

Escondido Lubbock LLC
County

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

ESCONDIDO CROSSING TOWNHOMES

[LUBBOCK COUNTY, TEXAS]

Declarant: ESCONDIDO LUBBOCK, LLC, a Texas limited liability company

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ESCONDIDO CROSSING TOWNHOMES**

This Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made by **ESCONDIDO LUBBOCK, LLC**, a Texas limited liability company (the "**Declarant**"), and is as follows:

RECITALS:

A. This Declaration is filed with respect to *Escondido Crossing*, Lots 158-245 and Lots 300-322, and Tracts "B" and "C", a subdivision located in the City of Lubbock, Lubbock County, Texas (the "**Subdivision**"), according to the map or plat recorded as County Clerk's File No. 2022038605 in the Official Public Records of Lubbock County, Texas (the "**Property**"). Declarant is the owner of the Property.

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

C. By the Recording of this Declaration, Declarant serves notice that the Property will be subjected to the terms and provisions of this Declaration.

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

**ARTICLE 1
DEFINITIONS**

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

"Affiliate" means any Person: (a) directly or indirectly through one or more intermediaries controlling, controlled by, or under direct or indirect common control with or managed by, an Owner; or (b) related to another Owner within the second degree of consanguinity. A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power (i) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners or the equivalent; or (ii) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Applicable Law" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Property in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision, including but not limited to, all ordinances and any other applicable building codes, zoning restrictions and permits

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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. Notwithstanding the foregoing, the RCLA shall be an Applicable Law and shall apply to each and every Lot, Dwelling, Improvement and Structure, regardless of the definition of the term "Residence" as used in the RCLA.

"Architectural Reviewer" means Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the architectural control committee appointed by the Board.

"Area of Common Responsibility" means those portions of a Structure, Dwelling, or Lot 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 **Exhibit "A."**

"Assessment" or **"Assessments"** means all assessments imposed by the Association under this Declaration.

"Assessment Unit" has the meaning set forth in *Section 8.9.2*.

"Association" means **ESCONDIDO CROSSING TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**, a Texas non-profit corporation, which has been created by the Declarant to exercise the authority and assume the powers specified in *Article 6* and elsewhere in this Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

"Association Documents" means, collectively, this Declaration, the Certificate, the Bylaws, the Design Guidelines, the Rules and all amendments, modifications and supplements to the foregoing.

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

"Bylaws" means the bylaws of the Association as adopted and as amended from time to time 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.

"Claim(s)" means, collectively, all claims, demands, suits, proceedings, actions, causes of action (whether civil, criminal, administrative or investigative and including, without limitation, causes of action in tort), losses, penalties, fines, damages, liabilities, obligations, costs, and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, including but not limited to, cost recovery, contribution and other claims.

"City" means the City of Lubbock, Texas.

"Common Area" means Tracts "B" and "C" and any other 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. Property or facilities held by the Declarant for the benefit of the Association or its Members will expressly include any portion of the Property designated by Plat to be maintained by the Association and any area designated as "Open Space" on a Plat. If requested by the Declarant, the Association will execute any instrument or document required by the City to evidence the Association's acceptance of all or any portion of the Property for maintenance. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the filing of such designation, the portion of the Property identified therein will be considered Common Area for the purpose of this Covenant. 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, their guests, tenants and invitees, and members of the public.

"Community Systems" means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, 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 ESCONDIDO LUBBOCK, LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights ESCONDIDO LUBBOCK, LLC, a Texas limited liability company, as Declarant, must be expressly set forth in writing and Recorded. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Declaration.

"Development Period" means the period of time beginning on the date when this Declaration has been Recorded and ending ten (10) years after Declarant and its affiliates no longer owns all or any portion of the Property, 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.

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

"Gross Negligence" means a conscious and voluntary disregard of the need to use reasonable care which is likely to cause foreseeable grave injury or harm to persons, property, or both.

"Homebuilder" means an Owner (other than the Declarant) who acquires a Lot for the construction of a single family Dwelling for resale or lease to a third party; provided, however, a party who personally occupies a Dwelling it has constructed shall not be treated as a Homebuilder.

"Improvement" means all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, alteration of drainage flow, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature,

including, but not limited to, buildings, outbuildings, storage sheds, 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, 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, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"Lot" means any portion of the Property 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 6.5.8*.

"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).

"Negligence" means ACTIVE, PASSIVE, SOLE AND/OR CONTRIBUTORY NEGLIGENCE, PERFORMANCE AND NON-PERFORMANCE, BUT DOES NOT INCLUDE GROSS NEGLIGENCE.

"Non-Standard Improvements" means any Improvements located in a Dwelling which are not standard improvements constructed by the Homebuilder in connection with the initial construction of the Dwelling (or replacements of standard improvements constructed by the Homebuilder in connection with the initial construction of the Dwelling).

"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. Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

"Owner Group" means an Owner and all Affiliates of such Owner.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership or other entity.

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

"Property" means The Overlook, Lots 1-28, a portion of a subdivision located in Lubbock County, Texas, according to the map or plat recorded or to be recorded in the Official Public Records of Lubbock County, Texas, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 15.4* and *Section 15.5* of this Declaration.

"**RCLA**" means the Residential Construction Liability Act, Chapter 27 of the Texas Property Code.

"**Record, Recordation, Recorded, and Recording**" means recorded or to be recorded in the Official Public Records of Lubbock 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, Rules and Regulations, or in any other rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. See *Table 1* for a summary of the Restrictions.

"**Rules**" means any instrument, however denominated, which is adopted by the Board or the Declarant during the Development Period for the regulation and management of the Property or the Common Area, including any amendments to those instruments.

"**Service Area**" means a group of Lots designated as a separate Service Area pursuant to this Declaration for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 3.4*.

"**Service Area Assessments**" means assessments levied against the Lots in a particular Service Area to fund Service Area Expenses, as described in *Section 8.6*.

"**Service Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.

"**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.

TABLE 1: RESTRICTIONS	
Declaration (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of 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.
Design Guidelines (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto. The Declarant shall have no obligation to adopt the Design Guidelines.
Rules (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property or the Common Area.

Board Resolutions (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners, and the Association.
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**ARTICLE 2
EASEMENTS**

2.1 **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the Common Area and the 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.

