improvements thereon.

**6.6 Conveyance of Common Area 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 reserve the right, from time to time and at any time, to designate, convey, assign, or transfer by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association, in the sole and absolute discretion of the Declarant. Upon the Recording of such designation,

the portion of the Property identified therein shall be considered Common Area for the purpose of this Declaration and the Association shall have an easement over and across the Common Area as 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 without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Association shall 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 shall re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment. Declarant and/or its assignees may construct and maintain upon portions of the Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Residences and Improvements on the Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

**6.7 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 shall 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, shall 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.

**6.8 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 their capacity as a director, officer, committee member, employee, servant or agent of the Association, 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.

**6.9 Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out hereinabove (except that during the Development Period, all Bulk Rate Contracts shall be approved in advance and in writing by the Declarant), the Association shall have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association shall 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 twelve (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 shall 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 shall 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 shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**6.10 Community Services and Systems.** The Declarant, or a designee of the Declarant, is specifically authorized, but not required, to install, provide, maintain or furnish, or to enter into contracts with other persons to install, provide, maintain or furnish, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and utility services (e.g., electricity, solar, gas, water), and related components, including associated infrastructure, equipment, hardware, and software to serve all or any portion of the Property ("**Community Services and Systems**"). The Community Services and Systems may be located on Common Area and on or in any Improvements constructed upon the Common Area, and an easement is herein reserved in favor of Declarant or its designee for the purpose of installing, operating, managing, maintaining, upgrading and modifying the Community Services and Systems. In the event the Declarant, or a designee of the Declarant, elects to provide any of the Community Services and Systems to all or any

portion of the Property, the Declarant or designee of the Declarant, may enter into an agreement with the Association with respect to such services. In the event Declarant, or any designee of the Declarant, enters into a contract with a third party for the provision of any Community Services and Systems to serve all or any portion of the Property, the Declarant or the designee of the Declarant may assign any or all of the rights or obligations of the Declarant or the designee of the Declarant under the contract to the Association or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or its designee determines appropriate. **Each Owner acknowledges that interruptions in Community Services and Systems shall occur from time to time. The Declarant and the Association, or any of their respective affiliates, directors, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.**

**6.11 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 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. Unless the Declarant agrees otherwise in advance and in writing, the Board shall 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.

**6.12 Administration of Common Area.** The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Dedicatory Instruments, 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) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

**6.13 Right of Action by Association.** The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a Claim, as defined in Section 14.1 below, relating to the design or construction of Residences or Improvements on a Lot (whether one or more).

**6.14 Maintenance Agreement with City.** The Development Agreement (as well as the City's Code of Ordinances per Section 100-77 as of the date hereof) requires a Maintenance Agreement (as defined in the Development Agreement) between the Association and the City (among other requirements). The Association shall comply with its obligations under the Development Agreement and shall enter into the Maintenance Agreement in accordance therewith (and in accordance with City's Code of Ordinances

Section 100-77). The form of the Maintenance Agreement being Exhibit F attached to the Development Agreement.

In general, the Development Agreement provides:

Upon Association creation, the Association shall enter into a Maintenance Agreement with the City, pursuant to which the Association shall agree to the MOA Maintenance Obligations (whose responsibility shall solely be the Association's, notwithstanding any ownership by the City of the improvements or real property upon which such maintenance is required to be performed). The Developer shall provide in the Association's organization documents that *the Association shall annually levy and collect fees from Owners that are, at a minimum and based on annual budget adopted by the Association prior to the beginning of its fiscal year, sufficient to satisfy the annual MOA Maintenance Obligations.* The Maintenance Agreement shall provide that the Association shall perform the MOA Maintenance Obligations in accordance with the applicable provisions of the Governing Regulations, subject to oversight and inspection by the City, and provide to the Association permission to perform the MOA Maintenance Obligations, as and to the extent reasonably necessary, on City-owned property. Upon reasonable request, the City shall have the right to inspect the financial reports, audits, and budget of the Association.

As used in this Section, the terms Governing Regulations, MOA, and MOA Maintenance Obligations shall have the meaning assigned to them by the Development Agreement.

## **ARTICLE 7**

### **INSURANCE; RESTORATION; MECHANIC'S AND MATERIALMEN'S LIEN**

**7.1 Insurance.** Each Owner shall be required to purchase and maintain commercially standard insurance on the Residences and all insurable Improvements located upon such Owner's Lot. The Association shall not be required to maintain insurance on the Residences or Improvements constructed upon any Lot. The Association's Board, or its duly authorized agent, shall obtain blanket all-risk casualty insurance for all insurable Improvements on the Common Area, or if blanket all-risk coverage is not reasonably available, an insurance policy providing fire and extended coverage. The Board may also obtain a public liability policy covering the Common Area, insuring the Association and its Members for all damages or injury caused by the negligence of the Association, its agents, the Members or Residents, in such amount as the Board deems appropriate. In addition to the other insurance discussed in herein, the Board may also obtain (i) worker's compensation insurance, and the Board shall obtain such insurance if and to the extent required by law, (ii) directors' and officers' liability coverage, and (iii) a fidelity bond or fidelity insurance on directors, officers, employees, and other Persons handling or responsible for the Association's funds. The Association may obtain any other insurance as it may deem necessary and in its discretion. Such insurance policies shall be in such amount or amounts as the Board deems appropriate. Insurance premiums for such policies described herein shall be a common expense to be included in the

Assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**7.2 Restoration.** In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner shall: (i) promptly repair, restore and replace any damaged or destroyed structures, Residence, or Improvements on their Lot 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 structure, Residence, or Improvement, remove all such damaged structures, Residence, or Improvements and debris from the Lot/Property within sixty (60) days after the occurrence of such damage. Such repair, restoration or replacement shall 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 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 sixty (60) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement, removal or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed under Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of one and one-half percent (1½%) per month) shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND HOLDS 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, 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.**

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

repair, restoration, replacement or clean up, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen' s lien in favor of the Association.

## ARTICLE 8

### COVENANT FOR ASSESSMENTS

**8.1 Assessments.** The Association may levy Assessments to promote the recreation, health, safety, and welfare of the Residents, to fund operating expenses of the Association, and to improve and maintain the Common Areas.

8.1.1 Established by the Board. Assessments established by the Board pursuant to the provisions of this Article shall be levied against each Lot in amounts determined pursuant to Section 8.7 below. The total amount of Assessments shall be determined by the Board pursuant to Section 8.3 through Section 8.6.

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

**8.2 Maintenance Fund.** The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall 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 Dedicatory Instruments and Applicable Law.

