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# HOLLISTER OAKS

*A Residential Community in  
Harris County, Texas*

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

*Declarant: PULTE HOMES OF TEXAS, L.P., a Texas limited partnership*

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

### HOLLISTER OAKS

This Declaration of Covenants, Conditions and Restrictions for **Hollister Oaks** is made on the date hereinafter set forth by Declarant (as hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the **Hollister Oaks Homeowners Association, Inc.**, to be formed as a Texas nonprofit corporation to own, operate and maintain the Common Maintenance Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

#### ARTICLE I DEFINITIONS

(a) **"ACA" or "Architectural Control Authority"** shall have the meaning given to such terms in Section 6.2 hereof.

(b) **"ACA Standards"** means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

(c) **"Architectural Committee"** means the committee established under Section 6.3 hereof.

(d) **"Assessment" or "Assessments"** means assessments imposed by the Association under this Declaration.

(e) **"Association"** means Hollister Oaks Homeowners Association, Inc., a Texas nonprofit corporation, established for the purposes set forth herein.

(f) **"Association Easement"** means (a) any easement reserved herein or created elsewhere intended for the construction, installation, operation, location or repair of any subdivision improvement, including, without limitation, the easement for subdivision fencing reserved in Section 9.6 hereof and any easement for any landscaping, subdivision sign, monument or entry feature, retaining, screening or perimeter wall or drainage facility, or (b) any other easement for the benefit of the Association shown on a Recorded plat of the Property or otherwise created or shown in any instrument of Record.

(g) **"Association Maintenance Fencing"** means any fencing or walls installed by Declarant pursuant to an Association Easement.

(h) **"Board"** means the Board of Directors of the Association.

(i) **"Builder"** means any person or entity who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

(j) **"Bylaws"** means the bylaws of the Association.

(k) **"Certificate"** means the Certificate of Formation of the Association.

(l) **"City"** means the City of Houston.

(m) **"Common Area"** and **"Common Areas"** means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including, without limitation, any property that the Association holds under a lease, license or easement in favor of the Association. Some Common Area will 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. The Common Area shall generally include community wide recreational facilities, open space, detention areas, wetlands and green areas. The Common Area shall not include any streets, streetlights, water mains or sanitary sewers or other improvements which have been dedicated to a municipality or governmental authority. Common Area may be on a separate subdivided lot or may be part of a Lot.

(n) **"Common Expenses"** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas.

(o) **"Common Maintenance Areas"** means the Common Areas, if any, and any areas within public rights-of-way or easements (public and private), portions of Lots, public parks,

private streets, landscaping, entry features and/or fence or similar areas that either the Board deems necessary or appropriate to maintain for the common benefit of the Members or that are shown on a Recorded plat of the Property or portion thereof as being maintained by the Association. The Common Maintenance Areas shall include, without limitation, the Front Yard Areas.

(p) **“County”** means Harris County, Texas.

(q) **“Declarant”** means **PULTE HOMES OF TEXAS, L.P.**, a Texas limited partnership, and its successors and assigns as provided in Section 12.12 hereof.

(r) **“Declaration”** means this Declaration of Covenants, Conditions and Restrictions for **Hollister Oaks**, and any amendments and supplements thereto made in accordance with its terms.

(s) **“Designated Interest Rate”** means the interest rate designated by the Board from time to time, subject to any interest limitations under Texas law. If the Board fails to designate an interest rate, then the interest rate shall be the lesser of twelve percent (12%) per annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 12.6 hereof.

(t) **“Development Period”** means the period commencing upon the date of this Declaration and expiring upon the earlier of (a) when Declarant does not own any real property within the Property, or (b) when Declarant executes a document stating the Development Period has terminated, which termination document may be executed during the period when Declarant still owns real property within the Property.

(u) **“Dwelling”** means any residential dwelling situated upon any Lot.

(v) **“Entry Signs”** means the entry feature signs for the subdivision that are or may be placed by Declarant or its agents on the Common Area, Common Maintenance Areas and/or any area covered by an Association Easement.

(w) **“Front Yard Area”** means the front yard and/or landscaped area(s) within a Lot.

(x) **“Land”** means any real property (other than areas dedicated to the City or County) within the Property that has not been platted as a Lot.

(y) **“Landscape Services”** mean the following services to be provided to the Front Yard Area: (a) mowing and edging all turf areas at least once per week during the months of May through September of each year, and on an as-needed basis during the months of October through April; (b) applying fertilizer to the turf areas twice a year; (c) manually and mechanically controlling weeds in as required to maintain a manicured appearance; and (d) controlling fire ants in the turf areas with applications of “Logic” or approved equal in the spring and fall.

Notwithstanding the foregoing, the Board will have the right to modify the Landscape Services provided hereunder from time to time.

(z) **“Lot”** means any separate residential building parcel shown on a Recorded subdivision plat of the Property, but only if such parcel has in place the infrastructure (including utilities and streets) necessary to allow construction of a Dwelling thereon. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

(aa) **“Majority”** means more than half.

(bb) **“Member”** means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III hereof.

(cc) **“Owner”** means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner

(dd) **“Plat”** a Recorded subdivision plat of any portion of the Property, and any amendments thereto.

(ee) **“Policy Manual”** means the policy manual, which may be adopted and recorded by the Board as part of the project documentation for the benefit of the Association. The Policy Manual may include the Bylaws, Rules and Regulations and other policies governing the Association. The Rules and Regulations and other policies set forth in the Policy Manual may be amended, from time to time, by the Declarant during the Development Period, or the Majority of the Board, with the advance written consent of the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Policy Manual may be amended by a Majority of the Board.

(ff) **“Property”** means the real property described on **Exhibit “A”** attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

(gg) **“Record,” “Recording” or “Recorded”** means the filing of a legal instrument in the Public Records of Harris County, Texas, or such other place as may be designated as the official location for filing deeds, plats and similar documents affecting title to real property.

(hh) **“Resident”** means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

(ii) **“Restrictions”** means the restrictions, covenants, and conditions contained in this Declaration, the ACA Standards (if any), Bylaws, Policy Manual, Rules and Regulations, or in any

other rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time.

(jj) **“Rules and Regulations”** means any instrument, whether containing rules, policies, regulations, resolutions or other similar denominations, which is adopted by the Board for the regulation and management of the use of or activities, and conduct on or within the Property, the Common Area, including any amendments thereto.

## **ARTICLE II PROPERTY RIGHTS**

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

### **2.1 General.**

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

(b) Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is mandatory and is not a substitute for compliance with applicable law. Please be advised that the Restrictions do not purport to list or describe each legal requirement or restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review the Plat applicable to their Lot, all applicable laws, and all other requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACA for approval. Furthermore, approval by the ACA should not be construed by the Owner that any improvement complies with the terms and provisions of any applicable law, requirements, regulations or encumbrances which may affect the Owner’s Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACA. The Association, each Owner, Resident, or other user of any portion of the Property must comply with the Restrictions and applicable law, as supplemented, modified or amended from time to time. The Plat includes certain building restrictions, and each Owner is advised to review the Plat applicable to their Lot prior to constructing any improvements on their Lot. Additionally, as specified in the Plat, the maintenance of certain easements and other improvements within the Property shall be the responsibility of the Association, and pursuant to Section 8.1, the Association shall accept such interests for operation and maintenance.