2.2 **Owner's Maintenance Easement.** Each Owner is hereby granted an easement over and across any adjoining Dwelling, Lot or 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 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 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 or reconstruction activities. 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 activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Area during any such maintenance or reconstruction. If an Owner damages an adjoining Dwelling or Common Area in exercising the easement granted hereunder, the Owner will be required to restore the 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 Dwelling.

Notwithstanding the foregoing, no Owner shall perform any work to any portion of his 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 Architectural Reviewer except in case of an emergency. All such work may only be performed by a Person who shall deliver to the Architectural Reviewer prior to commencement of such work, in form satisfactory to the Board:

- (i) releases of the Board, the Architectural Reviewer, and the Association for all Claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board, the Architectural Reviewer, 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.

2.3 **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 Architectural Reviewer 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.

2.4 **Owner's Encroachment Easement.** Every Owner of a Lot is granted an easement for the existence and continuance of any encroachment by his Dwelling on any adjoining Lot, the Dwelling on such adjoining Lot 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 constructed on a Lot, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the improvement stands.

2.5 **Easement Of Cooperative Support.** Each Owner of a Lot is granted an easement of cooperative support over each adjoining Lot and the Dwelling constructed on such adjoining Lot as needed for the common benefit of the Property, or for the benefit of Dwellings in a Structure, or Dwellings on such adjoining Lots 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; (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.

2.6 **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 perform maintenance and repair, and to regulate use of all private streets, alleys, and driveways located within the Property;
- (iv) to enforce the Restrictions;
- (v) to exercise self-help remedies permitted by the Restrictions or by Applicable Law;
- (vi) to respond to emergencies;
- (vii) to maintain landscaping and make, erect or install non-structural improvements (such as fences, irrigation systems, lighting systems, walking or biking paths, and the like) in or on those portions of each Owner's Lot.

- (viii) to grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property; and
- (ix) to perform any and all functions or duties of the Association as permitted or required by the Restrictions or by Applicable Law.

2.7 **Utility Easement.** Declarant hereby establishes and reserves: (i) a non-exclusive easement over and across each open space, landscape or recreational lot within the Property for public and private utilities necessary or required to serve the Property or the individual Dwellings located thereon; (ii) a non-exclusive electric utility easement over and across each Lot to the extent necessary or required to provide utility service to Dwellings; provided, however, that such easement will not unreasonably interfere with the use of any Dwelling for residential purposes; and (iii) an easement on the exterior elevation of each Structure (including necessary penetrations into the Structure) for the purpose of installation, maintenance, repair and operation of meters, panels, lines and related facilities or appurtenances necessary or required to provide electric service to each Structure and the Dwellings located therein. In addition, Declarant, during the Development Period, and the Board thereafter, may grant further easements over and across the Structure, Lots or Common Areas to the extent necessary or required to provide utilities to Dwellings and/or Lots; provided, however, that such easements will not unreasonably interfere with the use of any Dwelling for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property, including the Structure and Lots, 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. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, electronic communications and internet, cable television, and security.

2.8 **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, the Declarant, nor the utility company providing utility services will maintain, repair or replace Private Utility Lines. **EACH OWNER IS ADVISED THAT THE PRIVATE UTILITY LINES ARE LOCATED IN THE YARD AREA OF THE LOTS ON WHICH A STRUCTURE HAS BEEN ERECTED AND 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 THE DECLARANT AND THE ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY CLAIMS 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 OR PRIOR TO DIGGING ON SUCH OWNER'S LOT, EVEN IF DUE TO THE NEGLIGENCE OF THE RELEASED PARTY.

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 thirty (30) days after the date the Owner is notified in writing of the damage by the Owner of the damaged Dwelling or Lot.

2.9 **Party Walls.** A common wall located on or near the dividing line between two (2) Lots and separating two (2) Dwellings constitutes a "**Party Wall**" and, to the extent not inconsistent with the provisions of this *Section 2.9*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

2.9.1 **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 2.9*. 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.

2.9.2 **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 Architectural Reviewer in accordance with *Article 11* of this Declaration.

2.9.3 **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 Lubbock County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner's successors in title.

2.9.4 **Alterations.** The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot 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 Architectural Reviewer.

2.9.5 **Dispute Resolution.** In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section (the "**Dispute**"), the parties shall submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board shall appoint a mediator. If the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration. Either party may initiate the

arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator. The decision of the arbitrator shall be binding upon the parties and shall be in lieu of any right of legal action that either party may have against the other. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable. If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for the cost of implementing the decision and all costs and expenses incurred by the Association in conjunction therewith. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1.50%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

2.10 Easement to Inspect and Right To Correct. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for 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, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant 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 may not be construed to create a duty for Declarant, and may not be amended without Declarant's 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, including without limitation, each Lot, Structure, and Dwelling, and all Improvements thereon for the purposes contained in this Section.

2.11 Fire Safety. No Person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property or Common Area, or interfere with the maintenance and/or testing of same by Persons authorized by the Association or by public officials.

ARTICLE 3 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:

3.1 General.

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

3.1.2 Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not

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a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction or ordinance or regulation which may be applicable to a Lot located within the Property. Each Owner is advised to review all Applicable Law, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Architectural Reviewer for approval. Furthermore, approval by the Architectural Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of any Applicable Law, requirements, regulations, or encumbrances which may affect the Owner's Lot. The Association, each Owner, Resident, or other user of any portion of the Property must comply with the Restrictions and Applicable Law, as supplemented, modified or amended from time to time. Certain encumbrances may benefit parties whose interests are not addressed by the Architectural Reviewer.

3.2 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property or the Common Area, whether drafted or produced by Declarant or any Homebuilder, (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 statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, proposed or planned Improvements in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property or the Common Area will likely extend over many years, and agrees that such Owner and 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.

3.3 Single-Family Residential Use. The Lots shall be used solely for private single family residential purposes. 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.

Notwithstanding the foregoing, 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 all 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 the Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity

undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a 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.

