

Escondido Proceeds  
County



**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THESE DEED RESTRICTIONS AMEND, RESTATE AND REPLACE IN ITS ENTIRETY THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (THE "ORIGINAL DEED RESTRICTIONS") DATED MAY 26, 2021, RECORDED AS DOCUMENT NO. 2021030574, IN THE OFFICIAL PUBLIC RECORDS OF LUBBOCK COUNTY, TEXAS. AS OF THE DATE HEREOF, ALL REFERENCES TO THE ORIGINAL DEED RESTRICTIONS SHALL BE TO THESE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

STATE OF TEXAS           §  
  §           KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF LUBBOCK   §

WHEREAS, ESCONDIDO LUBBOCK, LLC, a Texas limited liability company, hereinafter referred to as either "the Declarant," or "the Developer," being one and the same, is the owner of all of that certain real property located in Lubbock County, Texas, named The Vineyards at Escondido Ranch (the "Subdivision" or the "Vineyards") and more particularly described as follows:

All of Lots 1 through 48 and Tract "A", The Vineyards at Escondido Ranch, an Addition to the City of Lubbock, Lubbock County, Texas, being more fully described on a plat filed on or about the 28<sup>TH</sup> day of May, 2021, as Instrument No. 2021026627, in the Official Public Records of Lubbock County, Texas, to which reference is hereby made for all purposes;

WHEREAS, Declarant proposes to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations. The purposes of this Declaration are to: protect the Declarant and the Owners against inappropriate development and use of Lots within the Properties; assure compatibility of design of improvements within the Subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to encourage construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on the Property now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the Subdivision. Declarant intends for this instrument to be a "dedicatory instrument" within the meaning of Chapter 202 of the *Texas Property Code* and the *Texas Residential Property Owners Protection Act*, as said statutes are now enacted or hereafter amended;

WHEREAS, the *Vineyards at Escondido Homeowners Association, Inc.*, a Texas non-profit association, (the "Association") has been or will be chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the Common Areas within *Vineyards* and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens described in this Declaration;

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the above described real property, and shall be binding on all parties having any right, title or interest in or to the above described properties or any part thereof, their heirs, successors, and assigns, and which easements, restrictions, covenants, and conditions shall inure to the benefit of each owner

thereof.

## ARTICLE I

### PROPERTY SUBJECT TO THIS DECLARATION

1.1. The residential lots and Common Areas which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration within *Sedona* are more particularly described above in this Declaration.

1.2. Additional land (the "**Additional Property**") may become subject to this Declaration, or the general scheme envisioned by this Declaration, as follows:

(a) The Declarant may (without the joinder and consent of any person or entity) add or annex Additional Property to the scheme of this Declaration within the Development Period by filing of record an appropriate enabling declaration, generally similar to this Declaration or incorporating this Declaration, which may extend the scheme of the Covenants to such Additional Property. Provided further; however, such other declaration(s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the Additional Property as are not materially inconsistent with the concept and purpose of this Declaration.

(b) In the event any person or entity other than Declarant desires to add or annex Additional Property and/ or Common Areas to the scheme of this Declaration, such annexation proposal must have the express approval of the Board.

Any additions made pursuant to this section 1.2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the Additional Property and correspondingly subject the Additional Property to the covenants of the enabling declaration. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law or by lawful articles or agreement of merger, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law or by lawful articles or agreement of merger, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants established by this Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

## ARTICLE II

### USE RESTRICTIONS, CONSTRUCTION STANDARDS AND EASEMENTS

2.1. **Residential Lots.** Lots 1 through 48 (hereinafter sometimes referred to as "the lots") shall be used for single family residential purposes only, and a "single-family residence" shall be construed as a single family dwelling used and occupied by one family and its constituent members. Unless approved by ARC, no building shall be erected, altered, placed, or permitted to remain on any lot other than one single family residence not to exceed two stories in height, and a private garage attached to the main residence providing for a minimum of two automobiles. Houses constructed on the lots shall contain at least 2,800 square feet of floor space, exclusive of garage, open or screened porch, storage rooms, basement and other space not equipped with heating and cooling.

Each garage shall be entered from alley way or side entrance (depending on the approved plans) and face the rear or side of each respective lot, except that on corner lots the garage may be entered from and face the side of the lot that faces the adjacent street, provided such design satisfies all other restrictions contained herein. All of any chimney and all of the exposed exterior walls of each residence shall be of materials of masonry construction, except openings for doors, windows, etc. which are exempt from this requirement. Any approved outbuildings shall be constructed with at least a 4 foot stone or brick wainscot around all four sides. It is the intent hereby to prohibit concrete blocks, as well as asbestos shingles, as an exterior siding. No residence may be constructed pursuant to an experimental design, including, but not limited to adobe, geodesic domes or all steel exterior construction; provided, the foregoing is not intended to prohibit steel frame construction. No residence shall be built with a roof of crushed stone, marble or gravel. Rather, each residence roof shall be constructed of thirty year or greater laminate shingles or other lifetime roofing materials (except as otherwise excluded) in earth tone colors only and shall have a pitch of 8 x 12 or more. Replacement shingles or other roofing materials shall be of the same or similar color as that being replaced. Residences consisting of two stories shall provide for sixty percent (60%) of floor space to be located on the first floor of such residence. There shall be no portable or "move in" homes allowed on any of the lots, which shall include (and thereby preclude) any modular or pre-built home of any kind. It is the intent of the foregoing to require that only newly-erected, permanent residences be placed on the lots and that such be built in-place and on-site. The garage shall be constructed of the same material as the residence, including the roof.