**2.2 Owners’ Easements of Use and Enjoyment.** Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to any limitations set forth herein, including, without limitation, the following:

(a) **Rules.** The right of the Association to establish and publish rules and regulations governing the use of the Common Areas and/or the Lots.

(b) **Suspension of Common Area Use Rights.** The right of the Association to suspend the right of use of the Common Areas for any period of time during which any Assessment against such Owner's Lot is due and remains unpaid.

(c) **Conveyance of Common Area.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas.

(d) **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas.

2.3 **Prohibitions on Easement of Use and Enjoyment.** Each Owner's right and easement of use and enjoyment in and to the Common Area is further limited as follows:

(a) **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

(b) **No Partition.** Except as provided in Section 2.2(c) hereof, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.4 **Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of such Owner's family, lessees and guests, as applicable, subject to the terms of this Declaration, the Bylaws and any reasonable rules of the Board. An Owner who leases his or her or its Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

### ARTICLE III MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot or Land will be a member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot or Land (as applicable).

3.2 **Voting Rights.** The voting rights in the Association shall be as follows:

(a) **Members other than Declarant.** Except as provided in Section 3.3(b) below, Members shall be entitled to one (1) vote for each Lot owned. However, when more than one person or Member holds an interest in any Lot, only one vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the

person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

(b) **Declarant.** In addition to the votes to which Declarant is entitled by reason of Section 3.3(a), for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

#### **ARTICLE IV ASSESSMENTS**

4.1 **Obligation to Pay Assessments.** Subject to and except as provided in this Article IV, each Owner of any Lot by acceptance of a deed therefor, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual Assessments as provided in Section 4.3 hereof, (b) special Assessments as provided in Section 4.6 hereof, and (c) specific Assessments as provided in Section 4.7 hereof.

4.2 **Rate of Assessments.** Both annual Assessments and special Assessments shall be fixed at a uniform rate for all Lots, regardless of a Lot's location or size or the value of the Dwelling thereon; provided, however, that vacant Lots shall be subject to a lower rate as provided herein.

(a) **Improved Lot.** A Lot that has thereon a Dwelling that has been occupied at any time (past or current) for residential purposes (an "Improved Lot") shall be assessed at the full rate.

(b) **Vacant Lot.** A Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes shall be assessed at the rate of 25% of the full rate.

(c) **Lots and Land Owned by Declarant – Exempt.** Except as provided in Section 4.5 below, during the Development Period, all Lots owned by Declarant shall be exempt from all Assessments (annual Assessments, special Assessments and/or specific Assessments) and Declarant shall not be obligated to pay any Assessments for the Lots. Notwithstanding anything contained herein to the contrary, Declarant shall never be obligated to pay Assessments for any Land owned by Declarant.

4.3 **Date of Commencement of Annual Assessments; Due Dates.** The annual Assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to Declarant, a Builder or an entity that assumes Declarant status as provided herein), unless the Board elects to commence the annual Assessment earlier. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner (other than to Declarant, a Builder or an entity that assumes Declarant status as provided herein), the annual Assessment shall be \$1,965.00 per Lot, provided that such first annual Assessment

shall be adjusted according to the number of months remaining in the calendar year. The amount of subsequent annual Assessments against each Lot shall be fixed by the Board at least thirty (30) days in advance of each assessment period. Written notice of the annual Assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board. The Board shall also establish whether the annual Assessment shall be paid annually, quarterly or monthly.

**4.4 Annual Assessment – Increases.** The annual Assessment may be increased by the Board, provided that the Board gives written notice of the increase to the Members at least thirty (30) days in advance of the effective date of such increase.

**4.5 Declarant's Obligation to Pay Budget Deficits.** If at any time during the Development Period the Association's operating expenses exceed the Assessments received by the Association from the Owners (the "Budget Deficit"), Declarant shall fund the amount of such deficit to the Association; provided, however, that in no event shall Declarant be obligated to pay more than an amount equal to the full Assessment rate applicable to Improved Lots for the Lots (but not Land) Declarant owns to make up such Budget Deficit. Notwithstanding the foregoing, if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual, special or specific Assessments, the Association will diligently pursue (and Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse Declarant for any Budget Deficit funded by Declarant from any amounts collected from such Owner or Owners. In no event shall Declarant be obligated to pay any Budget Deficit attributable to the period of time after the Development Period. Furthermore, nothing in this Section 4.5 shall in any way eliminate or diminish Declarant's exemption from all Assessments when no Budget Deficit exists.

**4.6 Special Assessments.** In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a special Assessment whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any special Assessments will be at the sole discretion of the Board.

**4.7 Specific Assessments.** The Association shall have the power to levy specific Assessments against a particular Lot to (a) cover costs incurred in bringing a Lot into compliance with this Declaration, (b) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees or guests, and/or (c) collect any sums due by the Owner to the Association (other than annual Assessments or special Assessments or interest or late charges related thereto), including, without limitation, fines.

**4.8 Utility Assessments.** This Section applies to water and sewer utilities serving the individual Lots and consumed by the Owners or Residents. Such utilities are billed to the Association by the utility provider and may or may not be allocated or sub-metered by or through the Association. The Association may levy a separate utility Assessment for these charges or may

include such charges in the annual Assessments. If the Lots are sub-metered for consumption of a utility, the utility Assessment for each Lot will be based on the sub-meter reading. If the Lots are not sub-metered, the Board may allocate the Association's utility charges among the Lots evenly or by any conventional method used for similar properties. The levy of a utility Assessment may include a share of the administrative and processing fees and any other charges that are typically incurred in connection with utility allocation or sub-metering services. The Board may, from time to time, change the allocation method, provided the same type of method or combination of methods is used for all Lots.

**4.9 Purpose of Annual and Special Assessments - Reserve.** Annual Assessments and special Assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, inspection, repair and replacement of improvements to the Common Maintenance Areas.

**4.10 Personal Obligation to Pay Assessments.**

Each Assessment provided for herein, together with interest at the Designated Interest Rate, late charges and collection costs (including, without limitation, reasonable attorneys' fees) shall be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid Assessments which accrued prior to the mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect Assessments.

**4.11 Capitalization of Association - Payment.**

(a) Each Owner (other than Declarant or a Builder) of a Lot with a completed Dwelling thereon will pay a one-time initial working capital contribution to the Association (the "**Initial Contribution**") in an amount equal to (6) months of the full annual Assessment per Improved Lot for that year/\$982.50, which amount shall be due immediately upon the transfer of title to the Lot.

(b) Notwithstanding the foregoing provision, the following transfers will not be subject to the requirement to pay the Initial Contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (ii) transfer to, from, or by the Association; or (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child or parent. In the event of any dispute regarding the application of the Initial Contribution to a particular Owner, the Board's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this Section 4.10. The Initial Contribution will be in addition to, not in lieu of, any other Assessments or other charges levied in accordance with this

Article IV and will not be considered an advance payment of such Assessments. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Initial Contribution attributable to a Lot by the execution and recordation in the Public Records of a waiver notice executed by the Declarant during the Development Period, and thereafter the Board.