3.4 Provision of Benefits and Services to Service Areas.

341 Designation by Declarant. Declarant, in any Recorded written notice, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Property. Declarant may unilaterally amend any Recorded written notice to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

342 Petition by Owners. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). Notwithstanding the foregoing, until expiration or termination of the Development Period, the Declarant shall have the right to withhold its consent for any petition to designate Lots as a Service Area in Declarant's sole and absolute discretion. If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

343 The Association may, from time to time, include additional components of Improvements or Lots or remove components of Improvements or Lots from a Service Area; however, unless otherwise approved by the Declarant during the Development Period, in no event may the Association at any time remove from any Service Area components of any Improvements or Lots previously designated as a Service Area under this Declaration. During the Development Period, any addition to a Service Area must also be approved by the Declarant. After expiration or termination of the Development Period, any addition or removal of components of Improvements or Lots must be approved by two-thirds (2/3) of the total number of votes held by all Lots within a Service Area. During the Development Period, the Service Area may be modified or amended by the Declarant, acting alone. Any modification or amendment to the Service Area must be recorded in the Official Public Records of Lubbock County, Texas.

3.5 Rentals. Nothing in this Declaration will prevent the rental of any Lot and the
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Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for terms of at least six (6) months; and (ii) no portion of a Lot (other than the entire Lot) may be rented. In addition, it is contemplated that the Dwellings constructed in the Subdivision shall primarily be Owner occupied. Consequently, no Owner or member of any Owner Group may directly or indirectly lease or rent more than one Dwelling in the Subdivision to any Person other than another member of such Owner Group without the consent of the Declarant during the Development Period, or the consent of the Association after the Development Period has ended. The foregoing restrictions shall not apply to any Lot owned by any Homebuilder, and any such Homebuilder shall be free to execute leases of Lots owned by such Homebuilder in its sole and absolute discretion. All leases shall be in writing. The Owner must provide to its lessee copies of the Restrictions. 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. Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions, provided such tenant is provided with no less than fifteen (15) days' notice and opportunity to cure such default pursuant to Section 7.2.6 herein below. Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Lot to the Association for any amount which is required by the Association to effect such repairs or to pay any Claim for any violation of, or non-compliance with, the provisions of the Restrictions; however, such tenant shall be solely and exclusively liable for any other Claim for personal injury, property damage, or any other Claim, made by any party whatsoever, caused by the acts or omissions of such tenant. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions of same shall be deemed expressly incorporated into any lease of a Lot. This *Section 3.5* shall also apply to assignments and renewals of leases.

3.6 Subdividing/ Combining Lots. No Lot shall be combined, 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 Architectural Reviewer; 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 Architectural Reviewer. No Owner shall initiate or support any proposed zoning change affecting the Property or any portion thereof without first obtaining the prior written consent of Declarant during the Development Period, and thereafter, the Architectural Reviewer.

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

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

3.9 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 the Declarant.

3.10 Noise. No exterior speakers, horns, whistles, bells, or other sound devices shall be located, used, or placed on any portion of the Property, except for: (a) security or fire protection devices; and (b) speakers and other sound devices installed by Declarant or the Association on any Common Area. Notwithstanding the foregoing, 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. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

3.11 Clotheslines: Window Air Conditioners. No clotheslines and no outdoor clothes drying or hanging shall be permitted within the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Dwelling, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of Dwellings, or any part thereof, nor relocated or extended, without the prior written consent of the Architectural Reviewer. Window air conditioners are prohibited.

3.12 Intentionally Omitted.

3.13 Rubbish and Debris. 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, except that such containers may be placed in the designated pick up location on the day of collection only. 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.

3.14 Maintenance. Except for the maintenance responsibilities assigned to the Association pursuant to *Article 9*, the Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon, and the landscaping between the boundary of such Owner's Lot and the curb of any adjacent right of way, street or alley (unless the responsibility for maintenance of such areas between the boundary of the Lot and the curb is performed by the Association) in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section 3.14* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Board, in its sole discretion (except with respect to maintenance responsibilities assigned to the Association pursuant to *Article 9*):

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering of lawn and landscaping.

- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vii) Keeping planting beds free of turf grass.
- (viii) Keeping sidewalks and driveways in good repair.
- (ix) Complying with Applicable Law.
- (x) Repainting of Improvements.
- (xi) Repair of exterior damage, and wear and tear to Improvements.

If, at any time, and from time to time, an Owner shall fail to take any action which it is required to take pursuant to this Section 3.14, the Association shall have the authority and right to access such Lot, or direct a third (3rd) party service to access such Lot, for the purpose of taking such action, and shall have the authority and right to assess an Individual Assessment against the Owner of such Lot for the reasonable costs incurred in therewith. The maintenance obligations set forth in this Section 3.14 shall not apply to any Lot during periods when a Dwelling is being constructed on such Lot by a Homebuilder.

3.15 Intentionally Omitted.

3.16 Antenna. Except as expressly provided below, no exterior radio or television antenna or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the Architectural Reviewer; 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 Architectural Reviewer, 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.

3.17 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, easements, setbacks, 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 Architectural Reviewer are as follows:

- (i) Attached to the back of the principal single-family Dwelling constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- (ii) Attached to the side of the principal single-family Dwelling constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The Architectural Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

3.18 Intentionally Omitted.

3.19 Intentionally Omitted.

3.20 Intentionally Omitted.

3.21 Intentionally Omitted.

3.22 Intentionally Omitted.

3.23 Intentionally Omitted.

3.24 Intentionally Omitted.

3.25 Intentionally Omitted.

3.26 Intentionally Omitted.

3.27 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 7.1* 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 Architectural Reviewer or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1.50%) 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 RELEASES AND AGREES TO HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND

AGENTS FROM ANY CLAIM INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 3.27* (INCLUDING BUT NOT LIMITED TO, ANY CLAIM ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), BUT NOT TO THE EXTENT SUCH CLAIM WAS CAUSED BY THE ASSOCIATION'S GROSS NEGLIGENCE.

3.28 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. 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 *Article 8* of this Declaration.

3.29 Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Common Area may include, now or in the future, one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property and are inspected, maintained and administered by the Association in accordance with Applicable Law. Access to these facilities and ponds is limited to persons engaged by the Association to periodically maintain such facilities. Each 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.

3.30 Decorations and Lighting. No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the Dwelling or on the front yard or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the Architectural Reviewer. Customary seasonal decorations for holidays are permitted without approval by the Architectural Reviewer 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 Dwellings 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 Architectural Reviewer.