Each residence shall have and there shall be erected a seven foot or greater cedar wood fence with a cap encompassing all of that residence's "back yard." The wood fence shall not be painted but rather left in its natural state, and shall be maintained in good repair and condition. In no instance shall a fence, wall or hedge be constructed, altered or maintained closer to any street than the minimum building setback line as promulgated by the City of Lubbock, except that on corner lots the fence may be installed from the interior lot line, along the rear lot line to the side street property line, and forward along the side street property line to within ten (10) feet of the front of the residence, thence across the side yard to the residence.

Each residence shall have access to mail service delivered by the United States Postal Service to a mailbox. Therefore, each residence shall contribute its pro rata portion of the cost to purchase and install such a mailbox, the placement of which shall be in compliance with regulations issued by the United States Postal Service. Mailboxes described in this paragraph must be approved by ARC prior to installation.

All landscaping plans must be approved by ARC prior to construction. Notwithstanding the foregoing, each lot must have at least three (3) six foot trees in the front yard.

Each residence built on a lot shall be located such that it fronts the street on which the lot faces. The minimum front building setback line for each residence shall be at least twenty-five (25) feet from the street and seven and a half (7.5) feet from the side property lines, and for all other building setback requirements, such shall comply with the minimum requirements as promulgated by the City of Lubbock, Texas. For purposes of complying with the setback requirements, eaves, steps and open porches shall not be considered as a part of the residence, but this shall not be interpreted as permitting encroachment on another lot.

2.2 **Common Area.** Tract "A" (a "Common Area") shall only be used for landscaping, drainage, and other amenities as determined by Declarant. For purposes of this Declaration this part of the Common Area may sometimes be referred to collectively as "tracts."

2.3 **Easements.** Easements for installation and maintenance of utilities and drainage facilities are either reserved, as shown on the recorded plat, or recorded contemporaneously with the

Dedication Deed. Right of use for ingress and egress shall be had at all times over any dedicated easement and for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement which would constitute interference with the use, maintenance, operation or installation of such utility.

**2.4 Utilities.** An underground electrical distribution system will be installed to serve each lot; provided, however, that any existing overhead electrical lines serving the Addition shall not be required to be underground, but all line connections thereto shall be underground. The then owner of each lot shall, at that owner's cost and expense, furnish, install, own and maintain (all in accordance with the requirements of the City of Lubbock, Lubbock County, Texas) an underground service cable and appurtenances from the meter installed on each lot or Tract, as applicable, by the electric company to such point as may be designated by such company on the property line of the lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter. The owner of each lot shall install, furnish, own and maintain, at that owner's cost and expense, a meter loop (in accordance with the then current standards and specifications of the electric company) for the improvements constructed on the property. For so long as underground service is maintained, the electric service to each lot shall be uniform in character and exclusively of the type known as "single-phase 120/240 volt, 3-wire, 60-cycle alternating current." Any and all of the foregoing notwithstanding, should the City of Lubbock or any utility company providing electrical services to this Addition change or alter its policy in regard to underground utilities and/or electrical services provided to this Addition, such change or changes shall automatically be adhered to and followed by all lot owners, and the foregoing provisions of this, Paragraph 3, shall automatically be amended to thereby comply with any such policy change, whether one or more.

**2.5 Prohibited Uses.** No garage, basement, trailer, tent, shack, or any other like building or shelter erected or located on any lot, shall ever be used as a dwelling unit. No residence dwelling or other type building, or any part of any other type building, shall ever be moved from outside of the lots onto any one or more of the lots. Regardless of the foregoing sentence, a portable storage building may be moved into a lot's "back yard" subject to the following conditions: (1) the portable storage building must be located within the wood fence surrounding such lot's back yard; (2) the portable storage building must be proportionate in size to the residence and to the lot's back yard; and (3) the portable storage building must be of an attractive appearance and in good condition at the time the portable storage building is moved into the lot's back yard and must be maintained in this same manner. For a period of 7 years beginning date hereof, Declarant reserves the right to require the owner of any lot to remove a portable storage building from such lot if, in the sole discretion of the Declarant, these conditions are not met. For purposes of enforcing this right, Declarant shall be considered as the owner of a lot with access to the options for enforcement set forth in paragraph 13 below.

No home beauty shops or home barber shops shall be allowed. Further, no occupations of any kind shall be allowed which require any structural alterations in any dwelling unit or room of any residence, or require the installation of machinery or equipment other than that customary to normal household operations, or require stocks in trade or inventory being kept and sold on the premises, or require exterior storage for equipment or materials. Any such occupation or activity shall be considered as noxious and offensive, and thereby deemed to be a nuisance.

No sign of any kind shall be displayed to the public view on any lot, except one professional sign of not more than five square feet advertising the property for sale or rent, or a sign used by a building contractor to advertise the building of such property during the construction and sales period.

