



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

HIDDEN OAK

Georgetown, Williamson County, Texas

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIDDEN OAK

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIDDEN OAK

GEORGETOWN, WILLIAMSON COUNTY, TEXAS

This Declaration of Covenants, Conditions and Restrictions for Hidden Oak is made by Declarant (as hereinafter defined) effective as of the date following Declarant's signature below.

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. This Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the community located on the Property. In furtherance of such plan, Declarant has caused or intends to cause the Georgetown Hidden Oak Homeowners' Association, Inc. to be formed as a Texas nonprofit corporation to own, operate and maintain the Common Maintenance Areas (as defined herein) and 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, all of 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

1.01 "ACA" or "Architectural Control Authority" shall have the meaning given to such terms in Section 6.02 hereof.

1.02 "ACA Standards" means standards, guidelines or rules 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.

1.03 "Architectural Committee" means the committee established under Section 6.03 hereof.

1.04 "Association" means Georgetown Hidden Oak Homeowners' Association, Inc., a Texas nonprofit corporation, established for the purposes set forth herein.

1.05 "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 9.06 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.

1.06 "Association Maintenance Fencing" means fencing or walls installed by Declarant or a Builder pursuant to an Association Easement or which are otherwise designated herein to be repaired and maintained by the Association. The Association Maintenance Fencing is depicted on Exhibit B attached hereto and incorporated herein for all purposes.

1.07 "Association Maintenance Retaining Walls" means retaining walls installed by Declarant or a Builder pursuant to an Association Easement or which are otherwise designated herein to be repaired and maintained by the Association.

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

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

1.10 "Bylaws" means the bylaws of the Association.

1.11 "Certificate" means the Certificate of Formation of the Association.

1.12 "City" means the City of Georgetown.

1.13 "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. Common Area also includes any property and facilities that are held by the Declarant or a Builder for the benefit of the Association and designated as Common Area in a Recorded written instrument executed by the Declarant. 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.

1.14 "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.

1.15 "Common Maintenance Areas" means the Common Areas and any improvements or areas within public rights-of-way or easements (public and private), portions of Lots, public parks, private streets, landscaping easements, entry features or other areas that are to be repaired and maintained by the Association, as a Common Expense of the Association, as set forth in this Declaration, as the Board from time to time deems necessary or appropriate for the common benefit of the Members, or that are designated on a Recorded plat of the Property or portion thereof as improvements or areas to be maintained by the Association.

1.16 "County" means Williamson County, Texas.

1.17 "Declarant" means Pulte Homes of Texas, L.P., a Texas limited partnership, and its successors and assigns.

1.18 "Declaration" means this Declaration of Covenants, Conditions and Restrictions and any amendments and supplements thereto.

1.19 "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 14.03 hereof.

1.20 "Development Period" means the period commencing upon the date of this Declaration and expiring upon the earlier of (a) when Declarant no longer owns any real property within the Property, or (b) when Declarant executes and Records a document stating the Development Period has terminated. If at any time there is more than one Declarant, then the Development Period shall instead expire upon the earlier of (a) when no Declarant continues to own any real property within the Property, or (b) when all Declarants or the last Declarant owning real property within the Property executes and Records a document stating the Development Period has terminated. The Development Period is the period in which, among other things, Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

1.21 "Dwelling" means any residential dwelling situated upon any Lot.

1.22 "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.

1.23 "Governing Documents" means this Declaration, the ACA Standards (if any), Certificate of Formation, Bylaws, Policy Manual, Rules and Regulations and all other rules and regulations promulgated by the Association pursuant to this Declaration, and resolutions of the Board, as each may be adopted and amended from time to time.

1.24 "Land" means any real property within the Property that has not been platted as a Lot.

1.25 "Lot" means (a) any separate portion of the Property designated by Declarant in a Recorded written instrument as a Lot for the purpose of this Declaration, or (b) any 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.

1.26 "Majority" means more than half.

1.27 "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.

1.28 "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.

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

1.30 "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.

1.31 "Property" means the real property described on Exhibit A attached hereto and such additional property as may be brought within the jurisdiction of the Association and made subject to this Declaration.

1.32 "Record," "Recording" or "Recorded" means the filing of a legal instrument in the real property records of the County or such other place as may be designated as the official location for filing deeds, plats and similar documents affecting title to real property.

1.33 "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

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

2.01 General.

(a) **Conditions and Restrictions.** All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to all of the terms, easements, restrictions, covenants and conditions contained in this Declaration and the other Governing Documents.

(b) **Ordinances.** Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Governing Documents is mandatory and is not a substitute for compliance with applicable law. Please be advised that the Governing Documents 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 Governing Documents 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 8.01, the Association shall accept such interests for operation and maintenance.

2.02 Owners' Use and Enjoyment of Common Areas. Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to all rights and limitations set forth herein, including, without limitation, the following:

(a) **Rules.** The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to 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.

(e) **Dedication of Common Area.** The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose.

(f) **Easements.** The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to grant easements or licenses over and across the Common Area.

2.03 Restrictions Regarding Owners' Rights in Common Areas. 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 2.02(c) hereof, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.04 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 and Regulations. An Owner who leases such Owner's Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

2.05 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property or the Common Area (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and improvements, including but not limited to any amenity centers and open spaces, reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Common Area or outside of the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Builder or other developer of any portion of the Property or the Common Area makes any representation or warranty concerning such land uses and improvements shown on the Conceptual Plans or otherwise planned for the Property or the Common Area and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statements made by the Declarant or any of Declarant's representatives regarding any existing or proposed land uses, or proposed or planned improvements in making the decision to purchase any land or improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property and/or the Common Area will likely extend over many years, and agrees that the Association may not engage in, or use Association funds to support, any protest or challenge, or make any form of objection to, development of the Property or the Common Area or changes in the Conceptual Plans as they may be amended or modified from time to time.

ARTICLE III MEMBERSHIP AND VOTING

3.01 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).

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

(a) **Members other than Declarant.** 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 3.02(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

4.01 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 4.03 hereof, (b) special assessments as provided in Section 4.06 hereof, and (c) specific assessments as provided in Section 4.07 hereof.

4.02 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 50% of the full rate.

(c) **Lots and Land Owned by Declarant – Exempt.** Except as provided in Section 4.05 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.

4.03 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 \$780.00 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.

4.04 Annual Assessments. The annual assessment may be increased or decreased by the Board, provided that the Board gives written notice of the change in the amount of the annual assessment to the Members at least thirty (30) days in advance of the effective date of such change.

4.05 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 (a "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. If at any time there is more than one Declarant, the amount of such deficit to be paid by each Declarant shall be equal to the amount of such deficit multiplied by a fraction, the numerator of which is the number of Lots then owned by that Declarant and the denominator is the total number of Lots then owned by all Declarants; provided, however, if all Declarants agree, then the amount of the deficit to be paid by each Declarant shall be equal to the full assessment rate applicable to Improved Lots for all Lots (but not Land) then owned by such Declarant. 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 shall in any way eliminate or diminish Declarant's exemption from all assessments when no Budget Deficit exists.

4.06 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 Governing Documents. The amount of any special assessments will be at the sole discretion of the Board.

4.07 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.

4.08 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.

4.09 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.

4.10 Capitalization of Association - Payment.

(a) Each Owner (other than Declarant or a Builder) who purchases a Lot will pay a one-time initial contribution to the Association (the "**Initial Contribution**"), which amount shall be due immediately upon the transfer of title to the Lot. Upon the purchase of a Lot from Declarant, the Initial Contribution initially shall be \$250.00, to be allocated between working capital and reserve funds as determined by the Board in its sole and absolute discretion. Upon each subsequent sale of a Lot with a completed Dwelling, the Initial Contribution shall be a working capital contribution to the Association in an amount determined from time to time by the Board in its sole and absolute discretion. The Initial Contribution need not be uniform among all Lots, and the Board is expressly authorized to levy initial capital contributions of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy.

(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. 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. During the Development Period, the Declarant, and, thereafter, the Board, will have the power to waive the payment of any Initial Contribution attributable to a Lot.

4.11 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 nonuse 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.

4.12 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 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

5.01 The Association - Duties and Powers. The Association is a 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.

5.02 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 Governing Documents, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

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

5.04 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.

5.05 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.

5.06 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.

5.07 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.

5.08 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.

5.09 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 an Owner's 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 real property 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.

5.10 Right of Action. The Association shall not have the power to institute, pursue, join, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design, construction or repair of a Dwelling, a Lot or any improvements on a Lot (other than a Claim (as defined below) relating to Common Maintenance Areas on one or more Lots). This Section may not be amended or modified without Declarant's written and acknowledged consent and the consent of Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, both of which must be part of the Recorded amendment instrument.

5.11 Indemnification For Association Operations. THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT AND ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AND DECLARANT'S SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "DECLARANT PARTIES") FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS, IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING) ASSERTED AGAINST ANY OF THE DECLARANT PARTIES OR TO WHICH ANY OF THEM MAY BECOME A PARTY ARISING OUT OF OR RELATED TO THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, INCLUDING WITHOUT LIMITATION, THE ENFORCEMENT OF THE GOVERNING DOCUMENTS, THE COLLECTION OF

ASSESSMENTS, AND THE OPERATION, MAINTENANCE AND REPAIR (OR FAILURE TO OPERATE, MAINTAIN OR REPAIR) THE COMMON AREAS.

**ARTICLE VI
ARCHITECTURAL CONTROLS**

6.01 No Improvements Unless Approved by Architectural Control Authority. 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.

6.02 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.

6.03 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.

6.04 Submission of Plans. Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.01 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.

6.05 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 6.04 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.

6.06 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.

6.07 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.

6.08 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.

6.09 Variances. The ACA may grant variances, in its sole and absolute discretion, from compliance with any of the provisions set forth herein, in any ACA Standards or any required procedures. All variances must be evidenced in writing and must be signed by the ACA. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the ACA Standards, will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the ACA Standards, if any, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the ACA Standards, if any.