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

3.32 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 Architectural Reviewer.

3.33 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.

3.34 Utilities. Each residence situated on a Lot shall be connected to the public water and sanitary sewer lines, and shall be connected to the gas service provided to the Property, if any. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be allowed during building construction. The use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except on portable gas grills or heaters) is prohibited. Except as to street lighting (if any) all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground (except meters, transformers, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities). Electric utility transformers may be installed only in locations designated on the Plat for such purpose or otherwise approved in writing by the Architectural Reviewer, and all Improvements on a Lot on which an electric transformer pad easement is located as shown on the Plat must be installed in compliance with all electric company guidelines for separations from pad-mounted transformers.

ARTICLE 4

CONSTRUCTION RESTRICTIONS

4.1 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 Architectural Reviewer in accordance with *Article 11* of this Declaration.

4.2 Fences; Sidewalks. All fences and walls shall comply with all Applicable Law. Unless otherwise approved by the Architectural Reviewer, 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 Architectural Reviewer will have the sole discretion to determine the front elevation of the Dwelling for the purpose of this *Section 4.2*. All fences shall be in conformance with the Design Guidelines, unless otherwise approved in advance by the Architectural Reviewer. Perimeter fences may not exceed six (6) feet in height unless otherwise approved by the Architectural Reviewer. No chain-link, metal cloth or agricultural fences may be installed or maintained on a Lot. The Association, at its sole discretion, may maintain perimeter fences constructed on corner Lots on streets facing main public streets or highways. Declarant shall not be liable for repairs or maintenance of fencing constructed on any Lot.

4.3 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 Architectural Reviewer. 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.

4.4 Compliance with Setbacks. 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 or as required by Applicable Law, and no building shall be located on any utility easements. The Architectural Reviewer may require additional setbacks in conjunction with the review and approval of proposed Improvements in accordance with *Article 11* of the Declaration.

ARTICLE 5

INTENTIONALLY OMITTED

ARTICLE 6

ESCONDIDO CROSSING TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

6.1 Organization. The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. 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.

6.2 Membership.

6.2.1 **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: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, email address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name, phone number, and email address of any Resident other than the Owner.

6.2.2 **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 in the sole and absolute discretion of the Declarant or Board, as applicable;
- (ii) The right of Declarant to grant additional Lots use rights in and to the Common Area in a subsequently filed Recorded instrument;
- (iii) The right of the Association to suspend the Member's rights to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;
- (iv) The right of the Declarant (during the Development Period) and the Board thereafter to grant easements or licenses over and across the Common Area or to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;
- (v) With the advance written approval of the Declarant during the Development Period, the right of the Association 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 Association may determine except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

6.3 Governance. 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. No less than one-third (1/3) of the members of the Board shall be Homebuilders until such a time as all Lots have been sold to third parties other than Homebuilder(s) or unless no Homebuilder desires to serve on the Board. **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. No later than the tenth (10th) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board must hold a meeting of Members of the Association for the purpose of electing one-third (1/3rd) 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, but not the obligation, to appoint and remove two-thirds (2/3) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.**

6.4 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 6.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

- (a) There shall be apportioned to each Lot one (1) vote, such vote to be exercised in accordance with *Section 6.4(c)* herein below.
- (b) Declarant may cast votes allocated to the Declarant pursuant to this Section and shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Property as a pre-condition to exercising such vote.
- (c) When more than one Person or entity owns a portion of the fee simple interest in any Lot, all such Persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the Person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 6.4*.

6.5 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 and obligations at all times:

6.5.1 Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules and Bylaws 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 any modifications to existing Rules, or the Bylaws proposed by the Board, must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

6.5.2 Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions, but at a minimum, no less than the coverages required under *Section 10.1* or as otherwise set forth herein.

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

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

6.5.5 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 8* 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. Declarant hereby agrees and acknowledges that due to the nature of Claims by a Homebuilder against an Owner, such Homebuilder's Claims may be subject to certain provisions of the Texas Property Code, subjecting pursuit of such Claims to additional requirements. As such, neither Declarant, nor the Association, nor the Board may enforce these Restrictions or pursue any Claim a Homebuilder may have on behalf of such Homebuilder without the express written consent of such Homebuilder. 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 RELEASES AND AGREES TO HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY CLAIM INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 6.5.5 (INCLUDING ANY CLAIM ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), BUT NOT TO THE EXTENT SUCH CLAIM IS CAUSED BY THE GROSS NEGLIGENCE OF THE ASSOCIATION.**

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

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

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

Nothing set forth above, however, 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 6.5.7* must be approved in advance and in writing by the Declarant.

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

6.5.9 Property Services. To pay for water, sewer, garbage removal, 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.

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

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

6.5.12 Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

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

6.5.14 Allocation of Votes. To determine votes when permitted pursuant to Section 6.4 above.

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

6.6 Acceptance of Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, the general public, and/or other landowners, and the Association will accept such transfers and conveyances. The Association shall accept the Common Area in its current conditions on an "AS-IS, WHERE IS," basis subject to all existing faults, and the Declarant shall have no liability for any defects therein, EVEN IF CAUSED BY THE NEGLIGENCE OF DECLARANT. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Common Area by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association, as determined in the sole and absolute discretion of the Declarant.

6.7 Administration of Common Area. The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law, 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.

6.8 Indemnification.

(i) **Indemnification to Individuals Acting for the Association**. 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 hold harmless,

defend and indemnify any Person who was, or is, a party, or is threatened to be made a party to any Claim asserted against such Person by reason of the fact that he or she is, or was, a director, officer, committee member, employee, servant or agent of the Association, including attorneys' fees incurred by such Person in connection with such Claim.

(ii) **Indemnification to Declarant.** To the fullest extent permitted by Applicable Law, but without duplication of (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will hold harmless, defend and indemnify the Declarant of, from and against any and all Claims asserted against Declarant as a result of or in connection with any improvements made by Declarant to the subject Property or Subdivision, or any other act, error or omission of Declarant, INCLUDING BUT NOT LIMITED TO: (A) CLAIMS CAUSED BY THE NEGLIGENCE OF DECLARANT; AND (B) SUBROGATION CLAIMS ASSERTED BY ANY INSURANCE COMPANY OR OTHER PARTY AGAINST DECLARANT IN CONNECTION THEREWITH.