No radio or television antenna shall extend more than five (5) feet above the highest point of the roof of any building, and no antenna shall be erected or maintained on any lot not having a

residence thereon.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

No oil drilling, oil development operations, oil refining, or quarrying or mining operations of any kind shall be permitted on or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on or in any lot. No derrick or other structure designed for use of boring for oil and/or natural gas shall be erected, maintained or permitted on any lot.

No trailer, camper, boat, motor home or other recreational vehicle, pickup truck of more than one ton capacity, or any other vehicle not used in day to day transportation, shall be parked, stored or maintained on any lot in such a way as to be visible from the front street or nearer to the side street than the side street building set back line.

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. All such garbage, trash and rubbish shall be kept in sanitary containers. All receptacles for disposal of such material shall be kept in a clean and sanitary condition.

No truck, bus or commercial trailer shall be parked in the street in front of any lot. No truck, bus or commercial trailer shall be parked on the driveway or any portion of any lot in such a manner as to be visible from the street.

**2.6 Commencement of Construction.** Construction of the residence shall commence within one (1) year of the date of the deed from Declarant to the owner. If construction has not commenced within one (1) year, Declarant shall be entitled to purchase the respective lot at the gross sales price of such lot at closing date plus a sum equal to the calculated interest from closing date to date of purchase by the Declarant on such gross sales price at the prime rate as published by the Wall Street Journal on closing date. Once commenced, construction shall be diligently pursued to the end that it will be completed within eighteen (18) months from the date commenced.

### ARTICLE III ASSOCIATION

3.1 The Association is governed by the certificate of formation, this Declaration, and the Bylaws of the Association (collectively, the "**Governing Documents**"). The Certificate of Formation will be filed with the Secretary of State of Texas. The Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Governing Documents. The Association shall be governed by the Board of Directors (the "**Board**") as provided in the Bylaws.

3.2 Every owner of a lot or tract is a member (a "**Member**") of the Association. Membership is appurtenant to and may not be separated from ownership of a lot or tract. Each Member shall be entitled to one (1) vote in the Association for each lot or tract owner. When more than one person or entity holds an interest in any lot or tract, all such persons and entities shall be considered as one Member. The vote for such lot or tract shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

3.3 The Board, for the benefit of the Association, the Properties and the Owners and the Members and Residents, may provide and may pay for, out of the Assessment fund(s) provided for in Article IV below, one or more of the following (unless such funds are limited to a particular use as expressly provided in this Declaration):

- (a) Care, preservation and maintenance of the Common Areas and the furnishing and upkeep of any desired personal property for use in or on the Common Areas;
- (b) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;
- (c) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Properties traditionally provided by local governmental agencies **(NOTE: NOTHING WITHIN THIS DECLARATION SHALL BE CONSTRUED AS A REQUIREMENT, DUTY OR PROMISE ON THE PART OF THE ASSOCIATION OR THE DECLARANT TO PROVIDE SECURITY, UTILITY OR MEDICAL SERVICES TO ANY OWNER, RESIDENT OR MEMBER - ALL OWNERS, RESIDENTS AND MEMBERS SHALL BE SOLELY RESPONSIBLE FOR THEIR OWN SAFETY AND WELFARE, AND SHOULD TAKE SUCH PRECAUTIONS AS THEY DEEM NECESSARY TO PROTECT PERSONS AND PROPERTY);**
- (d) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Areas;
- (e) The services of any person or firm (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion, thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees;
- (f) Legal and accounting services and all costs and expenses reasonably incurred by the Architectural Review Committee; and
- (g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or Assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

- (h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by the Association.
- (i) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Areas; (ii) monthly escrow and impound payments by a mortgagee regarding the Assessment, collection and disbursement process envisioned by Article V below; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay the Assessment applicable to any Lot (or any other Assessment authorized in this Declaration);

- (j) To borrow funds (including, without limitation, the borrowing of funds from the Declarant and/or its affiliates) to pay costs of operation or the construction of improvements to the Common Areas, secured by such assets of the Association as deemed appropriate by the lender and the Association;
- (k) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (l) To protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;
- (m) To make reasonable rules and regulations for the operation of the Association and the Common Areas and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Areas;
- (n) To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;
- (o) Adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and
- (p) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner, Resident or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary fines system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted individual Lot Owner Assessment secured by the continuing Payment and Performance Lien herein established.

3.4 The Association may: (i) borrow monies from the Declarant; (ii) lease equipment from the Declarant; (iii) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties; and, as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

3.5 The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association; however, in the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under this Declaration, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

3.6. Declarant shall control the operation and management of the Association by appointing officers and directors of the Association, pursuant to the rights and reservations contained in this Declaration, to the full extent and for the maximum duration permitted by applicable law (the "Declarant Control Period"). The duration of the Declarant Control Period will be from the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas until three months after ninety percent (90%) of the Lots that may be created in the Property and any Additional Property have been improved with residences and conveyed to Owners other than homebuilders. If applicable law requires a stated term for the duration of the Declarant Control Period, then the Declarant Control shall run continuously from the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas until the earlier of the following: (i) fifteen (15) years after the date that this Declaration is publicly recorded, and (ii) three months after the date that ninety percent (90%) of the Lots that may be created in the Property and any Additional Property have been improved with a residence and conveyed to Owners other than homebuilders. Declarant reserves the right to unilaterally amend this definition of "Declarant Control Period" for any purpose, including to increase or decrease the maximum length of the Declarant Control Period, except as may be prohibited by applicable law. No act, statement, or omission by the Association may cause termination of the Declarant Control Period earlier than the term stated in this paragraph. Declarant, however, may terminate the Declarant Control Period at any earlier time by publicly recording a notice of termination. The Declarant Control Period is for a term of years or until the stated status is attained, and does not require that Declarant own a Lot or any other land in the Property.

