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AFTER RECORDING RETURN TO:

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HOUSTON, TEXAS 77002

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BOOT LAKE RANCH
MASTER COVENANT
[MIXED-USE]

Midland County, Texas

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Declarant: **BOOT LAKE RANCH PROPERTY OWNER, LLC**, a Delaware limited liability company

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WINSTEAD
ATTORNEYS

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BOOT LAKE RANCH
MASTER COVENANT
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BOOT LAKE RANCH
MASTER COVENANT
[MIXED-USE]

This Boot Lake Ranch Master Covenant *[Mixed-Use]* (the "**Covenant**") is made by **BOOT LAKE RANCH PROPERTY OWNER, LLC**, a Delaware limited liability company (the "**Declarant**"), and is as follows:

RECITALS:

A. This Covenant is recorded with respect to that certain real property located in Midland County, Texas, as more particularly described on Exhibit "A", attached hereto (the "**Property**").

B. Declarant is an owner of a portion of the Property, and NUEVA BOOT, LLC, a Texas limited liability company ("**Nueva Boot**"), is also an owner of a portion of the Property. Nueva Boot executes this Covenant to evidence its consent to the terms and provisions of this Covenant.

C. Declarant desires to create a uniform plan for the development, improvement and sale of the Property and to act as the "Declarant" for all purposes under this Covenant.

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

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

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ARTICLE 1
DEFINITIONS

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

"**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, and any other applicable building codes, zoning restrictions, permits and ordinances adopted by a Governmental Entity (defined below), which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are "Applicable Law" on the effective date of the Document, 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.

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

"**Assessment Unit**" has the meaning set forth in *Section 5.8*.

"**Association**" means Boot Lake Ranch Master Community, Inc., a Texas nonprofit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant. The failure of the Association to maintain its corporate charter does not affect the existence or legitimacy of the Association, which derives its authority from this Covenant, the Certificate, the Bylaws, and Applicable Law.

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

"**Boot Lake Ranch Reviewer**" means the party holding the rights to approve Improvements within the Property and shall be Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Boot Lake Ranch Reviewer will automatically be transferred to the ACC appointed by the Board, as set forth in *Section 6.2* below.

"**Bylaws**" means the bylaws of the Association, which may be initially adopted and Recorded by Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. During the Development Period, Declarant must approve any amendment to the Bylaws. After the Development Period, a Majority of the Board may amend the Bylaws.

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

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

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

"**Condominium Unit**" means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Property.

"**Declarant**" means **BOOT LAKE RANCH PROPERTY OWNER, LLC**, a Delaware limited liability company. Notwithstanding any provision in this Covenant 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 Covenant 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 Covenant.

"**Design Code**" means the instrument setting forth the standards for design, construction of Improvements, landscaping and exterior items proposed to be placed on any Lot or Condominium Unit, and adopted pursuant to *Section 6.4.2*, as the same may be amended from time to time. The Design Code may consist of multiple written design guidelines applying to specific portions of the Property. The Boot Lake Ranch Reviewer may adopt, and amend from time to time, the Design Code applicable to the Property or any Development Tract, or any portion thereof. The Design Code may be Recorded as a separate written instrument or may be incorporated into a Development Tract Declaration by exhibit or otherwise. Until expiration or termination of the Development Period, any amendment or modification to the Design Code must be approved in advance and in writing by the Declarant.

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"**Development Period**" means the period of time beginning on the date when this Covenant has been Recorded and ending seventy-five (75) years thereafter, unless earlier terminated by Declarant. Declarant may terminate the Development Period by a Recorded written instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, or the right to direct the size, shape and composition of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property.

"**Development Tract**" means any part of the Property (less than the whole), which Development Tract may be subject to a Development Tract Declaration in addition to being subject to this Covenant.

"**Development Tract Declaration**" means, with respect to any Development Tract, the separate instrument containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Tract is subjected.

"**Documents**" means, singularly or collectively, as the case may be, this Covenant, including the Use Restrictions attached hereto as Exhibit "B", the Certificate, Bylaws, the Community Manual, the Design Code, and any Development Tract Declaration, as each may be amended from time to time, and any Rules, policies or procedures promulgated by the Association pursuant to this Covenant or any Development Tract Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of a Document. See Table 1 for a summary of the Documents.

"**Governmental Entity**" means (a) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (b) a municipal utility district created pursuant to Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code; (c) any other similarly constituted quasi-governmental entity created for the purpose of providing benefits or services to the Property; or (d) any other regulatory authority with jurisdiction over the Property.

"**Improvement(s)**" means any and all physical enhancements and alterations to the Property, including, but not limited to, grading, clearing, removal of trees, site work, utilities, utility lines, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, reservoirs, pipes, pumps, wells, tanks, lines, meters, antennas, water features, fences, gates, walls or retaining walls, garages, streets, roadways, driveways, sidewalks, parking areas and/or facilities, recreational facilities, buildings, warehouses, storage facilities, exterior air conditioning equipment, exterior fixtures, poles, signs, signage, mailboxes, awnings, and every structure, fixture, and all appurtenances of every type and kind, whether temporary or permanent in nature.

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"**Individual Assessments**" means assessments levied against the Lots and/or Condominium Units as described in *Section 5.7*.

"**Lot**" means any portion of the Property designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat other than Common Area or Special Common Area. A Lot, for the purpose of this Covenant, may also include a tract upon which a condominium will be impressed creating Condominium Units.

"**Majority**" means more than half.

"**Manager**" has the meaning set forth in *Section 3.5.8*.

"**Members**" means every Person 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 or Condominium Unit.