6.10 Improvements by Declarant. Notwithstanding any provisions contained in this Declaration to the contrary, to the extent that any improvements constructed or modified by the Declarant on the Property do not comply with a restriction or requirement contained in this Declaration, the Architectural Control Authority shall be deemed to have granted Declarant a variance from such restriction or requirement and such improvements shall not be considered to violate any restriction or requirement in this Declaration or any of the other Governing Documents.

6.11 Architectural Control Authority Standards. The ACA or the Board may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards. During the Development Period, any adoption, amendment or repeal of the ACA Standards must be approved in advance and in writing by the Declarant. 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.

6.12 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 5.09 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.

6.13 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 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, building standards 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 SUCH PERSON 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 QUIT CLAIMS 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, 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 PARTIES 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 ANY MEMBER OF THE ARCHITECTURAL COMMITTEE OR ANY OF THE DECLARANT PARTIES MAY BECOME A PARTY BY REASON OF ITS ACTIVITIES UNDER OR IN CONNECTION WITH THIS DECLARATION.

ARTICLE VII USE RESTRICTIONS AND COVENANTS

7.01 Single-Family Residential Use.

(a) The Property will be used solely for single-family residential purposes.

(b) No professional, business, or commercial activity to which the general public is invited will be conducted on any portion of the Property, except an Owner or such Owner's tenant may conduct business activities within a Dwelling so long as: (i) such activity complies with applicable law; (ii) participation in the business activity is limited to the Owner(s) or tenant(s) of a Dwelling; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business within the Property, sound, or smell from outside the Dwelling; (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the Dwelling nor the Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. Leasing of a residence in compliance with Section 7.02 will not be considered a business or trade within the meaning of this subsection. This subsection will not apply to any activity conducted by the Declarant or a Builder.

(c) Notwithstanding any provision in this Declaration to the contrary, until the expiration or termination of the Development Period, Declarant and/or its licensees may construct and maintain upon portions of the Common Area and any Lot owned by the Declarant such facilities and may conduct such events and other activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single-family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees have an easement over and across the Common Area for access and use of such facilities at no charge.

7.02 Rentals. No portion of the Property may be used as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, or any similar purpose, but the Dwelling constructed on a Lot may be leased for residential purposes for a lease term of no less than six (6) months. All leases must be in writing. The Owner must provide a copy of this Declaration and the other Governing Documents to its lessee. Notice of any lease, together with such additional information as may be required by the Board, must be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. All leases must be for the entire Dwelling.

7.03 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 operating on public streets and highways in compliance with applicable law. 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.

7.04 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 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. 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. 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.

7.05 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) **Fencing Design and Appearance.** All fencing shall comply (including size and location) with applicable City requirements. Except for fencing installed by Declarant or as otherwise approved by the ACA, all fencing shall be six (6) feet in height. Unless a specific color is approved by the ACA, fences must be stained or painted with the same color stain or paint as originally applied by Declarant or a Builder, as applicable. 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. Tubular metal fencing, six (6) feet in height, shall be installed on the property line of each Lot that is adjacent to a Common Area lot identified on a Plat(s) as "D.E. and Private Open Space" (the "**Restricted Fencing**"). Any Association Maintenance Fencing installed within a Common Area lot identified on a Plat(s) as "D.E. and Private Open Space" (if applicable) shall not be included within the definition of Restricted Fencing.

(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 7.05(f) hereof) shall share in the cost of such maintenance as provided in Section 7.05(f) hereof. The Association shall repair and maintain Association Maintenance Fencing as a Common Expense.

(e) **No Changes / Repairs.** No fencing may be changed or modified without the prior written consent of the ACA. This includes changes to design, color, height and materials. Unless approved otherwise by the ACA, all repairs and replacements to fencing must be done using the same design and 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.

(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 reimbursement from the other Owner of one-half (1/2) of the cost of repair or replacement; and/or (ii) seek payment from the other Owner of one-half (1/2) of the cost of repair or replacement, subject to the repair or replacement being made.

7.06 Retaining Walls.

(a) **Retaining Walls on Lots.** Unless otherwise specifically provided herein, retaining walls located on a Lot, other than Common Retaining Walls (defined below) and Association Maintenance Retaining Walls, shall be maintained solely by and at the expense of the Owner of such Lot.

(b) **Common Retaining Walls.** Except for Association Maintenance Retaining Walls, 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 reimbursement from the other Owner of one-half (1/2) of the cost of repair or replacement; and/or (ii) seek payment from the other Owner of one-half (1/2) of the cost of repair or replacement, subject to the repair or replacement being made.

(c) **Easement for Common Retaining Walls.** 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 7.06(a).

(d) **Association Maintenance Retaining Walls.** The Association shall repair and maintain Association Maintenance Retaining Walls as a Common Expense.

7.07 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 6 feet; (f) the total height of the building (including walls and roof) is not greater than 8 feet; (g) the building has less than 150 square feet of floor space; and (h) no detached accessory building shall be located on any Lot nearer to the side lot line or nearer to the rear lot line than 5 feet. In addition, the Owner is required to comply with any applicable governmental requirements, including, without limitation, any necessary permits.

7.08 Gazebos, Pergolas, Arbors and Other Shade Structures. Detailed plans (site plan, elevations, details, etc.) for gazebos, pergolas, arbors and other shade structures must be submitted for review prior to construction. Architecturally, all such structures shall be attractive in appearance, without an excess of ornamentation, and compatible with the style of the Dwelling. Construction materials may be wood, masonry, stone or other architecturally similar materials. Roofing, if any, shall match the Dwelling roof in style, material and color. The overall height, including ornaments, if any, shall not exceed 10 feet. The overall area of the structure shall be compatible with the size and landscaping of the lot. In no event shall it be larger than five percent (5%) of the total lot size, or 150 square feet, whichever is less. If painted, it shall be an earth-tone color coordinating with and complimenting the colors of the Dwelling. Only one gazebo or other shade structure is allowed per residence, and must be located in the rear or side yard. A gazebo or other shade structure must be located at least 5 feet from the side property line and 10 feet from the rear property line. Site compatibility and impact on neighboring properties will be major considerations of the ACA in the approval process.

7.09 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.

7.10 Signs. Unless otherwise provided in the Policy Manual and 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 a 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 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 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 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 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) an Owner may place Political Signs on such Owner's Lot as permitted in this subsection below. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on 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.

Owners may place ground mounted signs on their Lot which advertise a political candidate or ballot item for an election ("**Political Signs**"), provided the following criteria are met: (i) no Political Sign may be placed on an Owner's Lot prior to the ninetieth (90th) day before the date of the election to which the sign relates, or remain on an Owner's Lot subsequent to the tenth (10th) day after the election date; (ii) no more than one (1) Political Sign is allowed per political candidate or ballot item; (iii) Political Signs must be ground mounted, displayed only on an Owner's Lot and may not be located on, nor encroach on, another Lot, Common Area, or any property owned or maintained by the Association; and (iv) no Political Sign may (a) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; (b) be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; (c) include the painting of architectural surfaces; (d) threaten the public health or safety; (e) be larger than four (4) feet by six (6) feet; (f) violate a law; (g) contain language, graphics, or any display that would be offensive to the ordinary person; or (h) be accompanied by music or other sounds or by streamers or is otherwise distracting to motorists. The Association may remove a Political Sign displayed in violation of this Section.

7.11 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.

7.12 Nuisances and Offensive Activity. No conduct, action or activity is allowed on any part of the Property which is unreasonably obnoxious, abusive, threatening, profane, unpleasant, annoying or offensive or constitutes a public or private nuisance, including, without limitation, unreasonable smells, noises or aesthetics. No speakers, horns, whistles, bells or other devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any of the Property such that it becomes or will become clearly audible on the Lots of other Owners or residents or within the Common Areas. No person shall interfere with the Association's directors, officers, employee, agents, property managers or other representatives in the performance of their duties for the Association. The Board shall have the right to determine, in its sole and absolute discretion, whether conduct, actions, activities or devices are unreasonable, offensive, detrimental to other portion of the Property or other residents, or otherwise violate this Section. Without limiting any other rights or remedies of the Association under the Governing Documents, if the Board determines that an Owner, resident or guest violated any provision of this Section willfully or in a deliberate manner, the Board may impose penalties as it may determine, including without limitation suspension of use of the Common Areas and related facilities and privileges.

7.13 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 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 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 and the ACA Standards.

7.14 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.

7.15 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.

7.16 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, with Declarant's consent, to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.17 Landscaping Maintenance. All yards must be sodded or grassed 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. Decorative ground cover rock in the front and side yard must be a color approved by the ACA and may not exceed 10% of the total area of the front and side yard (excluding flower beds and planters with mulch rather than rock). Mulch must be a natural wood or a color, if any, approved by the ACA. 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.

7.18 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.

7.19 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.

7.20 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.

7.21 Garages. Each Dwelling must have a garage that will accommodate a minimum of two (2) automobiles and a minimum of two (2) 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.

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

7.23 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.

7.24 No Drilling or Mining. No drilling, refining, quarrying, mining or pumping operation of water, oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any drilling equipment, 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, nor will this section prohibit the drilling and operation of water wells on Property other than residential Lots by the Association or by a utility provider, utility district or other governmental authority.

7.25 Mailboxes. Mailboxes shall be located, constructed and maintained as determined by the U.S. Postal Service (the "USPS"). The Association shall have the right to adopt rules and guidelines governing the repair, maintenance and design of mailboxes provided same are not inconsistent with any regulations or determinations of the USPS. To the extent mailboxes are not maintained, repaired and replaced by the USPS, (a) individual mailboxes located on a Lot serving the Dwelling on that Lot will be maintained, repaired and replaced by the Owner of such Lot, and (b) group or clustered mailboxes serving more than one Dwelling will be deemed Common Maintenance Areas and maintained, repaired and replaced by the Association.