**8.3 Regular Assessments.** Prior to the beginning of each fiscal year (as defined in the Bylaws), the Board shall 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 Dedicatory Instruments, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing any lighting, the cost of administering and enforcing the Dedicatory Instruments, and (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and shall give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Assessments shall be due and payable to the Association annually in advance, on or before the first (1<sup>st</sup>) day of December of each year (preceding the beginning of the next fiscal year), or in such other manner as the Board may designate in its sole and absolute discretion. Annual written notice of the Regular Assessment shall be sent to every Owner at least thirty (30) days before its effective date. Until changed by the Board, the annual Regular

Assessment shall be **\$500.00 per Lot.** *The Regular Assessment shall include any obligation required pursuant to Section 6.14.*

**8.4 Working Capital Assessment.** Each Owner (other than Declarant) shall pay a one-time working capital assessment (the “Working Capital Assessment”) to the Association in such amount, if any, as may be determined by the Declarant, until expiration or termination of the Development Period, and the Board thereafter. The Working Capital Assessment hereunder shall be due and payable to the Association by the transferee immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. Such Working Capital Assessment need not be uniform among all Lots, and the Declarant or the Board is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy. The Association may use the working capital to discharge operating expenses. The levy of any Working Capital Assessment shall be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the Working Capital Assessment.

Notwithstanding the foregoing provisions, the following transfers shall be exempt from the Working Capital Assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (b) transfer to, from, or by the Association; (c) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent; and (d) any other exemption described in Section 13.20. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, Declarant, until expiration or termination of the Development Period, shall determine application of an exemption in its sole and absolute discretion. The Working Capital Assessment shall be in addition to, not in lieu of, any other Assessments levied in accordance with this Article and shall not be considered an advance payment of such Assessments. The Declarant during the Development Period, and thereafter the Board, shall have the power to waive the payment of any Working Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver, which waiver may be temporary or permanent.

**8.5 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 Dedicatory Instruments. The amount of any Special Assessments shall be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any Special 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 shall be levied against all Lots based on a per-Lot basis (not including exempt Lots pursuant to Sections 8.7.2 and 8.7.3). Any Special Assessments, pursuant to this Section, shall be approved by a vote of the Majority of the Members at a meeting in accordance with the Bylaws; and written notice of the terms of the Special Assessment shall be sent to every Owner at least thirty (30) days before its effective date.

**8.6 Individual Assessments.** In addition to any other Assessments, the Board may levy an individual assessment (the “Individual Assessment”) against the Owner's Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments;

reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with the Declaration; fines for violations of the Dedicatory Instruments; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Lot; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis (not including exempt Lots pursuant to Sections 8.7.2 and 8.7.3); and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to the benefit received.

## **8.7 Amount of Assessment.**

8.7.1 Assessments to be Levied. Unless otherwise provided in this Declaration, the Board shall levy Assessments against each Lot and such Assessments hereunder shall be levied uniformly against each Lot. Unless otherwise provided herein to the contrary, a Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

8.7.2 Declarant Exemption. Notwithstanding any provision herein to the contrary, no Assessments shall be levied upon Lots owned by Declarant or any portion of the Property owned by Declarant.

8.7.3 Other Exemptions. Notwithstanding any provision herein to the contrary, (A) 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; or (ii) delay the levy of Assessments against any un-platted, unimproved, or improved portion of the Property; and (B) Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

Additionally, the following areas shall be exempt from the Assessments provided for in this Article:

- (i) all area dedicated and accepted by a public authority; and
- (ii) the Common Area.

**8.8 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) shall 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 shall never exceed the maximum charge permitted under Applicable Law. Any Assessment not paid by the thirtieth (30th) day after it is due is late/delinquent.

**8.9 Owner's Personal Obligation; Interest.** Assessments levied as provided for herein shall be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself/herself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the

Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1 1/2%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts shall be levied as an Individual Assessment against the Lot owned by such Owner. Each Assessment, together with such interest thereon and costs of collection as herein provided, shall be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot. The Association may enforce payment of such Assessments in accordance with the provisions of this Article. **BY ACCEPTANCE OF A DEED TO A LOT, EACH OWNER GRANTS THE LIEN, TOGETHER WITH THE POWER OF SALE, TO THE ASSOCIATION TO SECURE ASSESSMENTS.**

**8.10 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in Section 8.8 and interest as provided in Section 8.9 hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to Section 8.1.2 above, and shall bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against such Lot, except only for: (i) tax and governmental assessment liens; (ii) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question and (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board, and such subordination may be signed by an officer, agent or attorney of the Association. To the extent authorized under Applicable Law, 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 officers, agents, or attorneys of the Association and shall be Recorded. **EACH OWNER, BY ACCEPTING A DEED OR OWNERSHIP INTEREST TO A LOT SUBJECT TO THIS DECLARATION, SHALL 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 SHALL 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 shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall 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 shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder shall 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 shall be extinguished, provided that past-due Assessments shall 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 shall 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 8.10, the Association shall upon the written request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release shall be signed by an officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility or service provider. Such notice shall 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 shall include the office or street address where the Owner or the Owner's Resident can make arrangements for payment of the bill and for reconnection of service. Utility or cable service shall 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 shall 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 shall pay such amounts to the Association out of the sales price of the Lot, and such sums shall 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 shall 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 shall be due upon the transfer of a Lot from Declarant to a third party.

## **8.11 Fines and Damages Assessment.**

8.11.1 Fines and Fees. As permitted by Applicable Law, the Board may assess fines against an Owner for violations of the Dedicatory Instruments which have been committed by an Owner, a Resident, or the Owner's or Resident's guests, agents or invitees. Any fine and/or charge levied in accordance with this Section 8.11.1 shall be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities caused by the Owner, Resident, or their guests, agents, or invitees. The Manager shall have authority to send written 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 shall adopt policies regarding the levying of fines, the enforcement of fines, and the schedule of fines in accordance with Applicable Law.

8.11.2 Lien Created. The payment of each fine and/or damage charge levied by the Board against a Lot, together with interest as provided in Section 8.9 hereof and all costs of collection, including attorney's fees as herein provided, is secured by the lien granted to the Association pursuant to this Declaration. The fine and/or damage charge shall be considered an Assessment for the purpose of this Article and shall be enforced in accordance with the terms and provisions governing the enforcement of Assessments pursuant to this Article 8. **BY ACCEPTANCE OF A DEED TO A LOT, EACH OWNER GRANTS THE LIEN, TOGETHER WITH THE POWER OF SALE, TO THE ASSOCIATION TO SECURE ASSESSMENTS.**

**8.12 Alternative Payment Schedule.** In accordance with Applicable Law, the Board shall adopt policies for alternative payment schedules for Assessments, allowing Members to pay Assessments under a schedule that extends for between three (3) and eighteen (18) months. Notwithstanding any provision herein to the contrary, a Member making payments on an alternative payment schedule shall not incur additional monetary penalties, other than any applicable interest and costs of administering the plan.