**4.12 Failure to Pay Assessments; Remedies of the Association.** With respect to any Assessment or other sum due herein not paid within ten (10) days after the due date, the Association shall have the right to: (a) charge a late fee, in an amount determined by the Board; (b) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; (c) charge costs and fees related to the collection of the sum due; and/or (d) exercise any other remedies available to the Association as provided elsewhere in this Declaration. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of his or her Lot. The failure to pay Assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

**4.13 Lien.**

(a) **Creation of Lien.** Each Assessment, together with such interest at the Designated Interest Rate, late charges and costs of collection, including, without limitation, court costs and attorneys' fees, and any other fees or charges that are authorized under or pursuant to this Declaration, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot is created. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

(b) **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial foreclosure or by nonjudicial foreclosure; provided, however, that prior to any nonjudicial foreclosure, the Association shall first obtain a court order as required under Section 209.0092(a) of the Texas Property Code, as amended, and otherwise comply with any applicable prerequisites or requirements for nonjudicial foreclosure under applicable law, including, without limitation, Chapter 209 of the Texas Property Code, as amended. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private

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power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of applicable law, including, without limitation, Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage and convey same.

(c) **Subordination of Lien.** The lien of the Assessments provided for herein is subordinate to the lien of any Recorded first purchase money mortgage or deed of trust against a Lot.

(d) **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for Assessments that are attributable to the period after the conveyance of the Lot, except as provided in Section 4.12(e) below. However, a conveyance of title to a Lot shall not affect the Assessment lien or relieve the Owner that conveys the Lot from personal liability for any Assessments attributable to the period prior to the date of the conveyance, except as provided in Section 4.12(e) below.

(e) **Effect of Foreclosure.** The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such Assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any Assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay Assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term "**first**" in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

**ARTICLE V  
THE ASSOCIATION**

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate, the Bylaws and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Certificate and the Bylaws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Certificate and the Bylaws. The Board shall have the powers granted in the Restrictions, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

5.3 **Limitation on Liability.** The liability of an officer, director or committee member of the Association shall be limited as provided in the Certificate.

5.4 **Indemnification.** Subject to the limitations and requirements of the Texas Business Organizations Code, as amended (the "TBOC"), and in the Bylaws, the Association shall indemnify, defend and hold harmless every officer, director and committee member against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify, defend and hold harmless shall be limited to those actions for which a director's, officer's or committee member's liability is limited under the Certificate. Additionally, subject to the limitations and requirements of the TBOC and in the Bylaws, the Association may voluntarily indemnify, defend and hold harmless a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person or party in that capacity and arising out of that capacity.

5.5 **Insurance.**

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, the following insurance coverage, if reasonably available:

(i) **Property Insurance – Common Area.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Common Maintenance Areas to the extent that the

Association has assumed responsibility in the event of a casualty, regardless of ownership.

(ii) **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf.

(b) **Additional Insurance.** The Board may obtain additional insurance as the Board determines advisable, including, without limitation, directors and officers liability insurance, fidelity insurance and any insurance to comply with any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation (“**FHLMC**”), the Federal National Mortgage Association (“**FNMA**”), the U. S. Department of Veterans Affairs (“**VA**”), and the U.S. Department of Housing and Urban Development (“**HUD**”), to the extent applicable. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary the Board shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

(c) **Review of Policies.** The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

5.6 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational or other agreements with other persons or entities; provided, however, that any such agreement shall require approval of the Board. The Board may employ for the Association a management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager’s assigned duties, but shall not delegate policymaking authority.

5.7 **Books and Records.** The books and records of the Association shall be made available to the Members for inspection and copying as provided in the Bylaws and in accordance with the requirements of applicable law, including, without limitation, Chapter 209 of the Texas Property Code, as amended.

5.8 **Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association, shall be conveyed as provided in the Certificate.

5.9 **Enforcement – Notice.** The Association may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to this Declaration) in

accordance with and subject to the applicable procedures set forth in this Declaration, the Bylaws, the Policy Manual, and applicable law, including Chapter 209 of the Texas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

(a) **Fines.** The Association may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest or invitee of the Owner of such Lot.

(b) **Suspension of Rights to Use Common Area.** The Association may suspend any person's or entity's right to use any Common Area; provided, however, that nothing herein shall authorize the Association to limit ingress or egress to or from a Lot.

(c) **Right of Self-Help.** The Association may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

(d) **Right to Require Removal.** The Association may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Association or its designee shall have the right to enter the Lot, remove the violation and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

(e) **Levy Specific Assessment.** The Association may levy a specific Assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

(f) **Lawsuit; Injunction or Damages.** The Association has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

(g) **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the Records and/or enter onto the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific Assessment.

The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Association's sole and absolute discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the

covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

## ARTICLE VI ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic or play equipment or facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (a) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant during the Development Period to be exempt from the ACA approval requirements; (b) any improvements to the interior of a Dwelling, except as provided herein; (c) the painting or re-bricking of the exterior of any Dwelling in accordance with the same color or design as originally constructed by Declarant or in accordance with the approved color and design scheme approved by the ACA; (d) improvements for which this Declaration expressly states that the ACA's prior approval is not required; or (e) repair or replacement of worn out or damaged improvements if such repair or replacement is with substantially similar materials. Any improvements pursuant to clauses (c) and (e) immediately preceding must be in compliance with any applicable ACA Standards.

6.2 **Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The "ACA" or "Architectural Control Authority" shall be the following entity:

(a) **Declarant - During Development Period.** Declarant shall be the ACA during the Development Period, unless Declarant has earlier terminated its rights as the ACA in writing. Declarant may, but shall not be obligated to, form an "Architectural Committee" during the Development Period. If Declarant forms an Architectural Committee during the Development Period, then during the Development Period the Architectural Committee will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association.

(b) **Architectural Committee – After the Development Period.** The Architectural Committee shall be the ACA after Declarant's right to act as the ACA has either expired or voluntarily been terminated.

6.3 **Architectural Committee.** Once formed, the Architectural Committee will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review improvements proposed to be made by any Owner other than Declarant. During the Development Period, Declarant will have the right to appoint and remove (with or without cause) all members of the Architectural Committee. Declarant may assign its right to appoint all members of the Architectural Committee to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the Architectural Committee. Any assignment by Declarant of the right to appoint and remove all members of the Architectural Committee may be withdrawn until expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the Architectural Committee, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the Architectural Committee. Declarant's right to appoint all members of the Architectural Committee will automatically expire upon the expiration of the Development Period. The Architectural Committee will have the right to employ consultants and advisors as it deems necessary or appropriate.

6.4 **Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing by Declarant during the Development Period to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual(s) or company(ies) intended to perform the work and projected commencement and completion dates.