(iii) **Indemnification to Homebuilders.** 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 hold harmless, defend and indemnify any Homebuilder who was, or is, a party, or is threatened to be made a party to any Claim asserted against such Homebuilder as a result of or in connection with any act, error, or omission of Declarant or the Association, INCLUDING BUT NOT LIMITED TO: (A) CLAIMS CAUSED BY THE NEGLIGENCE OF DECLARANT OR THE ASSOCIATION; AND (B) SUBROGATION CLAIMS ASSERTED BY ANY INSURANCE COMPANY OR OTHER PARTY AGAINST DECLARANT OR THE ASSOCIATION IN CONNECTION THEREWITH.

6.9 Insurance. The Board shall 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.

6.10 Intentionally Omitted.

6.11 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. If approved by the Board, 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 the Board. 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.

6.12 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant or any Homebuilder, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant or any Homebuilder, or which would be detrimental to the sale of Lots owned by Declarant or any Homebuilder. 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.

ARTICLE 7
ENFORCING THE RESTRICTIONS

7.1 Fines and Damages Assessment.

7.1.1 Board Assessment. Subject to Applicable Law, the Board may assess fines against an Owner that is not a Homebuilder for violations of the Restrictions which have been committed by an Owner, a Resident, or an Owner's or Resident's guests, agents or invitees pursuant to the policies and procedures established by the Board. Any fine and/or charge levied in accordance with this *Section 7.1* 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.

7.1.2 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 8.11* and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 8.1.2* of this Declaration. Unless otherwise provided in this *Section 7.1*, the fine and/or damage charge will be considered an Assessment for the purpose of *Article 8* and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 8*.

7.2 Remedies. The remedies provided in this Article for breach of the Restrictions are cumulative and not exclusive. In addition to other rights and remedies provided by the Restrictions and by Applicable Law, the Association has the following rights to enforce the Restrictions:

7.2.1 Nuisance. 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.

7.2.2 Fine. The Association may levy reasonable charges, as an individual Assessment, against an Owner and the Owner's Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Restrictions. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.

7.2.3 Suspension. The Association may suspend the right of Owners and Residents to use Common Area (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Restrictions. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.

7.2.4 Self-Help. The Association has the right to enter a Lot, Structure, and/or Dwelling to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, Person, vehicle, or condition that violates the Restrictions. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may

levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help.

7.2.5 **Suit.** Failure to comply with the Restrictions will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

7.2.6 **Eviction.** The Association has the right to enter a Lot, Structure, and/or Dwelling to evict or remove any tenant that violates the Restrictions in the event such tenant has failed to cure, or failed to diligently undertake efforts to cure, such violation within fifteen (15) days of such tenant's receipt of written notice of such violation from the Association.

7.3 **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Restrictions, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

7.4 **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Restrictions. Failure by the Association or by any Owner to enforce a provision of the Restrictions is not a waiver of the right to do so thereafter. Notwithstanding the foregoing, however, neither Declarant, the Association, or any Owner shall have the right to enforce any restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Restrictions with respect to any Lot owned by a Homebuilder or upon which such Homebuilder is constructing Improvements until such Lot is sold or leased to a third party.

7.5 **Recovery of Costs.** The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Restrictions or the restraint of violations of the Restrictions, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

7.6 **Right of Action by Owners; Release.** Unless expressly set forth herein to the contrary, each Owner hereby releases, acquits and forever discharges the Association, and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Dwellings, or the Common Areas. This release shall release and forever discharge the Association and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns, from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

7.7 **Right of Action by Association.** The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of the Association;
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behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 16.1* below, relating to the design or construction of a Dwelling (whether one or more). This *Section 7.7* 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.

ARTICLE 8 ASSESSMENTS

8.1 Assessments.

8.1.1 Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 8* will be levied against each Lot in amounts determined pursuant to *Section 8.9* below. The total amount of Assessments will be determined by the Board pursuant to *Section 8.3, 8.4, 8.5, 8.6, 8.7, and 8.8.*

8.1.2 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.

8.1.3 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, if so approved by the Board, as a loan. 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.

8.2 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 the Applicable Law.

8.3 Regular Annual 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 all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions; and (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and giving due consideration to any expected income and any surplus from the prior year's fund; and which (iii) excludes the operation, maintenance, repair and management costs and expenses associated with any Service Area. Regular Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by any Owner, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Assessments will be due and payable to the Association annually on or before

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the first day of the month, at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.

8.4 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessments will be at the 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 or any Dwelling (other than Non-Standard Improvements therein) required to be restored by the Association. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of Dwellings will be levied against all Owners of such Dwellings based on their respective Assessment Units.

8.5 Intentionally Omitted.

8.6 Service Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year which may include a reasonable provision for contingencies and an appropriate replacement reserve. The total amount of assessments levied to pay for Service Area Expenses for each Service Area (the "**Service Area Assessments**") will be allocated either: (i) equally; (ii) based on Assessment Units; or (iii) based on the benefit received among all Lots within the benefited Service Area. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

8.7 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. Individual Assessments shall be due and payable by the Owner to the Association within fifteen (15) days after the date notice of the Individual Assessments is delivered by or on behalf of the Association to the Owner.

8.8 Intentionally Omitted.

8.9 Amount of Assessment.

8.9.1 Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in *Section 8.9.2* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 8.3* and *Section 8.4* shall be levied uniformly against each Assessment Unit allocated to a Lot. Service Area Assessments levied pursuant to

Section 8.6 will be levied either: (i) equally; (ii) based on Assessment Units allocated to the Lots within the Service Area; or (iii) based on the benefit received among all Lots within the Service Area to which such Service Area Assessment relates.

8.9.2 Assessment Unit. Each Lot shall constitute one "Assessment Unit" unless otherwise provided in *Section 8.9.3 and 8.9.4*.

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

8.9.4 Other Exemptions. Declarant may, in its sole discretion, elect to:

(i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this *Article 8*; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Property or Lot. In the event Declarant elects to delay or reduce Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend, or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

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

8.11 Owner's Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, in addition to the late charge referred to in the preceding paragraph, 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 (1.50%) per month), together with all late charges, 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.

