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CHARLESTON MILLS TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
[BRAZOS COUNTY, TEXAS]

Declarant: AMSTAD BLACKSTONE JV, LLC, a Texas limited liability company

This Declaration of Covenants, Conditions and Restrictions may be used only in connection with the residential community known as Charleston Mills Townhomes in Brazos County, Texas and the operation of Charleston Mills Townhome Association, Inc.

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
CHARLESTON MILLS TOWNHOMES

This Declaration of Covenants, Conditions and Restrictions (the “**Declaration**”) is made by **AMSTAD BLACKSTONE JV, LLC**, a Texas limited liability company (the “**Declarant**”), and is as follows:

R E C I T A L S:

A. This Declaration is filed with respect that certain real property located in Brazos County, Texas, as more particularly described in Exhibit “A” attached hereto and incorporated herein (the “**Property**”).

B. **AMSTAD BUTLER JV, LLC**, a Texas limited liability company (“**Amstad Butler**”), is the owner of the Property. Amstad Butler executes this Declaration to evidence its consent to subject all the Lots within the Property to the terms and provisions of this Declaration.

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

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

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

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

ARTICLE 1
DEFINITIONS

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

“Applicable Law” means all statutes, public laws, ordinances, policies, rules, regulations and orders of all means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Property in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision, and all other ordinances, including but not limited to the PD, and any other applicable building codes, zoning restrictions and permits or other applicable regulations. Statutes and ordinances specifically referenced in the Restrictions are “Applicable Law” on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

“Architectural Control Committee” or **“ACC”** means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot, Structure or Dwelling. As provided in *Article 9* below, the Declarant acts as the ACC and the ACC is not a committee of the Association until the Declarant has assigned its right to appoint and remove all ACC members to the Association in a Recorded written instrument.

“Area of Common Responsibility” means those portions of a Structure or Dwelling that are designated, from time to time, by this Declaration or the Association to be maintained, repaired, and replaced by the Association, as a common expense, as reflected in the Designation of Area of Common Responsibility and Maintenance Chart attached to this Declaration as Attachment 1.

“Assessment” or **“Assessments”** means assessments imposed by the Association under this Declaration.

“Assessment Unit” has the meaning set forth in *Section 6.7.2*.

“Association” means Charleston Mills Townhome Association, Inc., a Texas nonprofit corporation, which has been created by Declarant to exercise the authority and assume the powers specified in *Article 5* and elsewhere in this Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

“Board” means the Board of Directors of the Association.

“Bulk Rate Contract” or **“Bulk Rate Contracts”** means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, “broadband” services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or

nature which are considered by the Board to be beneficial to all or a portion of the Property or the Common Area. Each Bulk Rate Contract must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"Bylaws" means the bylaws of the Association, which may be initially adopted and Recorded by Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by Declarant until expiration or termination of the Development Period. Any amendment to the Bylaws proposed by the Board must be approved in advance and in writing by Declarant until expiration or termination of the Development Period. Upon expiration of the Development Period, the Bylaws may be amended by a Majority of the Board.

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

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

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

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

“Declarant” means AMSTAD BLACKSTONE JV, LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights of AMSTAD BLACKSTONE JV, LLC, a Texas limited liability company, as Declarant, must be expressly set forth in writing and Recorded.

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

“Design Guidelines” means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot, adopted pursuant to *Section 9.2.3*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. At Declarant’s option, Declarant may adopt or amend from time to time the Design Guidelines for the Property or any portion thereof. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines for the Property or any portion thereof.

“Development Period” means the period of time beginning on the date when this Declaration has been Recorded and ending twenty (20) years thereafter, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property.

“Dwelling” means the single family residence located on a Lot, together with any garage incorporated therein, whether or not the Dwelling is occupied for residential purposes.

“Homebuilder” means an Owner (other than the Declarant) who acquires a Lot for the construction of a single family residence for resale to a third party.

“Improvement” means all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, balconies, porches, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, alteration of drainage flow, mailboxes, poles, signs, antennas, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs,

pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"Irrigation Maintenance Services" means irrigation of the Yard Area and the repair and maintenance of the irrigation systems, as originally installed by the Declarant for the Yard Area, which will include the following: (i) repair or replacement of broken, damaged or clogged sprinkler heads; (ii) repair or replacement of cut surface mounted drip tubes or broken pipes below ground; (iii) repair or replacement of control valves; (iv) repair or replacement of system controllers; and (v) repair or replacement of cut/damaged control wires. Irrigation Maintenance Services shall not include alterations, additions or modifications to the irrigation system (based on reconfigured landscaping or otherwise). Notwithstanding the foregoing, the Declarant during the Development Period and the Board thereafter, will have the right to terminate or modify the Irrigation Maintenance Services from time to time.

"Landscape Services" mean the following services to be provided to the Yard Area: (i) mowing and edging all turf areas at least once per week during the months of May through September of each year, and on an as-needed basis during the months of October through April; and (ii) applying fertilizer to the turf areas twice a year; (iii) trimming and removing plant material and clippings located on the turf areas (e.g., grass and shrubs). Notwithstanding the foregoing, the Declarant during the Development Period, and the Board thereafter, will have the right to modify the Landscape Services provided by the Association from time to time. Tree pruning and tree fertilization are the responsibility of the Owner. Dead trees are to be replaced at each Lot Owner's expense.

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

"Majority" means more than half.

"Manager" has the meaning set forth in *Section 5.5.8*

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

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

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

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

“Plat” means a Recorded subdivision plat of any portion of the Property, and any amendments thereto.

“Property” means that certain real property located in Brazos County, Texas, as more particularly described on Exhibit “A” attached hereto and incorporated herein, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 14.3* and *Section 14.4* of this Declaration.

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

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

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

“Rules and Regulations” means any instrument, however denominated, which may be adopted by the Declarant as part of the Community Manual or subsequently adopted by a Majority of the Board for the regulation and management of the Property or the Common Area, including any amendments to those instruments. Until expiration or termination of the Development Period, the Declarant may unilaterally amend the Rules and Regulations, and must approve any amendment to the Rules and Regulations adopted by the Board.

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

“Structure” means a building containing two (2) or more Dwellings that: (i) is located on two (2) or more adjacent Lots; and (ii) has one (1) or more party walls separating the Dwellings comprising such building.

“Yard Area” means the portion of the Lot not improved with a Dwelling or other Improvement. In the event of any disagreement of what constitutes the Yard Area of a Lot, the determination of the ACC or its designee will be final.

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

ARTICLE 2 GENERAL AND USE RESTRICTIONS

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

2.1 General.

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

NOTICE

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

2.1.2 Ordinances. Ordinances and requirements imposed by local governmental authorities, including but not limited to the PD, are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction, ordinance or regulation which may be applicable to a Lot located within

the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations or encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

2.2 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 reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Common Area may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other developer of any portion of the Property or the Common Area makes any representation or warranty concerning such land uses 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 the 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 acknowledges that development of the Property and/or the Common Area will likely extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or the Common Area or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.3 Single-Family Residential Use. The Lots shall be used solely for private single family residential purposes, and there will not be constructed or maintained thereon more than one (1) single-family Dwelling. The Lots may not be used for any other purposes without the prior written consent of the Declarant, which consent may be withheld by the Declarant in its sole and absolute discretion.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of a Lot, except an Owner or Resident may conduct business activities within a Dwelling so long as: (i) such activity complies with Applicable Law; (ii) participation in the business activity is limited to the Owner(s) or Resident(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 Dwellings in which no business activity is being

conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents within the Property as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the Dwelling nor Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required.

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

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

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

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

2.4 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least six (6) months. All leases shall be in writing. The Owner must provide to its lessee copies of the Restrictions and shall notify its lessee of any changes or additions thereto. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. Notwithstanding the foregoing, Declarant and its affiliates shall be exempt from the rental restrictions contained in this *Section 2.4*,

and this *Section 2.4* may not be amended or modified without Declarant's written and acknowledged consent.

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

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

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

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

2.9 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents.

2.10 Animals – Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term

“domestic household pet” shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, goats, exotic snakes or lizards, ferrets, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep more than four (4) cats and dogs, in the aggregate, of which no more than two (2) may be dogs, unless otherwise approved by the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner’s Dwelling, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and vaccinated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

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

2.12 Trash Containers. Unless it is within twelve (12) hours before or after the designated trash and recycling pickup time, trash containers and recycling bins must be stored inside the garage of the Dwelling constructed on the Lot or in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot. The Board shall have the right to specify additional locations on each Owner’s Lot in which trash containers or recycling bins must be stored.

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

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

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

(iii) an antenna that is designed to receive television or radio broadcast signals;

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

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

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

(ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the roof fascia, soffit, or bargeboard and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas. A Permitted Antenna exists at the sole risk of the Owner and/or Resident of the Lot. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. Additionally, the Association is not responsible for any loss or damage to a Dwelling caused by the installation, maintenance or removal of a Permitted Antenna. The Owner will defend and indemnify the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from the Owner’s Permitted Antenna.