6.5 **Plan Review.**

(a) **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this Article VI, the ACA will have thirty (30) days in which to review said plans and other documents and materials submitted pursuant to Section 6.4 hereof. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within thirty (30) days after the ACA's receipt of all materials requested by the ACA to complete the submission,

then such failure by the ACA to issue its written approval shall be deemed its disapproval of such materials. The ACA may charge a reasonable fee for reviewing requests for approval. It is the responsibility of the Owner seeking approval from the ACA to verify that the ACA has received its request for review and whether approval has been given by the ACA.

(b) **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements within the Property; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time

**6.6 Timing of Completion of Approved Items.** All work approved by the ACA shall be completed within one (1) year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

**6.7 Improvements Impact on Drainage.** With respect to any improvements performed on a Lot and/or any alterations to the grade of a yard, the Owner shall take proper precautions to insure that such improvements do not cause the surface water drainage on the Lot to (a) drain onto an adjoining Lot in an amount more than the drainage amount prior to the improvement or alteration, or (b) collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

**6.8 No Waiver.** The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

**6.9 Variances.** The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (a) in narrow

circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (b) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing, nor shall a variance in one instance estop the ACA from denying a variance in other circumstances.

**6.10 Architectural Control Authority Standards.** The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards. The ACA Standards may not conflict with the terms of this Declaration. In this regard, any conflict between any ACA Standards and the terms of this Declaration shall be controlled by the terms of this Declaration.

**6.11 Enforcement; Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in its sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the ACA. In addition to the Association's rights in Section 5.9 hereof, the Association or any Owner may maintain an action at law or in equity for the removal or correction of (a) the non-conforming improvement or alteration, and/or (b) any improvement or alternation to any improvement on any Lot that is not approved by the ACA.

**6.12 Liability of Declarant and the Architectural Committee; Indemnity.**

(a) **Decisions of Declarant and Architectural Committee.** Declarant and the members of the Architectural Committee shall have no liability for decisions made by them so long as such decisions are made in good faith and are not discriminatory, arbitrary or capricious. Any errors in or omissions from the documents submitted to Declarant or the Architectural Committee shall be the responsibility of the entity or person submitting the documents, and neither Declarant nor the Architectural Committee shall have any obligation to check for errors in or omissions from any such documents, or to check for such documents' compliance with the general provisions of this Declaration, City codes and other regulations, state statutes or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

(b) **NO LIABILITY OF DECLARANT OR ARCHITECTURAL COMMITTEE.** DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR (I) THE CREATION, SELECTION, MANAGEMENT OR OPERATION OF THE ARCHITECTURAL COMMITTEE, (II) ANY ACTIONS TAKEN OR OMITTED TO BE TAKEN BY OR ON BEHALF OF THE ARCHITECTURAL COMMITTEE IN CONNECTION WITH THIS DECLARATION OR THE PROPERTY, OR (III) ANY LIABILITIES, OBLIGATIONS, DEBTS, ACTIONS, CAUSES OF ACTION,

CLAIMS, DEBTS, SUITS OR DAMAGES INCURRED BY OR ON BEHALF OF OR ARISING IN CONNECTION WITH THE ARCHITECTURAL COMMITTEE, THE PROPERTY OR THE DUTIES AND OBLIGATIONS OF THE ARCHITECTURAL COMMITTEE PURSUANT TO THIS DECLARATION. FURTHERMORE, NEITHER DECLARANT, THE ASSOCIATION, MEMBERS OF THE ARCHITECTURAL COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL COMMITTEE, THE BOARD OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES AND QUITCLAIMS ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN. PLANS AND SPECIFICATIONS ARE NOT REVIEWED, APPROVED AND/OR REJECTED FOR ENGINEERING OR STRUCTURAL DESIGN, ADEQUACY OF MATERIALS OR ADEQUACY OF SOILS OR DRAINAGE, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS.

(c) **INDEMNIFICATION OF DECLARANT AND ARCHITECTURAL COMMITTEE.** WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 6.12, SUBJECT TO ANY LIMITATIONS IMPOSED UNDER THE TBOC OR IN THE BYLAWS, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE ARCHITECTURAL COMMITTEE AND DECLARANT FROM AND AGAINST ALL DAMAGES, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, REASONABLY INCURRED IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED ACTION, SUIT OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE THEN BOARD) TO WHICH THE ARCHITECTURAL COMMITTEE OR DECLARANT MAY BE A PARTY BY REASON OF ITS ACTIVITIES UNDER OR IN CONNECTION WITH THIS DECLARATION.

**ARTICLE VII**  
**USE RESTRICTIONS AND COVENANTS**

7.1 **Single Family Residential Use.** All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (d) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (a) through (d) above in this Section 7.1 shall be made by the Board in its sole and absolute discretion. The business activity prohibition will not apply to the use by Declarant or any Builder of any (i) Dwelling as a model home, construction office and/or sales office, or (ii) Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot.

7.2 **Parking of Motor Vehicles.** No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (a) has less than one (1) ton carrying capacity; (b) has less than 3 axles; (c) is in operating condition; and (d) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement; provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

7.3 **Trailers, Boats, Commercial and Recreational Vehicles.** No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with 3 or more axles or greater than 1 ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is operable and such item is (a) kept fully enclosed within a garage located on such Lot; (b) kept fully screened from view by a screening structure or fencing approved by the ACA; (c) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (d) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot

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in the immediate vicinity. The Board will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (a) through (d) above in this Section 7.3. Upon an adverse determination by the Board, the Owner will cause the item to be removed and/or otherwise brought into compliance with this Section 7.3. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

#### 7.4 Fences.

(a) **Required Fencing.** The backyard of each Lot must be fully enclosed with a perimeter fence. The Owner must at all times maintain the fence on its Lot in accordance with the terms of this Declaration, unless such Owner obtains the ACA's written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

(b) **Type of Fencing.** All perimeter fences will be wood, stone, metal, brick and/or masonry. No other type of fencing shall be permitted. All fencing shall comply in all respects (including size and location) with applicable City requirements, including, without limitation the City. All perimeter fences shall be 6 feet in height unless another height is approved by the ACA and shall be a color approved by the ACA. Unless approved by the ACA, fences may not be stained or painted, except that fences may be stained with a clear stain or with the same color stain as originally applied by Declarant. The portion of all fences which face a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) or which face a Common Area, open space, park or other recreational area adjoining such Owner's Lot (which area may be separated by an alley) shall have the smooth surface of the fence materials facing the applicable street or Common Area. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard.

(c) **Location of Fence.** Unless approved by the applicable governmental authority and the ACA, no fence or wall will be placed (i) on any Lot in a location nearer the street than the front building setback line for such Lot, or (ii) on those certain corner Lots whose rear boundary line adjoins any portion of another Lot's front yard of a Lot behind the corner Lot, in a location nearer to the front building setback line for the street that is in front of the adjoining Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences.

(d) **Maintenance of Fencing.** Except with respect to Association Maintenance Fencing, each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in Section 7.4(f) hereof) shall share in the cost of such

maintenance as provided in Section 7.4(f) hereof. The Association shall be responsible to maintain the Association Maintenance Fencing.