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

"**Nueva Boot Board Member**" means one (1) member of the Board of Directors of the Association appointed from time to time by Nueva Boot, for so long as Nueva Boot, (i) any affiliate of Nueva Boot, including, without limitation any entity in which Nueva Boot or any of Nueva Boot's affiliates (1) own more than fifty percent (50%) of the equity interests thereof or (2) exercise direct or indirect control; or (ii) any not for profit corporation which is initially organized by Nueva Boot or any person controlling Nueva Boot, together with any successors or assigns, including by reorganization or merger which utilizes the portion of the Property so owned for the purposes set forth in the Development Tract Declaration applicable to such portion of the Property.

"**Owner**" means the Person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or Condominium Unit, and in no event shall mean any Tenant. Mortgagees who acquire title to a Lot or Condominium Unit 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.

"**Person**" means any individual or entity having the legal right to hold title to real property.

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

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"**Property**" means all of that certain real property described on Exhibit "A", attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 9.3* and *Section 9.4* of this Covenant.

"**Record, Recording, Recordation and Recorded**" means recorded in the Official Public Records of Midland County, Texas.

"**Rules**" means any instrument, however denominated, which may be adopted by the Declarant as part of the Community Manual or subsequently adopted by the Board for the regulation and management of the Property, including any amendments to those instruments. Any amendment to the Rules or Community Manual must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"**Service Area**" means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots and Condominium Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.4*.

"**Service Area Assessments**" means assessments levied against the Lots and/or Condominium Units in a particular Service Area to fund Service Area Expenses, as described in *Section 5.6*.

"**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 reserve for operations and capital repairs and replacements.

"**Special Assessments**" means assessments levied against the Lots and/or Condominium Units as described in *Section 5.4*.

"**Special Common Area**" means any interest in real property or improvements designated by Declarant in a Development Tract Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as Special Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Special Common Area Assessments attributable thereto, to one or more, but less than all, of the Lots, Condominium Units, Owners or Development Tracts, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Development Tract Declaration, or other Recorded written notice will identify the Lots, Condominium Units, Owners or Development Tracts assigned to such Special Common Area and further indicate whether the Special Common Area is assigned to such parties for the purpose of exclusive use and the payment of Special Common Area Assessments, or only for the purpose of paying Special Common Area Assessments attributable thereto. By way of

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illustration and not limitation, Special Common Area might include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping.

"**Special Common Area Assessments**" means assessments levied against the Lots and/or Condominium Units as described in *Section 5.5*.

"**Special Common Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Special Common Area, which may include a reserve for operations and capital repairs and replacements.

"**Tenant**" means a tenant, user, occupant or other non-Owner of a Lot.

"**Use Restrictions**" means those certain restrictions on the use of a Lot, as set forth on Exhibit "B" attached hereto and incorporated herein for all purposes.

TABLE 1: DOCUMENTS	
Covenant (Recorded)	Creates obligations that are binding upon all present and future owners of the Property, including the Use Restrictions attached as Exhibit "B".
Development Tract Declaration (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Property.
Certificate of Formation (Filed with Secretary of State and Recorded)	Establishes the Association as a not-for-profit corporation under Texas law.
Community Manual (Recorded)	Establishes Rules and policies governing the Association and the Property. The Community Manual also includes the Bylaws of the Association.
Design Code (if adopted, Recorded)	Governs the standards for the construction of Improvements and modifications thereto.

ARTICLE 2
GENERAL RESTRICTIONS

2.1 General.

2.1.1 Conditions and Restrictions. All Lots and Condominium Units within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents, including the Use Restrictions set forth on Exhibit "B".

2.1.2 Compliance with the Documents and Applicable Law. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each requirement, rule, or restriction which may be

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applicable to a Lot or a Condominium Unit located within the Property. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot or Condominium Unit. Furthermore, approval by the Boot Lake Ranch Reviewer should not be construed by the Owner that an Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot or Condominium Unit. The Association, each Owner, Tenant or other user of any portion of the Property must comply with the Documents and Applicable Law.

2.1.3 Boot Lake Ranch Reviewer Approval for Project Names. Each Owner is advised that the name used to identify the Lot or any portion thereof for marketing or identification purposes must be approved in advance and in writing by the Boot Lake Ranch Reviewer.

2.2 Incorporation of Development Tract Declarations. Upon Recordation of a Development Tract Declaration such Development Tract Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but will apply only to portions of the Property made subject to the Development Tract Declaration upon Recordation. To the extent of any conflict between the terms and provisions of a Development Tract Declaration and this Covenant, the terms and provisions of this Covenant will control.

2.3 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property (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 may include uses which are not shown on the Conceptual Plans.** Declarant makes no representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statement by Declarant or any of Declarant's representatives regarding proposed land uses, or proposed or planned Improvements, in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot or Condominium Unit within the Property acknowledges that development will extend over many years, and each Owner agrees not to protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.4 Cell Tower and Telecommunications Equipment. Telecommunications, cellular, video and digital equipment, including without limitation, broadcast antennae and related equipment, cell towers, cell tower equipment, or other wireless communication antennae and related equipment, cable or satellite television equipment and equipment for high-speed internet access (collectively, the "**CTT Equipment**") may be located on or near the Property and/or the Development or may be constructed on or near the Property and/or the

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Development. As more particularly described in *Section 8.5* of this Covenant, Declarant has reserved the right, for the benefit of itself and its assigns, to construct, install, use, maintain, repair, replace, improve, remove, and operate CTT Equipment upon all or any portion of the Common Area and/or the Special Common Area. Parties other than the Declarant or its assigns may also have easements for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment.

2.5 Provision of Benefits and Services to Service Areas.

2.5.1 Declarant may, in a Recorded written instrument, assign Lots and/or Condominium Units 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 and/or Condominium Units in addition to those which the Association generally provides to the Property. During the Development Period, Declarant may unilaterally amend any written Recorded 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 and/or Condominium Units within the Service Area as a Service Area Assessment.