7.26 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 (including, without limitation, temporary and movable basketball goals). 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.

7.27 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.

7.28 Flags, Flagpoles, Lawn Decorations and Sculptures. Flags and Flagpoles may be installed pursuant to the Policy Regarding Display and Installation of Flags and Flagpoles contained in the Policy Manual. Except as set forth in the Policy Regarding Display and Installation of Flags and Flagpoles, 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.

7.29 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.

7.30 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. 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.

7.31 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.

7.32 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.

ARTICLE VIII COMMON AREAS

8.01 Association to Hold and Maintain. The Association will accept and own all Common Areas in fee simple title and be responsible for the operation thereof. The Association, at the Association's cost, shall repair and maintain the Common Area and Common Maintenance Areas and all improvements and landscaping thereon in good condition and repair. The costs of such repairs and maintenance of 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.

8.02 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.

8.03 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.

8.04 Conveyance of Common Areas by Declarant to Association. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant, and its assignees, reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Property identified therein will be considered Common Area for the purpose of this Declaration. Declarant and its assignees may also at any time assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, the general public, local governmental entities or districts or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Declarant's or its assignee's assignment, transfer or conveyance to the Association without consent or action by the Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. **ALL PROPERTY CONVEYED TO THE ASSOCIATION WILL BE DEEMED CONVEYED IN ITS THEN "AS-IS" CONDITION, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT TO THE EXTENT DECLARANT OR ASSIGNEE PROVIDES AN EXPRESS, WRITTEN WARRANTY IN THE DEED OR OTHER DOCUMENT MAKING SUCH CONVEYANCE. TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES PERTAINING TO COMMON AREAS, INCLUDING BUT NOT LIMITED TO STATUTORY AND IMPLIED WARRANTIES (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR PURPOSE), ARE HEREBY DISCLAIMED BY DECLARANT AND WAIVED BY THE ASSOCIATION AND EACH OWNER.** Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment.

8.05 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.

8.06 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 within or adjacent to the Property (the "**Drainage Areas**") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with specific aesthetic qualities. **DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE DRAINAGE AREAS AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE DRAINAGE AREAS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION AND EACH OWNER ACCEPTS THE DRAINAGE AREAS IN THEIR "AS-IS" CONDITION.**

8.07 No Representations or Warranties Regarding Natural Areas. Declarant has informed and hereby informs the Association that certain Common Area or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, water detention facilities and open spaces, may be intended to be unimproved open space to be left or maintained in a natural or semi-natural condition ("**Natural Areas**") and are not necessarily intended to be a recreational feature or an amenity with specific aesthetic qualities. Neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Natural Area. **DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE NATURAL AREAS AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE NATURAL AREAS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION AND EACH OWNER ACCEPTS THE NATURAL AREAS IN THEIR "AS-IS" CONDITION.**

ARTICLE IX EASEMENTS

9.01 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.

9.02 Easement to Correct Drainage on Property. During the Development Period and for a period of five years thereafter, 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.

9.03 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.

9.04 Easement Over Common Area. During the Development Period and for a period of ten years thereafter, Declarant and its licensees shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting, improving, modifying 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, improvements or repairs.

9.05 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 two years 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.

9.06 Association Easement. Declarant hereby reserves for the benefit of Declarant and the Association an Association Easement over those portions of each Lot for which access is reasonably necessary for repairing and maintaining Entry Signs (and associated equipment and landscaping), Association Maintenance Fencing, Association Maintenance Retaining Walls and other Common Maintenance Areas. The real property subject to the Association Easement shall be conveyed subject to the Association Easement.

9.07 Easement for Mailboxes. Mailboxes will be located and constructed within the Community as determined by the U.S. Postal Service (the "USPS"). Declarant hereby reserves for the benefit of the USPS, Declarant and the Association an easement over those portions of each Lot and Common Area as may be designated for the installation of a mailbox, together with space reasonably necessary for the installation and maintenance of same (each, a "Mailbox Easement Area"). Mailboxes may be individual mailboxes located on Lots serving the Dwelling on that Lot, group or clustered mailboxes on Lots or Common Areas serving more than one Dwelling, or as otherwise determined by the USPS. No Owner may disturb the mailbox improvements within the Mailbox Easement Area, obstruct access to the Mailbox Easement Area or construct improvements within the Mailbox Easement Area without the prior written consent of the Association. The Association shall have the right to adopt reasonable rules and regulations governing the use of each Mailbox Easement Area.

9.08 Easement to Inspect and Right to Correct. During the Development Period and for a period of ten years thereafter, Declarant reserves for itself, its assigns and for the Declarant's architect, engineer, other design professionals, builder and contractors the right, but not the duty, to inspect, monitor, test, redesign, repair, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the

Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section may not be construed to create a duty for Declarant, the Association, or any architect, engineer, design professional, builder or contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner's Lot and all improvements thereon for the purposes contained in this Section.

ARTICLE X ANNEXATION, WITHDRAWAL AND DEVELOPMENT

10.01 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.

10.02 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 will be effective without the written consent of Declarant, its successors or assigns during the Development Period.

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

10.04 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of Declarant or the Association to annex any real property, and no owner of any property not included in the Association shall have any right to have such property annexed thereto.

10.05 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.

10.06 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, and 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. Without limiting the preceding sentence, Declarant reserves the right, at any time and in Declarant's sole discretion,

to (a) plat any unplatted land within the Property, in whole or in part and in phases, (b) replat any platted land within the Property, in whole or in part, and (c) convert residential lots to Common Areas, (d) convert Common Areas to residential lots, (e) impose or remove easements, and (f) effect any other land use or change in land use which is conducive to the completion of the development of the Community or the sale of land owned by Declarant within the Property. 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.

10.07 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 and signage 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 until twenty-four (24) months after expiration or termination of the Development Period.

ARTICLE XI DISPUTE RESOLUTION

11.01 Dispute Resolution.

(a) **Introduction.** This Article is intended to encourage the resolution of certain disputes that may involve or affect the Association, its Members and/or the Property. Such disputes may create significant financial exposure for the Association and its Members, affect each Member's use and enjoyment of their Lot and the Common Areas, interfere with the resale and refinancing of Lots, and cause strife and tension among Members, the Board and the Association's management. Accordingly, this Article requires transparency and, in certain circumstances, Owner participation. Transparency means that inspection reports concerning Common Areas related to a dispute are prepared by an independent, professional engineer free from improper influence, and Owners are informed in advance about certain disputes and proposed arrangements between the Association and a law firm or attorney who may represent the Association in the dispute. Owner participation means that in certain situations Owners will have an opportunity to participate in the decision-making process regarding whether the Association should pursue a claim and engage an attorney or law firm for that purpose.

(b) **Agreement to Resolve Disputes; Application; Definitions.** The Association, Owners, the Declarant, all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this Article by written instrument delivered to a Claimant (defined below), which may include, but is not limited to, a Builder, a general contractor, sub-contractor, or design professional (individually, a **"Party"** and collectively, the **"Parties"**), agree to encourage the amicable resolution of disputes covered by this Article to avoid the costs of litigation and arbitration if at all possible. Accordingly, each Party agrees to be subject to the requirements of this Article and agrees this Article applies to all Claims (as defined below). The following words, when capitalized, have the following meanings:

"Claim" means any claim, cause of action, grievance or dispute:

- (i) relating to the rights and/or duties of the Association, the Board, the ACA or the Declarant under the Governing Documents;
- (ii) relating to the acts or omissions of the Association, the Board, any Board member, any officer of the Association, or the ACA; any acts or omissions of the Declarant during the Declarant's control and administration of the Board or the ACA; or any exercise by Declarant of any rights of Declarant under the Governing Documents, including but not limited to relating to budgets, reserves, assessments, contributions, deficit funding, expenditures, claims of financial guarantees and other financial and accounting matters; or

- (iii) relating to the design, construction, repair, alteration or maintenance, or warranty with respect thereto, of the Common Area or Common Maintenance Area or any improvements located thereon (a **"Common Area Claim"**; for purposes of this Article, the term **"Common Areas"** shall refer to both Common Areas and Common Maintenance Areas).

"Claimant" means any Party having a Claim against any other Party.

"Respondent" means any Party against which a Claim has been or may be asserted by a Claimant.

Notwithstanding the foregoing, a Claim does not include and this Article does not apply to (i) a claim by the Association for assessments or any action by the Association to collect assessments, (ii) any action to enforce the easements, architectural control, maintenance and use restrictions or rules contained in this Declaration or the other Governing Documents, or (iii) a claim for or related to injuries to or the death of a person. Notwithstanding anything contained in this Article, any claim brought by an Owner related to the design or construction of a Dwelling, a Lot or an improvement on a Lot will not be subject to this Article, but will be governed exclusively by the express or implied warranty provided by the Builder or contractor which constructed such dwelling or improvement and any other agreements between the Owner of such Lot (or its predecessor in title) and such Builder or contractor.

11.02 Mandatory Procedures. A Claimant may not initiate, participate in or maintain any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of a Claim until the Claimant has complied with the applicable procedures of this Article. As provided in Section 11.05 below, all Claims not resolved through negotiation must be submitted to mediation. As provided in Section 11.06 below, all Claims not resolved through negotiation or mediation must be resolved by binding arbitration.

Informal Resolution of Claims

The Parties are encouraged to informally communicate to amicably and efficiently resolve disputes. A Claimant is not required to follow the mandatory procedures in this Article unless a Claim is not resolved and the Claimant desires to pursue a Claim and initiate a proceeding described in Section 11.02 above.

Common Areas

Prior to pursuing a Common Area Claim, the Association (or an Owner if determined allowed by the jurisdiction) must comply with the requirements of Section 11.09 below.