(e) **No Changes / Repairs.** All repairs and replacements to the perimeter fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this Section 7.4(e), no fencing (including, without limitation, Association Maintenance Fencing) may be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

(f) **Common Fencing.** Except for Association Maintenance Fencing, side and rear yard fences that are installed by Declarant or the Builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "**Common Fence**") shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or any portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "**Arbitration**" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners

#### 7.5 **Common Retaining Wall**

(a) **Maintenance of Common Retaining Wall.** Any retaining walls that are installed by Declarant on a common boundary of two Lots or that are located on a Lot, but adjacent to (within 3 feet) and generally parallel with another Lot (a "Common Retaining Wall") shall be maintained jointly by the Owner(s) whose Lot the Common Retaining Wall is located on and the Owner whose Lot is adjacent to the Common Retaining Wall (depending upon which is applicable) and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation unless the other Owner agrees in writing to such release. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, unless both Owners agree in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Retaining Wall and/or portion thereof, then either Owner may (i) make the repair or replacement (provided any

applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration, and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made.

(b) **Easement for Common Retaining Wall.** Common Retaining Walls may or may not be located exactly on the common boundary line between two Lots. Therefore, there is hereby created an easement in and on the Lot where the Common Retaining Wall is actually located. The easement area shall be limited to the area that is within 3 feet of the common boundary line. The easement shall be for the benefit of the Owner of the Lot that adjoins the Common Retaining Wall so that such Owner can maintain the Common Retaining Wall as provided in Section 7.5(a).

**7.6 Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings (including, but not limited to, detached garages and storage buildings and sheds) shall be erected, placed or constructed upon any Lot, unless (a) the building is approved by the ACA prior to the installation or construction of the building; (b) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (c) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling; (d) the building is located within a backyard that has a fence that completely encloses the backyard; (e) the height of the walls (excluding the roof) is not greater than 8 feet; (f) the total height of the building (including walls and roof) is not greater than 10 feet; and (g) the building has less than 200 square feet of floor space. In addition, the Owner is required to comply with any applicable governmental requirements, including, without limitation, any necessary permits.

**7.7 Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board. If the animal owner fails to remove the animal from the Lot after the Board's request, the Board shall have the right to remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal

**7.8 Signs.** Except for Entry Signs, no sign or emblem of any kind, including "for rent" signs, may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (a) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size; (b) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of a Dwelling for sale, provided that the sign

does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours; (c) an Owner may place one (1) sign on the inside of a window advertising a Dwelling "for rent", provided that the sign does not exceed one and one-half (1 1/2) feet by one and one-half (1 1/2) feet in size; (d) signs or billboards may be erected by Declarant or any Builder designated in writing by Declarant as having the right to erect such signs or billboards; (e) an Owner may temporarily place one (1) sign on a Lot advertising a "garage sale", provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during the garage sale hours; or (f) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than sixty (60) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms hereof. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject Declarant, the Board, the Association or the Association's officers to any liability in connection with such removal.

**7.9 Trash; Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated in writing by Declarant during the Development Period.

**7.10 Nuisances.** No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any of the Property, the Common Area, or the Common Maintenance Areas such that it becomes or will become clearly audible at the property line of adjoining property owners. No noise, noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics or other nuisance shall be permitted to exist or operate upon any portion of the Property, the Common Area, or the Common Maintenance Areas which the Board determines, in its sole and absolute discretion, to be offensive or detrimental to any other portion of the Property or to the residents.

**7.11 Antennae and Satellite Dishes.** Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (a) antennas, satellite dishes or other apparatuses that are one meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be

permitted; and (b) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a “Permitted Device”), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.11 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this Section 7.11 and the ACA Standards shall not require the ACA’s approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this Section 7.10 and the ACA Standards.

**7.12 Air-Conditioning Units.** Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling, on the ground on the side of the Dwelling or in such other location as may be approved by the ACA. No air-conditioning apparatus or evaporative cooler may be located in or on the front of any Dwelling or attached to any roof, wall or any window of any Dwelling.

**7.13 Solar Energy Devices and Energy Efficient Roofing Materials.** Solar Energy Devices and Energy Efficient Roofing Materials must be installed pursuant to the Policy Regarding Installation and Use of Solar Energy Devices and Energy Efficient Roofing Materials contained in the Policy Manual.

**7.14 No Temporary Structures as a Residence.** No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

**7.15 Landscaping Maintenance.** All yards must be covered with grass or decorative ground cover rock (as permitted by the following sentence) within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner. Excluding decorative ground cover rock originally installed by Declarant, decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All trees, grass and

other landscaping located on any Lot must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass and plantings of every kind on his or her Lot cultivated, pruned, free of trash and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA.

**7.16 Owner's Maintenance of Adjacent Areas.**

(a) Unless such obligations are expressly assumed in writing by the Association as provided in paragraph (c) below, each Owner shall, at its sole cost and expense, be obligated to undertake all activities and work (collectively, the "Adjacent Area Maintenance Work") necessary to properly mow, irrigate and otherwise maintain in good condition all areas ("Adjacent Areas") situated between the boundary of such Owner's Lot and the back of the curb of any adjacent public or private rights-of-way, street or alley. The Adjacent Area Maintenance Work shall include, without limitation, irrigating, pruning, maintaining and replacing all landscaping and trees located within the Adjacent Areas and maintaining and/or replacing (as necessary) all irrigation equipment or lines located within the Adjacent Areas. Furthermore, no landscaping (including, without limitation, trees) or improvements may be removed from, or modified or installed within, the Adjacent Areas without the advance written consent of the Board.

(b) In the event an Owner fails or refuses to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) perform any Adjacent Area Maintenance Work for which it is responsible, such failure will constitute a violation of this Declaration. In such event, without limitation on any other rights or remedies arising out of such violation, the Board may additionally cause such Adjacent Area Maintenance Work to be performed in a manner determined by the Board, in its sole and absolute discretion. If the Board causes any Adjacent Area Maintenance Work to be performed due to an Owner's failure to do so, the Owner otherwise responsible therefor will be liable to the Association for all costs and expenses incurred by the Association for effecting such Adjacent Area Maintenance Work. If such Owner fails to pay such costs and expenses timely upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the Designated Interest Rate) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in 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).

(c) The Association at any time, but without any obligation to do so, may assume responsibility for all or a portion of the Adjacent Area Maintenance Work associated with one or more Owner's Lots. The Association may also from time to time

enter into agreements with one or more Owners pertaining to the Adjacent Area Maintenance Work or the costs thereof, in the sole discretion of the Board.

(d) To the extent any such Adjacent Areas are Common Areas, an Owner shall not be responsible or liable to the Association for injury or loss caused to third parties as a result of such Owner's performance of his/her Adjacent Maintenance Work within such Adjacent Areas (unless and to the extent caused by the gross negligence or willful misconduct of such Owner), and the Association shall maintain general commercial liability insurance with respect to such Adjacent Areas that are Common Areas. THE ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS EACH OWNER AND HIS/HER HEIRS, SUCCESSORS AND ASSIGNS FROM ANY THIRD PARTY CLAIMS OR CAUSES OF ACTION FOR DAMAGE TO PERSON OR PROPERTY THAT DIRECTLY ARISE OUT OF SUCH OWNER'S PERFORMANCE OF HIS/HER ADJACENT AREA MAINTENANCE WORK WITHIN ANY ADJACENT AREA THAT IS COMMON AREA, EXCEPT FOR SUCH CLAIMS OR CAUSES OF ACTION ARISING BY REASON OF SUCH OWNER'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.