2.5.2 In addition to Service Areas which Declarant may designate, until expiration or termination of the Development Period, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from the Association: (a) special benefits or services which are not provided to all Lots and/or Condominium Units; or (b) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots and/or Condominium Units 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 and/or Condominium Units among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least eighty percent (80%) of the total number of votes held by all Lots and/or Condominium Units 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 determined by the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots and/or Condominium Units within such Service Area as a Service Area Assessment. After expiration or termination of the Development Period, the Board may discontinue or modify benefits or services provided to a Service Area.

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ARTICLE 3
BOOT LAKE RANCH MASTER COMMUNITY, INC.

3.1 **Organization**. The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas 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 Covenant.

3.2 **Membership**.

3.2.1 Mandatory Membership. Any Person, 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 or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

3.2.2 Easement of Enjoyment – Common Area. Every Member of the Association will have a right and easement of enjoyment in and to all of the Common Area which easement will be appurtenant to and will pass with the title to such Member's Lot or Condominium Unit, subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Common Area;

(ii) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due or for any period during which such Member is in violation of any provision of this Covenant;

(iii) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Common Area to any Governmental Entity for any purpose;

(iv) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Common Area;

(v) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of

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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 Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

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

3.2.3 Easement of Enjoyment – Special Common Area. Each Owner of a Lot or Condominium Unit which has been assigned use of Special Common Area in a Development Tract Declaration or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if applicable, by and through such Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Condominium Unit subject to *Section* 3.2.2 above and subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Special Common Area;

(ii) The right of Declarant during the Development Period to grant additional Lots or Condominium Units use rights in and to Special Common Area in a subsequently Recorded Development Tract Declaration or other Recorded instrument;

(iii) The right of the Association to suspend the Member's rights to use the Special Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iv) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Special Common Area;

(v) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development

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Period, to dedicate or transfer all or any part of the Special Common Area to any Governmental Entity for any purpose;

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

(vii) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon; and

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

3.3 Governance.

3.3.1 Board of Directors. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in the Documents to the contrary, until the expiration or termination of the Development Period, Declarant will be entitled to appoint and remove all members of the Board and officers of the Association; provided, however, that Nueva Boot shall be permitted to appoint the Nueva Boot Board Member for so long as Nueva Boot is an owner of a portion of the Property. Declarant may terminate its right as to the appointment and removal of one or more or all the Board members by the Recordation of a termination notice executed by the Declarant. In the event Declarant terminates its right to appoint and remove less than all of the Board members, the Board positions to which the termination applies will be elected by the Members, other than the Nueva Boot Board Member. Each Board member elected by the Members in accordance with the foregoing sentence will be elected for a term of one (1) year and shall serve until his or her successor is elected or he or she is replaced in accordance with the Bylaws.**

At such time as Declarant no longer has or terminates the right to appoint and remove any members of the Board as provided in this *Section 3.3*, the President of the Association will call a meeting of the Members of the Association where the Members other than Nueva Boot will elect one (1) Director for a three (3) year term and one (1) Director for a two (2) year term. In the event Nueva Boot no longer owns any portion of the Property, the Members of the Associations shall be permitted to elect a third Director

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for a two (2) year term. Upon expiration of the term of a Director elected by the Members as provided herein, his or her successor will be elected by the Members for a term of two (2) years. A Director takes office upon the adjournment of the meeting or balloting at which he or she is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his or her successor is elected or appointed.

*It is not presently intended that the majority of the Property will be restricted to residential use, thus rendering Chapter 209 of the Texas Property Code inapplicable to the Property or the Association. However, in the event it is determined that Section 209.00591 of the Texas Property Code applies to the Property and/or the Association, then on or before the tenth (10th) anniversary of the date this Covenant is Recorded, or sooner as determined by Declarant, the Board will call a meeting of Members of the Association for the purpose of electing one-third (1/3) of the Board (the "**Initial Member Election Meeting**"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds (2/3) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.*

3.4 Voting. The methods of voting and the number of votes which may be cast for election of members to the Board (except as provided by *Section 3.3*) and on all other matters to be voted on by the Members are set forth below.

3.4.1 Owners. A Lot shall be allocated one (1) vote for each acre (or fraction thereof) within the Property. For example, if a Lot consists of 5.35 acres, 5.35 votes will be allocated to such Lot and the Owner of such Lot shall be entitled to cast a total of 5.35 votes. If a Lot is submitted to the condominium form of ownership, the condominium declaration must allocate to each Condominium Unit established thereby a fractional portion of all the votes assigned to such Lot. Common Area or Special Common Area shall not be allocated any votes.

3.4.2 Declarant. In addition to the votes to which Declarant is entitled by reason of *Section 3.4*, for every one (1) vote outstanding in favor of any other Person, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. 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 votes.

3.4.3 Co-Owners. If there is more than one Owner of a Lot or Condominium Unit, the vote for such Lot or Condominium Unit shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot or Condominium Unit determine among themselves and advise the Secretary of the Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot or Condominium Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests promptly to the President or other person presiding

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over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot's or Condominium Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event will the vote for such Lot or Condominium Unit exceed the total votes to which such Lot or Condominium Unit is otherwise entitled pursuant to this *Section 3.4*.

3.5 **Powers**. The Association will have the powers of a Texas nonprofit corporation. It will further have 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 Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

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

3.5.2 Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to protect the Association and to carry out the Association's functions. Without limitation to the foregoing, the Board may purchase and maintain, 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 such Person or incurred by such Person in their capacity as an director, officer, committee member, employee, servant or agent of the Association, or arising out of the Person's status as such, whether or not the Association would have the power to indemnify the Person against such liability or otherwise.

3.5.3 Records. To keep books and records of the Association's affairs, and to make such books and records available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours in accordance with Applicable Law.