**8.13 Remedial Options.** Without limiting any provision herein:

- (1) if the Association complies with all applicable notice requirements, an Owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent Assessments, foreclosing the Association's lien, and enforcing the Dedicatory Instruments;
- (2) the Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments;
- (3) an Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments; and
- (4) an Owner is liable to the Association for damage to Common Areas caused by the Owner or the Owner's family, Residents, guests, agents, independent contractors, and invitees in accordance with law.

## **ARTICLE 9**

### **ARCHITECTURAL CONTROL COMMITTEE**

Declarant has a substantial interest in ensuring that the Residences and 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. 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/Board in a Recorded written instrument. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in Section 9.1.1 below: (1) the ACC shall be acting solely in Declarant's interest and shall owe no duty to any other Owner or the Association; and (2) notwithstanding any provision in this Declaration to the contrary, Declarant may exercise the rights of the ACC or appoint a single person to exercise the rights of the ACC (this right includes the Declarant's right to appoint and remove any such single person from time to time, with or without cause, in its sole and absolute discretion).

**9.1 Architectural Control Committee.** Unless otherwise provided herein, the ACC is established as a committee of the Association to assist the Association in ensuring that all Residences and Improvements (including, but not limited to, landscaping) within the Property are aesthetically compatible and conform to the Dedicatory Instruments.

9.1.1 Composition. The ACC shall be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who shall review Residences and Improvements proposed to be made by any Owner other than Declarant. Declarant shall 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 shall 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 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 shall 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 shall 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 shall 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 shall reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC shall have the right to employ consultants and advisors as it deems necessary or appropriate. ACC members serve until replaced or they resign or otherwise no longer able to serve.

9.1.2 Submission and Approval of Plans and Specifications. **NO RESIDENCE OR IMPROVEMENT MAY BE ERECTED ON ANY LOT, OR THE EXTERIOR ALTERED, UNLESS PLANS, SPECIFICATIONS, AND ANY OTHER DOCUMENTS REQUESTED BY THE ACC HAVE BEEN SUBMITTED TO AND APPROVED BY THE ACC IN WRITING (UNLESS SUCH RESIDENCE OR IMPROVEMENT IS OTHERWISE CONDUCTED BY THE DECLARANT).** Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, shall be submitted in accordance with the Design Guidelines or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with Section 9.1.3 to the ACC. No re-subdivision or consolidation shall be made, nor any Residence or Improvement placed or allowed on any Lot, until the plans and specifications and the Homebuilder 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 shall be approved by the ACC prior to the clearing of any Lot, or the construction of any Residences and Improvements. The ACC may refuse to approve plans and specifications for proposed Residences and 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. At the minimum, the plans and specifications, submitted pursuant to this Section, shall show exterior design, height, building materials, color scheme, location of any Residence and Improvement depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.

9.1.3 Design Guidelines. Declarant shall have the right, but shall have no obligation to, adopt Design Guidelines (in addition to those provided herein) and, during the Development Period, shall have the power from time to time, to adopt, amend, modify, or supplement the Design Guidelines. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to Section 9.1.1, shall have the power from time to time, to adopt, to amend, modify, or supplement the Design Guidelines; provided, however, that any amendment to the Design Guidelines made by a sub-committee shall only apply to the Residences and Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement shall 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 and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall control (except for the Landscaping Design Guidelines specifically provided in Section 9.1.3.1; such Landscaping Design Guidelines shall control in the event of a conflict with a provision of the Declaration, provided, however, all shall be read in concert, with all reasonable effort made to reconcile their respective provisions). In addition, the ACC shall 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 shall 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 shall be distributed to the Association at the end of each calendar year. The ACC shall not be required to review any plans until a complete submittal package, as required by this Declaration (and the Design Guidelines, as applicable), is assembled and submitted to the ACC. Within thirty (30) days after the submission of plans and specifications pursuant to this Section, the ACC shall notify the submitting person/Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission shall be deemed complete on the thirtieth (30<sup>th</sup>) day after submission. The ACC shall 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 Residence and Improvement and the right to approve in advance any contractor selected for the construction of any Residence and Improvement), not in conflict with this Declaration (and any applicable Dedicatory Instruments), as it may deem necessary or appropriate in connection with the performance of its duties hereunder. The Design Guidelines and any other standards adopted pursuant to this Section 9.1.3 (including Section 9.1.3.1) shall be effective beginning on the Recorded date.

9.1.3.1 **Landscaping Design Guidelines.** Notwithstanding any provision herein to the contrary, the landscaping for any development of a Lot shall comply (at the minimum) with **Exhibits**

C-1 and C-2 attached hereto and incorporated herein for all purposes and shall be reviewed for written approval by the ACC prior to the development of a Lot.

9.1.4 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 shall constitute an act of the ACC.

9.1.5 Failure to Approve. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails to approve such plans and specifications for a period of thirty (30) days following such submission of a complete submittal package, denial of such plans and specifications by the ACC shall be provided by written notice in accordance with Texas Property Code Section 209.00505.

9.1.6 Variances. The Board may grant variances, in its sole and absolute discretion, from compliance with any of the provisions of the Design Guidelines or this Declaration. All variances shall be evidenced in writing and shall be signed by at least a Majority of the Board. **EACH VARIANCE SHALL ALSO BE RECORDED;** provided however, that failure to Record a variance shall 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, shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall 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 shall 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. Notwithstanding the above provisions in this Section 9.1.6, a variance shall not be approved unless prior written approval is also received from the Declarant during the Development Period and, under no circumstance, shall a variance be granted if it violates the Development Agreement and Development Documents while such are in full force and effect.

9.1.7 Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the Board, shall 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 shall be required to resubmit such plans and specifications to the ACC or written request for a variance to the Board, and the ACC or the Board, as applicable, shall have the authority to re- evaluate such in accordance with this Section 9.1.7 and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

9.1.8 No Waiver of Future Approvals. The approval of the ACC or Board to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC or Board shall 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 shall such approval or consent be deemed to establish a precedent for future approvals by the ACC or Board.

9.1.9 Appeal. An Owner may appeal any action of the ACC to the Board. The appealing Owner shall give written notice of the appeal to the Board within thirty (30) days after the ACC's action. The Board shall determine the appeal within thirty (30) days after timely notice of appeal is given. The determination by the Board is final.