#### ARTICLE IV ASSESSMENTS

4.1 The Association may levy assessments (an "Assessment") against any lot or tract to promote the recreation, health, safety and welfare of the members of the Association, to fund the operating expenses of the Association and to improve and maintain the Common Areas. The term "Common Areas" as used in this Declaration shall mean and refer to any and all areas of land within *the Vineyards* or adjacent thereto, which are known, described or designated as common areas, parks, recreational easements, jogging trails, floodway easement areas, lakes and ponds, perimeter fences and columns, off-site monuments and directional signs, landscape easements, open spaces, paths and trails, boulevards, and the like including without limitation those shown on any recorded subdivision plat of portions of *the Vineyards* as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Owners, together with any and all improvements that are now or that may hereafter be constructed thereon. It is anticipated that the Common Areas will be owned and maintained by the Association. The Declarant reserves the right to use, during the Development Period, portions of the Common Areas for business matters directly and indirectly related to the sale of Lots within *Sedona*. The Declarant further reserves the right to utilize the Common Areas for such purposes as set forth in this Declaration. The concept of Common Areas will also include: (i) any and all public right-of-way lands for which the City or County of Lubbock, Texas has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by the Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. Declarant shall convey record title to some or all of the Common Areas to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Areas



(particularly along the edges) and to execute any open space declarations applicable to the Common Areas which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes. An Assessment is a personal obligation of each owner when the Assessment accrues.

4.2 Assessments are secured by a continuing lien on each lot or tract, which lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a lot or a tract, each owner grants the lien, together with the power of sale, to the Association to secure Assessments; provided, however, such lien shall be inferior and subordinate to the tax lien held by local taxing authorities, any purchase money loan for the lot or tract, and the improvements, if any, placed upon the lot or tract, which are financed by any third-party lender.

4.3. A lot or tract becomes subject to Assessments on conveyance of the lot or tract by Declarant.

#### 4.4. *Regular Assessments*

a. Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Association. Regular Assessments will commence on the date that the Common Areas on the Property are complete.

b. Regular Assessments may be changed by the Board (or the Declarant if it is during the Declarant Control Period), but any such change will only be effective starting on the 1st day of January of the year next following such change. Written notice of any change of the Regular Assessment will be sent to every owner at least on or before December 1st of any year the change is adopted; provided, however, no notice will be sent to the owner if there has been no change in the Regular Assessment.

c. Regular Assessments will be collected annually for the succeeding calendar year and will be due on or before January 31st of such calendar year.

4.5. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every owner. Any Special Assessment must be approved by a fifty-one percent (51%) of the votes cast at a meeting of the Members in accordance with the Bylaws.

4.6 Any Lot which is owned by Declarant, as unimproved property, is exempt from the Assessments, and from all other Assessments which are authorized in this Article III. The rate of Assessment for any Lot, within a Fiscal Year, may change as the character of ownership and the status of occupancy by a resident changes. The applicable Assessment for any Lot will be prorated according to the rate specified in these covenants for each type of ownership.

4.7. The lien granted and reserved to the Association is subordinate to any lien granted by an owner against a lot or tract not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Association's lien as to Assessments due before the foreclosure;

provided, however, the Association may still seek payment of the Assessments from the original owner who the assessment was made against.

4.8 Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the lot or tract. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each owner, by his or her acceptance of a deed to a lot or tract, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce such lien by all methods available for the enforcements of such liens, including nonjudicial foreclosure pursuant to applicable law, and each owner hereby grants to the Association a power of sale in connection with such lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all owners. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his or her lot or tract.

4.9 An owner delinquent in payment of any Assessment may not vote on any business conducted by the Association. If an owner violates the Governing Documents, the Association may suspend the owner's rights under the Governing Documents in accordance with law until the violation is cured.

4.10 An owner is liable to the Association for damage to Common Areas caused by the owner or the owner's family, guests, agents, independent contractors and invitees in accordance with law.

4.11 The Association maintain property insurance and comprehensive liability insurance in amounts reasonable determined by the Board and covering the Common Area.

4.12. The following property otherwise subject to this Declaration shall be exempted from any Assessments, charge and lien created herein:

- (a) All properties dedicated to and accepted by a local public or governmental authority;
- (b) Common Areas; and
- (c) Lots owned by Declarant.

## ARTICLE V ARCHITECTURAL REVIEW

5.1 This Declaration creates rights to regulate the design, use and appearance of the Lots in order to preserve and enhance the value of the Property. During the Development Period, the Declarant reserves the right of architectural control.