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

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

(i) signs which are expressly permitted pursuant to the Design Guidelines or to the Rules and Regulations;

(ii) signs which are part of Declarant's or Homebuilder's overall marketing, sale, or construction plans or activities for the Property;

(iii) one (1) temporary "For Sale" sign placed on the Lot. The sign must be professionally made and shall be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from the finished grade of the Lot at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale of the Lot;

(iv) candidate or measure signs may be erected provided the sign: (a) is erected no earlier than the ninetieth (90th) day before the date of the election to which the sign relates; (b) is removed no later than the tenth (10th) day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one sign may be erected for each candidate or measure. In addition, signs which include any of the components or characteristics described in Section 259.002(d) of the Texas Election Code are prohibited;

(v) a maximum of two (2) school or youth affiliated signs shall be permitted, provided the sign(s): (a) is located in the landscaping bed of the front yard and blends in with the existing landscaping; (b) is no larger than 36" x 42" and does not exceed five feet (5') in height above natural ground; (c) is constructed of wood, plastic or metal and are not flags or banners, as determined in the sole and absolute discretion of the Board; (d) is kept in good condition and repair, as determined in the sole and absolute discretion of the Board; (e) does not cause embarrassment, discomfort and/or annoyance to other Owners, as determined in the sole and absolute discretion of the Board; and (f) does not contain any telephone numbers or commercial advertisements;

(vi) permits as may be required by legal proceedings;

(vii) permits as may be required by any governmental entity; and

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

For Lease and For Rent signs are expressly prohibited.

2.16 Flags – Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States armed forces, or one (1) flag with official insignia of a college or university (“**Permitted Flag**”) and is permitted to install a flagpole no more than five feet (5’) in length affixed to the front of a Dwelling near the principal entry or affixed to the rear of a Dwelling (“**Permitted Flagpole**”). Only two (2) Permitted Flagpoles are allowed per Dwelling. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the Yard Area of any Lot (“**Freestanding Flagpole**”). To obtain ACC approval of any Freestanding Flagpole, the Owner shall provide the ACC with the following information: (a) the location of the Freestanding Flagpole to be installed on the Lot; (b) the type of Freestanding Flagpole to be installed; (c) the dimensions of the Freestanding Flagpole; and (d) the proposed materials of the Freestanding Flagpole (the “**Flagpole Application**”). A Flagpole Application may only be submitted by an Owner. The Flagpole Application shall be submitted in accordance with the provisions of *Article 9* of this Declaration.

2.17 Flags – Installation and Display. With the exception of flags displayed on Common Area or any Lot which is being used for marketing purposes by the Declarant or a Homebuilder, unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

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

(ii) Any Permitted Flagpole must be no longer than five feet (5’) in length and any Freestanding Flagpole must be no more than twenty feet (20’) in height;

(iii) Any Permitted Flag displayed on either a Permitted Flagpole or a Freestanding Flagpole may not be more than three feet in height by five feet in width (3’x5’);

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

(v) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole must comply with all Applicable Law, easements and setbacks of record;

(vi) Each Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction thereof and harmonious with the Dwelling;

(vii) Any Permitted Flag, Permitted Flagpole and Freestanding Flagpole must be maintained in good condition and any deteriorated Permitted Flag or deteriorated or structurally unsafe Permitted Flagpole or Freestanding Flagpole must be repaired, replaced or removed;

(viii) A Permitted Flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring Lot; and

(ix) Any external halyard of a Permitted Flagpole or Freestanding Flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

The requirements of this *Section 2.17* shall not apply to any flag or flagpole erected by the Declarant.

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

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

2.20 Outside Storage Buildings. Outside storage buildings located in a fenced rear yard of a Lot are allowed with the prior written approval of the ACC. One (1) permanent storage

building will be permitted if: (i) the surface area of the pad on which the storage building is constructed is no more than one hundred (100) square feet; (ii) the height of the storage building, measured from the surface of the Lot to the peak of the roof of the storage building, is no more than eight (8) feet; (iii) the exterior of the storage building is constructed of the same or substantially similar materials and of the same color as the principal residential structure constructed on the Lot; (iv) the roof of the storage building is the same material and color as the roof of the principal residential structure constructed on the Lot; and (v) the storage building is constructed within all applicable building setbacks. No storage building may be used for habitation.

2.21 Unsightly Articles. No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, graders, trucks other than pickups, tractors, boats, wagons, buses, dirt bikes, motocross bikes, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Trailers are not permitted on any Lot at any time. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag or vehicle registration shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property or Common Area. Notwithstanding the foregoing, marine craft and all-terrain vehicles may be parked temporarily for a period not to exceed seventy-two (72) consecutive hours during each two (2) month period. Unless operated by Declarant or a Homebuilder, no vehicles (including, without limitation, trucks, vans or commercial vehicles) with commercial writings on their exteriors shall be allowed temporarily within the Property and the Common Area during normal business hours for the purpose of serving a Lot or Common Area; provided, however, no such vehicle shall remain on the Property or the Common Area overnight without the Board's prior written consent.

2.22 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes, travel trailers or recreational vehicles shall be parked or placed on any street right of way, Lot, or used as a residence, either temporary or permanent, at any time. However, such vehicles may be parked temporarily for a period not to exceed seventy-two (72) consecutive hours during each two (2) month period.

2.23 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted in the front of the residence on a Lot provided the basketball goal is located at least ten feet (10') away from the street curb. Permanent basketball goals are not permitted in any street right-of-way. The basketball goal backboard must be perpendicular to the street and mounted

on a metal pole permanently installed in the ground. Portable basketball goals are permitted but must be stored in the rear of the Lot or inside the garage when not in use. Portable basketball goals are not permitted in any street right-of-way. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the ACC prior to being placed on any Lot.

2.24 Compliance with Restrictions. Each Owner, his or her family, Residents of a Dwelling, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner in accordance with *Section 6.12* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the ACC or by an aggrieved Owner. The result of every act or omission that violates any provision of the Restrictions is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **Each such Owner shall release and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.24 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.**

2.25 Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Area of Common Responsibility or Common Area without the prior written approval of the Board and the Declarant during the Development Period. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, including but not limited to the Area of Common Responsibility, which damages were caused by

the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be levied as an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in *Section 6.10* of this Declaration.

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

2.27 Party Walls and Fences. A fence, wall or shared driveway located on or near the dividing line between two (2) Lots or Dwellings constructed upon such Lots and intended to benefit both Lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this *Section 2.27*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

2.27.1 Encroachments & Easement. If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 2.27*. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

2.27.2 Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the ACC in accordance with *Article 9* of this Declaration.

2.27.3 Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding

liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Brazos County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this *Section 2.27* is appurtenant to the Lot and passes to the Owner's successors in title.

2.27.4 Roofs, Foundation, Fences. Common roofs, foundations and fences which form a part of a Dwelling will be dealt with in the same fashion as Party Walls, as set forth in this *Section 2.27*.

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

2.27.6 Speakers. Speakers are prohibited from being installed in any Party Wall.

2.27.7 Association Insurance. Notwithstanding the foregoing, Party Walls that are covered by an insurance policy maintained by the Association pursuant to *Section 8.1* shall be repaired and replaced in accordance to the provisions set forth in *Section 8.1*.

2.27.8 Dispute Resolution. In the event of any dispute arising concerning a Party Wall, or under the provisions of this *Section 2.27* (the "**Dispute**"), the parties shall submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board shall appoint a mediator. If the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration. Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board, the Board shall appoint an arbitrator. The decision of the arbitrator shall be binding upon the parties and shall be in lieu of any right of legal action that either party may have against the other. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable. If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association in conjunction therewith. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's

Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in 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).

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

2.29 Decorations and Lighting. A maximum of three (3) sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be permitted on a Lot, provided that such decorations: (i) blend in with the existing landscaping and residence constructed on the Lot; (ii) are no larger than three (3) feet in height above natural ground; (iii) are kept in good condition and repair, as determined in the sole and absolute discretion of the Board; (iv) do not cause embarrassment, discomfort and/or annoyance to other Owners, as determined in the sole and absolute discretion of the Board; and (v) do not contain any telephone numbers or commercial advertisements. Customary seasonal decorations for holidays are permitted without approval by the ACC but shall be removed within thirty (30) days of the applicable holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding residences or yards. No mercury vapor, sodium or halogen light shall be installed on any Lot which is visible from any street unless otherwise approved by the ACC.

2.30 Exterior Window Air Conditioning Units. No exterior window air conditioning units are permitted on any Lot without the advance written approval of the ACC.

2.31 Window Treatments. An Owner may install window treatments inside the residence constructed on his or her Lot, provided that the window treatments, including drapes, blinds, shades or shutters, must appear to be (i) clear, (ii) white, (iii) near-white light neutral; or (iv) light wood tone when viewed from adjacent property. The use of newspaper, bed sheets, tablecloths, or other obviously non-drapery fabrics, aluminum foil, and reflective materials as window treatments are expressly prohibited.

2.32 Shared Mailboxes. Mailbox kiosks ("**Shared Mailboxes**") may be installed by Declarant to serve the Owners. Such Shared Mailboxes, if installed, shall be Common Area, and the Association shall maintain the Shared Mailboxes in good condition and repair in accordance with United States Postal Service requirements. The costs incurred, or estimated to be incurred, by the Association for maintenance of the Shared Mailboxes, if any, shall be discharged through Assessments. Notwithstanding the foregoing, individual Owners are required to replace the locks and/or keys as needed and are responsible for the cost associated therewith.