3.5.4 Assessments. To levy and collect Assessments and to determine Assessment Units, as provided in *Article 5* below.

3.5.5 Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after forty-eight (48) hours' written

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notice), without being liable to any Owner, upon any Lot or into any Condominium Unit for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, improvement or other facility or removing any item to conform to the Documents. The expense incurred by the Association in connection with the entry upon any Lot or into any Condominium Unit and the removal or maintenance and repair work conducted therefrom, thereon or therein will be a personal obligation of the Owner of the Lot or the Condominium Unit so entered, will be deemed an Individual Assessment against such Lot or Condominium Unit, will be secured by a lien upon such Lot or Condominium Unit, and will be enforced in the same manner and to the same extent as provided in *Article 5* 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 Documents. 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 Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot, on any Condominium Unit, other than Common Area or Special Common Area, in enforcing this Covenant 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) or Condominium Unit(s) has been obtained. **EACH OWNER AND TENANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT, ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 3.5.5* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION RESULTED FROM THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

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

3.5.7 Conveyances. To grant and convey to any Person 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 or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

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(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.

Until expiration or termination of the Development Period, any grant or conveyance under this *Section 3.5.7* must be approved in advance and in writing by the Declarant. In addition, the Association (with the advance written approval of the Declarant during the Development Period) and the Declarant are expressly authorized and permitted to convey easements, specifically including pipeline easements, over and across Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provision of this Covenant.

3.5.8 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 the Common Area, Special Common Area, and/or any Service Area, to the extent deemed advisable by the Board. Such fees must be commercially reasonable and consistent with prevailing market rates for such services. Additional 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 FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

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

3.5.10 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

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is required or permitted to secure or to pay for pursuant to Applicable Law, under the terms of the Documents or as determined by the Board.

3.5.11 Construction on Common Area and Special Common Area. To construct new Improvements or additions to Common Area and Special Common Area, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

3.5.12 Contracts. To enter into contracts or licenses with Declarant or any third party on such terms and provisions the are commercially reasonable and consistent with prevailing market rates, to operate and maintain the Property, any Common Area, Special Common Area, Service Area, Improvement, 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 contracts must be approved in advance and in writing by the Declarant.

3.5.13 Property Ownership. To acquire, own and dispose of all manner of real and personal property, 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.

3.5.14 Authority with Respect to the Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Documents. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 3.5.14* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

3.5.15 Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Special Common Area, Service Area, and any Improvements thereon. All Rules governing and limiting the use of the Common Area, Special Common Area, Service Area, and any Improvements thereon must apply equally to all Owners and be approved in advance and in writing by the Declarant during the Development Period.

3.5.16 Relationships with Governmental Entities and Tax Exempt Organizations. To create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, Special Common Area, or Service Area with Governmental Entities or non-profit, tax-exempt organizations. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the Assessments levied by the Association and included as a line item in the Association's annual budget.

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3.6 Common Area and Special Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of the Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Covenant. Such property will be accepted by the Association and thereafter will be maintained as Common Area or Special Common Area, as applicable, 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 during the Development Period, 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. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Special 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 and signage. Declarant and/or its assignees shall have an easement over and across the Common Area and/or the Special Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

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

3.8 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against

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Declarant, or which would be detrimental to the sale of Lots or Condominium Units owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by the Declarant, the Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

3.9 Administration of Common Area. The administration of the Common Area, Special Common Area and Service Area by the Association shall be in accordance with the provisions of Applicable Law and the Documents, 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) designated by Declarant or by any Governmental Entity having regulatory jurisdiction over the Common Area, Special Common Area or Service Area or by any title insurance company selected by Declarant to insure title to any portion of such areas.

ARTICLE 4
INSURANCE

4.1 Insurance. Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. The Association will not maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. The Association may, however, obtain such other insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

4.2 Restoration Requirements. In the event of any fire or other casualty, the Owner will either: (a) unless otherwise approved by the Boot Lake Ranch Reviewer, promptly commence the repair, restoration and replacement of any damaged or destroyed Improvements to their same exterior condition existing prior to the damage or destruction thereof within one hundred and eighty (180) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion; or (b) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Property within one hundred twenty (120) days after the occurrence of such damage, provided, however, that the timeframes herein shall be abated accordingly to account for any ongoing insurance investigation, provided that written notice of such insurance investigation is delivered to the Board. Unless otherwise approved by the Boot Lake Ranch Reviewer, any repair, restoration or replacement will be commenced and completed in a good and

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workmanlike manner using exterior materials substantially the same as the materials used in the Improvements damaged or destroyed, as determined by the Boot Lake Ranch Reviewer, in its sole and absolute discretion. To the extent that the Owner fails to commence repair, restoration, replacement, or the removal of debris, within the time period required in this *Section 4.2*, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and the costs incurred by the Association will be levied as an Individual Assessment against such Owner's Lot or Condominium Unit; provided, however, that if the Owner is prohibited or delayed by Applicable Law or Court dispute from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of ninety (90) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be levied as an Individual Assessment chargeable to the Owner's Lot or Condominium Unit. **EACH OWNER AND TENANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT, ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 4.2*, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.3 **Restoration - Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned-up by the Association pursuant to the rights granted under this *Article 4*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5
COVENANT FOR ASSESSMENTS

5.1 Assessments.

5.1.1 Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 5* will be levied against each Lot and Condominium Unit in

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amounts determined pursuant to *Section 5.8.1* below. The total amount of Assessments will be determined by the Board in accordance with the terms of this *Article 5*.