11.03 Notice of Claim. To pursue a Claim, a Claimant must send each Respondent written notice of the Claim (the **"Notice"**) stating plainly: (i) the nature of the Claim, including date, time, location, persons involved and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Governing Documents or other authority from which the Claim arises or which supports the Claim); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section 11.03 of this Declaration. If the Claim is a Common Area Claim, the Notice must also include a signed resolution of the Board confirming that Members holding a Majority of the total votes in the Association approved pursuing the Claim in accordance with Section 11.09(c) below. The Notice must be sent to each Respondent via certified mail, return receipt requested.

11.04 Negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time in an effort to resolve the Claim by good faith negotiation. If the Claim involves or may affect any portion of the Property, then at such meeting or another mutually-agreeable time, Respondent and its representatives will be given access to, and the opportunity to inspect, such portions of the Property.

11.05 Mediation. If the Parties do not resolve the Claim through negotiation within one-hundred twenty (120) days after the date of the Notice (or within such other period as may be agreed on by the Parties), either Claimant or a Respondent may submit the Claim to mediation with the assistance of a mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and with expertise appropriate to the subject matter of the Claim. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, either Respondent or Claimant may initiate arbitration proceedings in accordance with Section 11.06.

11.06 Arbitration. All Claims not resolved through negotiation and mediation must be resolved by binding arbitration as provided below. However, Claimant or Respondent may bring an action in court seeking injunctive relief to preserve the status quo and prevent irreparable harm, seeking relief that would otherwise be

unavailable in arbitration, or to compel arbitration of any Claim not referred to arbitration as required by this Section 11.06.

(a) **Governing Rules.** If a Claim has not been resolved after mediation in accordance with Section 11.05, the Claim will be resolved by binding arbitration pursuant to the Federal Arbitration Act ("FAA") conducted in accordance with the applicable rules of the American Arbitration Association ("AAA"). If the Claim is a Common Area Claim, then those rules shall be the AAA's Construction Industry Arbitration Rules and Mediation Procedures. The periods of limitation under applicable law shall apply to any Claim and arbitration proceeding under this Article. In the event of any inconsistency between the applicable AAA rules and this Section 11.06, this Section 11.06 will control. The decision rendered by the arbitrator shall be binding and, except as provided below, not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction.

(b) **Award.** To resolve Claims, the arbitrator may grant any remedy or relief the arbitrator deems just and equitable; provided, however, the arbitrator's decision and award must be in accordance with applicable law and may not violate this Section 11.06 or Section 11.07 below. In each proceeding, the arbitrator shall make specific, written findings of fact and conclusions of law. **In no event may an arbitrator award speculative, consequential, indirect, special, exemplary, treble or punitive damages for any Claim.** In addition, if a Claim or any portion of a Claim is governed by Chapter 27 of the Texas Property Code or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. In addition to any right of appeal or review under the FAA or applicable AAA rules, any Party may appeal or seek vacation or modification of an award that is based in whole or in part on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined under applicable law; (ii) conclusions of law that are erroneous; (iii) an error of applicable law; or (iv) a cause of action or remedy not expressly provided under applicable law.

(c) **Other Matters.** To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days after the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in the County. Any Party to a Claim shall have the right to join in the proceedings any contractor, subcontractor, supplier or design professional involved in the design or construction of improvements that are the subject of the Claim. Except as otherwise provided by this Section 11.06 or 11.07, the arbitrator may impose sanctions and take other actions as the arbitrator deems necessary to the same extent a judge could do so pursuant to applicable law. Claimant and each Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law. In no event shall a Party discuss a Claim with the news media or issue a press release regarding a Claim without the written consent of all other parties to the Claim.

11.07 Costs. Except as provided in the following sentence, each Party shall bear all of its own costs incurred in bringing or responding to a Claim or otherwise complying with the dispute resolution process contained in this Article, including without limitation its attorney's fees and costs, and none of such costs may be allocated or awarded to either Party by an arbitrator. If Claimant files an action in a court of law prior to complying with the applicable dispute resolution procedures in this Article, then Claimant shall reimburse the other Parties for the costs, including attorneys' fees, of dismissing or staying such action. Claimant and each Respondent will equally divide all expenses and fees charged by the mediator and arbitrator.

11.08 Funding Association Claims. If the Association intends to pursue a Claim and a reasonable estimate of the attorneys' fees, inspection costs, consultant and expert fees, arbitration fees and other costs that may be incurred as a result of prosecuting the Claim (whether incurred by the Association directly or for which the Association may be liable) exceeds \$10,000, then the Association must levy a special assessment to fund the estimated costs to pursue and resolve such Claim in accordance with this Article. The Association may not use its annual operating income or reserve funds to fund the costs to pursue and resolve a Claim, but the Association may use a previously established and funded dispute resolution fund.

11.09 Claims Relating to Common Areas. As stated in Section 5.10 above, the Association does not have the power or right to institute, pursue, join, defend, intervene in or settle litigation, arbitration or other proceedings (i) in the name of or on behalf of an Owner (whether one or more) or (ii) pertaining to a claim relating to the design or construction of a Dwelling, a Lot, or any improvements on a Lot (other than a Claim relating to Common Maintenance Areas on one or more Lots). Each Owner, by accepting an interest in or title to a Lot, grants and assigns to the Association the exclusive right to institute, pursue, join, defend, intervene in and settle litigation, arbitration or other proceedings relating Common Area Claims. If the Association desires to assert a Common Area Claim, as a precondition to providing the Notice required by Section 11.03 and initiating the mandatory dispute resolution procedures set forth in this Article, the Association must comply with subsections (a), (b) and (c) below:

(a) **Obtain a Common Area Report.** The Association must obtain a written report (the "Common Area Report") prepared by an independent professional engineer licensed by the state in which the

Property is located with an office located in the County (the "Inspection Company") assessing the condition of the Common Areas the subject of the Claim. ***The requirements for the Common Area Report are intended to provide assurance to the Association, Owners and Respondents that the report was prepared by an independent professional and the substance, conclusions and recommendations contained in the report have not been affected by improper influences or influences that could have compromised the professional judgment of the party preparing the report.*** The Common Area Report must include: (i) a description and photographs of the Common Area the subject of the Claim and its present condition; (ii) a description of any modifications, maintenance, or repairs to same performed by any party; and (iii) if the report identifies deficient or defective conditions, a detailed description of any recommended repairs, including the specific process, procedures and materials required to repair such deficient or defective conditions, and the estimated costs to effect such repairs. Such estimated repair costs shall be obtained from independent, third-party contractors, each with an office located in the County and holding all licenses required by applicable law to perform the recommended repair work. The Common Area Report must be an "independent" report obtained directly by the Association, which means: (i) the Inspection Company may not have an arrangement or agreement to provide consulting and/or engineering services with a law firm or attorney that presently represents or proposes to represent the Association; (ii) the costs to prepare the Common Area Report must be paid directly by the Association to the Inspection Company at the time the Common Area Report is completed and delivered to the Association; and (iii) a law firm or attorney that presently represents or proposes to represent the Association may not have agreed, conditionally or unconditionally, to reimburse the Association for the cost of the Common Area Report.

(b) **Provide Notice of the Defective Condition and Opportunity to Inspect and Repair.**

Within thirty (30) days after the Association receives the Common Area Report, the Association must send each Respondent a written notice of the Common Area Claim identifying in reasonable detail each deficient or defective condition in the Common Area that is the subject of the Claim, together with a complete copy of the Common Area Report and any other report, study, analysis and recommendation obtained by the Association relating to the Common Areas the subject of the Claim. Such notice must be sent to each Respondent via certified mail, return receipt requested, or via overnight delivery service with proof of delivery. From the date of receipt of such notice and for ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Common Area Report as defective or deficient; (b) contact the Inspection Company for additional information needed to clarify any finding or statement in the Common Area Report; and (c) repair or correct any one or more of the conditions identified as being defective or deficient (if a Respondent commences the repair or correction of one or more conditions identified as being defective or deficient, the Respondent shall have the time reasonably necessary to complete such repair or correction). As provided in Section 9.08 above, the Declarant has an easement throughout the Property for itself, its successors, assigns, architects, engineers, design professionals, each Builder and their contractors that may be utilized to correct any such conditions identified in the Common Area Report. For Claims governed by Chapter 27 of the Texas Property Code, the Claimant and each Respondent shall comply with the inspection, offer of settlement or repair, and other requirements of Section 27.004 of the Texas Property Code during the time from and after each Respondent's receipt of the notice described in this subparagraph above. The Parties agree that an "appurtenance" under Chapter 27 of the Texas Property Code means only a structure or recreational facility that is located on a Lot and was constructed for the exclusive use and benefit of the Dwelling on such Lot. Nothing in this Article shall be construed to modify or extend the time periods set forth in Section 27.004 of the Texas Property Code.

(c) **Obtain Approval of Owners to Pursue Claim. *The requirements related to Owner***

approval are intended to ensure the Owners are fully informed of and approve the potential costs the Association and Owners may incur in prosecuting a Common Area Claim, the time that prosecuting such a claim may take, and the financial and other effects that prosecuting such a claim may have on the Association and its Owners. Accordingly, the Association must obtain the approval of Members holding a Majority of the total number of votes entitled to be cast by all Members of the Association at a meeting of the Members called in accordance with the Bylaws to provide the Notice described in Section 11.03, initiate the mandatory dispute resolution procedures set forth in this Article, or take any other action to prosecute a Common Area Claim. The notice of such meeting must include (in addition to any requirements set forth in the Bylaws): (i) a description of the Common Area Claim, the relief sought, an estimate of the time it will take to prosecute the Claim and the likelihood of success; (ii) a copy of the Common Area Report; (iii) an estimate of the attorney fees, consultant fees, expert fees, arbitration fees and other costs that may be incurred as a result of prosecuting the Claim, whether incurred by the Association directly or for which the Association may be liable; (iv) a summary of the steps previously taken by the Association to resolve the Claim; (v) a statement that initiating arbitration or any legal action to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is being prosecuted; and (vi) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not the attorney or member of the law firm who represents or is proposed to represent the Association with respect to the Claim, or retained or employed by or otherwise affiliated

with the law firm of the attorney who represents or is proposed to represent the Association with respect to the Claim. If the Members so approve pursuing the Common Area Claim, Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue pursuit of the Claim.