2.33 Injury to Person or Property. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Lot or Common Area; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Lot, each Owner agrees that the limitations set forth in this *Section 2.33* are reasonable and constitute the exercise of ordinary care by the Association and Declarant. EACH OWNER AGREES TO RELEASE AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT, AND DECLARANT'S AGENTS FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE PROPERTY TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, HIS TENANT, HIS GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

2.34 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the Declarant, the ACC, and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

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

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

2.37 Fiber Optic Service: Exclusive Fiber Provider. Declarant has entered into an agreement (the “**Fiber Agreement**”) with Arrive Internet (“**Fiber Provider**”) for the benefit of the Owners. Pursuant to the Fiber Agreement, the Fiber Provider shall construct, own, maintain and operate a system of fiber-optic lines, surface appurtenances, and all other necessary or desirable Improvements related thereto to be installed (collectively, the “**Fiber System**”) to provide: (i) High-Speed Internet Service; and (ii) Voice-over-Internet-Protocol service to the Property. To the fullest extent permitted by Applicable Law, Declarant has granted the Fiber Provider, its successors and assigns, the exclusive right to construct a Fiber System in the Property. All Homebuilders and Owners of Lots shall be deemed to have taken and accepted title to such Lots subject to and encumbered by all easements, rights-of-way, rights of ingress and egress, and other real property rights, titles, and interests of the Fiber Provider created, evidenced or referred to in the Fiber Agreement relating to the construction, installation, ownership, operation, maintenance, and/or repair of the Fiber System. The term of the Fiber Agreement terminates fifty (50) years following the first sale of Fiber Services by the Fiber Provider to a Resident.

ARTICLE 3 CONSTRUCTION RESTRICTIONS

3.1 Approval for Construction. Unless prosecuted by the Declarant, no Improvements shall hereafter be placed, maintained, erected, or constructed upon any Lot without the prior written approval of the ACC in accordance with *Article 9* of this Declaration.

3.2 Fences; Sidewalks. All fences and walls shall comply with all Applicable Law. Unless otherwise approved by the ACC, no fence, wall or hedge will be erected or maintained on any Lot nearer to the street than the front elevation of the Dwelling constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices. The ACC will have the sole discretion to determine the front elevation of the Dwelling for the purpose of this *Section 3.2*. No chain-link, metal, vinyl or agricultural fences may be installed or maintained on a Lot, except by Declarant. No fence shall be less than six (6) feet in height or be greater than eight (8) feet in height, unless installed by Declarant or required by Applicable Law. Each Owner must maintain all fences on such Owner’s Lot in good condition, including but not limited to periodically re-staining all fences on such Owner’s Lot using stain substantially similar to the stain applied to the fences as originally constructed (if any), as determined by the ACC. Any broken pickets, fallen or leaning panels must be repaired or replaced. In the event that a fence on an Owner’s Lot is replaced, the Owner is responsible for staining the new fence with stain substantially similar to the stain applied to the fences as original constructed (if any), as determined by the ACC. All fences that are Party Walls shall be subject to *Section 2.27* of this Declaration. If required by the Plat, the Owner of each Lot shall construct, at such Owner’s sole cost and expense and prior to

occupying any Improvement, a sidewalk on such Owner's Lot, located and designed in conformance with the Plat.

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

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

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

3.5.1 Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner, unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application. The Solar Application shall be submitted in accordance with the provisions of *Article 9* of this Declaration. The installation of a Solar Energy Device on any portion of a Lot, Structure or Dwelling which is maintained by the Association is prohibited.

3.5.2 Approval Process. The ACC will review the Solar Application in accordance with the terms and provisions of *Article 9* of this Declaration. The ACC will approve a Solar Energy Device if the Solar Application complies with *Section 3.5.3* below **UNLESS** the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.5.3*, will create a condition that substantially

interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or on or within Common Area must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.5.2* when considering any such request.

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

(i) The Solar Energy Device must be located on the roof of the Dwelling located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the Dwelling, the ACC may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

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

Notwithstanding the foregoing provision, in the event the roof is included within an Area of Common Responsibility in accordance with the terms and provisions of *Article 7* hereof for maintenance by the Association and an Owner installs a Solar Energy Device in accordance with this *Section 3.5*, the Association may assign the responsibility for maintenance of Owner's roof to the Owner, in the Association's sole discretion, and the Association will be relieved of any of its maintenance responsibilities with respect to the Owner's roof.

3.6 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a “Rainwater Harvesting System”) may be installed with the advance written approval of the ACC.

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

3.6.2 Approval Process. The decision of the ACC will be made in accordance with *Article 9* of this Declaration. Any proposal to install a Rainwater Harvesting System on property owned by the Association or on or within Common Area must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.6.2* when considering any such request.

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

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

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner’s Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner’s Lot to install the Rainwater Harvesting System, as reasonably determined by the ACC.

(v) the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner’s Lot, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.6.4* for additional guidance.

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

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

3.7.1 Application. Approval by the ACC is required prior to installing Xeriscaping. To obtain the approval of the ACC for Xeriscaping, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The ACC is not responsible for: (a) errors or omissions in the Xeriscaping Application submitted to the ACC for approval; (b) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (c) the compliance of an approved application with Applicable Law.

3.7.2 Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, or otherwise required to be approved under Applicable Law, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the ACC. For purposes of this Section 3.7, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the ACC determines that: (a) the proposed

Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or (b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

(ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over thirty percent (30%) of such Owner's front yard or fifty percent (50%) of such Owner's back yard.

(iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the ACC.

3.7.3 Process. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 3.7* when considering any such request.

3.7.4 Approval. Each Owner is advised that if the Xeriscaping Application is approved by the ACC, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the ACC may require the Owner to: (a) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (b) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.8 Swimming Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all Applicable Law and be approved in advance by the ACC. Nothing in this *Section 3.8* is intended or shall be construed to limit or affect an Owner's obligation to comply with any Applicable Law concerning swimming pool enclosure requirements. Unless otherwise

approved in advance by the ACC, above-ground or temporary swimming pools are not permitted on a Lot. Notwithstanding the foregoing, kiddie pools that are no taller than fifteen (15) inches and no wider than sixty (60) inches shall be permitted within a fenced rear yard of a Lot.

3.9 Compliance with Setbacks and Easements. No Dwelling or any other permanent structure or Improvement may be constructed on any Lot nearer to a street than the minimum building setback lines shown on the Plat, and no Improvement shall be located on any drainage, utility or conservation easement, unless otherwise permitted pursuant to Applicable Law.

ARTICLE 4 DISCLOSURES

This *Article 4* discloses selective features of the Property or the Common Area that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this *Article 4* should be relied upon without independent confirmation.

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

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

4.3 Fire Sprinkler Disclosure. The Dwellings and/or Structures may be constructed with a fire sprinkler system. If sprinklers are present, water lines and sprinkler heads may be in the ceilings above rooms in the Dwelling. This disclosure is given because damage to, or a malfunction of, a water line or sprinkler head may harm or destroy real and personal property. Each Owner is solely responsible for all of the following:

- (i) determining the location and proper care of the sprinkler equipment, water lines and sprinkler heads in the Dwelling;
- (ii) preserving the integrity and functionality of the portion of the fire sprinkler system in the Dwelling;

(iii) instructing each Resident, invitees and contractors about the care and protection of the sprinkler system, including any applicable rules adopted by the Board;

(iv) any damage to their Dwelling, an adjoining Dwelling, Common Area, and/or any personal property (such as furnishings and clothing) caused by the functioning or malfunctioning of any component of the sprinkler system in or serving their Dwelling; and

(v) complying with any municipal or other regulatory inspection requirements, at such Owner's expense.

Components of a fire sprinkler system may be located in the attic portion of the Dwelling. If the attic is also the location of air conditioning equipment or other equipment that requires periodic servicing or repair, to ensure protection of the water lines and sprinkler heads, the Owner is advised to closely supervise all persons using the attic.

**The Association does not inspect or fix water lines
and fire sprinkler heads, if any, in your Dwelling.**

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

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

4.6 Concrete.

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

4.6.2 Exposed Floors. This *Section 4.6.2* applies to residences or Dwellings and/or Structures with exposed concrete floors. This notice is given because Owners may be inexperienced with concrete and expect it to be as forgiving as wood or sheetrock. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, an

Owner is hereby made aware that any specification for polished concrete means that the concrete will be polished, but this does not mean an Owner will be able to actually see their reflection in the floor.

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

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

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

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

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

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

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

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

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

4.16 Photography of the Property. Declarant, Homebuilders, and their licensees retain the right to obtain and use photography of the Property for publication and advertising purposes.

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

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

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

4.20 Wood. Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations in wood that add to its aesthetic appeal. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent.

Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination, and surfaces may weather differently due to the type of wood, its location in or on a Dwelling, and other factors. Wood floors may require more maintenance than some man-made materials. Owners of Dwellings with wood floors should educate themselves about wood floor care.

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

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

4.23 Marketing. Declarant's use of a sales center and/or model homes or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the Dwellings available for purchase. A Structure and/or Dwelling may not conform to any model in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model of a Structure and/or Dwelling is intended only to demonstrate approximate size and basic architectural features. The Structures and/or Dwellings, as completed, may not conform to the models displayed by Declarant. Declarant may also have shown prospective purchasers model homes, floor plans, sketches, drawings, and scale models of Structures and/or Dwellings ("**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Structures and/or Dwellings.

ARTICLE 5 CHARLESTON MILLS TOWNHOME ASSOCIATION, INC.

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

5.2 Membership.

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

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

(i) the right of the Declarant, or the Declarant's designee, to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) the right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of the Restrictions;

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

(iv) the right of Declarant (during the Development Period) and the Board thereafter, to grant easements or licenses over and across the Common Area;

(v) with the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(vi) the right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules and Regulations regarding the use of the Common Area and any Improvements thereon; and

(vii) the right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

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

5.4 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 5.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(i) Owner Votes. The Owner of each Lot will have one (1) vote for each Lot so owned.

(ii) Declarant Votes. In addition to the votes to which Declarant is entitled by reason of *Section 5.4(i)*, 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.

(iii) Co-Owner Votes. When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be

Members. As more specifically described in the Bylaws, the vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 5.4*.