9.1.10 Records. The ACC shall maintain written records of all requests submitted to it and of all actions taken. The Board shall maintain written records of all appeals of ACC actions and all determinations made.

9.1.11 Non-Liability. **NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER SHALL 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. MOREOVER, THE DECLARANT, THE ASSOCIATION, THE BOARD, THE ACC, AND THEIR MEMBERS SHALL NOT BE LIABLE TO ANY PERSON SUBMITTING REQUESTS FOR APPROVAL OR TO ANY OWNER BY REASON OF ANY ACTION, FAILURE TO ACT, APPROVAL, DISAPPROVAL, OR FAILURE TO APPROVE OR DISAPPROVE ANY REQUEST.**

## **ARTICLE 10**

### **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.

**10.1 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**")), shall 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 Dedicatory Instruments 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.

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

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

## **ARTICLE 11**

### **EASEMENTS AND COMMON AREAS**

**11.1 Easements - General.** Neither Declarant nor any utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants. Declarant expressly reserves the right to grant easements over, under and across any Lot in the Properties for the installation and maintenance of utility and drainage facilities; provided, however, any easement created by the Declarant pursuant to this provision shall not materially adversely affect the use and enjoyment of any Residence or the value of any Residence. Declarant further reserves unto itself, its agents, employees, servants, successors and assigns, the right of ingress and egress, on, over, in, and across the Properties in order to complete development of the Properties and the construction of all Residences. The rights reserved by Declarant in this paragraph shall be used in such a manner as not to unreasonably interfere with the use and enjoyment of any Residence in the Properties.

**11.2 Right of Ingress and Egress.** Declarant, its agents, employees, designees, successors and assigns shall have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area and the right to such other temporary uses of the Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance 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 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 shall 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.

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

**11.4 Roadway and Utility Easements.** Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant; and (iv) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Property and any other property owned by Declarant. Declarant shall be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iv) of this Section. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area.

**11.5 Entry and Fencing Easement.** Declarant reserves for itself and the Association, an easement over and across the Property and any Common Area for the installation, maintenance, repair or replacement of certain subdivision entry facilities, walls, and/or fencing which serves the Property, the Common Area or any other property owned by the Declarant. Declarant shall have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities fencing to

which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area.

**11.6 Landscape, Monumentation and Signage Easement.** Declarant hereby reserves for itself and the Association, an easement over and across the Property and the Common Area for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Property, the Common Area or any other property owned by the Declarant. Declarant shall have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation or signage as Common Area.

**11.7 Easement for Special Events.** The Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant or the Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. **EACH OWNER, BY ACCEPTING A DEED OR OTHER INSTRUMENT CONVEYING ANY INTEREST IN A LOT SUBJECT TO THIS DECLARATION ACKNOWLEDGES AND AGREES THAT THE EXERCISE OF THIS EASEMENT MAY RESULT IN A TEMPORARY INCREASE IN TRAFFIC, NOISE, GATHERING OF CROWDS, AND RELATED INCONVENIENCES, AND EACH OWNER AGREES ON BEHALF OF ITSELF AND THE RESIDENTS TO TAKE NO ACTION, LEGAL OR OTHERWISE, WHICH WOULD INTERFERE WITH THE EXERCISE OF SUCH EASEMENT.**

**11.8 Solar Equipment Easement.** Declarant hereby reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over and across the Property and Common Area for the installation, maintenance, repair or replacement of a rooftop solar electric generating system designed to deliver electric power to a particular Residence built on a Lot or Common Area. Declarant shall have the right, from time to time, to Record a written notice which identifies the solar equipment to which the easement reserved hereunder applies. Declarant shall be entitled to unilaterally assign the easements reserved hereunder to any third party.

**11.9 Cellular Tower and Telecommunications Easement.** Declarant hereby grants and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area, or any portion of the Property which Declarant intends to designate as Common Area (the “**CTT Easement Area**”) for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee shall have the right, from time to time, but no obligation, to Record a written notice which identifies the portion of the Common Area to which the CTT Easement Area pertains, and Declarant, or its assignee, may fence, install landscaping, or otherwise install improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither the Association, nor any Owner other than the Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment. In addition, Declarant hereby

reserves for itself and its assigns a non-exclusive, perpetual and irrevocable easement over the Property for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third-party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this Section. The rights reserved to Declarant under this Section shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Property shall have any rights to income derived from or in connection with the rights and easements granted in this Section, except as expressly approved in writing by Declarant. **EACH OWNER AND RESIDENT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT ITS ASSIGNS UNDER THIS SECTION (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.** The provisions of this Section shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

**11.10 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, Homebuilder 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 shall 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 11.10 may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, Homebuilder 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.**

**11.11 Owner's Rights of Access and Enjoyment.** Subject to the further provisions of this Section, every Member shall 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, and such right shall be appurtenant to and shall pass with the title to the Lot owned by such Member. Such rights shall be subject to the following: (a) The Association shall have the right to charge reasonable admission and other fees for the use of any facility situated upon the Common Area. (b) The Association shall have the right, without the approval of the Members, to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred. (c) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure of any such mortgage. (d) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any Assessment or other amount owed by such Member to the Association remains unpaid in excess of thirty (30) days. (e) The Association shall have the right to establish reasonable Rules and Regulations governing the Members' use and enjoyment of the Common Area, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such Rules and Regulations. (f) The Association shall have the right, without the approval by the Members, to sell or convey all or any part of the Common Area and the right, to grant or dedicate easements in portions of the Common Area to public or private utility companies. (g) The Association shall have the right to enter into agreements with one or more persons pursuant to which individuals who are not Members of the Association are granted the right to use the Common Area and the facilities located thereupon upon payment of such fees as may be determined by the Board. (h) 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. (i) 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. (j) The right of the Declarant, during the Development Period, and the Board thereafter to grant easements or licenses over and across the Common Area.

Each Member shall have the right to extend his right of enjoyment to the Common Area to the members of his family, Residents, and to such guests or other persons as may be permitted by the Association. An Owner shall be deemed to have made a delegation of all rights to use the Common Area to the Residents of any rented/leased Residence.