7.17 **Sidewalks.** The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City or any other applicable governmental authority.

7.18 **Exterior Improvement Maintenance.** All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion.

7.19 **Garages.** Each Dwelling must have a garage that will accommodate a minimum of one (1) automobile and a minimum of two off-street parking spaces per dwelling as required by the Plat. All garages must comply with all applicable governmental requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.20 **Clothes Hanging Devices.** No clothes hanging devices are to be constructed or placed on the Lot, except within the Dwelling.

7.21 **Window Treatment.** No aluminum foil, newspaper, reflective film, bed sheets or similar linens, nor any similar treatment, will be placed on windows or glass doors of a Dwelling.

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7.22 **Oil and Gas Drilling or Mining.** No drilling, refining, quarrying or mining operation of oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any oil derrick, well, tank, storage facility or other related equipment be permitted on any Lot. This Section shall not prohibit subsurface drilling activities that begin upon and are conducted from the surface of real property not subject to these restrictions.

7.23 **Mail Boxes.** Mail boxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards and the approval of the ACA.

7.24 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (a) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed twelve (12) feet in height, or (b) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

7.25 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within thirty (30) days after the holiday has ended.

7.26 **Flags, Flagpoles, Lawn Decorations and Sculptures.** Flags and Flagpoles must be installed pursuant to the POLICY REGARDING DISPLAY AND INSTALLATION OF FLAGS AND FLAGPOLES contained in the Policy Manual. In addition, an Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags, flagpoles and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (a) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (b) such item is no taller than the fence. Displays of American patriotism, school pride, and individuality are encouraged within reason and decorum; however, to maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community.

7.27 **No Lot Consolidation or Division.** No Owner, other than Declarant, may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof.

7.28 **Drainage Alteration Prohibited.** Unless approved by the ACA, no Owner will: (a) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (b) install landscaping or other improvements that may interfere

with, obstruct or divert drainage flows established by Declarant or any Builder. The foregoing shall not prevent or limit Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

**7.29 Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration 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 diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board, in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

**7.30 Declarant and Builder Development and Construction.** Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

**7.31 Drainage.** No structure, fences, walls, or other obstructions that impede drainage shall be placed within the limits of the drainage easements shown on the Plat. No landscaping or other modifications which alter the cross-sections of the drainage easements as approved, shall be allowed.

**7.32 Private Utilities/Private Water and Sewer Meters.** The water and sewer lines and related facilities within the Property are private facilities which will be owned and maintained by the Association. Since the water and sewer lines and related facilities within the Property are private facilities, the City requires that the Property be served through a "master" meter (the "**Master Meter**"). The Association shall have the right, but not the obligation, to equip each Lot within the Property with a sub-meter (the "**Sub-Meter**") which shall record the utility usage of a particular Lot from the Master Meter. The Association may engage a third party (the "**Third-Party Utility Administrator**") to read the Master Meter or the Sub-Meters, whichever is applicable. No representation or warranty is made by the Association about the accuracy of such meters, systems or measurements, including but not limited to the Sub-Meters, if applicable, or that any such meters or systems will in all cases work as the meter or system is designed or intended. In the event that an Owner does not fully pay the Assessments for utilities (whether a utility Assessment or an annual Assessment containing utility charges, as described in Section 4.8), the Board shall, in addition to the enforcement remedies the Association is entitled to pursuant to this Declaration and applicable law, have the right to disconnect, or cause the Third-

Party Utility Administrator to disconnect, the delinquent Owner's utility service until such delinquent amount is paid, pursuant to assessment collection policies adopted by the Declarant or the Board. **ALL OWNERS AND RESIDENTS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE (1) FROM ANY OMISSION OR IMPROPER EXERCISE BY THE THIRD-PARTY UTILITY ADMINISTRATOR OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED UNDER THIS SECTION OR (2) BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 7.32 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE THIRD-PARTY UTILITY ADMINISTRATOR'S OR 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.**

7.33 **Electric Service Lines.** Electric service will be provided to the Property via electric supply lines that will be owned and maintained by the applicable utility company to the point(s) within the Property where electric service is metered for each Home. Electric service will then be provided by electric service lines (each, an "**Electric Service Line**") from each Home's meter to each Home. Each Owner will be responsible to maintain and repair the Electric Service Line serving such Owner's Home from the electric meter to the Home; provided, however, an Owner will not be responsible to maintain or repair any part of the electric supply line or related equipment that is owned, maintained and repaired by the applicable utility company. To the extent an Owner needs to access other Lots and/or Common Areas in order to maintain the Electric Service Line serving such Owners' Lot, the Owner will have a limited easement and right to do so for such purpose. To the extent an Owner accesses other Lots or Common Areas for such purpose, such Owner will restore such Lots and Common Areas to the condition that same existed immediately prior to such Owner's entry. If an Owner damages another Owner's Electric Service Line, such damaging Owner will promptly repair the damage to the other Owner's Electric Service Line, at the damaging Owner's sole cost and expense.

7.34 **Streets Within the Property.** The streets located outside the Property are public streets and maintained by applicable governmental authorities. Streets within the Property are private and maintained by the Association.

(a) **Private Streets.** Any private streets located within the Property are Common Area and are administered and maintained by the Association. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules and Regulations for the use of private streets, including but not limited to the following:

- (i) Identification of vehicles used by Owners and Residents and their guests.

- (ii) Designation of parking areas and no-parking areas, and loading/unloading zones.
- (iii) Limitations or prohibitions on street or parking.
- (iv) Removal or prohibition of vehicles that violate applicable rules and regulations.
- (v) Fines for violation or applicable rules and regulations

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

#### ARTICLE VIII COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will accept and own all Common Areas in fee simple title. The Association shall maintain, at the Association's cost, the Common Area and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas, at the Association's cost, to the extent the Board determines that such maintenance is desirable. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during or after the Development Period.

8.2 **Condemnation of Common Area.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board determines, in its sole discretion, including, without limitation, (a) to purchase additional Common Areas to replace that which has been condemned, (b) to reconstruct or replace on the remaining Common Area any improvements that were on condemned Common Area, (c) to pay for Common Expenses, or (d) to be distributed to each Owner on a pro rata basis.

8.3 **Damage to Common Area.** If the Common Area or Common Maintenance Areas or improvements located thereon are damaged and if there are insurance proceeds sufficient to repair such damage and return such areas or improvements to their prior condition, then the Association shall cause such damage to be repaired or reconstructed unless sixty-seven percent (67%) or more of all outstanding votes of the Members entitled to be cast vote not to make such repair or reconstruct within ninety (90) days after the loss. If said sixty-seven percent (67%) vote

is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

**8.4 Conveyance of Common Areas by Declarant to Association.** Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the Records.