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

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

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

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

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

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

in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.5.5 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

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

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

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

- (v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 5.5.7* must be approved in advance and in writing by the Declarant.

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

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

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

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

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

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

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

5.5.14 Allocation of Votes. To determine votes when permitted pursuant to *Section 5.4* above.

5.5.15 Authority with Respect to the Restrictions. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Restrictions. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 5.5.15* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

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

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

Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment.

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

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

5.9 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 5.5* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this

Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

5.10 Community Systems. The Association is specifically authorized to provide, or to enter into contracts to provide Community Systems. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control. In addition, until expiration or termination of the Development Period, any contracts entered pursuant to this *Section 5.10* must be approved in advance and in writing by the Declarant.

5.11 Declarant's Right to Contribute to Revenues of the Association. Declarant shall have the right, but not the obligation, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

5.12 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates

or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

5.13 Administration of Common Area. The administration, maintenance, repair and replacement of the Common Area by the Association (such Common Area includes, without limitation, any Improvements and/or facilities thereon and appurtenances thereto), shall be in accordance with the provisions of Applicable Law, and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area. Declarant and/or its assignees may construct and maintain upon portions of the Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

5.14 Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 15.1* below, relating to the design or construction of Improvements on a Lot, including any Area of Common Responsibility located on a Lot. This *Section 5.14* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the Recorded amendment instrument.

5.15 Maintenance Obligation. Notwithstanding anything herein to the contrary, the Association shall maintain or cause to be maintained and kept in good repair and condition, and at least to the standards and in the condition required by Applicable Law, all features or elements located in Common Areas, including, but not limited to, the following (to the extent such features or elements exist within the Common Areas): areas between screening walls or living screens and adjacent curbs or street pavement edges adjacent to drainage ways or drainage structures, landscape and irrigation systems, entryway features and monuments, private amenity centers, playgrounds, pavilions, ponds, detention ponds, off-street parking for private amenity centers, swimming pools, exercise trails, private neighborhood parks and related amenities.

ARTICLE 6 COVENANT FOR ASSESSMENTS

6.1 Assessments.

6.1.1 Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied against each Lot in amounts determined pursuant to *Section 6.7* below. The total amount of Assessments will be determined pursuant to *Sections 6.3* through *6.6*.

6.1.2 Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this *Article 6*.

6.1.3 Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. It is anticipated that Declarant shall treat the initial construction of certain amenities within the Property as a loan (the "**Initial Amenity Construction Cost**"). The Declarant and the Association shall execute a promissory note for the loan amount of such Initial Amenity Construction Cost and return an original of the promissory note to Declarant. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

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

6.3 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association (the "**Regular Assessments**") which sets forth: (i) an estimate of the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of Landscape Services and Irrigation Maintenance Services, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions; and (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, giving due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of

Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Assessments will be due and payable to the Association annually on or before the first day of the month, or in such other manner as the Board may designate in its sole and absolute discretion.

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

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

6.6 Working Capital Assessment. Each Owner of a Lot (other than Declarant) will pay a one-time working capital assessment (the "**Working Capital Assessment**") to the Association in such amount, if any, as may be determined by the Declarant, until expiration or termination of the Development Period, and the Board thereafter. Such Working Capital Assessment need not be uniform among all Lots, and the Declarant or the Board, as applicable, is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy. The Association may use the working capital to discharge operating expenses. The levy of any Working Capital Assessment will be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the Working Capital Assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent. Additionally, the Declarant and an Owner who (a) is a Homebuilder; or (b) acquires a Lot for the purpose of resale to a Homebuilder (a "**Development Owner**") will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Lot from a Homebuilder or Development Owner for residential living purposes or by any Owner who: (i) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, the Declarant's during the Development Period, and thereafter the Board's, determination regarding the application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 6.6*. The Working Capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such Assessments. The Working Capital Assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.7 Amount of Assessment.

6.7.1 Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in *Section 6.7.2* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 6.3* and *Section 6.4* shall be levied uniformly against each Assessment Unit allocated to a Lot.

6.7.2 Assessment Unit. Assessment Units will be allocated to each Lot based on the following formula: one (1) Assessment Unit per bedroom constructed or anticipated to be constructed on a Lot, as set forth on plans and specifications approved by the ACC. If the Improvements change, and such change necessitates a modification of the Assessment Units allocated to the Lot, the Declarant, and after expiration or termination of the Development Period, a Majority of the Board, will modify (which modification may be effected after Declarant's conveyance of any Lot to any third party not affiliated with Declarant) the number of Assessment Units previously assigned to the Lot based on the change in use or Improvements, which allocation will be determined, in the case of a change in Improvements, based on the plans and specifications reviewed and approved by the ACC.

6.7.3 Assessment Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant without Dwellings. Homebuilders shall be required to pay Assessments at such time that the Declarant determines, in the Declarant's sole and absolute discretion, that the Association shall assume the maintenance responsibilities over the Structure, Dwelling or Lot.

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

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

6.9 Owner's Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1 1/2%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

6.10 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this is *Article 6*, together with late charges as provided in *Section 6.8* and interest as provided in *Section 6.9* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.1.2* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens and governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; and (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was

Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized officer, agent, or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the authorized officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.10*, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an authorized officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Resident of the Owner's Lot can make

arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

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

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

6.11 Exempt Property. The following areas will be exempt from the Assessments provided for in this *Article 6*:

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

6.12 Fines and Damages Assessment.

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

violations and asking them to comply with the Rules and Regulations and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

6.12.2 Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.9* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.1.2* of this Declaration. The fine and/or damage charge will be considered an Assessment for the purpose of this *Article 6*, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

ARTICLE 7 MAINTENANCE AND REPAIR OBLIGATIONS

7.1 Overview. Generally, the Association maintains the Common Area, and the Owner maintains his Lot and the Structure and Dwelling located thereon. If any Owner fails to maintain his Lot and the Structure and Dwelling located thereon, the Association may perform the work at the Owner's expense. This Declaration assigns portions of the Structures, Dwellings and Lots to the "**Area of Common Responsibility**", as defined and described below. The Area of Common Responsibility is maintained by the Association and not the Owner. On the date of this Declaration, the initial designation of components of Structures, Dwellings, and Lots included within the Area of Common Responsibility is attached hereto as Attachment 1.

7.2 Association Maintains. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a common expense, the portions of the Property or the Common Area listed below, regardless of whether the portions are on an Owner's Lot:

- (i) the Common Area;
- (ii) the Area of Common Responsibility;
- (iii) any real and personal property owned by the Association not otherwise designated as a Common Area;
- (iv) any property adjacent to the Property or the Common Area if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property; and
- (v) any area, item, easement or service the maintenance of which is assigned to the Association by this Declaration or in accordance with any Recorded plat of the Property.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is otherwise assumed by or assigned to an Owner; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area or the Area of Common Responsibility by an Owner or Resident that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Resident and the Owner and Resident shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Resident of any Lot or any other person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Area or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Resident of a Lot has put the Association on written notice of a specific leak or flow from any portion of the Common Area and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner or Resident of any Lot for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Area or any Lot. The Association shall not be liable to any Owner or Resident, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this *Section 7.2* where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

7.3 Area of Common Responsibility. The Association, acting through its members only, has the right but not the duty to designate, from time to time, portions of a Structure, Dwelling, and Lot as an Area of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. A designation applies to every Lot having the identified feature. The cost of maintaining the Area of Common Responsibility is added to the annual budget and assessed uniformly against all Lots as a Regular Assessment, unless, after expiration of the Development Period, the Owners of at least a Majority of the Lots decide to assess the costs as Individual Assessments.

7.3.1 Easement. The Association is hereby granted an easement over and across each Structure, Lot and Dwelling to the extent reasonably necessary or convenient for the Association or its designee to maintain, repair and/or replace the Area of Common Responsibility. Unless otherwise agreed to by the Owner of the Lot to be accessed, access to the Area of Common Responsibility is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual maintenance activities. If the Association damages any Improvements located within a Structure, Lot or Dwelling in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

7.3.2 Change in Designation. The Association may, from time to time, include additional components of Structures, Lots and Dwellings within the Area of Common Responsibility; however, unless otherwise approved by the Declarant during the Development Period, in no event may the Association at any time remove from the Area of Common Responsibility components of Structures, Lots or Dwellings previously designated as an Area of Common Responsibility under this Declaration. During the Development Period, any addition to the Area of Common Responsibility must also be approved by the Declarant. After expiration or termination of the Development Period, any modification must be approved by a majority of the Owners. During the Development Period, the Area of Common Responsibility may be modified or amended by the Declarant, acting alone. Any modification or amendment to the Area of Common Responsibility must be recorded in the Official Public Records of Brazos County, Texas.

7.4 Inspection Obligations.

7.4.1 Contract for Services. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with (subject to the limitations otherwise set forth in this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services for the Area of Common Responsibility.

7.4.2 Schedule of Inspections. Such inspections shall take place at least once every three (3) years. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as

requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

7.4.3 Notice to Declarant. During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

7.5 Irrigation Maintenance Services and Landscape Services.

7.5.1 Generally. The Association will cause the Irrigation Maintenance Services and Landscape Services to be provided to each Yard Area. Accordingly, the Association is hereby granted an easement over and across each Lot to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform Irrigation Maintenance Services and Landscape Services. Access to each Yard Area is limited to Monday through Saturday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual performance of Irrigation Maintenance Services and Landscape Services. If the Association damages any Improvements located within or on a Lot in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

7.5.2 Dates. The Association or its designated landscape company may, from time to time, provide each Owner with a schedule of dates on which Irrigation Maintenance Services and Landscape Services will be performed.