If the Association desires to engage or execute an agreement with a law firm or attorney to investigate or prosecute a Common Area Claim, then the Members should be informed of, and have the opportunity to approve, the financial arrangements between the Association and the law firm or attorney proposed to be engaged. Among other financial arrangements, the engagement agreement between the Association and the law firm or attorney could require the Association to pay fees and expenses to the law firm or attorney which will be paid through assessments levied against Owners, or may require the Association to pay fees and expenses if the relationship between the Association and the law firm or attorney is terminated, if the Association elects not to engage the law firm or attorney to prosecute the Claim, or if the Association agrees to settle the Claim. Such financial obligations could have a significant effect on the Association and its Members. Accordingly, before the Association engages or executes an agreement with a law firm or attorney to investigate or prosecute a Common Area Claim, the law firm or attorney and the financial arrangements and agreements between the Association and the law firm or attorney (collectively, an **"Engagement Agreement"**) must be approved by Members holding a Majority of the total number of votes entitled to be cast by all members of the Association at the meeting of the Members described in the preceding paragraph. In that case, the meeting notice to the Members must also include: (a) the name of the law firm and attorney; (b) a copy of the Engagement Agreement; (c) an estimate of the fees and expenses that may be required to be paid by the Association under the Engagement Agreement; (d) the conditions upon which such fees and expenses may be required to be paid by the Association; and (e) a description of the process the law firm or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of portions of the Common Area or improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall contain (i) a description of the destructive testing, (ii) the likely locations of the destructive testing, (iii) whether the Owners' use of their Lots or any Common Area will be interrupted or affected by such testing, (iv) the means or methods the Association will use to repair the Common Area or improvements affected by such testing, and (v) the estimated costs for such testing and repairs, along with an estimate of the assessments that may be levied against the Owners to pay for the costs of such testing and repairs. Unless approved by the Members as provided above, the Association shall not have the authority to enter into, and shall not enter into, an Engagement Agreement with a law firm or attorney to investigate or prosecute a Common Area Claim. All Engagement Agreements must be in writing. Neither the Board nor any officer of the Association shall have the authority to pay any fees, expenses or other charges to a law firm or attorney relating to evaluating, investigating or asserting a Common Area Claim unless same is pursuant to a written Engagement Agreement approved by the Owners in accordance with this Section.

11.10 Claims by Owner(s) Relating to Common Areas. Pursuant to Section 11.09 above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Areas or Common Maintenance Areas. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Areas or Common Maintenance Areas, since a Claim affecting the Common Areas or Common Maintenance Areas could affect all Owners, such Owner shall be required, as a precondition to providing the Notice defined in Section 11.03, initiating the mandatory dispute resolution procedures set forth in this Article, or taking any other action to prosecute such a Claim, to comply with the requirements of Section 11.09(a) – (c). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration.

ARTICLE XII HOME CONSTRUCTION CLAIMS

12.01 Claims Relating to Dwellings and Lots. EACH OWNER (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A LOT), BY ACCEPTING AN INTEREST IN OR TITLE TO A LOT, AGREES THAT ALL CLAIMS AND CAUSES OF ACTION THAT SUCH OWNER MAY HAVE RELATING TO THE ORIGINAL DESIGN OR CONSTRUCTION OF SUCH OWNER'S DWELLING, LOT, OR ANY IMPROVEMENT ON SUCH OWNER'S LOT (OTHER THAN COMMON MAINTENANCE AREAS ON ONE OR MORE LOTS), INCLUDING WITHOUT LIMITATION CLAIMS BASED ON ANY EXPRESS OR IMPLIED WARRANTIES (COLLECTIVELY, "HOME CONSTRUCTION CLAIMS"), WILL BE GOVERNED EXCLUSIVELY BY THE TERMS AND CONDITIONS OF THE EXPRESS OR IMPLIED WARRANTY PROVIDED BY THE BUILDER OR CONTRACTOR WHICH CONSTRUCTED SUCH DWELLING OR IMPROVEMENT AND ANY OTHER

AGREEMENTS BETWEEN THE INITIAL PURCHASER OF SUCH DWELLING AND SUCH BUILDER OR CONTRACTOR, INCLUDING WITHOUT LIMITATION ALL PROCEDURES AND AGREEMENTS CONTAINED THEREIN PERTAINING TO THE RESOLUTION OF DISPUTES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH OWNER (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A LOT), BY ACCEPTING AN INTEREST IN OR TITLE TO A LOT, ASSUMES THE TERMS AND CONDITIONS OF THE EXPRESS OR IMPLIED WARRANTY PROVIDED BY THE BUILDER OR CONTRACTOR WHICH CONSTRUCTED THE DWELLING OR IMPROVEMENT, AND, UNLESS THE EXPRESS WARRANTY OR CONTRACT PROVIDED BY SUCH BUILDER OR CONTRACTOR CONTAINS OTHER PROCEDURES TO RESOLVE HOME CONSTRUCTION CLAIMS, SPECIFICALLY AGREES TO THE FOLLOWING:

(a) **Agreement to Arbitrate Home Construction Claims. ALL HOME CONSTRUCTION CLAIMS SHALL BE RESOLVED BY BINDING ARBITRATION.** This means each Owner (which includes without limitation each subsequent purchaser of a Lot) and the other parties involved in the Home Construction Claim GIVE UP THE RIGHT TO GO TO COURT OR TO A JURY to assert or defend Home Construction Claims (EXCEPT for matters that may be taken to SMALL CLAIMS COURT as provided below). Home Construction Claims will be determined by a NEUTRAL ARBITRATOR and NOT by a judge or jury. The parties to each Home Construction Claim will be entitled to a FAIR HEARING, but the arbitration procedures are simpler and more limited than the rules applicable in a court. The arbitrator's decision will be final and binding, subject to appeal as described below. Arbitrator decisions are as enforceable as any court order and are subject to very limited review by a court. For more information, read the provisions regarding arbitration below, review the American Arbitration Association's Home Construction Arbitration Rules and related information at www.adr.org, call the American Arbitration Association at 1-800-778-7879, and consult an attorney if you so choose. Alternatively, if the Home Construction Claim does not exceed the maximum jurisdictional amount for a small claims court in the state where the Lot is located, a party involved in a Home Construction Claim may elect to have the claim resolved in a small claims court rather than by binding arbitration (however, any appeal of a small claims court judgment must be resolved through arbitration in accordance with this Article).

(b) **Applicable Law.** The original construction and sale of each Dwelling was a transaction involving interstate commerce. The Federal Arbitration Act (the "FAA") shall govern the interpretation and enforcement of this agreement to arbitrate Home Construction Claims. Even if a part of these arbitration provisions is determined to be unenforceable under applicable law, the remainder shall survive, and the parties shall remain obligated to resolve Home Construction Claims through binding arbitration as set forth herein.

(c) **Arbitrator – American Arbitration Association.** The arbitration shall be conducted before an arbitrator appointed by the American Arbitration Association (the "AAA"). If the AAA declines to arbitrate a Home Construction Claim, or if the AAA is not available, the parties will agree to an alternative arbitrator, or have a court appoint a new arbitrator who meets the qualification criteria of an AAA-trained arbitrator and has at least ten years of construction arbitration experience.

(d) **Arbitration Rules.** The arbitration shall proceed in accordance with the AAA's Home Construction Arbitration Rules. If those rules have been repealed or replaced at the time the arbitration claim is filed, the AAA's rules then most applicable to residential construction shall apply. However, each builder or contractor will be entitled to visually inspect and perform testing as to any component claimed to have a construction defect and no AAA rule shall apply if it is inconsistent with the provisions of this agreement.

(e) **Additional Parties or Claims.** Each party to a Home Construction Claim may join as a party to the arbitration any third party consultant, contractor, supplier, manufacturer, engineer, architect or other professional involved in the manufacture, design or construction of any part of the Dwelling, Lot or improvement on the Lot. Except as provided above, each Home Construction Claim shall be between only the then Owner of a Dwelling or Lot and the Builder, Contractor and other parties involved in manufacture, design or construction of any part of such Dwelling or improvements on such Lot and shall not be joined or consolidated with the claims or arbitration of any other party, and the arbitrator is not authorized to permit any consolidation or joinder with any other party. Each Owner and subsequent purchaser of a Lot waives the right to institute or participate in a class or any other type of representative arbitration or any type of legal action as a member or representative of a class for any Home Construction Claim and agrees the arbitrator is not authorized to permit any class or representative arbitration.

(f) **Arbitration Process.** A party seeking to resolve a Home Construction Claim shall begin the arbitration process by filing a demand for arbitration with the AAA and serving a copy of the demand on the other party. The failure to initiate arbitration at any particular time shall not be considered a waiver of the right to compel arbitration of a Home Construction Claim. The only way this right to arbitrate claims may be waived is by a written agreement among the parties. To the extent not inconsistent with the FAA, all provisions of this paragraph are subject to the general qualification that state laws, requirements and rules, including, but not limited to, state filing limitations (such as statute of limitations and statutes of repose), may affect how and when arbitration may be

initiated and administered. The following is a brief description of the steps to initiate arbitration and the arbitration process:

(1) **Step 1 – Filing a Request.** The party initiating arbitration must notify the AAA in writing of the request for arbitration under the terms of this Agreement. If a builder or contractor initiates arbitration, such builder or contractor will pay the AAA's filing fee. If an Owner (including a subsequent purchaser of a Lot) initiates arbitration, such Owner will pay the lesser of 1/2 of the AAA filing fee or the amount provided by the AAA rules and the builder or contractor will pay the other 1/2 or remainder. All other AAA arbitration fees and costs shall be paid in accordance with the applicable AAA fee schedule.