**AN OWNER MAY NOT ERECT OR ALTER ANY IMPROVEMENT ON, OR CLEAR, LANDSCAPE, OR DISTURB, ANY COMMON AREA EXCEPT AS APPROVED BY THE BOARD.**

**11.12 Easements for Utilities and Public Services.** (a) There is hereby granted to the Association, and to any other public authority or agency, utility district, or public or private utility company, a perpetual easement upon, over, under, and across (i) the Common Area, and (ii) those portions of all Lots as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems and retention ponds, electrical, gas, telephone, water and sewer lines, street lights, street signs and traffic signs; provided, however, that such easements shall not unreasonably affect the ability to develop, market or the value of any Lot. To the extent possible, utility lines and facilities serving the Properties and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permitted for the providing utility company or other supplier or servicer, with respect to the portions of the Properties encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to excavate or fill, or (iv) to take any other similar action reasonably

necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems. (b) There is also hereby granted to the City and to such other governmental authority or agency as shall from time to time have jurisdiction over the Properties (or any portion thereof) with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all of the Properties (including the Common Areas) for purposes of performing such duties and activities related to law enforcement and fire protection in the Properties (and Common Areas) as shall be required or appropriate from time to time by such governmental authorities under Applicable Law. More specifically, this Declaration grants the city, other public agencies, political subdivisions, and public utilities written permission for access to the Common Areas at any time and without liability when on official business, as well as permission to remove any obstructions, if necessary, to obtain timely and practical access; any cost of such removal may be assessed to the Association, and in turn, may be assessed by the Association as an Individual Assessment to the Owner of the obstruction.

**11.13 Easements for Association.** There is hereby granted a general right and easement to the Association, its directors, officers, agents, and employees, including, but not limited to, any Manager employed by the Association and any employees of such Manager, to enter upon any Lot or any portion thereof in the performance of their respective duties or the enforcement of the provisions of this Declaration without liability for trespass. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance written notice to the Owner or Resident of the Residence directly affected thereby.

## **ARTICLE 12**

### **DEVELOPMENT RIGHTS**

**12.1 Development by Declarant.** It is contemplated that the Property shall be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but shall not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate Lots and Common Areas and to subdivide all or any portion of the Property pursuant to the terms of this Section 12.1, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property and the Common Area. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

**12.2 Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant shall 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 Residences and 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 and the Common Area. The construction, placement or maintenance of Residences and Improvements by Declarant shall not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section 12.2 until twenty-four (24) months after expiration or termination of the Development Period.

**12.3 Addition of Land.** Declarant may, at any time and from time to time (in its sole and absolute discretion), add additional lands to the Property. Upon the Recording of a notice of addition of land, such land shall be considered part of the Property for purposes of this Declaration, and such added lands shall 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 shall be the same with respect to such added land as with respect to the lands originally covered by this Declaration.

12.3.1 To add lands to the Property, Declarant shall be required only to Record a notice of addition of land containing the following provisions:

A reference to this Declaration, which reference shall state the document number or volume and initial page number wherein this Declaration is Recorded;

A statement that such land shall be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land; and

A legal description of the added land.

12.3.2 The Owners of land in annexed property under this Section shall be entitled to use the Common Area in the same manner and to the same extent of the Owners of all other property subject to the jurisdiction of the Association. Such additional property shall be impressed with and subject to Assessments imposed hereby on an uniform basis, consistent with provisions of this Declaration.

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

12.4.1 A reference to this Declaration, which reference shall state the document number or volume and initial page number wherein this Declaration is Recorded;

12.4.2 A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and

12.4.3 A legal description of the withdrawn land.

**12.5 Notice of Plat Recordation.** Declarant may, at any time and from time to time, file a notice of Plat Recordation (a “**Notice of Plat Recordation**”). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Declaration after portions of the Property is made subject to a Plat. Declarant shall have no obligation to Record a Notice

of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Declaration.

**12.6 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 13**

### **GENERAL PROVISIONS**

**13.1 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the Property, and shall 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 shall 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 a Majority vote of Members owning at least sixty-seven percent (67%) of the Lots subject to the Declaration, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the Recording of a certified copy of such resolution.

**13.2 Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received shall be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments shall be allocated on a per-Lot basis (not including exempt Lots pursuant to Sections 8.7.2 and 8.7.3) and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Lot.

**13.3 Amendment.** This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) the Declarant acting alone, in its sole and absolute discretion (during the Development Period); or (ii) the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by a Majority vote of Members owning at least sixty-seven percent (67%) of the Lots subject to the Declaration – provided that no amendment shall be effective without the written consent of Declarant, its successors or assigns, during the Development Period. This Section 13.3 may be subject to Texas Property Code Section 209.013 to the extent it applies to an amendment of this Declaration; such Section 209.013 provides, “A dedicatory instrument created by a developer of a residential subdivision or by a property owners' association in which the developer has a majority of the voting rights or that the developer otherwise controls under the terms of the dedicatory instrument may not be amended during the period between the time the developer loses the majority of the

voting rights or other form of control of the property owners' association and the time a new board of directors of the association assumes office following the loss of the majority of the voting rights or other form of control.”

**13.4 Enforcement.** Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the Dedicatory Instruments. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any Dedicatory Instruments. Such right of enforcement shall include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any Dedicatory Instruments are 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 Dedicatory Instruments shall 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 Dedicatory Instruments 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 DEDICATORY INSTRUMENTS.**

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

**13.6 Severability.** If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall 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.

**13.7 Conflicts.** If there is any irreconcilable 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, shall govern; provided, however, all shall be read in concert, with all reasonable effort made to reconcile their respective provisions. Notwithstanding the foregoing, the terms and provisions of this Declaration (and Dedicatory Instruments) are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration (and Dedicatory Instruments) are enforceable to the extent they do not violate or conflict with Applicable Law.

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

**13.9 Acceptance by Owners.** EACH OWNER 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 OWNER AGREES THAT NO ASSIGNEE OR SUCCESSOR TO DECLARANT HEREUNDER SHALL 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 SHALL CONSTITUTE COVENANTS RUNNING WITH THE LAND WITHIN THE PROPERTY, AND SHALL BIND ANY PERSON HAVING AT ANY TIME ANY INTEREST OR ESTATE IN THE PROPERTY, AND SHALL 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.

**13.10 Damage and Destruction.** The Association shall undertake the following actions subsequent to damage or destruction to all or any part of the Common Area covered by insurance:

13.10.1 **Claims.** Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, shall 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, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

13.10.2 **Repair Obligations.** Any damage to or destruction of the Common Area shall 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 shall be extended until such information shall be made available.

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

13.10.4 **Special Assessment.** If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a Special Assessment, as provided in Article 8, against all Owners' Lots.

13.10.5 **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 shall be allocated based on a per-Lot basis (not including exempt Lots pursuant to Sections 8.7.2 and 8.7.3) and paid jointly to the Owners and the holders of Mortgages or deeds of trust on their Lots.

**13.11 No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof shall be permitted, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property or Common Area in question has been removed from the provisions of this Declaration pursuant to Section 12.4 above. This Section 13.11 shall 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.