7.5.3 Alterations. Any alterations in the landscaping of any portion of a Yard Area must be approved in writing by Declarant and/or the ACC prior to the alterations being made. In the event the Association performs alterations, additions or modifications to an Owner's irrigation system (based on an Owner's alteration of the landscaping), the cost of the alterations, additions or modifications will be levied as an Individual Assessment.

7.5.4 Owner or Occupant Repair. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed by an Owner or Resident that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Resident, and the Owner and Resident shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

7.5.5 Termination or Modification of Services. The Declarant during the Development Period, and the Board thereafter, shall have the right to terminate or modify the Irrigation Maintenance Services and Landscape Services.

7.5.6 Release and Hold Harmless. THE ASSOCIATION SHALL NOT BE LIABLE FOR INJURY OR DAMAGE TO PERSON OR PROPERTY CAUSED BY THE ELEMENTS OR BY THE OWNER OR RESIDENT OR ANY OTHER PERSON OR RESULTING FROM ANY UTILITY, RAIN, SNOW OR ICE WHICH MAY LEAK OR FLOW FROM ANY PIPE, DRAIN, CONDUIT, APPLIANCE OR EQUIPMENT WHICH THE ASSOCIATION IS RESPONSIBLE FOR MAINTAINING HEREUNDER. THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT FOR LOSS OR DAMAGE, BY THEFT OR OTHERWISE, OF ANY PROPERTY, WHICH MAY BE STORED IN OR UPON THE YARD AREA OF ANY LOT. THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT, FOR ANY DAMAGE OR INJURY CAUSED IN WHOLE OR IN PART BY THE ASSOCIATION'S FAILURE TO DISCHARGE ITS RESPONSIBILITIES UNDER THIS SECTION 7.6. NO DIMINUTION OR ABATEMENT OF ASSESSMENTS SHALL BE CLAIMED OR ALLOWED BY REASON OF ANY ALLEGED FAILURE OF THE ASSOCIATION TO TAKE SOME ACTION OR PERFORM SOME FUNCTION REQUIRED TO BE TAKEN OR PERFORMED BY THE ASSOCIATION UNDER THIS DECLARATION OR FOR INCONVENIENCE OR DISCOMFORT ARISING FROM THE MAKING OF REPAIRS OR IMPROVEMENTS WHICH ARE THE RESPONSIBILITY OF THE ASSOCIATION OR FROM ANY ACTION TAKEN BY THE ASSOCIATION TO COMPLY WITH APPLICABLE LAW.

7.6 Owner Responsibility. This Declaration contemplates that the Association will maintain some significant components of the Structures, Dwellings and Lots. Every Owner is responsible for the maintenance, repair and replacement of all Improvements located on such Owner's Lot, unless such Improvements are maintained by the Association as an Area of Common Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair and replacement of their Lot:

- (i) to maintain, repair, and replace the Structure and Dwelling located on the Owner's Lot and any Improvements which exclusively serve such Owner's Lot, except for the Area of Common Responsibility;
- (ii) to not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto;
- (iii) to be responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those

acts necessitate maintenance, repair, or replacement of Common Area or the property of another Owner, or any component of the Property for which the Association has maintenance and/or insurance responsibility;

(iv) to perform his or her responsibilities in such a manner so as not to unreasonably disturb other Owners and Residents;

(v) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(vi) to pay for the cost of repairing, replacing or cleaning up any item that is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and to become part of the Owner's next chargeable Assessment.

SEE ATTACHMENT 1
IF IT'S NOT AN AREA OF COMMON RESPONSIBILITY,
THEN IT'S THE OWNER'S INDIVIDUAL RESPONSIBILITY.

7.7 Disputes. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board, who shall delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Board in its sole and absolute discretion.

ARTICLE 8 INSURANCE

8.1 Property Insurance-Association. The Association shall comply with the following insurance requirements.

8.1.1 The Association will insure the Common Area and property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies. The Association will maintain a commercial general liability insurance policy covering the Common Area for bodily injury and property damage.

8.1.2 The Association shall obtain property insurance on the Dwellings insuring against all risks of physical loss commonly insured against, including fire and extended coverage, in a total amount to restore the Dwellings to their original as-built condition, being the condition of the Dwellings as originally constructed by Declarant or

Homebuilder, excluding improvements and betterments installed by an Owner and excluding furnishings and personal property of an Owner or their guests or invitees. Notwithstanding the foregoing, the Association may elect to obtain a property insurance policy that covers improvements and betterments installed by Owners. Each Owner is advised to contact the Owner's insurance agent to determine and obtain additional insurance coverage for improvements and betterments installed by the Owner and personal property of the Owner or their guest or invitees. The Association will make available, or provide to each Owner upon written request, a copy of the property insurance on the Dwellings obtained and maintained by the Association.

8.1.3 The Association shall keep a policy or policies of (i) liability insurance insuring the Board, officers and employees of the Association against any claims, losses, liabilities, damages or causes of action arising out of, or in connection with, or resulting from any act done or omission to act by any such person or entities, including but not limited to directors and officer's liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable, (ii) workmen's compensation as required by Applicable Law, and (iii) such other insurance as deemed necessary by the Board. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services.

8.1.4 Insurance policies carried pursuant to this *Section 8.1*, and to the extent available, must also provide that:

- (i) Each Owner is an insured person under the policy with respect to liability arising out of the person's membership in the Association;
- (ii) The insurer waives its right to subrogation under the policy against an Owner;
- (iii) No action or omission of an Owner, unless within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;
- (iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

8.1.5 A claim for any loss covered by the insurance required by this *Section 8.1* must be submitted by and adjusted with the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. The Association shall hold insurance proceeds in trust for the Owners and lienholders as their interests may appear. Subject to *Section 8.1.8*, the

proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged Dwellings or Structures, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored.

8.1.6 An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

8.1.7 The insurer issuing the policy may not cancel or refuse to renew it less than thirty (30) days after written notice of the proposed cancellation or nonrenewal has been mailed to the Association.

8.1.8 Except as provided by this *Section 8.1.8*, any portion of a Dwelling or Structure for which insurance is required to be obtained by the Association that is damaged or destroyed shall be promptly repaired or replaced by the Association unless replacement would be illegal under any Applicable Law. The cost of repair or replacement in excess of the insurance proceeds shall be a common expense of the Association, and the Board may levy an Assessment to pay the excess costs or expenses in accordance with *Article 6*. Any insurance proceeds attributable to a damaged Dwelling or Structure shall be used to restore the damaged Dwelling or Structure to a condition compatible with the remainder of the Dwellings or Structures. If a Dwelling or Structure is not repaired or replaced, the insurance proceeds attributable to Dwelling or Structure that are not rebuilt shall be distributed to the Owners of that Dwelling or Structure, or to their mortgagees, as their interests may appear.

8.1.9 The decision to repair or replace damaged Common Area shall be made by the Board, in its sole and absolute discretion, subject to the approval of the Declarant until expiration or termination of the Development Period.

8.1.10 Even if the Association and the Owners have adequate amounts of recommended and required coverage, the Property may experience a loss that is not covered by insurance. In such event, the Association is responsible for restoring the Common Area as a common expense of the Association, and the Owner is responsible for restoring the Owner's Dwelling or Structure.

8.1.11 The Association, the Board, and the Association's officers and managers, will not be liable for failure to obtain any coverage required by this *Article 8* or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

8.2 Owner's Responsibility for Insurance.

8.2.1 Insurance by Owners. The Owner of a Dwelling is encouraged to procure insurance covering the interior of the Dwelling, including replacement of interior improvements and betterment coverage to insure Improvements the Owner may make to the Dwelling, commonly referred to as HO-6 insurance or its equivalent. The Association does not insure Improvements and betterments made by the Owner to a Dwelling. The Owner of a Dwelling is also encouraged to obtain Loss Assessment coverage, as well as general liability insurance covering the Owner's Lot for bodily injury and property damage. Notwithstanding the foregoing, the Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners.

8.2.2 Association Does Not Insure. The Association does not insure an Owner or Resident's furnishings or personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Dwelling and on the Property, including furnishings, vehicles, and stored items. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON HIS FURNISHINGS OR PERSONAL BELONGINGS.

8.3 Owner's Liability For Insurance Deductible. If repair or restoration of a Dwelling, a Structure, Common Area or any Improvement thereon is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance. Notwithstanding the foregoing, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner, then the Board may levy an Individual Assessment against the Owner and his Lot for the amount of the deductible that is attributable to the act or omission.

ARTICLE 9 ARCHITECTURAL CONTROL COMMITTEE

Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 9.2.1* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 9* and need not be approved in advance herewith.

9.1 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

9.2 Architectural Control Committee.

9.2.1 Composition. The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration of twenty-four (24) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration of twenty-four (24) months after the expiration of the Development Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

9.2.2 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 9.2.3* to the ACC at the offices of Declarant or at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or

percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

Notwithstanding any provision to the contrary in this Declaration, the ACC may issue an approval to Homebuilders for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval of Improvements set forth in this Declaration

9.2.3 Design Guidelines. Declarant shall have the right, but shall have no obligation to, adopt Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to *Section 9.2.1*, will have the power, from time to time, to adopt (if not previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

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

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

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

9.2.7 Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred twenty (120) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this Section 9.2.7 and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

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

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

ARTICLE 10 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this *Article 10* apply to this Declaration and the Bylaws of the Association.

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

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

(ii) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or Resident which is not cured within sixty (60) days; or

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

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

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

ARTICLE 11 GENERAL PROVISIONS

11.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2073, 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 11.1* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants, as of the date this Declaration is Recorded, of Charles III, King of England.