(2) **Step 2 - Hearing.** The arbitration will be held at a location agreed to by the parties, usually in the metropolitan area where the Property is located. The hearing typically will be scheduled by the arbitrator at a time mutually agreeable to all parties. At the hearing, the arbitrator will hear and consider evidence presented by all parties. If a party timely notifies the AAA of a request for a record of the hearing prior to the earlier of the hearing date or the date in the AAA's rules, if specified, the arbitrator will preserve all evidence presented at the arbitration. Oral evidence will be preserved in a manner that it can be converted into a written transcript. The costs of the record will be paid by the party requesting the record or shared equally among the parties requesting a copy.

(3) **Step 3 - Award.** The arbitrator's award will decide the relief to be awarded and, if requested by a party, the scope and manner of correction. The arbitrator's award shall be consistent with this agreement, based on applicable law (except to the extent the FAA overrides and preempts state, local or other law), and shall include findings of fact and conclusions of law. If permitted by the AAA rules, either party may request a written explanation of the award. Each party shall bear its own attorney's fees and expenses (including without limitation the costs and fees of any expert witnesses) in the arbitration, any confirmation proceeding and any appeal. Arbitrator compensation, expenses, and administrative fees (which include filing and hearing fees) shall not be subject to reallocation.

(i) **Appeal.** Each party shall have the right to appeal the arbitrator's award to the AAA by filing a written notice with the AAA (with a copy to the other party) within 30 days of the date of the arbitrator's award. The party appealing the award shall pay the fees necessary to initiate the appeal. If both sides appeal, the fees shall be split 50/50. The notice of appeal must include the specific items the party seeks to change in the award and the supporting facts and law. The appeal shall be heard by a panel of three arbitrators from the AAA. The appeal shall be conducted in accordance with the applicable rules of the AAA and this agreement as if the claim was being initially filed with the AAA, except that: (i) the only issues to be determined on appeal are the issues described in the notice of appeal and any issues raised by the non-appealing party in response to the issues in the notice of appeal, (ii) the arbitrators' award on appeal shall be final, binding and non-appealable, and (iii) no new evidence shall be accepted or considered by the arbitrators.

(ii) **Award after Appeal.** The award of the arbitrator shall be final, subject to appeal as provided above. If a notice of appeal from the initial hearing is not received by the AAA within 30 days after the date of the initial award, then the initial award shall be final. Once the award is final, it will be binding on and enforceable against the parties, except as modified, corrected, or vacated according to the applicable arbitration rules and procedures or to the extent not inconsistent with the FAA or applicable state law. Either party may present the final award to any court having jurisdiction over the Home Construction Claim to enter that award as a judgment of the court.

(4) **Step 4 - Repairs.** Unless designated otherwise in the award (and unless appealed), any party ordered to perform a correction to the Dwelling or Lot will, within 10 days after a final award, elect to either perform the correction awarded by the arbitrator or, at such party's option, pay the Owner of the Dwelling or Lot the reasonable cost of such correction. If such party elects to perform a correction under an award, such party will complete the correction within 60 days after a final award or as may be specified by the arbitrator. If the correction cannot be completed in that time, the arbitrator must grant reasonable additional time to make the correction. If the Owner believes that the correction was not performed satisfactorily or in a timely manner, such Owner may have those issues determined in a later arbitration. If the cost of correction is not specified in the award and party ordered to perform a correction elects to pay the Owner the reasonable cost of the correction, such Owner may have the amount of that payment reviewed in a later arbitration.

(g) **Expenses.** Except as stated above, each party shall bear its own attorney's fees and other expenses incurred in connection with a Home Construction Claim. However, if a party to such a claim files a court action in violation of this Article and the other party is required to compel arbitration by filing a motion with the court, the court shall award the moving party its court costs and reasonable attorneys' fees incurred in connection with the motion.

LIKE ALL COVENANTS CONTAINED IN THIS DECLARATION, THE AGREEMENTS CONTAINED IN THIS ARTICLE ARE COVENANTS RUNNING WITH TITLE TO EACH LOT, CONCERN EACH LOT AND THE DWELLING AND OTHER IMPROVEMENTS ON SUCH LOT, AND SHALL BE BINDING UPON EACH SUCCESSIVE OWNER OF A LOT (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A LOT).

ARTICLE XIII TERM, AMENDMENTS AND ENFORCEMENT

13.01 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 for fifty (50) years, 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 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.

13.02 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 for any purpose by the Recording of an instrument executed by Declarant. Specifically, and without limiting the preceding sentence, Declarant may unilaterally amend this Declaration: (i) to bring any provision into compliance with applicable law; (ii) to resolve conflicts, clarify ambiguities and to correct misstatements, errors or omissions in this Declaration; (iii) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (iv) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (v) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

(b) **Amendment by Association.** Except as otherwise provided herein, 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 all members of the Association. The foregoing sentence shall not be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns during the Development Period. Notwithstanding the foregoing, whether during or after the Development Period, (i) the Association shall be required to obtain Declarant's written consent to any amendment to Section 3.02(b), Section 4.05, Section 5.10, Section 5.11, Section 6.10, Section 6.11, Section 6.13, Article IX, Article X, Article XI, Article XII or Article XIII; and (ii) if any amendment to this Declaration will affect a Claim or the process of resolving a Claim against Declarant, such amendment may not apply retroactively to a Claim based on acts or omissions alleged to have occurred prior to the date of the amendment.

13.03 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 Governing Documents. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of the Governing Documents. 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 Governing Documents 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 Governing Documents 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 Governing Documents 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 GOVERNING DOCUMENTS.

13.04 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.

13.05 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 14.05 hereof.

ARTICLE XIV NOTICES, DISCLOSURES AND DISCLAIMERS

14.01 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.

14.02 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 does not obligate the Board or the manager to levy transfer-related fees.

14.03 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.

14.04 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.

14.05 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. If at any time there is more than one Declarant, a Declarant may only assign its rights as a Declarant in whole to a single person or entity unless otherwise approved by the other Declarants. Without limiting other provisions of this Declaration, 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. If at any time there is more than one Declarant and a Declarant no longer owns any real property within the Property, then such Declarant's rights that apply or are exercisable only during the Development Period automatically shall be deemed to have been assigned to the remaining Declarant(s).

14.06 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, WALLS AND GATES 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 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.

14.07 Privacy. While the Association may adopt policies or procedures designed, directly or indirectly, to support the privacy of persons, property and/or data, the Association shall have no obligation to do so, and each Owner, resident and occupant agrees and accepts the Association does not guarantee the privacy of any person or his or her property or data. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL HAVE ANY DUTY OF ANY KIND, EXPRESS OR IMPLIED, TO PROTECT THE PRIVACY OF ANY OWNER, RESIDENT OR OCCUPANT, INCLUDING WITHOUT LIMITATION THE PRIVACY OF HIS OR HER PERSON, PROPERTY OR DATA, AND EACH OWNER, RESIDENT AND OCCUPANT RELEASES THE ASSOCIATION AND DECLARANT AND THEIR RESPECTIVE BOARD MEMBERS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY LIABILITY, RESPONSIBILITY AND DAMAGE OF EVERY KIND RELATING TO PRIVACY OR A BREACH, LOSS OR INVASION OF PRIVACY.

14.08 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, plan or drawing 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. No sales agent, realtor or other party has the authority to make any representation on behalf of Declarant.

**ARTICLE XV
MISCELLANEOUS**

15.01 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.

15.02 Severability. If any provision (or any part of any provision) contained in this Declaration shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, this Declaration shall be reformed and construed as if such invalid, illegal or unenforceable provision (or part thereof) had never been contained herein (but only to the extent it is invalid, illegal or unenforceable), and such invalid, illegal or unenforceable provision shall be reformed so that it would be valid, legal and enforceable to the maximum extent possible.

15.03 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.

15.04 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.

15.05 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.

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

15.07 Exhibits. All exhibits referenced in this Declaration as being attached hereto are incorporated by reference.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective as of the date following Declarant's signature below.

DECLARANT:

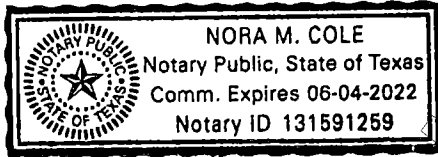
PULTE HOMES OF TEXAS, L.P.,
a Texas limited partnership, by Pulte
Nevada I LLC, its General Partner

By: Stephen Ashlock
Name: Stephen Ashlock
Title: Vice President of Land Development
Date: August 31, 2020

STATE OF TEXAS }

COUNTY OF WILLIAMSON }

The foregoing instrument was acknowledged before me on Sept 1, 2020, by Stephen Ashlock, Vice President of Land Development of Pulte Nevada I LLC, a Delaware limited liability company, on behalf of said limited liability company, in its capacity as General Partner of Pulte Homes of Texas, L.P., a Texas limited partnership, on behalf of said partnership.