**8.5 Annual Inspection of Common Area - Budget.** From the period commencing on the expiration of the Development Period until ten (10) years thereafter, the Association shall at least annually examine the condition of the Common Area and Common Maintenance Areas to evaluate the quality, frequency and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer or professional contractors such as landscapers and brick masons. Within fifteen (15) days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. Any expert's report shall be a record of the Association that is available to Owners for inspection and copying.

**8.6 No Representations or Warranties Regarding Lakes, Creeks or Drainage Areas.** Declarant has informed and hereby informs the Association that any lakes, creeks or drainage areas located on or to be constructed upon the Common Area (the "**Water/Drainage Improvements**") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with certain specific aesthetic qualities. DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE WATER/DRAINAGE IMPROVEMENTS AND DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE WATER/DRAINAGE IMPROVEMENTS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION. THE ASSOCIATION HEREBY AGREES TO ACCEPT THE WATER/DRAINAGE IMPROVEMENTS IN THEIR "AS-IS" CONDITION.

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8.7 **No Representations or Warranties Regarding Open Space.** Declarant has informed and hereby informs the Association that the Common Area or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, and water detention facilities, are and are intended to be unimproved open space (the "**Open Space Area**") to be maintained in a natural or semi-natural condition and are not intended as a recreational feature or an amenity with certain specific aesthetic qualities. Without limiting the foregoing, Open Space Area includes the areas described and/or depicted on **Exhibit B** attached hereto. Neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Open Space Area. DECLARATION MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE OPEN SPACE AREA AND DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE OPEN SPACE AREA, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION. THE ASSOCIATION HEREBY AGREES TO ACCEPT THE OPEN SPACE AREA IN ITS "AS-IS" CONDITION.

8.8 **Landscape Services.**

(a) Generally. Without limitation on the Association's maintenance obligations generally hereunder, the Association will cause the Landscape Services to be provided to the Front Yard Area of each Lot. Accordingly, the Association is hereby granted an easement over and across each Lot (including the Front Yard Area thereof) to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Landscape Services (the "**Landscape Easement**"). Access hereunder to each Lot is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual performance of Landscape Services. If the Association damages any improvements located within a Lot in exercising the easement granted hereunder, the Association will be required to restore such improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

(b) Dates. The Association or its designated landscape company may, from time to time, provide each Owner with a schedule of dates on which the Landscape Services will be performed.

(c) Irrigation. Each Owner will be required to water turf thoroughly after the application of fertilizer. Each Owner is also responsible for irrigation and all costs associated therewith (unless otherwise discharged by the Association) and must properly irrigate all Front Yard Areas within such Owner's Lot. Unless otherwise expressly approved by the Board, the Landscape Services will not include irrigation or the repair and maintenance of irrigation facilities. Each Owner will refrain from irrigating the Front Yard Areas during the performance of Landscape Services.

(d) Access. Notwithstanding the foregoing, in the event for any reason the Association is unable to access Front Yard Area, the Association will be relieved of its obligation hereunder to provide Landscape Services to such Front Yard Area until such time that the Association is able to access such Front Yard Area.

## ARTICLE IX EASEMENTS

**9.1 Easement for Utilities on Common Area.** During the Development Period, Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for the construction, installation, use and maintenance for utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have at all times the right to grant the easements described in this Section 9.1.

**9.2 Easement for Utilities on Lots.** The Association and any company or entity, public or private, furnishing utility service to the Property or any Lot, is granted an easement over the Property and any Lot for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain such utilities and furnish utility service to the Property or any Lot. Utilities may include, but are not limited to, water, irrigation, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

**9.3 Easement to Correct Drainage on Property.** For a period of five (5) years after the expiration of the Development Period, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where a Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

**9.4 Easement for Right to Enter Lot.** If an Owner fails to maintain its Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

9.5 **Easement for Right to Enter and Inspect Common Area.** For a period of ten (10) years after the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting and repairing the Common Area and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any such inspections or repairs.

9.6 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot twenty-four (24) months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.7 **Association Easement.** Declarant hereby reserves an Association Easement for the benefit of Declarant and the Association for the purpose of placing, constructing and maintaining any Entry Signs, Association Maintenance Fencing and landscaping located within or on a Lot. The real property subject to the Association Easement shall be conveyed subject to the Association Easement.

## ARTICLE X ANNEXATION AND WITHDRAWAL; DEVELOPMENT RIGHTS

10.1 **Annexation by Declarant.** Declarant may, at any time and from time to time, add additional lands to the Property subject to the terms and conditions of this Declaration. Upon the filing of a Notice of Annexation, such added land will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth herein and the jurisdiction of the Association for purposes of this Declaration. Upon the Recordation of a Notice of Annexation, the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added lands as with respect to the real property already encumbered by and subject to this Declaration. To add lands to the Property, Declarant will be required only to Record a Notice of Annexation containing the following provisions:

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

10.2 **Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof with the affirmative vote of sixty-seven percent (67%) or more of all outstanding votes of the Members that are entitled to be cast. Notwithstanding the foregoing, no annexation pursuant to this Section 10.2 will be effective without the written consent of Declarant, its successors or assigns, during the Development Period.

10.3 **Recording of Annexation.** The annexation of such real property shall be evidenced by a written Recorded document.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of Declarant or any Member to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

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

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

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

(c) A legal description of the withdrawn land.

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

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

**10.7 Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain improvements upon Lots as sales, model, management, business and construction offices; or (iii) to maintain and locate construction trailers and construction tools and equipment within the Property or the Common Area. The construction, placement or maintenance of improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section 10.7 until twenty-four (24) months after expiration or termination of the Development Period.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Introduction & Definitions.** The Association, the Owners, Declarant and all persons subject to this Declaration (individually a “**Party**” and collectively, the “**Parties**”) agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims (as hereafter defined). As used in this Article only, the following words, when capitalized, have the following specified meanings:

(a) “**Claim**” means any claim, grievance or dispute between or among the Parties arising from this Declaration, the Bylaws or the Certificate or related to the Property, except Exempt Claims (as defined below), and including, without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of this Declaration; (ii) Claims relating to the rights and/or duties of Declarant as Declarant under this Declaration; and (iii) Claims relating to the design, construction or maintenance of the Property.

(b) “**Claimant**” means any Party having a Claim against any other Party.

(c) “**Exempt Claims**” means the following claims or actions, which are exempt from this Article: (i) the Association’s claim for Assessments, and any action by the Association to collect Assessments; (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party’s ability to enforce the provisions of this Declaration; (iii) enforcement of the easements, architectural control, maintenance and use restrictions of this Declaration; (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article;

and (v) a dispute that is subject to alternate dispute resolution (such as mediation or arbitration) by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article unless the Parties agree to have the dispute governed by this Article.

(d) **“Respondent”** means the Party against whom the Claimant has a Claim.

**11.2 Mandatory Procedures.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

**11.3 Notice.** Claimant must notify Respondent in writing of the Claim (the **“Notice”**), stating plainly and concisely: (a) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (b) the basis of the Claim (i.e., the provision of the Declaration, Bylaws or Certificate other authority out of which the Claim arises); (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) that the Notice is given pursuant to this Section 11.3.