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

11.3 Amendment. This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the

Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. No amendment may affect the Declarant's rights under the Declaration without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

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

11.5 Declarant Fine Authority. During the Development Period, Declarant may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or any guests, agents, family members, or invitees of an Owner or Resident. The Declarant uses fines to discourage violations of the Restrictions, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Declarant. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Declarant for enforcing the Restrictions. The Declarant may from time to time adopt a schedule of fines. If the violation of the Restrictions is ongoing or continuous, the fine may be assessed on a periodic basis (such as daily, monthly, or quarterly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis. An Owner is liable for fines levied by the Declarant for violations of the Restrictions by the Owner, a Resident, or any guests, agents, family members or invitees of the Owner or Resident. Regardless of who commits the violation, the Declarant will direct its communications to the Owner, although the Declarant may send copies of its notices to the Residents.

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

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

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

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

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

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

11.11.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 11.11.1*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

11.11.2 Repair Obligations. Any damage to or destruction of the Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the

cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

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

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

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

11.12 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property or Common Area in question has been removed from the provisions of this Declaration pursuant to *Section 14.4* below. This *Section 11.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

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

11.14 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the Declarant, the ACC, nor the Association shall have any obligation to relocate, prune, thin trees or perform other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

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

ARTICLE 12 EASEMENTS

12.1 Owner's Easement of Enjoyment. Every Owner is granted a right and easement of enjoyment over the Common Area and to use of Improvements thereon, subject to other rights and easements contained in the Restrictions. An Owner who does not occupy a Dwelling delegates this right of enjoyment to the Residents of his Dwelling, and is not entitled to use the Common Area.

12.2 Owner's Maintenance Easement. Each Owner is hereby granted an easement over and across any adjoining Dwelling and Lot and the Common Area to the extent reasonably necessary to maintain or reconstruct such Owner's Dwelling, subject to the consent of the Owner of the adjoining Lot and Dwelling and the consent of the Board as provided below, or the consent of the Board in the case of Common Area, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Lot and/or Dwelling or Common Area. Requests for entry into an adjoining Lot and/or Dwelling must be made to the Owner of such Lot in advance. The consent of the adjoining Lot Owner will not be unreasonably withheld; however, the adjoining Lot Owner may require that access to their Lot or Dwelling be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Requests for access to the Common Area for the purpose of maintaining or reconstructing any Dwelling must be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Area be limited to Monday through

Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction of a Dwelling. In addition, the Board may require that the Owner abide by additional reasonable Rules and Regulations with respect to use and protection of the Common Area during any such maintenance or reconstruction. If an Owner damages an adjoining Lot, Dwelling or Common Area in exercising the easement granted hereunder, the Owner will be required to restore the Lot, Dwelling or Common Area to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Lot or Dwelling.

Notwithstanding the foregoing, no Owner shall perform any work to any portion of his or her Dwelling or Lot if the work requires access to, over or through the Common Area or other Lots and/or Dwellings without the prior consent of the ACC except in case of an emergency. All such work may only be performed by a person who shall deliver to the ACC prior to commencement of such work, in a form satisfactory to the Board:

- (i) releases of the Board, the ACC, and the Association for all claims that such person may assert in connection with such work;
- (ii) indemnities of the Board, the ACC, and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Area, or other Lots and Dwellings;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

12.3 Owner's Ingress/Egress Easement. Each Owner is hereby granted a perpetual easement over the Property, including the Lots (but excluding any portion of the Lot enclosed by a private fence installed by the Declarant or approved by the ACC creating a private yard space for the Lot Owner), as may be reasonably required, for ingress to and egress from his Dwelling, but subject to any Rules and Regulations adopted from time to time by the Board.

12.4 Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by his Dwelling on any adjoining Lot, Dwelling or Common Area now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Dwelling, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands.

12.5 Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over each adjoining Lot and Dwelling as needed for the common benefit of the Property, or for the benefit of Dwellings in a Structure, or Dwellings that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Lot, each Owner: (i) acknowledges the necessity for cooperation in a townhome community; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Dwelling and Lot when needed by the Association to fulfill its duties; and (iv) agrees to try refraining from actions that interfere with the Association's maintenance and operation of the Property.

12.6 Association's Access, Maintenance and Landscape Easement. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access, maintenance and entry over, across, under, and through the Property, including without limitation, each Lot and each Dwelling and all Improvements thereon for the following purposes:

- (i) to perform inspections and/or maintenance that is permitted or required of the Association by the Restrictions or by Applicable Law;
- (ii) to perform maintenance that is permitted or required of the Owner by the Restrictions or by Applicable Law, if the Owner fails or refuses to perform such maintenance;
- (iii) to enforce the Restrictions;
- (iv) to exercise self-help remedies permitted by the Restrictions or by Applicable Law;
- (v) to respond to emergencies;
- (vi) to perform all Irrigation Maintenance Services and Landscape Services;
- (vii) to grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property; and
- (viii) to perform any and all functions or duties of the Association as permitted or required by the Restrictions or by Applicable Law.

12.7 Permitted Residential Encroachment Easement. Declarant or a Homebuilder may construct certain Improvements on a Lot that serve a Dwelling located on another Lot, which Improvements may include air conditioner condensing units and related pads, fencing, wiring, lines, conduits and devices (a "**Permitted Residential Encroachment**"). Each Owner is hereby granted an easement over and across the Lot on which the Permitted Residential Encroachment

has been constructed for: (i) the Permitted Residential Encroachment; and (ii) the reasonable maintenance and repair of any Permitted Residential Encroachment. In addition, the Board may require that Owners abide by reasonable rules with respect to use and protection of other Lots and Dwellings during any such maintenance. If an Owner damages another Lot or any Improvements constructed thereon in exercising the easement granted hereunder, the damaging Owner will be required to restore the damaged Lot or Improvements to the condition which existed prior to any such damage, at the damaging Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the damaging Owner is notified in writing of the damage by the Association or the Owner of the damaged Lot or Improvements.

12.8 Private Utility Lines. Utility lines from each meter located on a Structure that exclusively serve a Dwelling are private utility lines (each a "**Private Utility Line**" and collectively, the "**Private Utility Lines**") that the Owner of the Dwelling is required to maintain, repair and replace, if necessary. Neither the Association, Declarant, nor the utility company providing utility services will maintain, repair or replace Private Utility Lines. **EACH OWNER IS ADVISED THAT THE UTILITY LINES SERVING MORE THAN ONE DWELLING MAY BE LOCATED ON AN OWNER'S LOT. PRIOR TO DIGGING ON THE OWNER'S LOT, THE OWNER MUST DETERMINE THE LOCATION OF UTILITY LINES. FAILURE TO LOCATE UTILITY LINES BEFORE DIGGING MAY CAUSE SERIOUS INJURY TO PERSON OR PROPERTY. CALL 811 AT LEAST 48 HOURS BEFORE YOU DIG. SEE WWW.TEXAS811.ORG FOR FURTHER INFORMATION.**

EACH OWNER AND RESIDENT HEREBY RELEASES AND HOLDS HARMLESS DECLARANT AND THE ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF AN OWNER'S FAILURE MAINTAIN, REPAIR OR REPLACE A PRIVATE UTILITY LINE OR FAILURE TO TAKE THE PROPER PRECAUTIONS AND DETERMINE THE LOCATION OF ALL PRIVATE UTILITY LINES AT PRIOR TO DIGGING ON SUCH OWNER'S LOT.

Each Owner is hereby granted an easement over and across the yard space of each Lot with a Private Utility Line that exclusively serves such Owner's Dwelling to the extent reasonably necessary to maintain, repair and replace the Private Utility Line serving such Owner's Dwelling, subject (except in the case of an emergency threatening life or property) to the consent of the Owners of the Lots on which such Private Utility Line is located, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the Lots or Dwellings. Requests for entry into Lots subject to the easement granted herein must be made to the Owner of such Lot in advance. The consent of the Lot Owner will not be unreasonably withheld; however, the Lot Owner may require that access to its Lot be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance, repair or replacement activities. If an Owner damages a Dwelling or Lot in exercising the easement granted hereunder, the Owner will be required to restore the Dwelling or Lot to the condition which existed prior to any such damage, at such Owner's expense, within

a reasonable period of time not to exceed 30 days after the date the Owner is notified in writing of the damage by the Owner of the damaged Dwelling or Lot.

12.9 Proposed Trail Easement. It is anticipated that a hike and/or bike trail will be created on a portion of the Common Area within the Property (the “Trail”). Declarant reserves the right to grant the City a perpetual easement over the Property, as may be reasonably required, for the Trail, if any, for the benefit of the members of the Association, the public, and the City (the “Trail Easement”). The Association or the City will be responsible for maintaining the Trail in its natural condition and in accordance with Applicable Law. The costs incurred, or estimated to be incurred, if any, by the Association for maintenance of the Trail shall be discharged through Assessments. The Trail Easement will be subject to reasonable Rules and Regulations adopted by the Board or by the City.

ARTICLE 13 DEVELOPMENT EASEMENTS

13.1 Right of Ingress and Egress. Declarant, its agents, employees, designees, successors and assigns will have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area and the right to such other temporary uses of the Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance of, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any person or entity. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other person or entity may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption

in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

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

13.3 Utility Easements. Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Areas for utilities, and other purposes reasonably necessary for the proper operation of the Property. Declarant, during the Development Period, and the Association thereafter, may grant easements over and across the Lots and Common Areas to the extent necessary or required to provide utilities to Lots; provided, however, that such easements will not unreasonably interfere with the use of any Lot for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board and may not unreasonably interfere with the use of a Lot for residential purposes. Utilities may include, but are not limited to, water, sewer, irrigation, trash removal, electricity, gas, telephone, master or cable television, and security.