5.1.2 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 or Condominium Unit 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 and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article. Unless the Association elects otherwise (which election may be made at any time), each condominium association established by a condominium regime imposed upon all or a portion of the Development Tract will collect all Assessments levied pursuant to this Covenant from Condominium Unit Owners within such condominium regime. The condominium association will promptly remit all Assessments collected from Condominium Unit Owners to the Association. If the condominium association fails to timely collect any portion of the Assessments due from the Owner of the Condominium Unit, then the Association may collect such Assessments allocated to the Condominium Unit on its own behalf and enforce its lien against the Condominium Unit without joinder of the condominium association. The condominium association's right to collect Assessments on behalf of the Association is a license from the Association which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Board.

5.1.3 Declarant Subsidy. Declarant shall financially support to Association during the Development Period by contributing funds equivalent to any shortfall on an annual budget. This obligation terminates upon the termination of the Development Period.

5.2 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 Covenant. The funds of the Association may be used for any purpose authorized by the Documents and Applicable Law.

5.3 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association ("**Regular Assessments**") which sets forth: (a) an estimate of expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Covenant, 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 Documents; and (b) an estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, but

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excluding (c) the operation, maintenance, repair and management costs and expenses associated with any Special Common Area and Service Area. If the sums collected prove inadequate for any reason, including non-payment of any Individual Assessment by an Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association at the beginning of the fiscal year or, during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. If the Board elects to adopt annual Regular Assessments and further elects to permit Regular Assessments to be paid in installments, e.g., monthly, quarterly, etc., the Board may charge an administrative or processing fee for each such installment.

5.4 **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 Documents. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment 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 Special Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. 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 a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments based on Assessment Units. All such Special Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.5 **Special Common Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve. If the sums collected prove inadequate for any reason, including non-payment of any individual Special Common Area Assessment, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. If the Board elects to adopt annual Special Common Area Assessments and further elects to permit Special Common Area Assessments to

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be paid in installments, e.g., monthly, quarterly, etc., the Board may charge an administrative or processing fee for each such installment.

5.6 **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. The total amount of Service Area Assessments will be allocated either: (a) equally among Lots and Condominium Units within the Service Area; (b) based on Assessment Units assigned to Lot or Condominium Units within the Service Area; or (c) based on the benefit received among all Lots and Condominium Units in the 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. All such Service Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. If the Board elects to adopt annual Service Area Assessments and further elects to permit Service Area Assessments to be paid in installments, e.g., monthly, quarterly, etc., the Board may charge an administrative or processing fee for each such installment.

5.7 **Individual Assessments.** In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Lot or Condominium Unit for: (a) interest, late charges, and collection costs on delinquent Assessments; (b) reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Condominium Unit into compliance with the Documents; (c) fines for violations of the Documents; (d) fees for estoppel letters and project documents; (e) insurance deductibles; (f) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Tenants of the Owner's Lot or Condominium Unit; and (g) common expenses that benefit fewer than all of the Lots or Condominium Units, which may be assessed according to benefit received.

5.8 **Amount of Assessments**.

5.8.1 Assessments to be Levied. The Board will levy Assessments against each Lot or Condominium Unit based on "**Assessment Units**" (as described in *Section 5.8.2* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.3* and *Section 5.4* will be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 5.5* will be levied uniformly against each Assessment Unit allocated to a Lot or Condominium Unit that has been assigned the obligation to pay Special Common Area Assessments for specified Special Common Area. Service Area Assessments levied pursuant to *Section 5.6* will be levied either: (a) equally among Lots or Condominium Units within the Service Area; (b) based on Assessment Units assigned to Lots or Condominium Units within the Service Area; or (c) based on the benefit received among all Lots and Condominium Units in the Service Area.

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5.8.2 Assessment Units. Each Lot shall be allocated one (1) Assessment Unit for each acre (or fraction thereof) within the Property. For example, if a Lot consists of 5.35 acres, 5.35 Assessment Units will be allocated to such Lot. If Lot is submitted to the condominium form of ownership, the condominium declaration must allocate to each Condominium Unit established thereby a fractional portion of all the Assessment Units assigned to such Lot.

5.8.3 Declarant Exemption. Notwithstanding anything in this Covenant to the contrary, no Assessments will be levied upon Lots or Condominium Units owned by Declarant. Notwithstanding the foregoing provision, Declarant will be required to pay Assessments for a Lot or Condominium Unit owned by the Declarant if the Declarant constructs Improvements on the Lot or Condominium Unit and intends to retain ownership of such Lot or Condominium Unit with Improvements constructed thereon instead of marketing for sale to a third-party or conveying or transferring such Improvements to the Association or a Governmental Entity. Assessments against a Lot or Condominium Unit owned by the Declarant, that are subject to Assessments in accordance with the previous sentence, will commence on the first day of the month succeeding the month in which a certificate of occupancy or its equivalent has been issued by a Governmental Entity for the Improvements constructed on the Lot or Condominium Unit.

5.8.4 Other Exemptions. Declarant may, in its sole discretion, elect to: (a) exempt any un-platted or unimproved portion of the Property, Lot or Condominium Unit from Assessments; (b) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property, Lot or Condominium Unit; or (c) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Property, Lot or Condominium Unit. 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 a Governmental Entity from Assessments.

5.9 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 a charge upon the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

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5.10 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit 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 thereof (or if there is no such highest rate, then at the rate of 1½% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

5.11 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this *Article 5* is, together with late charges as provided in *Section 5.9* and interest as provided in *Section 5.10* and all costs of collection, including attorney's fees, are secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.1.2* above, and will bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for (a) tax and governmental assessment liens; and (b) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question. 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 officer 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 or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by an officer of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Covenant, 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 or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for

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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 5.11*, 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 may be signed by an officer of the Association and Recorded. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit 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 or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit 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 or Condominium Unit to a third party.

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

(i) The Common Area and the Special Common Area; and

(ii) Any portion of the Property owned by Declarant.