5.2 During the Development Period, neither the Association, the Board, nor any committee appointed by the Board may involve itself with the approval of Improvements on Lots. During the Development Period, the Declarant shall be the sole member of the Architectural Review Committee ("*ARC*"); or, the Declarant may delegate such duties as provided below. 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 the Property or the

ability of homebuilders to sell homes in the Subdivision. Accordingly, each Owner agrees that during the Development Period, no Improvements will be commenced on an Owner's Lot 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 organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications. During the Development Period, the Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (i) a modifications or architectural committee appointed by Declarant or the Board; (ii) a modifications or architectural committee elected by the Owners; or (iii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation is subject to the unilateral right of the Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated. References in this Declaration to the ARC shall refer to Declarant, when Declarant is acting as the sole member of the ARC during the Development Period.

5.3 On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant (which writing must be recorded in the Official Public Records of Lubbock County, Texas), the Association, acting through the ARC, will assume jurisdiction over architectural control. The ARC will consist of at least three but not more than five persons appointed by the Board, pursuant to the Bylaws. Members of the ARC will 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 ARC, in which case all references in the Governing Documents to the ARC are construed to mean the Board. Members of the ARC need not be Owners or Residents and may but need not be architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

5.4 No building, Structure, fence, wall, residence or Improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications (the "Plans") have been submitted to and approved in writing by the ARC (or the Declarant during the Development Period), or a majority of its members, as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and proper facing of main elevation with respect to nearby streets, all in accordance with this Declaration and/or the Design Guidelines and/or bulletins;
- (b) minimum finished floor elevation and proposed footprint of the dwelling;
- (c) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (d) drainage solutions;
- (e) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Areas; and
- (f) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the ARC, or matters in which the ARC has been vested with the authority to render a final interpretation and decision.

The Plans to be submitted to the ARC will include: (i) a site plan showing the location, description of materials and architectural treatment of all walks, driveways, fences, walls,

residences and any other Improvements; (ii) floor plan showing the exact window and door locations, exterior wall treatment and materials, and the total square feet of air conditioned living area; (iii) exterior elevations of all sides of any buildings must be included, the type of roofing materials must be indicated, and the type, use and color of exterior wall materials must be clearly indicated throughout; (iv) front, rear, and side elevations must show all ornamental and decorative details; (v) specifications of materials may be attached separately to the plans or written on the plans themselves (plans will not be approved without specifications - specifications must include type, grade of all exterior materials, and color of all exposed materials); and (vi) landscaping plan.

The ARC (and the Declarant during the Development Period) is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ARC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the lots. Also, the ARC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ARC.

The ARC may require as a condition precedent to any approval of the Plans, that the applicant obtain and produce an appropriate building permit from the City of Lubbock, Texas. The ARC is also authorized to coordinate with the City of Lubbock and County of Lubbock in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that the City of Lubbock issues a building permit with respect to a proposed structure does not automatically mean that the ARC is obliged to unconditionally approve the Plans. Similarly, the ARC's approval of any Plans does not mean that all applicable building requirements of the City of Lubbock or County of Lubbock have been satisfied.

5.5 The ARC may, from time to time, publish and promulgate additional or revised standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Subdivision, and as further described in Article II of this Declaration (the "Design Guidelines"), and such Design Guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Properties and are intended as a guide to assist the ARC in reviewing plans and specifications.

**PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY ENCOURAGED TO CONTACT THE DECLARANT OR ASSOCIATION OR THE ARC TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.**

5.6. Within ten (10) business days ("business days" being days other than Saturday, Sunday or legal holidays) following its receipt of the Plans, the ARC shall advise the submitting Owner whether or not the Plans are approved. If the ARC (or the Declarant) shall fail to approve or disapprove the Plans in writing within said ten-day period, it shall be conclusively presumed that the ARC has approved the Plans. Plans shall not be deemed to have been received by the ARC until the Plans are received and a written receipt is signed by the ARC (during the Development Period, when the Declarant is serving as the ARC, the written receipt must be signed by Declarant). If the Plans are not sufficiently complete or are

otherwise inadequate, the ARC may reject them as being inadequate or may approve or disapprove certain portions of the same, whether conditionally or unconditionally. The ARC shall not approve any Plans unless it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding Lots, that the appearance of any structures affected thereby will be in harmony with surrounding structures and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of *Sedona* or the enjoyment thereof by the Owners. Approval shall be based, among other things, on adequacy of site dimensions, structural design, proximity with and relation to existing neighboring structures and sites, as well as proposed and future neighboring structures and sites, relation of finished grades and elevations to existing neighboring site and conformity to both specific and general intent of the terms of this Declaration. The ARC may adopt rules or guidelines setting forth procedures for the submission of Plans and may require a reasonable fee to accompany each application for approval in order to defray the costs of having the Plans reviewed. The ARC may require such details in Plans submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of the Plans and any other information or materials requested by the ARC, the ARC shall not be deemed to have received such Plans or be obligated to review the same.

5.7 Neither Declarant, nor the ARC, nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting Plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such Plans or specifications. No approval of Plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such Plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed Improvements and/or Improvements built in a good and workmanlike manner. Every person or entity who submits Plans or specifications, and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the ARC, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. **The Declarant and the ARC has sole discretion with respect to taste, design, and all standards specified by this Declaration and any Design Guidelines. The Declarant and the ARC (and each of its members) has no liability for decisions made in good faith, and which are not arbitrary and capricious.**

5.8 No approval by the ARC of any Plans for any work done or proposed to be done shall be deemed to constitute a waiver of any rights on the part of the ARC to withhold approval or consent to any similar Plans which subsequently are submitted to the ARC for approval or consent.