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

13.5 Landscape and Monument Sign Easement. Declarant hereby reserves for itself and the Association, an easement over and across the Property and the Common Area for the

installation, maintenance, repair, replacement, relocation, removal, and/or modification of landscaping, signs, and/or monument signs which serve the Property and the Common Area. Declarant will have the right, from time to time, to Record a written notice, which identifies those portions of the Property and the Common Area to which the easement reserved hereunder applies. Declarant may designate all or any portion of the easement areas reserved hereunder as Common Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any Dwelling, nor will it unreasonably interfere with the use of any Lot or Dwelling.

13.6 Easement to Inspect and Right to Correct. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any Structure, Improvement, Dwelling, or condition that may exist on any portion of the Property or the Common Area, and a perpetual nonexclusive easement of access throughout the Property or the Common Area to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a retaining wall may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with Applicable Law. This *Section 13.6* may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advance written and acknowledged 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 or the Common Area, including without limitation, each Lot, Structure, and Dwelling, and all Improvements thereon for the purposes contained in this *Section 13.6*.

ARTICLE 14 DEVELOPMENT RIGHTS

14.1 Development by Declarant. It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate additional Lots and Common Area and to subdivide all or any portion of the Property pursuant to the terms of this *Section 14.1*, subject to any limitations imposed on portions of the Property by any applicable Plat. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "Development Rights", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions set out in *Section 5.3*. These rights may be exercised with respect to any portions of the Property and 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 that area.

14.2 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property and the Common Area. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 14.2* until twenty-four (24) months after expiration or termination of the Development Period.

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

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

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

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

14.5 Notice of Plat Recordation. Declarant may, at any time and from time to time, file a notice of plat recordation (a “**Notice of Plat Recordation**”). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Declaration after portions of the Property is made subject to a Plat. Unless otherwise provide in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Declaration (without the necessity of complying with the withdrawal provisions set forth in *Section 14.4*). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Declaration.

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

ARTICLE 15 DISPUTE RESOLUTION

This Article 15 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Lots, Common Area, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Board and the Association’s management. Since disputes may have a direct effect on each Owner’s use and enjoyment of their Lot and the Common Area, this Article 15 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, the proposed arrangement between the Association and any inspection company who will prepare the Common Area Report (as defined below) or perform any other investigation or inspection of the Common Areas and/or Improvements related to the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

15.1 Introduction and Definitions. The Association, the Owners, Declarant, all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 15* by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots, Common Area or any Improvement within, serving or forming a part of the Property (individually, a “Party” and collectively, the “Parties”) agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. This *Article 15* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

15.1.1 “Claim” means:

(i) Claims relating to the rights and/or duties of Declarant, the Association, or the ACC, under the Restrictions.

(ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant’s control and administration of the Board, and any claim asserted against the ACC.

(iii) Claims relating to the design or construction of the Common Area or any Improvements located within or on the Property, including any Area of Common Responsibility.

(iv) Claims relating to any repair or alteration of the Common Area or any Improvements located within or on the Property.

15.1.2 “Claimant” means any Party having a Claim against any other Party.

15.1.3 “Respondent” means any Party against which a Claim has been asserted by a Claimant.

15.2 Mandatory Procedures. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 15.8* below, a Claim must be resolved by binding arbitration.

15.3 Claim Affecting Common Areas. In accordance with *Section 5.14* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 15.1*

above, relating to the design or construction of Improvements on a Lot (whether one or more), including any Area of Common Responsibility located on a Lot. Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. Each Lot Owner, by accepting an interest in or title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event the Association asserts a Claim related to the Common Area, as a precondition to providing the Notice defined in *Section 15.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 15*, or taking any other action to prosecute a Claim related to the Common Area, the Association must:

15.3.1 Obtain Owner Approval of Engagement.

The requirements related to Owner approval set forth in this Section 15.3.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm or attorney engaged by the Association to prosecute a Claim relating to the design or construction of the Common Area, and any financial arrangements between the Association and the Inspection Company (defined below) or a law firm and/or attorney and the Inspection Company. The engagement agreement between the Association, the law firm or attorney, and/or the Inspection Company may include requirements that the Association pay costs, fees, and expenses to the law firm or attorney or the Inspection Company which will be paid through Assessments levied against Owners. The financial agreement between the Association, the law firm or attorney and/or the Inspection Company may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association, the law firm or attorney, and/or the Inspection Company is terminated, the Association elects not to engage the law firm or attorney or Inspection Company to prosecute or assist with the Claim, or if the Association agrees to settle the Claim. In addition, the financial arrangement between the Association, the law firm or attorney, and/or the Inspection Company may include additional costs, expenses, and interest charges. These financial obligations can be significant. The Board may not engage or execute an agreement with a law firm or attorney to investigate or prosecute a Claim relating to the design or construction of the Common Area or engage or execute an agreement between the Association and a law firm or attorney for the purpose of preparing a Common Area Report or performing any other investigation or inspection of the Common Area for a Claim related to the design or construction of the Common Area unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 15.3.1. In addition, the Board may not execute an agreement with an Inspection Company to prepare the Common Area Report or perform any other investigation or inspection of the Common Areas for a Claim related to the design or construction of the Common Area, unless the Inspection Company and

the financial arrangements between the Association and the Inspection Company are approved by the Owners in accordance with this Section 15.3.1. For the purpose of the Owner approval required by this Section 15.3.1, an engagement, agreement or arrangement between a law firm or attorney and an Inspection Company, if such engagement, agreement or arrangement could result in any financial obligations to the Association, irrespective of whether the Association and law firm or attorney have entered into an engagement or other agreement to prosecute a Claim relating to the design or construction of the Common Area, must also be approved by the Owners in accordance with this Section 15.3.1. An engagement or agreement described in this paragraph is referred to herein as a "Claim Agreement".

Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to enter into a Claim Agreement if the Claim Agreement includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney and/or the Inspection Company, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the Claim Agreement or engages another firm or third party to assist with the Claim; (ii) if the Association elects not to enter into a Claim Agreement; (iii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iv) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney or the Inspection Company; and/or (v) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney or the Inspection Company. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association must approve the law firm and attorney who will prosecute the Claim and the Inspection Company who will prepare the Common Area Report or perform any other investigation or inspection of the Common Area for a Claim relating to the design or construction of the Common Area, and each Claim Agreement. All Claim Agreements must be in writing. The Board shall not have the authority to pay any costs, expenses, fees, or other charges to a law firm, attorney or the Inspection Company unless the Claim Agreement is in writing and approved by the Owners in accordance with this Section 15.3.1.

The approval of the Members required under this Section 15.3.1 must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney and/or the Inspection Company; (b) a copy of each Claim Agreement; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association under any Claim Agreement; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association under any Claim Agreement; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association

if the conditions for payment under any Claim Agreement occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm, attorney and/or the Inspection Company will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area or Improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots or the Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Area or Improvements affected by such testing and the estimated costs thereof, and an estimate of Assessments that may be levied against the Owners for such repairs. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed Claim Agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Claim and the Claim Agreement(s), the Board shall have the authority to engage the law firm and/or attorney, and the Inspection Company, and enter into the Claim Agreement approved by the Members.

15.3.2 Provide Notice of the Inspection.

As provided in *Section 15.3.3* below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

15.3.3 Obtain a Common Area Report.

The requirements related to the Common Area Report set forth in this Section 15.3.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.

Obtain a written independent third-party report for the Common Area (the "**Common Area Report**") from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Brazos County, Texas (the "**Inspection**

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

The Common Area Report must be obtained by the Association. The Common Area Report will not satisfy the requirements of this *Section 15.3.3* and is not an “independent” report if: (i) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (ii) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Association; (iii) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association’s agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Area Report. For avoidance of doubt, an “independent” report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Area Report is finalized and delivered to the Association.

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

15.3.5 Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Common Area Report; (b) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (c) correct any condition identified in the Common Area Report. As provided in *Section 13.7* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

15.3.6 Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association must obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in *Section 15.5*, initiate the mandatory dispute resolution procedures set forth in this *Article 15*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 15.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

15.4 Claim by Lot Owners – Improvements on Lots. Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to a Lot Owner by the Declarant or a Homebuilder relating to the design or construction of any Improvements located

on a Lot, then this *Article 15* will only apply to the extent that this *Article 15* is more restrictive than such Lot Owner's warranty, as determined in the sole discretion of the party that provided such warranty (either the Declarant or the Homebuilder). If a warranty has not been provided to a Lot Owner relating to the design or construction of any Improvements located on a Lot, then this *Article 15* will apply. Class action proceedings are prohibited, and no Lot 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. If a Lot Owner brings a Claim, as defined in *Section 15.1*, relating to the design or construction of any Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in *Section 15.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 15*, or taking any other action to prosecute a Claim, the Lot Owner must:

15.4.1 Provide Notice of the Inspection.

As provided in *Section 15.4.2* below, an Owner Improvement Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Owner Improvement Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Owner Improvement Report, the Improvements and areas of the Improvements to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

15.4.2 Obtain an Owner Improvement Report.

The requirements related to the Owner Improvement Report set forth in this Section 15.4.2 are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Owner Improvement Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Owner Improvement Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Owner Improvement Report is compromised.