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

**13.13 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 and the Common Area. The Association may, but shall not be obligated to, maintain or support certain activities within the Property and the Common Area designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property or the Common Area, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property or the Common Area, cannot be compromised or circumvented; or that any such system or security measures undertaken shall in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Residents of such Owner's Lot that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to the Property, including any Residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

**13.14 Notices. ANY NOTICE PERMITTED OR REQUIRED TO BE GIVEN TO ANY PERSON BY THIS DECLARATION SHALL BE IN WRITING AND MAY BE DELIVERED EITHER PERSONALLY OR BY MAIL, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW. NOTICE BY MAIL IS DEEMED DELIVERED (WHETHER ACTUALLY RECEIVED OR NOT) WHEN PROPERLY DEPOSITED WITH THE UNITED STATES POSTAL SERVICE, ADDRESSED (A) TO A MEMBER, AT THE MEMBER'S LAST KNOWN ADDRESS ACCORDING TO THE ASSOCIATION'S RECORDS, AND (B) TO THE ASSOCIATION, THE BOARD, THE ACC, OR A MANAGING AGENT AT THE ASSOCIATION'S PRINCIPAL OFFICE OR ANOTHER ADDRESS DESIGNATED IN A NOTICE TO THE MEMBERS. UNLESS OTHERWISE REQUIRED BY LAW OR THE DEDICATORY INSTRUMENTS, ACTUAL NOTICE, HOWEVER DELIVERED, IS SUFFICIENT. SUCH ADDRESS MAY BE CHANGED FROM TIME TO TIME BY NOTICE IN WRITING GIVEN BY SUCH PERSON TO THE ASSOCIATION.**

**13.15 Mining and Drilling.** Except for the Third Party Oil, Gas and Mineral Interests defined below, no other portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision shall not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. Furthermore, this provision shall not be interpreted to prevent the drilling of water wells approved in advance by the Board which are required to provide water to all or any portion of the Property. All water wells shall also be approved in advance by the Board and any applicable regulatory authority. This Section 13.15 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.

**13.16 Declarant and Board Fine Authority; Corrective Action.** Declarant (during the Development Period) or Board may assess fines against an Owner for violations of the Dedicatory Instruments which have been committed by an Owner, a Resident, or any guests, agents, family members, or invitees of an Owner or Resident. The Declarant/Board uses fines to discourage violations of the Dedicatory Instruments, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Declarant. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one (1) of several methods available to the Declarant or Board for enforcing the Dedicatory Instruments. An Owner is liable for fines levied by the Declarant or Board for violations of the Dedicatory Instruments by the Owner, a Resident, or any guests, agents, family members or invitees of the Owner or Resident. Regardless of who commits the violation, the Declarant or Board shall direct its communications to the Owner, although the Declarant or Board may send copies of its notices to the Residents. Any fines pursuant to this section shall comply with any Enforcement Policy, adopted by the Association and amended from time to time.

Notwithstanding the provisions contained herein, where a violation of the Dedicatory Instruments is determined to exist, the Manager for the Association, with the approval of the Board, may undertake to

cause the violation to be corrected, removed or otherwise abated by qualified contractors if the Association, in its reasonable judgment, determines that such violation may be readily corrected, removed, or abated without undue expense and without breach of the peace. Such corrective action shall also be in accordance with this Declaration, the Bylaws, any Enforcement Policy, and any other Dedicatory Instruments, adopted by the Association and amended from time to time.

**13.17 Management Certificate.** The Association shall comply with Texas Property Code Section 209.004 regarding management certificates (and amended management certificates).

**13.18 Merger and Consolidation.** Upon a merger or consolidation of the Association with another non-profit corporation organized for the same or similar purposes, the Association's properties, rights, and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. No merger or consolidation shall be permitted except with the approval by two-thirds (2/3rds) vote of the Class "A" Members present in person or by proxy at a meeting called for such purpose and, until the termination of the Class "B" Membership, the Declarant.

**13.19 Dissolution.** The Association may be dissolved with the approval by two-thirds (2/3rds) vote of the Class "A" Members present in person or by proxy at a meeting called for such purpose and, until the termination of the Class "B" Membership, the Declarant. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

**13.20 Notice of Sale or Transfer of Title.** In the event that an Owner sells or otherwise transfers title to his or her Lot, such Owner shall provide the Association with a copy of the executed instrument of conveyance and give the Association written notice of the name and address of the (f) purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of Assessments, notwithstanding the transfer of title to the Lot. The Board may require payment of a transfer fee to defray the costs incurred in changing its records to reflect the new Owner; provided, however, the following transfers are exempt from such fees:

- (i) by the Declarant;
- (ii) by a Homebuilder;
- (iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (iii) to the Owner's estate, surviving spouse, or child upon the death of the Owner;

- (iv) to any entity wholly owned by the grantor;
- (v) to a Mortgagee or the designee of a Mortgagee in lieu of foreclosure or upon foreclosure of a Mortgage;
- (vi) to an interim Owner in connection with an employer relocation agreement; or
- (vii) any other exemption described in Section 8.4.

**ARTICLE 14**  
**DISPUTE RESOLUTION**

**14.1 Introduction and Definitions.** The Association, the Owners, Declarant, Homebuilders, and all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this Article by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots, Common Area, or any Improvement within, serving or forming a part of the Property (individually, a **“Party”** and collectively, the **“Parties”**) agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. Notwithstanding anything contained in this Article, any Claim brought by an Owner related to a Residence that is subject to a warranty agreement provided by the Declarant or Homebuilder shall not be subject to this Article and shall be governed by the warranty agreement, unless the Parties agree to have the dispute governed by this Article. This Article may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

(i) **“Claim”** means:

(A) Claims relating to the rights and/or duties of Declarant, the Association, or the ACC, under the Dedicatory Instruments.

(B) 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.

(C) Claims relating to the design or construction of the Common Area or any Improvements located within or on Common Area.

(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.

**14.2 Mandatory Procedures.** Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in Section 14.8 below, a Claim shall be resolved by binding arbitration.

**14.3 Claim Affecting Common Areas.** In accordance with Section 14.1 of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other 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 14.1 above, relating to the design or construction of Improvements on a Lot (whether one or more). Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. Each Lot Owner, by accepting an interest in or to title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event the Association asserts a Claim related to the Common Area, as a precondition to providing the Notice defined in Section 14.5, initiating the mandatory dispute resolution procedures set forth in this Article, or taking any other action to prosecute a Claim related to the Common Area, the Association shall:

**14.3.1 Obtain Owner Approval of Engagement.** Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area if the agreement between the Association and law firm or attorney includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iii) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association shall approve the law firm and attorney who shall prosecute the Claim and the written agreement between the Association and the law firm and/or attorney.