8.12 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in *Section 8.10* and interest as provided in *Section 8.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 8.1.2* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens and governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question, (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record, or

(iv) as otherwise required by Applicable Law; provided that, in the case of subparagraphs (ii), (iii), and (iv) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination 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 foreclose thereon will be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable 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 8.12*, 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. 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.

8.13 Exempt Property. The following area within the Property will be exempt from the Assessments provided for in this Article:

- (i) All area dedicated and accepted by a public authority;
- (ii) The Common Area; and

- (iii) Any portion of the Property owned by Declarant or Homebuilder.

8.14 Timing of Assessments. The Association may not levy or collect assessments pursuant to Article 8 of the Declaration until such time as individual Dwellings in a Structure are owned by different parties and such parties provide notice to the Association that such change in ownership has occurred (the "Notice of Ownership").

ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS

9.1 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 and Dwellings constructed on the 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 and Dwellings constructed on the Lots included within the Area of Common Responsibility is set forth on Exhibit "A" attached hereto.

9.2 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 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 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 by an Owner or Resident that is the responsibility of the Association shall be performed at the sole expense of such Owner or Resident and the Owner and Resident shall not be entitled

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to reimbursement from the Association even if the Association accepts the maintenance or repair.

Notwithstanding anything to the contrary contained in the Declaration, as of the date of this Declaration, the Association has not designated any Area of Common Responsibility and therefore shall not provide any maintenance or repair services to any Owner. Upon receipt of the Notice of Ownership, the Association may designate such Structure as a Service Area and shall determine what Area of Common Responsibility, if any, will be the Association's responsibility. In the event it is determined that the Association will provide certain maintenance and repair services, the Association may assess the Service Area in accordance with Article 8 of this Declaration.

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, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section 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. THE DECLARANT AND THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT, AND EACH OWNER OR RESIDENT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND THE ASSOCIATION, AS WELL AS THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, FOR LOSS OR DAMAGE, WHETHER CAUSED BY HURRICANES, FLOODING, WIND, OR ANY OTHER NATURAL ELEMENT, THEFT, OR OTHERWISE TO THE OWNER'S OR RESIDENT'S PROPERTY OR PERSONAL PROPERTY, WHICH MAY BE STORED IN OR UPON ANY OF THE COMMON AREA OR ANY LOT.

9.3 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 the 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.

9.3.1 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 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.

9.3.2 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 addition must be approved by the Owners of two-thirds of the votes in the Association. 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 Lubbock County, Texas.

9.4 Inspection Obligations.

9.4.1 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 and the Common Area.

9.4.2 Schedule of Inspections. Such inspections shall take place at least once every two (2) 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.

9.4.3 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.

9.5 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 or Common Area, 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 manner so as not to unreasonably disturb other Owners and Residents, Declarant acknowledges, however, that any disturbances caused during periods of general home construction performed by a Homebuilder shall not be treated as a violation hereunder;
- (v) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible;
- (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.

9.6 **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 10 INSURANCE

10.1 Insurance-Association.

10.1.1 The Association shall insure the Common Area, the Dwelling located on any Lot (except for any Non-Standard Improvements therein), and property owned by the Association, including, if any, records, furniture, fixtures, equipment, and supplies, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insurable hazard. The Association is not required to insure any Non-Standard Improvements in any Dwelling constructed on a Lot or any automobiles, watercraft, furniture or other personal property located within a Dwelling, on a Lot or on any Common Area.

10.1.2 The Association shall maintain a commercial general liability insurance policy on an occurrence-based form covering the Common Area, for bodily injury and property damage.

10.1.3 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.

10.1.4 The Association shall maintain directors and officer's liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

10.1.5 The Association may maintain any additional insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

10.1.6 All insurance maintained by the Association shall be written by an insurer with an A.M. Best rating of A-VII or higher. The insurance policies required under this *Section 10.1* or otherwise will provide for blanket waivers of subrogation for the benefit of Declarant, shall provide primary coverage, not secondary, and provide first dollar coverage. Additionally, the insurance policies under this paragraph shall provide that Declarant shall receive thirty-days written notice prior to cancellation of the policy and that Declarant shall be permitted to pay any premiums to keep the Association's insurance policies in full force and effect. The Association shall cause Declarant to be named as an additional insured on all insurance required under this *Section 10.1* or as otherwise set forth herein. In addition to the other indemnities herein and without limitation, if the Association fails to name Declarant as an additional insured as set forth herein, the Association shall hold harmless, defend and indemnify Declarant for any loss, claim, damage and/or lawsuit suffered by Declarant for the Association's failure described herein.

Notwithstanding anything to the contrary contained in the above, the Association **will not** insure any portion of the Property (including any Dwellings) until such time as the Association designates Areas of Common Responsibility. EACH OWNER WILL BE OBLIGATED TO MAINTAIN PROPERTY INSURANCE ON ANY DWELLING LOCATED ON SUCH OWNER'S LOT, IN AN AMOUNT SUFFICIENT TO COVER 100% OF THE REPLACEMENT COST OF ANY REPAIR OR RECONSTRUCTION IN THE EVENT OF DAMAGE OR DESTRUCTION FROM ANY INSURABLE HAZARD.

10.2 Insurance-Owner. Each Owner of a Lot will be obligated to maintain property insurance on any Non-Standard Improvements located on such Owner's Lot, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction of any Non-Standard Improvements in the event of damage or destruction from any insurable hazard. 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 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.

10.3 Owner's Liability For Insurance Deductible. If repair or restoration of Common Area or any Structure, Dwelling or Improvement is required as a result of an insured loss which the Association is required to insure or restore, 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, and the Board may not levy an Assessment against any other Owner or Lot in connection with such loss.

10.4 Waiver of Subrogation. The Association and each Owner and Resident hereby waives
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and releases any right of recovery against Declarant and its partners, managers, members, shareholders, officers, directors and authorized representatives for any Claim that is covered by any policy of property insurance maintained by the Association or such Owner or Resident (or required to be maintained by the Association or such Owner or Resident pursuant to the Association Documents), regardless of cause, INCLUDING NEGLIGENCE OF THE PARTY BENEFITING FROM THE WAIVER. If any such policy of insurance does not permit the foregoing waiver and release or if the coverage under any such policy would be invalidated as a result of such waiver and release, the Association or such Owner or Resident shall obtain from the insurer under such policy a waiver and release of all right of recovery by way of subrogation against Declarant and its partners, managers, members, shareholders, officers, directors and authorized representatives in connection with any Claim covered by such policy.