Obtain a written independent third-party report for the Improvements (the "**Owner Improvement Report**") from an Inspection Company. The Owner Improvement Report must include: (i) a description with photographs of the Improvements subject to the Claim; (ii) a description of the present physical condition of the Improvements; (iii) a detailed description of any modifications, maintenance, or repairs to the Improvements performed by the Owner or a third-party, including any Respondent; (iv) specific and detailed recommendations regarding remediation and/or repair of the Improvements. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or

defective condition identified in the Owner Improvement Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Brazos County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Owner Improvement Report must be obtained by the Owner. The Owner Improvement Report will not satisfy the requirements of this *Section 15.4.2* and is not an "independent" report if: (i) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (ii) the costs and expenses for preparation of the Owner Improvement Report are not directly paid by the Owner to the Inspection Company no later than the date the Owner Improvement Report is finalized and delivered to the Owner; (iii) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner's agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Owner Improvement Report. For avoidance of doubt, an "independent" report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Owner Improvement Report is finalized and delivered to the Owner.

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

15.4.4 Right to Cure Defects and/or Deficiencies Noted on Owner Improvement Report. Commencing on the date the Owner Improvement Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Owner Improvement Report; (b) contact the Inspection Company for additional information necessary and required to clarify any information in the Owner Improvement Report; and (c) correct any condition identified in the Owner Improvement Report. As provided in *Section 13.6* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general

contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Owner Improvement Report.

15.4.5 Claims Pertaining to the Common Area. Pursuant to *Section 5.14* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, such Owner shall be required, since a Claim affecting the Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 15.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 15*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with *Section 15.3.2* (Provide Notice of Inspection), *Section 15.3.3* (Obtain a Common Area Report), *Section 15.3.4* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 15.3.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 15.3.6* (Owner Meeting and Approval), and *Section 15.5* (Notice).

15.5 Notice. Claimant must notify Respondent in writing of the Claim (the “Notice”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 15.5*. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 15.6* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 15.6*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 15.6* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred twenty (120) day period for mediation set forth in *Section 15.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 15.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area, a true and correct copy of the Common Area Report, and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide

assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved the law firm and attorney and the Claim Agreement in accordance with *Section 15.3.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 15.3.6* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas, the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Association and relates to the design or construction of Improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

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

15.7 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent may submit the Claim to mediation in accordance with this *Section 15.7*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 15.8*.

15.8 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 15.8*.

15.8.1 Governing Rules. If a Claim has not been resolved after mediation in accordance with *Section 15.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 15.8* and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA

Supplementary Procedures for Consumer Related Disputes are referred to herein as the “AAA Rules”). In the event of any inconsistency between the AAA Rules and this *Section 15.8*, this *Section 15.8* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
- (iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

15.8.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 15.8* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

15.8.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 15.8*.

15.8.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 15.8* and subject to *Section 15.9* below; **provided, however, attorney’s fees and costs may not be awarded by the arbitrator to either Claimant or Respondent.** In addition, for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas

Property Code, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. **In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.**

15.8.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Brazos County, Texas. Unless otherwise provided by this *Section 15.8*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

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

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

15.11 Period of Limitation.

15.11.1 For Actions by an Owner or Resident. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of

limitations for such Claim. In the event that a court of competent jurisdiction determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, the exclusive period of limitation for a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable statute of limitations for such Claim. In no event shall this *Section 15.11.1* be interpreted to extend any period of limitations.

15.11.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 15.11.2* be interpreted to extend any period of limitations.

15.12 Funding the Resolution of Claims. The Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 15*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

AMSTAD BLACKSTONE JV, LLC, a Texas
limited liability company

By: 

Printed Name: Jaseen Coats

Title: Partner

THE STATE OF TEXAS

§


COUNTY OF Brazos

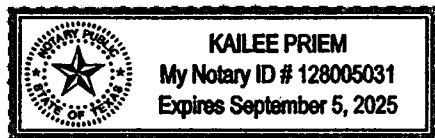
§

§

This instrument was acknowledged before me this 8th day of February, 2024
by Jaseen Coats the Partner of AMSTAD
BLACKSTONE JV, LLC, a Texas limited liability company, on behalf of said limited liability
company.

(SEAL)


Notary Public Signature



Signature Page

CHARLESTON MILLS TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

CONSENT OF LANDOWNER

The undersigned, being the fee title owner of the Property, executes this instrument solely for the purpose of evidencing its consent to the terms and provisions hereof.

AMSTAD BUTLER:

AMSTAD BUTLER IV, LLC
a Texas limited liability company

By: [Signature]

Printed Name: JOE WHITE

Title: PARTNER

THE STATE OF TEXAS

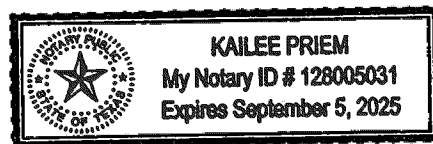
COUNTY OF Brazos

§
§
§

This instrument was acknowledged before me this 8th day of February, 2024,
by Joe White, as Partner of AMSTAD
BUTLER IV, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)

[Signature]
Notary Public Signature



Signature Page

CHARLESTON MILLS TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT "A"

PROPERTY

Lots 1 through 22, Block 1; and Lots 1 through 6, Block 4, Charleston Mill Subdivision, Phase 1A, a subdivision in Brazos County, Texas, according to the plat recorded in Document No. 2024-1519596 of the Official Public Records of Brazos County, Texas.

EXHIBIT "A"

CHARLESTON MILLS TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

ATTACHMENT 1**DESIGNATION OF AREA OF
COMMON RESPONSIBILITY AND
MAINTENANCE RESPONSIBILITY CHART**

“All aspects” includes maintenance, repair, and replacement, as needed.

COMPONENT OF PROPERTY	ASSOCIATION'S AREA OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY (SUBJECT TO APPROVAL BY ACC)
Exterior portions of Dwelling, unless otherwise listed in this <u>Attachment 1</u> .	Repair and placement as determined necessary or required by the Board in its sole and absolute discretion. The Association will have no obligation to provide cosmetic touch-ups to the exterior masonry portions and the Board's determination will be final. Exterior painting as determined necessary or required by the Board in its sole and absolute discretion. The Association will have no obligation to provide periodic touch-ups to the exterior paint and the Board's determination will be final.	All aspects.
Dwelling foundations, patio slabs, and A/C slabs.	None.	All aspects.
Concrete driveways and sidewalks.	None.	All aspects.

ATTACHMENT 1

CHARLESTON MILLS TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

COMPONENT OF PROPERTY	ASSOCIATION'S AREA OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY (SUBJECT TO APPROVAL BY ACC)
Roofing.	Replacement of the roof when the Board determines, in its sole and absolute discretion, that the roof needs to be replaced in its entirety. The Association will have no obligation to replace shingles, flashing, or other roof components unless associated with roof replacement as determined by the Board in its sole and absolute discretion. The board will not replace or repair any areas where there is a roof mounted attachment.	All other aspects.
Roof mounted attachments.	None.	All aspects.
Displays of street numbers on exterior doors or Dwelling surfaces.	All aspects.	None.
Gutters and downspouts.	All aspects.	None.
Grounds – Common Areas	All aspects.	None.
Landscaping and Irrigation – Yard Areas of Lots.	Landscape Maintenance and Irrigation Maintenance Services.	All other aspects.
Fences and gates around private yard areas.	All aspects.	None.
Exterior light fixtures on Dwelling.	All aspects.	None.
Skylights.	None.	All aspects.
Attics.	None.	All aspects.
Insulation & weather stripping.	None.	All aspects.
Dwelling interiors, including improvements, fixtures, partition walls & floors within Dwelling.	None.	All aspects.
Sheetrock in Dwellings (walls and ceilings) & treatments on walls.	None.	All aspects.

ATTACHMENT 1

CHARLESTON MILLS TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

COMPONENT OF PROPERTY	ASSOCIATION'S AREA OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY (SUBJECT TO APPROVAL BY ACC)
Maintenance of Improvements and/or non-grass portions of Yard Areas.	None.	All aspects.
Surface water drainage systems.	All aspects, including collection drains and drain systems.	None. Prohibited from changing the drainage system.
Windows, glass, doors (including appurtenant hardware), and garage doors.	Exterior painting of entry doors and garage doors only.	All other aspects.
Water, sewer, electrical lines & systems.	All other aspects unless maintained by a utility company or other regulatory authority.	All aspects for lines and systems located on and serving the Lots.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms on doors/windows, smoke/heat detectors, monitoring equipment.	None.	All aspects.
Any other component of a Dwelling and/or Lot not specifically listed in this <u>Attachment 1.</u>	None.	All aspects.

NOTE 1: The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement to have such a component.

NOTE 2: If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner.

ATTACHMENT 1

CHARLESTON MILLS TOWNHOMES DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**Brazos County
Karen McQueen
County Clerk**

Instrument Number: 1521426

Volume : 19044

ERecordings - Real Property

Recorded On: February 08, 2024 03:40 PM

Number of Pages: 99

" Examined and Charged as Follows: "

Total Recording: \$417.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

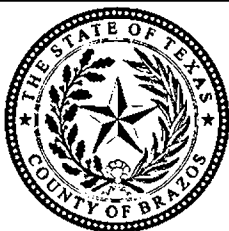
File Information:

Document Number: 1521426
Receipt Number: 20240208000099
Recorded Date/Time: February 08, 2024 03:40 PM
User: Thao C
Station: CCLERK02

Record and Return To:

Simplifile
5072 NORTH 300 WEST

PROVO UT 84604



STATE OF TEXAS
COUNTY OF BRAZOS

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Public Records of Brazos County, Texas.

Karen McQueen
County Clerk
Brazos County, TX