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

**11.5 Mediation.** If the Parties negotiate but do not resolve the Claim through negotiation within one hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the Parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the Parties mutually agree. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

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

**11.7 Allocation of Costs.** Except as otherwise provided in this Section 11.7, each Party bears all of its own costs incurred prior to and during the proceedings described in Sections 11.3,

11.4 and 11.5 above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

**11.8 Enforcement of Resolution.** Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorney's fees and court costs.

**11.9 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 a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

**11.10 Litigation Approval and Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the affirmative vote of at least seventy-five percent (75%) of the votes of all Members, except that no such approval is required (a) to enforce provisions of this Declaration, including collection of Assessments; (b) to challenge condemnation proceedings; (c) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (d) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (e) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, without limiting the provisions of Section 6.12 hereof, the Association may not initiate any judicial or administrative proceeding against Declarant without the affirmative vote of at least seventy-five percent (75%) of the votes of all Members. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

The provisions of this Article XI may not be amended without the affirmative vote of at least seventy-five percent (75%) of the votes of all Members.

## **ARTICLE XII MISCELLANEOUS**

**12.1 Declaration Term - Perpetual.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January

1, 2065, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this Section 12.1 to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any applicable law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date that this document is first Recorded, descendants of Elizabeth II, Queen of England.

#### 12.2 Amendments to Declaration.

(a) **Amendment by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant, in its sole discretion and without a vote or the consent of any other party, shall have the right to amend this Declaration, by the Recording of an instrument executed by Declarant, for the following purposes: (i) to add real property to the Property, (ii) to create lots, easements, common areas, common maintenance areas, fencing and signage, (iii) to modify the use and covenant restrictions in Section VII hereof, (iv) to comply with the requirements of any governmental authority or institutional lender or underwriting lender, (v) to resolve conflicts, clarify ambiguities and to correct misstatements, errors or omissions in this Declaration, and (vi) for any other purpose; provided, however, that any amendment made pursuant to this clause (vi) must not have any material adverse effect on any significant right of an Owner without the consent of such Owner.

(b) **Amendment by Association.** Except as otherwise provided in this Declaration, this Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding the foregoing, the Association shall be required to obtain Declarant's written consent to (i) any amendment during the Development Period, and (ii) any amendment to Section 3.2(b), Section 4.5, Section 6.12, Article IX or Article XI after the Development Period.

**12.3 Enforcement by Association and/or Owner.** Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce, by a proceeding at law or in equity, the Restrictions. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of the Restrictions. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any applicable law pertaining to the ownership, occupancy, or use of any portion of the Property, the Common Area, or the Common Maintenance Areas is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE RESTRICTIONS.

**12.4 Remedies; Cumulative.** In the event any Lot does not comply with the terms hereof or any Owner fails to comply with the terms hereof, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

**12.5 Notice to Association of Sale or Transfer.** Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee, within thirty (30) days after the date of such transfer of title, and such other information as the Board may reasonably require. With the Board's approval a number of independent fees may be charged in relation to the transfer of title to a Lot, including, but not limited to, fees for resale certificates, estoppel certificates, copies of this Declaration, the Bylaws and/or the Certificate, compliance inspections, ownership record changes and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special Assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: foreclosure of a deed of trust lien, tax lien or the Association's Assessment lien;

transfer to, from or by the Association; or voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's Assessment lien, and are not payable by the Association. This Section 12.5 does not obligate the Board or the manager to levy transfer-related fees.

**12.6 Limitation on Interest.** All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

**12.7 Construction and Interpretation.** This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

**12.8 Notices.** Except as otherwise provided in the Bylaws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice

**12.9 Not a Condominium.** This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

**12.10 Severability.** Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain, in full force and effect.

**12.11 Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed. Notwithstanding any provision herein, the rights of Declarant as provided herein shall not run with the land, but instead may only be transferred or assigned as provided in Section 12.12 hereof.

**12.12 Assignment of Declarant's Rights.** Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of Declarant status. Without limiting the terms of Section 6.12 hereof, upon a Declarant's assignment of any or all of its rights as Declarant under this Declaration, the assigning Declarant shall automatically, without further acknowledgment or consent of any other party, be fully released and discharged from any obligations accruing under this Declaration after the date of such assignment, including, without limitation, the obligation of such assigning Declarant to fund Budget Deficits arising after such assignment.

**12.13 DISCLAIMER REGARDING SECURITY.** Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property, the Common Area, or the Common Maintenance Areas. The Association may, but shall not be obligated to, maintain or support certain activities within the Property, the Common Area, or the Common Maintenance Areas designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. HOWEVER, NEITHER THE ASSOCIATION NOR THE DECLARANT NOR THE DIRECTORS, EMPLOYEES, OR AGENTS OF SUCH ENTITIES SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY, THE COMMON AREA, OR THE COMMON MAINTENANCE AREAS, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM OR RELATED TO AN OWNER'S OR RESIDENT'S, OR THEIR RESPECTIVE GUEST'S AND INVITEE'S, PRESENCE IN OR USE OF ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY OF THE COMMON AREA, OR THE COMMON MAINTENANCE AREAS OR IMPROVEMENTS THEREIN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING SECURITY MONITORING SYSTEMS OR ANY GATE, MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTY, THE COMMON AREA, OR THE COMMON MAINTENANCE AREAS CANNOT BE COMPROMISED OR CIRCUMVENTED; OR THAT ANY SUCH SYSTEM OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ANY RESIDENTS OF SUCH OWNER'S LOT THAT NEITHER THE ASSOCIATION, NOR THE DECLARANT, NOR THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND COMMITTEES OF SUCH

RP-2016-487480

ENTITIES, ARE INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY AND THE COMMON MAINTENANCE AREAS ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY RESULTING FROM ACTS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ANY DAMAGE OR LOSS TO ANY RESIDENCES OR IMPROVEMENTS CONSTRUCTED UPON ANY LOT AND THE CONTENTS LOCATED THEREIN.

**12.14 Adjacent Land Use.** Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property, regardless of what any plat shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water or air.

**12.15 Attorneys' Fees and Court Costs.** If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

**12.16 Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

**12.17 Headings.** The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

**12.18 Conflicts.** In the event of conflict between this Declaration and any Bylaws, rules, regulations or the Certificate, this Declaration will control.

**12.19 Exhibits.** All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

***[SIGNATURE PAGE FOLLOWS]***



**EXHIBIT "A"**

**The Property**

That certain real property described as Lots 1 through 31, Block 1; Lots 1 through 12, Block 2; Lots 1 through 12, Block 3; Hollywood Gardens Partial Replat No 2 Replat No 1, according to the plat recorded under Document Number 20150461527 (Film Code No. 676035) in the Official Public Records of Harris County, Texas.

RP-2016-487480

Exhibit "A"

RP-2016-487480  
# Pages 52  
10/28/2016 10:30 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
STAN STANART  
COUNTY CLERK  
Fees \$216.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Stan Stanart*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

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