5.13 Fines and Damages Assessment.

5.13.1 Board Assessment. The Board may assess fines against an Owner for violations of the Documents which have been committed by an Owner, a Tenant or an Owner's or Tenant's guests, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 5.13* will be considered an Individual Assessment pursuant to this Covenant. 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 Improvements caused by the Owner,

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Tenant, 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 Documents and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

5.13.2 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 5.10* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.1.2* of this Covenant. The fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 5*.

ARTICLE 6
BOOT LAKE RANCH REVIEWER

6.1 Architectural Control by Declarant. During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Boot Lake Ranch Reviewer is Declarant or its designee. Any Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 6* and need not be approved by the Boot Lake Ranch Reviewer.

6.1.1 Rights Reserved. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of the Boot Lake Ranch Reviewer, which approval may be granted or withheld in its sole discretion. In reviewing and acting on an application for approval, the Boot Lake Ranch Reviewer 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.

6.1.2 Delegation. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or 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: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Neither

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Declarant nor the Boot Lake Ranch Reviewer is responsible for: (a) errors in or omissions from the plans and specifications submitted to the Boot Lake Ranch Reviewer; (b) supervising construction for the Owner's compliance with approved plans and specifications; or (c) the compliance of the Owner's plans and specifications with Applicable Law.

6.2 **Architectural Control by Association**. 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 Boot Lake Ranch Reviewer hereunder.

6.2.1 ACC. The ACC will consist of at least three (3) but no more than seven (7) Persons appointed by the Board. 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 Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Tenants, 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.

6.2.2 Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified in 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: (a) errors in or omissions from the plans and specifications submitted to the ACC; (b) supervising construction for the Owner's compliance with approved plans and specifications; or (c) the compliance of the Owner's plans and specifications with Applicable Law.

6.3 **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 Boot Lake Ranch Reviewer. The Boot Lake Ranch 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. Unless otherwise provided in the Design Code, an Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement located on such Owner's Lot or within such Owner's Condominium Unit, provided that such action is not visible from any other portion of the Property.

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6.4 Architectural Approval.

6.4.1 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots or Condominium Units, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Code, if any, or any additional rules adopted by the Boot Lake Ranch Reviewer together with any review fee which is imposed by the Boot Lake Ranch Reviewer in accordance with *Section 6.4.2*. No plat, re-subdivision or consolidation will be made nor any Improvement placed or allowed on any Lot or Condominium Unit, until the plans and specifications for the proposed Improvement have been approved in writing by the Boot Lake Ranch Reviewer. The Boot Lake Ranch Reviewer reserves the right to adopt preconditions or requirements for the approval of contractors proposed by the Owner to construct the Improvements. The Boot Lake Ranch Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or other tests that may be required by the Boot Lake Ranch Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Boot Lake Ranch Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Boot Lake Ranch Reviewer, in its sole discretion, may require. Site plans must be approved by the Boot Lake Ranch Reviewer prior to the clearing of any Lot or Condominium Unit, or the construction of any Improvements. The Boot Lake Ranch Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or Condominium Unit on any grounds that, in the sole and absolute discretion of the Boot Lake Ranch Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Covenant, the Boot Lake Ranch Reviewer may issue an approval for the construction of Improvements based on a procedure which differs from the procedures for review and approval otherwise set forth in this Covenant.

6.4.2 Design Code. The Boot Lake Ranch Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Code which may apply to all or any portion of the Property. In addition, the Boot Lake Ranch Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Covenant or the Design Code. Such charges will be held by the Boot Lake Ranch Reviewer and used to defray the administrative expenses and any other costs incurred by the Boot Lake Ranch Reviewer in performing its duties hereunder. The Boot Lake Ranch Reviewer will not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Code, is assembled and submitted to the Boot Lake Ranch Reviewer. The Boot Lake Ranch Reviewer will have the

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authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Covenant (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

6.4.3 Approval of Regulatory Submission Item. Each Owner is further advised that prior to submitting any application, variance or special use permit, plat, drainage plans, building or site plan, expressly including any amendments to a preliminary plan or a development plan (a "**Regulatory Submission Item**") required to be submitted by an Owner to a Governmental Entity for approval or issuance of a permit, as applicable, the Owner must first obtain approval from the Boot Lake Ranch Reviewer of the Regulatory Submission Item (the "**Preliminary Regulatory Approval**"). Any Preliminary Regulatory Approval granted by the Boot Lake Ranch Reviewer is conditional and no Improvements may be constructed in accordance with the Regulatory Submission Item until the Owner has submitted to the Boot Lake Ranch Reviewer a copy of the Regulatory Submission Item approved by the Governmental Entity and the Boot Lake Ranch Reviewer has issued to the Owner a "Notice to Proceed". In the event of a conflict between the Regulatory Submission Item approved by the Boot Lake Ranch Reviewer and the Regulatory Submission Item approved by the regulatory authority, the Owner will be required to resubmit the Regulatory Submission Item to the Boot Lake Ranch Reviewer for approval. Each Owner acknowledges that no Governmental Entity has the authority to modify the terms and provisions of the Documents applicable to all or any portion of the Property.

6.4.4 Boot Lake Ranch Reviewer Approval of Project Names. Each Owner is advised that the name used to identify a Development Tract or any portion thereof for marketing or identification purposes must be approved in advance and in writing by the Boot Lake Ranch Reviewer.

6.4.5 Failure to Act. In the event that any plans and specifications are submitted to the Boot Lake Ranch Reviewer as provided herein, and the Boot Lake Ranch 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.

6.4.6 Variances. The Boot Lake Ranch Reviewer in its sole and absolute discretion may grant variances from compliance with any of the provisions of the Documents. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by the Declarant until expiration or termination of the Development Period, a Majority of the Board, and a Majority of the members of the ACC. Each variance must also be Recorded at the expense of the Owner requesting

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the variance; 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 Boot Lake Ranch Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Documents 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 Documents 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 Documents.