ARTICLE 11 ARCHITECTURAL REVIEWER

11.1 **Purpose.** This Declaration creates rights to regulate the design, use, and appearance of all Improvements.

11.2 **Architectural Control by Declarant.** During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Architectural Reviewer for Improvements is Declarant or its designee.

11.2.1 **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other Person or any organization. Declarant may designate one or more Persons from time to time to act on its behalf in reviewing and responding to applications.

11.2.2 **Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

11.3 **Architectural Control by Association.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "ACC") will assume jurisdiction over architectural control and will have the powers of the Architectural Reviewer hereunder.

11.3.1 **ACC.** The ACC will consist of at least three (3) but not more than seven (7) Persons appointed by the Board. No less than one-third (1/3) of the members of the ACC

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shall be Homebuilders until such a time as all Lots have been sold to third parties other than Homebuilder(s) or unless no Homebuilder desires to serve on the ACC. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Restrictions to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

11.3.2 Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

11.4 **Prohibition of Construction, Alteration and Improvement** No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Architectural Reviewer. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of their Dwelling, provided that such action is not visible from any other portion of the Property.

11.5 **Architectural Approval.**

11.5.1 Submission and Approval of Plans and Specifications. Construction plans and specifications will be submitted in accordance with procedural rules established from time to time by the Architectural Reviewer together with any review fee which is imposed by the Architectural Reviewer. No Improvement will be placed or allowed on any Lot until the plans and specifications have been approved in writing by the Architectural Reviewer. The Architectural Reviewer may, in reviewing such plans and specifications consider any information that it deems proper including, but not limited to, the harmony of external design and location in relation to surrounding structures. The Architectural Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Reviewer, in its sole discretion, may require. The Architectural Reviewer may refuse to approve plans and specifications for proposed Improvements on any grounds that, in the sole and absolute discretion of the Architectural Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

Notwithstanding any provision to the contrary in the Declaration, the Architectural Reviewer 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.

11.5.2 Failure to Act. In the event that any plans and specifications are submitted to the Architectural Reviewer as provided herein, and the Architectural Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

11.5.3 Variances. The Architectural Reviewer may grant variances from compliance

with any of the provisions of Restrictions when, in the opinion of the Architectural Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by at least a Majority of the members of the ACC. Each variance must also be recorded in the Official Public Records of Lubbock County, Texas; 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 Architectural Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the Restrictions 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 the Restrictions 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 the Restrictions.

11.5.4 Duration of Approval. The approval of the Architectural Reviewer of any final plans and specifications, and any variances granted by the Architectural Reviewer will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Architectural Reviewer, and the Architectural Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 11.5.4* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

11.5.5 No Waiver of Future Approvals. The approval of the Architectural Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Reviewer 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 Architectural Reviewer.

11.5.6 Non-Liability of Architectural Reviewer. THE ARCHITECTURAL REVIEWER WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL REVIEWER'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCTOR BAD FAITH OF THE ARCHITECTURAL REVIEWER OR ONE OR MORE INDIVIDUALS ACTING ON ITS BEHALF, AS THE CASE MAY BE.

ARTICLE 12 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property.

12.1 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; or

- (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.

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

12.3 **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 13 GENERAL PROVISIONS

13.1 **Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2065, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 13.1* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date that this document is first Recorded, descendants of Elizabeth II, Queen of England.

13.2 **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 first Mortgages or deeds of trust on the respective Lot.

13.3 **Amendment.** This Declaration may be amended or terminated by the Recording, of an instrument executed and acknowledged by: (i) Declarant acting alone and unilaterally; 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.

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

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

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

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

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

13.9 **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.

13.10 **Damage and Destruction.** The Association shall undertake the following actions subsequent to damage or destruction to all or any part of the Common Area or any Dwelling (other than Non-Standard Improvements therein) which is covered by insurance maintained by the Association:

13.10.1 **Claims.** Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or any Dwelling covered by insurance maintained by the Association, 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. Each Owner irrevocably appoints the Association, acting through its Board, as his or her 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 of the Lots affected by the damage and lienholders as their interests may appear. The proceeds paid under a policy with respect to damage to a Dwelling must be disbursed first for the repair or restoration of the damaged Dwelling, 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 damaged Dwellings have been completely repaired or restored. Repair, as used in this *Section 13.10.1*, means repairing or restoring the Common Area or Dwelling (other than Non-Standard Improvements therein) to substantially the same condition as existed prior to the fire or other casualty.

13.10.2 **Repair Obligations - Common Area.**

(i) **Common Area - Decision by Board.** 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 such Common Area. 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.

(ii) **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.

(iii) **Special Assessments for Restoration of Common Area.** If insurance proceeds are to be paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 8*, against all Owners that are not Homebuilders. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(iv) **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 first Mortgages or deeds of trust on their Lots.

13.10.3 Repair Obligations-Dwellings.

(i) Restoration. Any portion of a Dwelling for which insurance is maintained by the Association shall be repaired or replaced by the Association promptly following the Association's receipt of the insurance proceeds with respect to such damage. Any insurance proceeds attributable to a damaged Dwelling shall be used to restore the damaged Dwelling. The Association is not required to restore any Non-Standard Improvements in any Dwelling.

(ii) Special Assessments for Restoration of Dwellings. If insurance proceeds paid to restore or repair any damaged or destroyed Dwellings are not sufficient to defray the cost of repair or restoration of such Dwellings, the Board will levy a Special Assessment, as provided in *Article 8*, against all Owners of such Dwellings unless such Owner is a Homebuilder. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(iii) Proceeds Payable to Owners. If insurance proceeds paid to restore or repair any damaged or destroyed Dwelling exceeds the cost of repair or restoration of such Dwelling, the excess proceeds shall be distributed to the Owners of such Dwelling, or to their mortgagees, as their interests may appear, based on their respective Assessment Units. If a Dwelling is not repaired or replaced, the insurance proceeds attributable to Dwellings that are not rebuilt shall be distributed to the Owners of such Dwellings, or to their mortgagees, as their interests may appear, based on their respective Assessment Units.