Nora M Cole
Notary Public, State of Texas

Notary's Name Printed:

Nora M Cole
My Commission Expires: 6-4-2022

EXHIBIT A
The Property

TRACT 1:

DESCRIPTION OF A 15.37 ACRE TRACT OF LAND LOCATED IN THE FRANCIS A. HUDSON SURVEY, ABSTRACT NO. 295, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN CALLED 47-ACRE TRACT OF LAND, MORE OR LESS, IN WILLIAMSON COUNTY CONVEYED TO JOSEPH WALTER KEYES, JR, BY PROBATE OF RECORD IN DOCUMENT NO. 2014090179, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS,

SAID 47 ACRE TRACT OF LAND BEING THE REMAINDER OF THAT CERTAIN 5 ACRE TRACT OF LAND CONVEYED TO DEAN RHODES BY DEED OF RECORD IN VOLUME 382, PAGE 293, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, AND THAT CERTAIN CALLED 123 ACRE TRACT OF LAND CONVEYED TO E.D. RHODES AND WIFE FERN RHODES BY WARRANTY DEED OF RECORD IN VOLUME 364, PAGE 97, SAID DEED RECORDS,

SAVE AND EXCEPT THE PORTION OF THE 123 ACRES CONVEYED TO OK FARMS, INC, IN A DEED OF RECORD IN VOLUME 427, PAGE 547, DEED RECORDS AND BEING AFFECTED BY A RELEASE OF ACCESS EASEMENT RECORDED IN COUNTY CLERK'S FILE NO. 2019041729, OFFICIAL PUBLIC RECORDS,

SAVE AND EXCEPT THAT PORTION OF THE 123 ACRES CONVEYED TO THE STATE OF TEXAS BY RIGHT-OF-WAY DEED OF RECORD IN VOLUME 430, PAGE 441, SAID DEED RECORDS;

SAVE AND EXCEPT THAT PORTION OF THE 47 ACRES CONVEYED TO THE STATE OF TEXAS BY DEED OF RECORD IN DOCUMENT NO. 2014034929, SAID OFFICIAL PUBLIC RECORDS;

SAID 15.37 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, AT A 1/2-INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF A 5 ACRE TRACT OF LAND, CONVEYED TO DEAN RHODES BY DEED OF RECORD IN VOLUME 382, PAGE 293, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, BEING AN INSIDE CORNER OF A 35 ACRE TRACT OF LAND CONVEYED TO S.E. GREEN AND WIFE, MARGARET CLARK GREEN, BY DEED OF RECORD IN VOLUME 565, PAGE 383, SAID DEED RECORDS AND SAME POINT BEING THE SOUTHWEST CORNER OF LOT 1, BLOCK B, FINAL PLAT OF TERAVISTA SECTION 401, PHASE 2, A SUBDIVISION OF RECORD IN DOCUMENT NO. 2016112499, SAID OFFICIAL PUBLIC RECORDS, FOR THE NORTHERNMOST NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 68°12'14" EAST, CONTINUING WITH THE COMMON LINE OF SAID 5 ACRE TRACT OF LAND AND SAID 35 ACRE TRACT OF LAND, SAME LINE BEING THE SOUTH BOUNDARY LINE OF SAID LOT 1, BLOCK B, A DISTANCE OF 510.08 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STANTEC" FOUND ON THE SOUTH RIGHT-OF-WAY LINE OF LA CANTERRA BLVD., A VARIABLE WIDTH ROADWAY DEDICATED ON SAID DOCUMENT NO. 2016112499, FOR A CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE NORTHEAST CORNER OF SAID 5 ACRE TRACT OF LAND, SAME POINT BEING AN INSIDE CORNER OF SAID 35 ACRE TRACT OF LAND, AND SAME POINT BEING THE NORTHWEST CORNER OF LOT 23, BLOCK B, REPLAT OF FINAL PLAT OF TERAVISTA SECTION 402, A SUBDIVISION OF RECORD IN DOCUMENT NO. 2017076212, SAID OFFICIAL PUBLIC RECORDS;

THENCE, SOUTH 22°28'21" EAST, CONTINUING WITH THE COMMON LINE OF SAID 5 ACRE TRACT OF LAND AND SAID 35 ACRE TRACT OF LAND, WITH THE WEST BOUNDARY LINE OF SAID LOT 23, BLOCK B, AT 199.54 FEET PASS A 1/2 INCH IRON PIPE FOUND FOR THE SOUTHWEST CORNER OF SAID LOT 23, BLOCK B, AND CONTINUING WITH THE WEST BOUNDARY LINE OF THAT CERTAIN CALLED 4.6767 ACRE TRACT OF LAND CONVEYED TO THE SKAGGS FAMILY REVOCABLE TRUST BY SPECIAL WARRANTY DEED OF RECORD IN DOCUMENT NO. 2012066335, SAID OFFICIAL PUBLIC RECORDS, IN ALL A TOTAL DISTANCE OF 418.98 FEET, TO A FENCE POST FOUND ON THE NORTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND, FOR A CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE SOUTHEAST CORNER OF SAID 5 ACRE TRACT OF LAND, SAME POINT BEING A CORNER OF SAID 35 ACRE TRACT OF LAND, AND SAME POINT BEING THE SOUTHWEST CORNER OF SAID 4.6767 ACRE TRACT OF LAND;

THENCE, NORTH 68°42'27" EAST, WITH THE NORTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND, SAME LINE BEING THE SOUTH BOUNDARY LINE OF SAID 4.6767 ACRE TRACT OF LAND, A DISTANCE OF 46.15 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STEGE BIZZELL" SET;

THENCE, CROSSING SAID 123 ACRE TRACT, AND SAID 47 ACRE TRACT, THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

1. SOUTH 23°21'38" EAST, A DISTANCE OF 254.13 FEET, TO A POINT IN A STOCK POND;
2. NORTH 66°38'22" EAST, A DISTANCE OF 20.00 FEET, TO A POINT IN A STOCK POND;
3. SOUTH 23°21'38" EAST, A DISTANCE OF 345.88 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STEGE BIZZELL" SET FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;
4. SOUTH 66°41'00" WEST, A DISTANCE OF 820.21 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STEGE BIZZELL" SET, ON THE EAST BOUNDARY LINE OF FINAL PLAT OF TERAVISTA SECTION 328, A MAP OF WHICH IS RECORDED IN DOCUMENT NO. 2014064128, SAID OFFICIAL PUBLIC RECORDS, FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 11°05'39" WEST, WITH SAID EAST BOUNDARY LINE OF FINAL PLAT OF TERAVISTA SECTION 328, AND CONTINUING WITH THE EAST LINE OF FINAL PLAT OF TERAVISTA SECTION 330, A SUBDIVISION OF RECORD IN DOCUMENT NO. 2015011950, SAID OFFICIAL PUBLIC RECORDS, A DISTANCE OF 637.95 FEET, TO A 1/2 IRON ROD FOUND ON THE NORTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND, SAME LINE BEING A SOUTH BOUNDARY LINE SAID 35 ACRE TRACT OF LAND, FOR THE WESTERN MOST NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE NORTHEAST CORNER OF SAID FINAL PLAT OF TERAVISTA SECTION 330;

THENCE, NORTH 68°42'27" EAST, WITH THE COMMON LINE OF SAID 123 ACRE TRACT OF LAND AND SAID 35 ACRE TRACT OF LAND, A DISTANCE OF 102.72 FEET, TO A POINT FOR AN INSIDE CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE SOUTHEAST CORNER OF SAID 5 ACRE TRACT OF LAND, AND SAME POINT BEING A CORNER OF SAID 35 ACRE TRACT OF LAND;

THENCE, NORTH 21°37'51" WEST, WITH THE COMMON LINE OF SAID 5 ACRE TRACT OF LAND AND SAID 35 ACRE TRACT OF LAND, A DISTANCE OF 414.42 FEET, TO THE POINT OF BEGINNING, AND CONTAINING 15.37 ACRES OF LAND, MORE OR LESS, WITHIN THESE METES AND BOUNDS.

TRACT 2:

DESCRIPTION OF A 28.40 ACRE TRACT OF LAND LOCATED IN THE FRANCIS A. HUDSON SURVEY, ABSTRACT NO. 295, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN CALLED 47 ACRE TRACT OF LAND, MORE OR LESS, IN WILLIAMSON COUNTY CONVEYED TO JOSEPH WALTER KEYES, JR, BY PROBATE OF RECORD IN DOCUMENT NO. 2014090179, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS;

SAID 47 ACRE TRACT OF LAND BEING THE REMAINDER OF THAT CERTAIN 5 ACRE TRACT OF LAND CONVEYED TO DEAN RHODES BY DEED OF RECORD IN VOLUME 382, PAGE 293, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, AND THAT CERTAIN CALLED 123 ACRE TRACT OF LAND CONVEYED TO E.D. RHODES AND WIFE FERN RHODES BY WARRANTY DEED OF RECORD IN VOLUME 364, PAGE 97, SAID DEED RECORDS,

SAVE AND EXCEPT THE PORTION OF THE 123 ACRES CONVEYED TO OK FARMS, INC, IN A DEED OF RECORD IN VOLUME 427, PAGE 547, DEED RECORDS AND BEING AFFECTED BY A RELEASE OF ACCESS EASEMENT RECORDED IN COUNTY CLERK'S FILE NO. 2019041729, OFFICIAL PUBLIC RECORDS;

SAVE AND EXCEPT THAT PORTION OF THE 123 ACRES CONVEYED TO THE STATE OF TEXAS BY RIGHT-OF-WAY DEED OF RECORD IN VOLUME 430, PAGE 441, SAID DEED RECORDS;

SAVE AND EXCEPT THAT PORTION OF THE 47 ACRES CONVEYED TO THE STATE OF TEXAS BY DEED OF RECORD IN DOCUMENT NO. 2014034929, SAID OFFICIAL PUBLIC RECORDS;

SAID 28.40 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, AT A 1/2 INCH IRON ROD WITH TEXAS DEPARTMENT OF TRANSPORTATION ALUMINUM DISK (TXDOT TYPE III MONUMENT), FOUND AT THE INTERSECTION OF THE NORTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND, SAME LINE BEING THE SOUTH BOUNDARY LINE OF THAT CERTAIN CALLED 4.6767 ACRE TRACT OF LAND CONVEYED TO THE SKAGGS FAMILY REVOCABLE TRUST BY SPECIAL WARRANTY DEED OF RECORD IN DOCUMENT NO. 2012066335, SAID OFFICIAL PUBLIC RECORDS, AND THE CURVING WEST RIGHT-OF-WAY LINE OF FARM TO MARKET ROAD 1460 (FM 1460), FOR THE NORTHWEST CORNER OF THAT CERTAIN CALLED 2.574 ACRE PARCEL OF LAND CONVEYED TO THE STATE OF TEXAS IN SAID DOCUMENT NO. 2014034929, SAME POINT BEING THE SOUTHWEST CORNER OF THAT CERTAIN CALLED 0.250 ACRE (TRACT 2) PARCEL OF LAND CONVEYED TO THE CITY OF GEORGETOWN, BY GENERAL WARRANTY DEED OF RECORD IN DOCUMENT NO. 2013029286, SAID OFFICIAL PUBLIC RECORDS, FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH POINT A TXDOT TYPE III MONUMENT, FOUND, BEARS WITH SAID CURVING WEST RIGHT-OF-WAY LINE, A CHORD BEARING OF NORTH 19°57'09" WEST, A CHORD DISTANCE OF 161.22 FEET;