5.9 Upon approval of the Plans by the ARC, the Owner submitting such Plans for approval promptly shall commence construction of all Improvements and Structures described therein and shall cause the same to be completed in compliance in all material respects with the approved Plans, and in compliance with these Covenants. If an Owner shall vary materially from the approved Plans in the construction of any Improvements and Structures, the ARC shall have the right to order such Owner to cease construction and to correct such variance so that the Improvement will conform in all material respects to the Plan as approved. If an Owner shall refuse to abide by the ARC's request, the ARC shall have the right to take appropriate

action to restrain and enjoin any further construction on a Lot that is not in accordance with approved Plans. The ARC shall have the right, but not the obligation, to inspect the Improvements during construction to insure compliance with the Plans and compliance with City of Lubbock and County of Lubbock code requirements (to the extent that such requirements are applicable to the Properties). During the Development Period, the Declarant shall have all of the rights granted herein to the ARC.

5.10 The ARC may authorize variances from compliance with any of the provisions of this Declaration relating to construction of residences and other improvements on a Lot, including restrictions upon height, size, floor area or replacement of residences, or similar restrictions, when circumstances such as governmental code changes, topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the ARC (or by the Declarant during the Development Period) and shall become effective upon their execution. Such variances may be recorded. If such variances are granted, no violation of any of the provisions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot.

#### ARTICLE VI COMMON AREA USE AND MAINTENANCE

6.1. Each owner has an easement in and to the Common Area, subject to the right of the Association to:

- (a) suspend an owner's rights under the Governing Documents;
- (b) restrict use of any of portion of the Common Area as may be necessary for the health and safety of the Members;
- (c) grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
- (d) dedicate or convey any of the Common Area for public purposes, on approval by a vote of fifty percent (5%) of the Members casting a vote at a meeting in accordance with the Bylaws.

6.2. An owner's right to use and enjoy the Common Area extends to the owner's family, guests, agents, and invitees, subject to the Governing Documents.

6.3. An owner may not erect or alter any structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

6.4. The Association shall be responsible for the maintenance of the Common Area including landscaping and maintaining any entrance feature or other improvements located in the Common Area.

#### ARTICLE VII MISCELLANEOUS

7.1 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, pursuant to the rights and reservations contained in this Declaration, to the full extent permitted by Applicable Law (the "Development Period"). **The length of the reserved Development Period is fifteen (15) years** (however, Declarant reserves the right to increase or decrease the length of the Development Period by amendment of this Declaration). If Applicable Law requires an event of termination as an alternative to a stated number of years, the Development Period shall mean a period commencing on the date of the recording of this Declaration in the Official Public Records of Lubbock County, Texas and continuing thereafter until two years after the date on which every Lot in the Property and Additional Property is: (i) made subject to this Declaration, (ii) improved with a residence, and (iii) conveyed to an Owner, other than a homebuilder or Declarant. No act, statement, or omission by the Association may cause termination of the Development Period earlier than the term stated in this paragraph. Declarant, however, may terminate the Development Period at any earlier time by publicly recording a notice of termination. The Development Period is for a term of years or until the stated status is attained, and does not require that Declarant own a Lot or any other land in the Property.

7.2 During the Development Period, Declarant may amend and/or restate this Declaration and other Governing Documents, unilaterally, for any purpose including without limitation the following purposes:

- (a) To add real property to the Property.
- (b) To withdraw real property from the Property.
- (c) To create lots, easements, and common areas within the Property.
- (d) To subdivide, combine, or reconfigure lots.
- (e) To convert lots into common areas.
- (f) To allocate the use of certain common areas to specified lots as limited common areas.
- (g) To modify - even to increase - Declarant's rights and reservations.
- (h) To change or modify any aspect of the building specifications stated in Article II of this Declaration and to add provisions to Article II to address changes, improvements and innovations in building and construction materials and designs
- (i) To merge the Association with another property owners association.
- (j) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Governing Documents.
- (k) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.
- (l) To enable a reputable company to issue title insurance coverage on the lots.
- (m) To change the name or entity of Declarant.
- (n) To change the name of the addition in which the Property is located.
- (o) To change the name of the Association.
- (p) For any other purpose not prohibited by Applicable Law.

7.3. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Any one or more of these covenants may be amended by an instrument signed by at least 75% of the then owners of the lots and tracts agreeing to change any such covenant, condition, and restriction in whole or in part.

7.4. Enforcement shall be by proceedings, at law or in equity, by the owner of any lot or tract, against any person or persons, or any other entity, violating or attempting to violate any covenants. The person or entity seeking enforcement shall have the right to enforce, by any proceedings, at law or in equity, all restrictions, conditions and reservations now or hereafter imposed by the provisions of this declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or right to do so thereafter. If any lot or tract owner shall be required to employ an attorney to enforce or defend the rights of such lot owner hereunder, the prevailing lot owner shall be entitled to recover reasonable attorney's fees, court costs and out-of-pocket expenses incurred as a result thereof.