6.4.7 Duration of Approval. The approval of the Boot Lake Ranch Reviewer of any final plans and specifications, and any variances granted by the Boot Lake Ranch Reviewer will be valid for a period of three hundred and sixty (360) days only. If construction in accordance with such plans and specifications or variance is not commenced within such three hundred and sixty (360) 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 Boot Lake Ranch Reviewer, and the Boot Lake Ranch Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.4.7* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

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

6.4.9 Non-Liability of the Boot Lake Ranch Reviewer. NEITHER THE DECLARANT, THE BOARD NOR THE BOOT LAKE RANCH REVIEWER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE BOOT LAKE RANCH REVIEWER'S DUTIES UNDER THIS COVENANT.

ARTICLE 7
MORTGAGE PROVISIONS

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

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7.1 **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 or Condominium Unit to which its Mortgage relates thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

7.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot or Condominium Unit on which there is an Eligible Mortgage held, insured, or guaranteed by an Eligible Mortgage Holder; or

7.1.2 Any delinquency in the payment of assessments or charges owed for a Lot or Condominium Unit 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 Documents relating to such Lot or Condominium Unit or the Owner or Tenant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

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

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

7.3 **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 or Condominium Units and not to any other portion of the Property.

ARTICLE 8
EASEMENTS

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

8.2 **Common Area or Special Common Area Right of Ingress and Egress.** Declarant, its agents, employees, successors and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other

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temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property.

8.3 **Roadway and Utility Easements.** Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Property for: (a) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (b) the installation, operation and maintenance of cable and telecommunications lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; (c) the installation, operation and maintenance of landscaping and fencing, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant, and (d) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, private roadways or other areas to serve the Property and any other property owned by Declarant. 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 (a) through (d) of this *Section 8.3*. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

8.4 **Landscape, Monumentation and Signage Easement**. Declarant hereby reserves an easement over and across the Property for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Property and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area or Special Common Area.

8.5 **Cellular Tower and Telecommunications Easement**. Declarant hereby grants and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area or Special Common Area, or any portion of the Property or the Development which Declarant intends to designate as Common Area or Special Common Area (the "**CTT Easement Area**") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee will have the right, from time to time, but no obligation, to Record a written notice which identifies the portion of the Common Area or Special Common Area to which the CTT Easement Area pertains and Declarant, or its assignee, may fence, install landscaping, or otherwise install improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither the Association, nor any Owner other than the Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and

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operation of the CTT Equipment. In addition, Declarant hereby reserves for itself and its assigns a non-exclusive, perpetual and irrevocable easement over the Property and the Development for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third-party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this *Section 8.5*. The rights reserved to Declarant under this *Section 8.5* shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Property or the Development shall have any rights to income derived from or in connection with the rights and easements granted in this *Section 8.5*, except as expressly approved in writing by Declarant. EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT ITS ASSIGNS UNDER THIS *SECTION 8.5* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. The provisions of this *Section 8.5* shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

8.6 **Easement for Special Events**. The Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area and Special Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant or the Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot or Condominium Unit subject to this Covenant acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and any Tenants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

ARTICLE 9
DEVELOPMENT RIGHTS

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9.1 Development. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified by the Declarant in its sole and absolute discretion. Declarant reserves the right, but will not be obligated, to designate Development Tracts, and to create and/or designate Lots, Condominium Units, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Property. As each area is conveyed, developed or dedicated, Declarant may Record one or more Development Tract Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Tract Declaration may provide its own procedure for the amendment thereof.

9.2 Special Declarant Rights. Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (a) 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 and Condominium Units in the Property; (b) to maintain Improvements upon Lots, including the Common Area and Special Common Area, as sales, model, management, business and construction offices; and (c) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

9.3 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the Recording of a notice of addition of land, such added lands will be considered part of the Property subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant and the rights, privileges, duties and liabilities of the Persons subject to this Covenant will be the same with respect to such added land as with respect to the lands originally covered by this Covenant. Such added land need not be contiguous to the Property; to add lands to the Property, Declarant will be required only to Record, a notice of addition of land (which notice may be contained within any Development Tract Declaration affecting such land) containing the following provisions:

(i) A reference to this Covenant, which reference will state the document number or volume and page wherein this Covenant is Recorded;

(ii) A statement that such land will be considered Property for purposes of this Covenant, and that all of the terms, covenants, conditions, restrictions and obligations of this Covenant will apply to the added land; and

(iii) A legal description of the added land.

9.4 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Property and remove and exclude from the burden of this Covenant and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal

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and removal, this Covenant 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 Covenant, which reference will state the document number or volume and page number wherein this Covenant is Recorded;

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

(iii) A legal description of the withdrawn land.

9.5 Assignment of Declarant's Rights. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any Person and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other Person in any of its privileges, exemptions, rights, reservations and duties hereunder.

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

ARTICLE 10
GENERAL PROVISIONS

10.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant will run with and bind the portion of the Property described in such notice, 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 Covenant is Recorded, and continuing through and including January 1, 2095, after which time this Covenant 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 by Members entitled to cast at least eighty percent (80%) of the total number of votes of the Association. The foregoing sentence

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shall in no way be interpreted to mean eighty percent (80%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 10.1* to the contrary, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Charles III, King of England.

10.2 Eminent Domain. In the event it becomes necessary for any Governmental Entity to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such Governmental Entity 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 or Condominium Unit. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit.

10.3 Amendment. This Covenant may be amended or terminated by the recording of an instrument executed and acknowledged by: (a) Declarant acting alone; or (b) 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 eighty percent (80%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean eighty percent (80%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant during the Development Period, nor shall any amendment be effective to change the rights of Nueva Boot to appoint the Nueva Boot Board Member without the written consent of Nueva Boot.

10.4 Enforcement. The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant 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 Documents shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND

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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 DOCUMENTS.