The approval of the Members required under this Section shall be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting shall be provided pursuant to the Bylaws but the notice shall also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between the Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law

firm and/or attorney shall use to evaluate the Claim and whether destructive testing shall be required (i.e., the removal of all or portions of the Common Area or Improvements on the Property). If destructive testing shall be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots or the Common Area shall be affected by such testing, and if the destructive testing occurs the means or method the Association shall use to repair the Common Area or Improvements affected by such testing and the estimated costs thereof. The notice required by this paragraph shall be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in the Association approve the law firm and/or attorney who shall prosecute the Claim and the written agreement between the Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

14.3.2 Provide Notice of the Inspection. As provided in Section 14.3.3 below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association shall have provided at least ten (10) days prior written notice of the date on which the inspection shall occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection shall occur. Each Respondent may attend the inspection, personally or through an agent.

14.3.3 Obtain a Common Area Report. The Common Area Report shall be obtained by the Association - a written independent third-party report for the Common Area (the **“Common Area Report”**) from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Medina County, Texas (the **“Inspection Company”**). The Common Area Report shall include: (i) a description with photographs of the Common Area subject to the Claim; (ii) a description of the present physical condition of the Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area subject to the Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations shall also include the specific process, procedure, materials, and/or Improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Medina County, Texas, and each such contractor providing the estimate shall hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report shall not satisfy the requirements of this Section and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Association; or (c) the law firm or

attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Area Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association shall directly pay for the report at the time the Common Area Report is finalized and delivered to the Association.

14.3.4 Provide a Copy of Common Area Report to all Respondents and Owners. Upon completion of the Common Area Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Area Report, the Association shall provide a full and complete copy of the Common Area Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report which shall include the date the report was provided. The Common Area Report shall be delivered to each Respondent by hand- delivery and to each Owner by mail.

14.3.5 Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in Section 11.9 above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

14.3.6 Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association shall obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in Section 14.5, initiate the mandatory dispute resolution procedures set forth in this Article, or take any other action to prosecute a Claim, which approval from Members shall be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder shall be provided pursuant to the Bylaws but the notice shall also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph shall be prepared and signed by a person who is not (a) the attorney who represents or shall represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or shall

represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or shall represent the Association in the Claim. In the event Members approve providing the Notice described in Section 14.5, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

14.3.7 Provide Officer Certification. Within ten (10) days after a vote of Members called pursuant to this Article, the secretary or another officer of the Association shall provide to Declarant and any Respondent (if different than Declarant): (i) a true and correct copy of the meeting notice provided to Members, for the meeting at which such vote was taken; (ii) copies of the ballots cast at such meeting (whether in person, electronic, or by proxy); (iii) a certification, executed by the issuing officer of the Association that: (a) the information set forth in (i) and (ii) hereinabove is true and correct; (b) the meeting notice provided to Members was provided in accordance with this Article; and (c) the vote was held in accordance with the Bylaws and this Article.

**14.4 Claim by Lot Owners.** Pursuant to Section 14.3 above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, such Owner shall be required, since a Claim affecting the Common Area could affect all Owners, as a precondition to providing the Notice defined in Section 14.5, initiating the mandatory dispute resolution procedures set forth in this Article, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with Section 14.3.2 (Provide Notice of Inspection), Section 14.3.3 (Obtain a Common Area Report), Section 14.3.4 (Provide a Copy of Common Area Report to all Respondents and Owners), Section 14.3.5 (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), Section 14.3.6 (Owner Meeting and Approval), Section 14.3.7 (Officer Certification), and Section 14.5 (Notice). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration.

**14.5 Notice.** Claimant shall 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 Dedicatory Instruments 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 14.6 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 14.6, to comply with the terms and provisions of Section 27.004 of the Texas Property Code during such sixty (60) day period. Section 14.6 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 of the Texas Property Code 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 14.7 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 14.7 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice shall also include: (a) if the Claim relates to the design or construction of the Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with Section 14.3.1; (d) a true and correct copy of the special meeting notice provided to Members in accordance with Section 14.3.6 above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas, the Notice shall also include a true and correct copy of the Common Area Report.

**14.6 Negotiation.** Claimant and Respondent shall 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 shall 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 shall have full access to the Property that is subject to the Claim for the purposes of inspecting the Property.

**14.7 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 shall 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 shall have at least five (5) years of experience serving as a mediator and shall 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 shall submit the Claim to mediation in accordance with this Section 14.7. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with Section 14.8.

**14.8 Binding Arbitration-Claims.** All Claims shall 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.

**14.8.1 Governing Rules.** If a Claim has not been resolved after mediation in accordance with Section 14.7, the Claim shall be resolved by binding arbitration in accordance with the terms of this Section 14.8 and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and

Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the “AAA Rules”). In the event of any inconsistency between the AAA Rules and this Section 14.8, this Section 14.8 shall control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, 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.

14.8.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 14.8.2 shall limit the right of Claimant or Respondent, and Claimant and the Respondent shall 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.

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

14.8.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Section 14.8.4 and subject to Section 14.9 below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In addition, 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, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. 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 Applicable

Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.

14.8.5 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. Arbitration proceedings hereunder shall be conducted in Medina County, Texas. Unless otherwise provided by this Section 14.8.5, 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. Claimant and Respondent agree 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. In no event shall Claimant or Respondent 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.

**14.9 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 shall equally divide all expenses and fees charged by the mediator and arbitrator.

**14.10 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.

**14.11 Period of Limitation.**

14.11.1 For Actions by an Owner or Resident. 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 or Resident 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 or Resident discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, the exclusive period of limitation for a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable statute of limitations for such Claim. In no event shall this Section 14.11.1 be interpreted to extend any period of limitations.

14.11.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, 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 Association or its Manager, Board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years

and one (1) day from the date that the Association or its Manager, Board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this Section 14.11.2 be interpreted to extend any period of limitations.