THENCE, WITH SAID WEST RIGHT-OF-WAY LINE OF FM 1460, WITH A CURVE TO THE RIGHT AN ARC DISTANCE OF 55.04 FEET, HAVING A RADIUS OF 5950.00 FEET, A CENTRAL ANGLE OF 000°31'48", AND A CHORD THAT BEARS SOUTH 18°54'40" EAST, A CHORD DISTANCE OF 55.04 FEET, TO A TXDOT TYPE III MONUMENT, FOUND FOR THE END OF SAID CURVE TO THE RIGHT AND A CORNER OF SAID 2.574 ACRE PARCEL OF LAND;

THENCE, SOUTH 18°38'47" EAST, CONTINUING WITH SAID WEST RIGHT-OF-WAY LINE FM 1460, A DISTANCE OF 880.82 FEET, TO A POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT, FROM WHICH POINT A TXDOT TYPE III MONUMENT FOUND BEARS SOUTH 75°48'44" WEST, A DISTANCE OF 0.46 FEET;

THENCE, CONTINUING WITH SAID WEST RIGHT-OF-WAY LINE FM 1460, WITH SAID TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 165.88 FEET, HAVING A RADIUS OF 6150.00 FEET, A CENTRAL ANGLE OF 001°32'43", AND A CHORD THAT BEARS SOUTH 19°25'09" EAST, A CHORD DISTANCE OF 165.87 FEET, TO A TXDOT TYPE III MONUMENT FOUND AT THE INTERSECTION OF THE SOUTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND AND THE WEST RIGHT-OF-WAY LINE OF FM 1460, FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE SOUTHWEST CORNER OF SAID 2.574 ACRE PARCEL OF LAND, SAME POINT BEING THE NORTHWEST CORNER OF THAT CERTAIN LOT 66 (OPEN SPACE AND RIGHT-OF-WAY RESERVE), BLOCK 1, FINAL PLAT OF TERAVISTA SECTIONS 322B AND 323, A SUBDIVISION OF RECORD IN DOCUMENT NO. 2013069776, SAID OFFICIAL PUBLIC RECORDS, AND SAME POINT BEING THE NORTHEAST CORNER OF THAT CERTAIN CALLED 0.1614 ACRE TRACT OF LAND CONVEYED TO THE CITY OF GEORGETOWN BY WARRANTY DEED OF RECORD IN DOCUMENT NO. 2011075728, SAID OFFICIAL PUBLIC RECORDS;

THENCE, SOUTH 68°45'19" WEST, WITH SAID SOUTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND, SAME LINE BEING THE NORTH BOUNDARY LINE OF SAID 0.1614 ACRE CITY OF GEORGETOWN TRACT, AT 126.83 FEET, PASS A MAGNAIL WITH WASHER STAMPED "BURY PARTNERS" FOUND FOR THE NORTHWEST CORNER OF SAID 0.1614 ACRE CITY OF GEORGETOWN TRACT, SAME POINT BEING A CORNER OF LOT 22, SAID BLOCK 1, FINAL PLAT OF TERAVISTA SECTIONS 322B AND 323, AND CONTINUING WITH THE NORTH BOUNDARY LINE OF SAID BLOCK 1, FINAL PLAT OF TERAVISTA SECTIONS 332B AND 323, A DISTANCE OF 1614.38 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "BURY PARTNERS" FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE SOUTHEAST CORNER OF FINAL PLAT OF TERAVISTA SECTION 328, A SUBDIVISION OF RECORD IN DOCUMENT NO. 2014064128, SAID OFFICIAL PUBLIC RECORDS;

THENCE, NORTH 11°05'39" WEST, WITH THE EAST BOUNDARY LINE OF SAID FINAL PLAT OF TERAVISTA SECTION 328, A DISTANCE OF 479.01 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STEGE BIZZELL" SET FOR THE WESTERN MOST NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, CROSSING SAID 123 ACRE TRACT, AND SAID 47 ACRE TRACT, THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

1. NORTH 66°41'00" EAST, A DISTANCE OF 820.21 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STEGE BIZZELL" SET FOR AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;
2. NORTH 23°21'38" WEST, A DISTANCE OF 345.88 FEET, TO A POINT IN A STOCK POND;
3. SOUTH 66°38'22" WEST, A DISTANCE OF 20.00 FEET, TO A POINT IN A STOCK POND;
4. NORTH 23°21'38" WEST, A DISTANCE OF 254.13 FEET, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "STEGE BIZZELL" SET IN THE NORTH LINE OF SAID 123 ACRE TRACT AND IN THE SOUTH LINE OF SAID 4.6767 ACRE TRACT FOR THE NORTHERN MOST NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

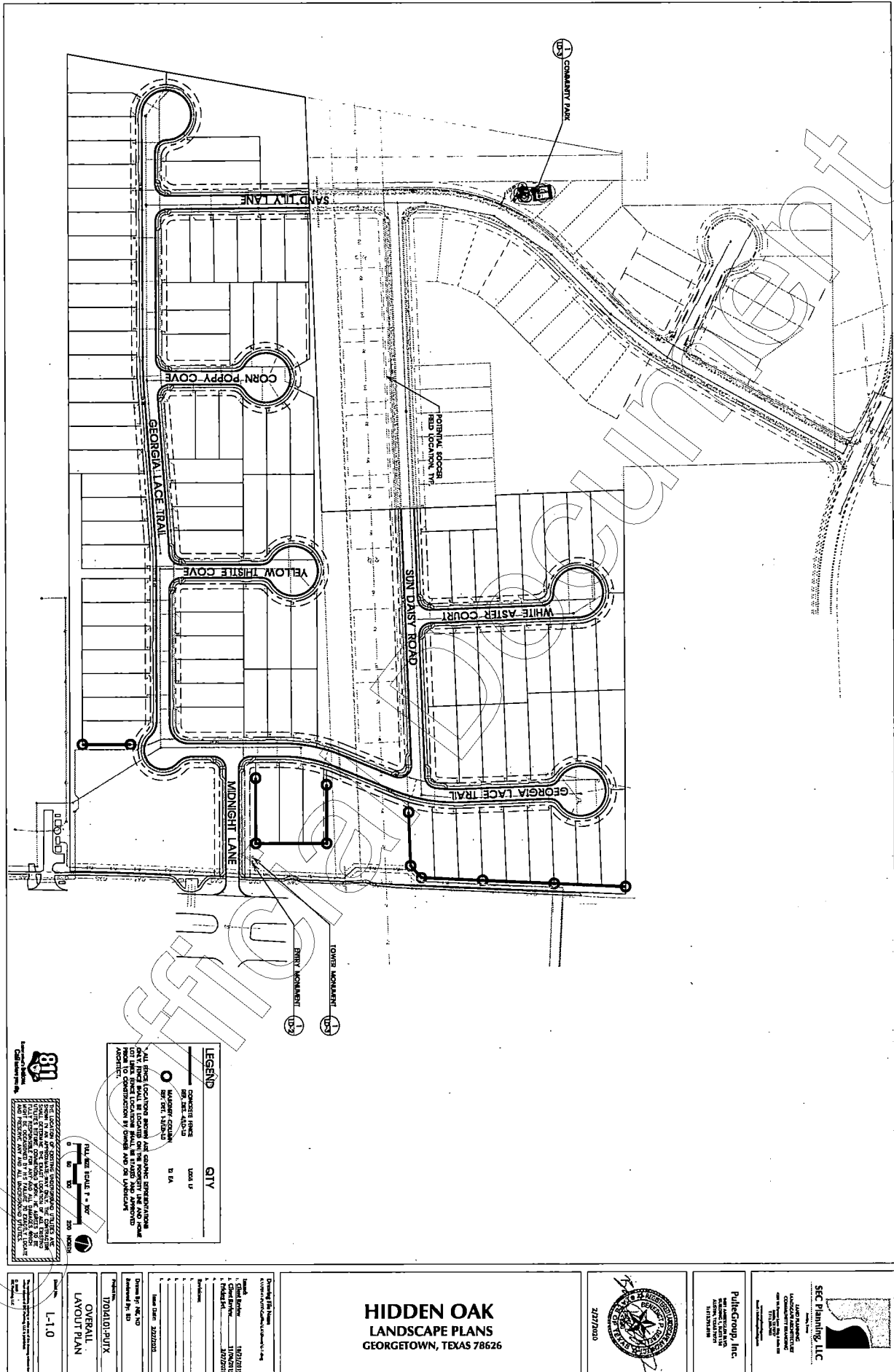
THENCE, NORTH 68°42'27" EAST, WITH THE NORTH BOUNDARY LINE OF SAID 123 ACRE TRACT OF LAND, SAME LINE BEING THE SOUTH BOUNDARY LINE OF SAID 4.6767 ACRE TRACT OF LAND, A DISTANCE OF 799.88 FEET, TO THE POINT OF BEGINNING, AND CONTAINING 28.40 ACRES OF LAND, MORE OR LESS, WITHIN THESE METES AND BOUNDS.

EXHIBIT B

Location of Association Maintenance Fencing

[See attached depiction]

Unofficial Document



RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

② Pulte Homes of Texas
9401 Amber Glen Blvd
Building I, Suite 150
Austin, TX 78729

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2020105253

REST Fee: \$201.00
09/03/2020 01:12 PM

KCURRIE



Nancy E. Rister

Nancy E. Rister, County Clerk
Williamson County, Texas

Unofficial Document