13.11 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof 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 the Common Area in question has been removed from the provisions of this Declaration pursuant to *Section 15.5* below. This *Section 13.11* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

**ARTICLE 14
DEVELOPMENT EASEMENTS**

14.1 Right of Ingress and Egress. Declarant, its agents, employees, designees, successors or assigns and each Homebuilder, its agents, employees, designees, successors or assigns will have a right of ingress and egress over and the right of access to the Common Area 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 or the Common Area. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance of, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or paid directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant.

Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person or entity. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other Person or entity may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no Person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

14.2 **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.

14.3 **Improvements, Roadway and Utility Easements.** Declarant hereby reserves unto itself and Declarant's agents and employees, a perpetual non-exclusive easement under, over and across the Property, or any areas conveyed or maintained by the Association, including but not limited to any Service Area, or any areas reserved or held as Common Area for the installation, operation, maintenance, repair, relocation, removal and/or modification of any Improvements, roadways, walkways, pathways, street lighting, sewer lines, water lines, electrical lines and conduits, utility lines, drainage or storm water lines, and/or other pipelines, conduits, wires, and/or any public utility function on, beneath or above the surface of the ground that serve the Property, and any other property owned by Declarant, with the right of access to the same at any time for the purposes of repair and maintenance. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in this Section 14.3. The exercise of the easement reserved herein will not extend to permitting entry into any Dwelling, nor will it unreasonably interfere with the use of any Lot or Dwelling or Improvement constructed thereon. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area or a Service Area.

14.4 **Subdivision Entry and Fencing Easement.** Declarant reserves for itself and the Association, an easement over and across the Property for the installation, operation, maintenance, repair or replacement of certain subdivision entry facilities, walls, and fencing, including perimeter 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 or Service 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 or Improvement constructed thereon.

14.5 **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, operation, maintenance, repair, relocation, removal and/or modification of signs, monument signs and/or landscaping which serve the Property and the Common Area, and any other property owned by the Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies those portions of the Property 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 or Service 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 or Improvement constructed thereon.

14.6 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in the Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development Period, whichever occurs first. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party this is not a Homebuilder claiming a legal or equitable interest in the Common Area or Service Area, any such agreements, documents, amendments or supplements to the Restrictions which may be 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 Service Area, or by any title insurance company selected by Declarant to insure title to any portion of the Common Area or Service Area.

ARTICLE 15 DEVELOPMENT RIGHTS

15.1 Development by Declarant. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate Lots, Common Area and Service Areas and to subdivide all or any portion of the Property pursuant to the terms of this *Section 15.1*, 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 6.3*. These rights may be exercised with respect to any portions of the Property or the Common Area. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. The Declarant shall have no further obligation in regards to the Property unless specifically stated here, within the Declaration, or other documents recorded under the direction of the Association or the Declarant.

15.2 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 or the Common Area. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 15.2* until two (2) years after expiration of the Development Period.

15.3 Special Homebuilder Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, each Homebuilder 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 owned by such Homebuilder; (ii) to maintain Improvements upon Lots owned by such Homebuilder as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property or the Common Area. The construction, placement or maintenance of Improvements by Homebuilders will not be considered a nuisance, and the Homebuilders hereby reserve the right and privilege for themselves to conduct the activities enumerated in this *Section 15.3* during any time when such Homebuilder owns a Lot..

15.4 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 include the document number or volume and initial page number of the Official Public Records of Lubbock County wherein 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.

15.5 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 portions 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 include the document number or volume and initial page number of the Official Public Records of Lubbock County wherein this Declaration is recorded;

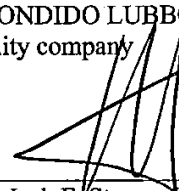
- (ii) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (iii) A legal description of the withdrawn land.

15.6 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 or otherwise arising under the Restrictions 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.

Executed to be effective on the date this instrument is recorded in the Official Public Records of Lubbock County, Texas.

DECLARANT:

ESCONDIDO LUBBOCK, LLC, a Texas limited liability company

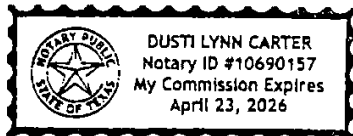
By: 
 Jack F. Strong, III, Manager

THE STATE OF TEXAS §
 §
 COUNTY OF LUBBOCK §

This instrument was acknowledged before me this 21 day of September, 2022, by Jack F. Strong, III, Manager of Overlook Land Group, LLC, a Texas limited liability company, on behalf of said limited liability company.


 Notary Public Signature

(SEAL)



CONSENT OF LIENHOLDER TO ESCONDIDO CROSSING TOWNHOMES DECLARATION

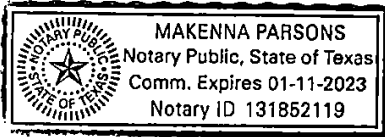
The undersigned lienholder holds a first lien mortgage on the property described in the attached Declaration of Covenants, Conditions and Restrictions (the "CCR"), as evidenced by that certain Deed of Trust (the "Deed of Trust") dated _____, recorded as Document No. _____, in the real property records of Lubbock County, Texas. By signing this instrument, the lienholder hereby consents to the Declaration and subordinates the lien created by the Deed of Trust to the Declaration. The lienholder agrees that any foreclosure under the Deed of Trust will be subject to the restrictions contained in the Declaration.

FIRST BANK & TRUST

By: [Signature]
Name: Matt Graves
Title: EVP

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this 22 day of September, 2022, by Matt Graves, the EVP of First Bank & Trust.



[Signature]
Notary Public, State of Texas
Makenna Parsons
Notary's printed name

My Commission expires:
1-11-2023

EXHIBIT "A"

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

TO BE COMPLETED UPON DESIGNATION OF AREAS OF COMMON RESPONSIBILITIES BY THE
ASSOCIATION

EXHIBIT A-1

LANDSCAPE SERVICES

TO BE COMPLETED UPON DESIGNATION OF AREAS OF COMMON RESPONSIBILITIES BY THE ASSOCIATION.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Kelly Pinion

Kelly Pinion, County Clerk
Lubbock County, TEXAS
09/22/2022 12:03 PM
FEE: \$228.00
2022044960