7.5. Matters pertaining to architectural matters and issues concerning substantial completion shall be determined by the ARC (or by Declarant when acting for the ARC). These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners and Residents. The following shall apply for all other disputes

(a) **Mediation.** Except as otherwise provided herein, any controversy or claim between or among any Owner, Resident, the ARC, the members of the ARC, the Association, the Board of Directors of the Association, or the Declarant, or any combination of said parties, including any claim based on or arising from an alleged tort or from Declarant's sale or development of (or failure to develop) the Properties, shall be settled informally, and said parties shall make every effort to meet and settle their dispute in good faith informally. If said parties cannot agree on a written settlement to the dispute within fourteen days after it arises, then the matter in controversy shall be submitted to non-binding mediation (except that disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process), and the dispute resolution process shall be conducted as follows:

- (i) In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will be an attorney-mediator skilled in community association law. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Property, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than 30 days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.
- (ii) By agreeing to use this dispute resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before mediation may be scheduled.
- (iii) The provisions of this Declaration dealing with alternate dispute



resolution (mediation) shall not apply to the collection of Assessments or the enforcement of any Assessment owing to the Association. Further, the provisions of this Declaration dealing with alternate dispute resolution (mediation) shall not apply in the circumstances described in Article XII, Section 7.5(b), below.

(b) **Arbitration.** If a matter in controversy cannot be resolved by mediation as set forth above, then the matter in controversy shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Endispute, Inc., doing business as J.A.M.S./Endispute ("J.A.M.S."), as amended from time to time, and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any Owner, Resident, the ARC or the Declarant may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Declaration applies in a court having jurisdiction over such action.

- (i) The arbitration shall be conducted in the City of Lubbock, Texas and administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within 90 days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional 60 days.
- (ii) The provisions of this Declaration dealing with mediation and arbitration shall not apply to the collection of Assessments or the enforcement of any lien by the Association as set out in this Declaration. Further, nothing in this Declaration shall be deemed to
  - (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waiver contained in this Declaration; or
  - (ii) limit the right of any party to enforce the Covenants contained in this Declaration through a proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both; or (iii) limit the right of any party to enforce any lien created in this Declaration, and to foreclose said liens by exercise of the power of sale hereunder or by judicial foreclosure in a court having jurisdiction; or (iv) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunction relief or the appointment of a receiver and, in the previously described situations, mediation and arbitration shall not be required. Subject to Applicable Law, the Association or the Declarant may exercise any self help rights, foreclose upon such property, or
- (iii) obtain such provisional or ancillary remedies before, during or after the pendency of any mediation or arbitration proceeding brought pursuant to this Declaration. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any Owner, Resident, the Association or the Declarant in any such action, to arbitrate the merits of the controversy or claim occasioning

resort to such remedies.

7.6 Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

7.7 The undersigned, being the sole owner of the hereinabove described real property, does hereby revoke any and all prior restrictions or restrictive covenants, if any, placed on said land by any prior owners.

7.8 Each Owner and any Homebuilder, by his or her purchase of each Lot within the Property, hereby expressly assumes the risk of personal injury, property damage, or other loss caused by use, maintenance, and operation of the Property (including but not limited to the Common Areas) and any Lot, including but not limited to the design, development and construction of the Property and any Common Areas.

7.9 Except as specifically stated in this Declaration or in any Deed, Declarant hereby specifically disclaims any warranty, guaranty, or representation, oral or written, expressed or implied, past, present or future, of, as to, or concerning:

(i) the nature and condition The Vineyards, the water (either quantity or quality), soil, subsurface, and geology, and the suitability thereof and of The Vineyards the Property, the Common Areas and any lot within the Property, for any and all activities and uses which Owner, Resident, or any Homebuilder may elect to conduct thereon,

(ii) the manner, construction, design, condition, and state of repair or lack of repair of any improvements located on the Property, the Common Areas and any lot;

(iii) except for any warranties contained in the Deeds to be delivered from Declarant to an Owner or any homebuilder, the nature and extent of any right-of-way, possession, reservation, condition or otherwise that may affect the Property, the Common Area and any lot; and

(iv) the compliance of Sedona, the Property, the Common Areas and any Lot with any laws, rules, ordinances or regulations of any governmental or quasi-governmental body (including without limitation, zoning, environmental and land use laws and regulations).

7.10 To the maximum extent permitted by applicable law, Declarant's sale of each lot within the Property is on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, and each Owner and homebuilder purchasing a lot within the Property expressly acknowledges that as part of the consideration for the purchase of a Lot, and except as expressly provided in this Declaration or in any Deed, Declarant makes NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY

OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTIES, OR ANY LOT WITHIN THE SUBDIVISION.

By acceptance of a Deed to any Lot, and to the maximum extent permitted by Applicable Law, Owner and any Homebuilder hereby waives, releases, acquits and forever discharges Declarant and any successor or assign of Declarant, and the Declarant's general partners, limited partners, members, managers, officers, agents, employees, representatives, attorneys and any other person or entity acting on behalf of Declarant (sometimes referred to in this Declaration as the "Released Parties"), of and from, any claims, actions, causes of action, demands, rights, damages, liabilities, costs and expenses whatsoever (including court costs and attorney's fees), direct or indirect, known or unknown, foreseen or unforeseen, which Owner and any Homebuilder now has or which may arise in the future, on account of or in any way growing out of or in connection with the design or physical condition of the Property, the Common Areas, or any Lot, or any law, rule, order, statute, code, ordinance, or regulation applicable thereto.