**14.12 Funding the Resolution of Claims.** The Association shall levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this Article. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Declarant executes this **DECLARATION** as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**BY:**

**KF Flat Creek, LP,**  
a Texas limited partnership

**BY:**

**King Fish Development, LLC,**  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

**STATE OF TEXAS** §

**COUNTY OF \_\_\_\_\_** §

**BEFORE ME**, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of King Fish Development, LLC, a Texas limited liability company, the general partner of KF Flat Creek, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_ day of \_\_\_\_\_ 202\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**METES AND BOUNDS DESCRIPTION**

**EXHIBIT B**

**PRELIMINARY CONCEPT PLAN**

(as may be amended from time to time)

## EXHIBIT C -1

### LANDSCAPING DESIGN GUIDELINES

- **Landscaping Requirements for 50' Lots:**

- Minimum of 100 square foot mulched landscape bed in the front yard.
- Front yard shall be fully sodded, except for landscape bed, and rear yard shall be fully sodded, except for any landscape bed(s).
- Minimum of ten (10) one (1) gallon plants in the front yard.
- Minimum of six (6) three (3) gallon plants in the front yard.
- Minimum of one (1) two-inch (2") caliper hardwood tree shall be planted within the rear yard inside of any fencing.
- Minimum of one (1) two-inch (2") caliper hardwood tree shall be planted within the front yard or side yard in front of any fencing.
- Landscape irrigation system for entire front and rear yard shall be installed.
- Any Lots which are corner lots or side open space lots shall include the following:
  - Minimum of 100 square foot mulched landscape bed in the front yard.
  - Minimum of 100 square foot mulched landscape bed in the side yard.
  - Front yard and rear yard shall be fully sodded, except for landscape bed(s).
  - Minimum of fifteen (15) one (1) gallon plants in the front yard.
  - Minimum of ten (10) five (5) gallon plants in the front yard.
  - Minimum of three (3) two-inch (2") caliper hardwood trees, planted not less than twelve feet (12') apart, two (2) of which shall be a side yard tree, and one (1) of which shall be front yard trees.
  - Minimum of six (6) one (1) gallon plants in the side yard.
  - Minimum of five (5) five (5) gallon plants in the side yard.
  - Landscape irrigation system for entire front yard, side yard and rear yard shall be installed.

- **Landscaping Requirements for 60' Lots:**

- Minimum of 125 square foot mulched landscape bed in the front yard.
- Front yard shall be fully sodded, except for landscape bed, and rear yard shall be fully sodded, except for any landscape bed(s).
- Minimum of twelve (12) one (1) gallon plants in the front yard.
- Minimum of eight (8) three (3) gallon plants in the front yard.
- Minimum of one (1) two-inch (2") caliper hardwood tree shall be planted within the rear yard inside of any fencing.
- Minimum of two (2) two-inch (2") caliper hardwood trees shall be planted within the front yard or side yard in front of any fencing.
- Landscape irrigation system for entire front and rear yard shall be installed.
- Any Lots which are corner lots or side open space lots shall include the following:
  - Minimum of 125 square foot mulched landscape bed in the front yard.
  - Minimum of 125 square foot mulched landscape bed in the side yard.
  - Front yard and rear yard shall be fully sodded, except for landscape bed(s).
  - Minimum of eighteen (18) one (1) gallon plants in the front yard.
  - Minimum of twelve (12) five (5) gallon plants in the front yard.
  - Minimum of three (3) two-inch (2") caliper hardwood trees, planted not less than twelve feet (12') apart, two (2) of which shall be a side yard tree, and one (1) of which shall be front yard trees.
  - Minimum of eight (8) one (1) gallon plants in the side yard.
  - Minimum of seven (7) five (5) gallon plants in the side yard.
  - Landscape irrigation system for entire front yard, side yard and rear yard shall be installed.

## EXHIBIT C – 2

### LANDSCAPING DESIGN GUIDELINES

• **Landscaping Requirements for 70' Lots:**

- o Minimum of 150 square foot mulched landscape bed in the front yard.
- o Front yard shall be fully sodded, except for landscape bed, and rear yard shall be fully sodded, except for any landscape bed(s).
- o Minimum of fifteen (15) one (1) gallon plants in the front yard.
- o Minimum of ten (10) three (3) gallon plants in the front yard.
- o Minimum of one (1) two-inch (2") caliper hardwood tree shall be planted within the rear yard inside of any fencing.
- o Minimum of two (2) two-inch (2") caliper hardwood trees shall be planted within the front yard or side yard in front of any fencing.
- o Landscape irrigation system for entire front and rear yard shall be installed.
- o Any Lots which are corner lots or side open space lots shall include the following:
  - Minimum of 150 square foot mulched landscape bed in the front yard.
  - Minimum of 150 square foot mulched landscape bed in the side yard.
  - Front yard and rear yard shall be fully sodded, except for landscape bed(s).
  - Minimum of twenty (20) one (1) gallon plants in the front yard.
  - Minimum of fourteen (14) five (5) gallon plants in the front yard.
  - Minimum of three (3) two-inch (2") caliper hardwood trees, planted not less than twelve feet (12') apart, two (2) of which shall be a side yard tree, and one (1) of which shall be front yard trees.
  - Minimum of eight (8) one (1) gallon plants in the side yard.
  - Minimum of seven (7) five (5) gallon plants in the side yard.
  - Landscape irrigation system for entire front yard, side yard and rear yard shall be installed.

**EXHIBIT D**

**SUMMARY OF DEDICATORY INSTRUMENTS**

<b>DEDICATORY INSTRUMENTS</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, and as filed under the Texas Secretary of State File No. 805638687)	Establishes the Association as a Texas nonprofit corporation.
<b>Bylaws</b> (Recorded)	Governs the Association's internal affairs, such as elections, meetings, etc.
<b>Alternative Payment Plan Guidelines</b> (Recorded)	Guidelines establishing an alternative payment schedule by which an Owner may make partial payments to the Association for delinquent Assessments or any other amount owed to the Association.
<b>Records Production and Copying Policy</b> (Recorded)	Governs the reasonable examination of books and records of the Association.
<b>Records Retention Policy</b> (Recorded)	Identifies how long each document of the Association is retained.
<b>Management Certificate</b> (Recorded and electronically filed with the Texas Real Estate Commission)	Provides information about the management of the Association.
<b>Community Manual</b> (if adopted, Recorded)	Establishes Rules and Regulations and policies governing the Association.
<b>Design Guidelines</b> (Recorded)	Governs the design and architectural standards for the construction of Residences, Improvements and/or any modifications thereto. The Declarant shall have no obligation to adopt the Design Guidelines.
<b>Rules and Regulations</b> (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property or the Common Area.
<b>Board Resolutions</b> (if adopted, Recorded)	Establishes rules, policies, and procedures for the Property, Owners and Association.
<b>Enforcement Policy</b> (Recorded)	Establishes a policy regarding the levying of fines by the Association.
<b>Development Agreement</b> (Recorded)	Provides certain regulatory terms for the Property's residential development, including associated public infrastructure and other public and private improvements.
<b>Maintenance Agreement</b> (Recorded)	Provides the terms for the Association's ongoing maintenance of public parkland and storm drainage improvements.