Each Owner, Homebuilder, Resident, and Member waives and releases the Released Parties from any liability to said Owner, Homebuilder, Resident and Member and to said Owner's, Homebuilder's, Resident's and Member's respective heirs, successors and assigns, for the design and/or condition of the Property, the Common Areas, or any lot, known or unknown, present and future, including liabilities, if any, due to the existence, now or hereafter, of any hazardous materials or hazardous substances, on the Property, Common Areas, or any lot, and due to the existence, now or hereafter, of a violation, if any, of any environmental laws, rules, regulations or ordinances.

**EACH OWNER, HOMEBUILDER, RESIDENT AND MEMBER EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST THE RELEASED PARTIES BY REASON OF, AND RELEASES THE RELEASED PARTIES FROM ANY LIABILITY WITH RESPECT TO, ANY INJURY TO PERSON OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING CONSEQUENTIAL DAMAGES) RESULTING FROM ANY CAUSE WHATSOEVER (EXPRESSLY INCLUDING THE RELEASED PARTIES OWN NEGLIGENCE).**

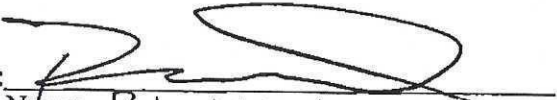
7.11 To the extent and only to the extent caused by the acts or omissions of such Owner, Homebuilder, Resident or Member, each Owner, Homebuilder, Resident and Member agrees to indemnify and hold harmless the Released Parties from all claims, suits, actions, liabilities and proceedings whatsoever and of every kind, known or unknown, fixed or contingent (the "Claims") which may be brought or asserted against the Released Parties, on account of or growing out of any and all injuries or damages, including death, to persons or property relating to such Owner's, Homebuilder's, Resident's or Member's use, occupancy, ownership, construction, operations, maintenance, repair or condition of the Sedona, the Property, the Common Areas, any Lot, or any Improvements located thereon, following the effective date of the Declaration, even if such Claims arise from or are caused in whole or in part by

the sole or concurrent negligence (whether active or passive, gross negligence or strict liability) of the Released Parties, and all losses, liabilities, judgments, settlements, costs, penalties, damages and expenses relating thereto, including, but not limited to, attorney's fees and other costs of defending against, investigating and settling the Claims. The indemnity agreement provided herein includes without limitation all Claims, whether from:

- (i) the design, maintenance, operation or supervision of Sedona, the Property, the Common Areas, any lot, or any improvement located thereon;
- (ii) the Owner's, Homebuilder's, Resident's or Member's activities on Sedona, the Property, the Common Areas, any Lot, or any improvement located thereon;
- (iii) the existence, now or hereafter of hazardous materials or substances on the Property, Common Areas or any Lot; or
- (iv) due to a violation, now or hereafter, of any environmental laws, rules, regulations or ordinances, or otherwise. Each Owner, Homebuilder, Resident and Member does assume on behalf of the Released Parties and will conduct with due diligence and in good faith the defense of all Claims against any of the Released Parties.

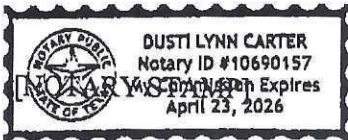
EXECUTED AND EFFECTIVE this 8<sup>th</sup> day of March, 2023.

ESCONDIDO LUBBOCK, LLC, a Texas  
limited liability company

By:   
Name: Robert Wood  
Title: Manager

STATE OF TEXAS           §  
  §  
COUNTY OF LUBBOCK   §

On this 8<sup>th</sup> day of March, 2023, before me, a Notary Public in and for said state, personally appeared Robert Wood, in his capacity as Manager of Escondido Lubbock, LLC, a Texas limited liability, on behalf of said limited liability company.




  
Notary Public, State of Texas

After recording, please return to:  
Escondido Lubbock, LLC  
c/o Robert Wood  
8213 Alcove Avenue  
Lubbock, Texas 79424

**CONSENT OF LIENHOLDER TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

The undersigned lienholder holds a first lien mortgage on the property described in the attached Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration"), 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.


FIRSTBANK & TRUST

By:   
Name: Matt Graves  
Title: EVP

STATE OF TEXAS           §  
  §  
COUNTY OF LUBBOCK   §

This instrument was acknowledged before me on this 13 day of March, 2023, by Matt Graves, the EVP of FirstBank & Trust.



  
Notary Public, State of Texas  
Lindsey Dubiel  
Notary's printed name

My Commission expires:  
May 20, 2023

# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

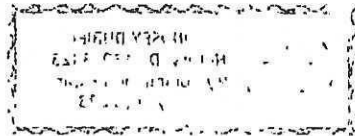


*Kelly Pinion*

Kelly Pinion, County Clerk  
Lubbock County, TEXAS  
03/13/2023 11:44 AM  
FEE: \$110.00  
2023009013

*11:44 AM*      *03/13/2023*      *11:44 AM*

*11:44 AM*



*03/13/2023*