10.4 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Covenant. Any Owner acquiring a Lot or Condominium Unit in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot or Condominium Unit, agrees to hold Declarant harmless therefrom.

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

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

10.8 Conflicts. If there is any conflict between the provisions of this Covenant, the Certificate, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Development Unit Declaration, the provisions of this Covenant will govern.

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

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

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10.11 Damage and Destruction.

10.11.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 10.11*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

10.11.2 Repair Obligations. Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

10.11.3 Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special 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.

10.11.4 Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.11.5 Special Assessment for Special Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board may levy a Special Assessment, as provided in *Article 5*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.11.6 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

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Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

10.11 Proceeds Payable to Owners Responsible for Special Common Area. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

10.12 No Partition. Except as may be permitted in this Covenant or amendments thereto, no physical partition of the Common Area or Special 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 all or the portion of the Property in question has been removed from the provisions of this Covenant pursuant to *Section 9.4* above. This *Section 10.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Covenant.

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

10.14 Safety and Security. Each Owner and Tenant of a Lot or Condominium Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each Person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or

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intended. Each Owner acknowledges, understands, and shall be responsible for informing any Tenants of such Owner's Lot or Condominium Unit that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot or Condominium Unit and the contents thereof, resulting from acts of third parties.

10.15 Facilities Open to the Public. Certain facilities and areas within the Property will be open for the use and enjoyment of the public. Such facilities and areas may include, by way of example, greenbelts, trails and paths, parks, roads, sidewalks and medians.

10.16 Notices. Any notice permitted or required to be given to any Person by this Covenant will be in writing and may be delivered either personally or by mail, or as otherwise provided in this Covenant or 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 in writing 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.

10.17 Estoppel Certificates. Each Owner may request that the Association deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Lot or Condominium Unit, as applicable, upon the payment of a reasonable administrative fee, certifying: (a) the Documents are unmodified and in full force and effect (or if modified that the Documents as so modified is in full force and effect); (b) the Documents attached to the certificate is a true and correct copy of the Documents and all amendments hereto; (c) the date through which all Assessments have been paid by the Owner requesting such certificate; and (d) to the actual knowledge of the Association, the requesting party is not in default of any of its obligations under the Documents.

ARTICLE 11
DISPUTE RESOLUTION

11.1 Agreement to Encourage Resolution of Disputes Without Litigation.

11.1.1 Bound Parties. Declarant, the Association and its officers, directors, and committee members, Owners and all other parties subject to this Covenant ("**Bound Party**", or collectively, the "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in *Section 11.1.2*, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 11.2* in a good faith effort to resolve such Claim.

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11.1.2 Claim(s). As used in this Article, the term "**Claim**" or "**Claims**" will refer to any claim, grievance or dispute arising out of or relating to:

(i) Claim relating to the rights and/or duties of Declarant under the Documents; or

(ii) Claims against the Declarant relating to the design or construction of Improvements on the Common Area, Special Common Area, or Lots.

11.2 Claims Process. In the event the Association or a Lot Owner asserts a Claim, as a precondition to providing the Notice defined in *Section 11.3*, initiating the mandatory dispute resolution procedures set forth in this *Article 11*, or taking any other action to prosecute a Claim, the Association or a Lot Owner, as applicable, must:

11.2.1 Independent Report on the Condition. If the Claim is against the Declarant related to the design or construction of Improvements on the Common Area, Special Common Area, or Lots, obtain an independent third-party report (the "**Condition Report**") from a licensed professional engineer which: (a) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (b) describes any modification, maintenance, or repairs to the Improvements performed by the Lot Owner(s) and/or the Association; (c) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or a Lot Owner and paid for by the Association or a Lot Owner, as applicable, and not prepared by a Person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or a Lot Owner in the Claim. As a precondition to providing the Notice described in *Section 11.3*, the Association or Lot Owner must provide at least ten (10) days prior written notice of the inspection to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Condition Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Condition Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 11.3*, the Association or the Lot Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Condition Report.

11.2.2 Claims by Association – Owner Meeting and Approval. If the Claim is brought by the Association, obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 11.3*, initiate the mandatory dispute resolution procedures set forth in this *Article 11*, or take any other action to prosecute a Claim, which approval from Members must be obtained

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at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (a) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (b) a copy of the Condition Report if required pursuant to *Section 11.2.1*; (c) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "**Engagement Letter**"); (d) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not to proceed with the Claim; (e) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (f) an estimate of the impact on the value of each Lot and Improvements if the Claim is prosecuted and an estimate of the impact on the value of each Lot and Improvements after resolution of the Claim; (g) an estimate of the impact on the marketability of each Lot and Improvements if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot and Improvements during and after resolution of the Claim; (h) the manner in which the Association proposes to fund the cost of prosecuting the Claim; (i) the impact on the finances of the Association, including the impact on present and projected reserves. The notice required by this paragraph must be prepared and signed by a Person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 11.3*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

11.3 **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (a) the nature of the Claim, including date, time, location, Persons involved, and Respondent's role in the Claim; (b) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) that the Notice is given pursuant to this Section. The one hundred and twenty (120) day period for mediation set forth in *Section 11.5* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 11.5* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Condition Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Improvements which

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form the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 11.2.2* above; and (e) and reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice.

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

11.5 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 11.5*.

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

11.7 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 11.7*.

11.7.1 Governing Rules. If a Claim has not been resolved after Mediation as required by *Section 11.5*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 11.7* and the rules and procedures of the American Arbitration Association ("**AAA**") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Midland County, Texas. Regardless of what entity or Person is acting as the arbitrator, the arbitration shall be conducted in

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accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 11.7*, this *Section 11.7* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

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

11.7.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 11.7* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (a) exercising self-help remedies (including set-off rights); or (b) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

11.7.3 Statutes of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 11.7*.

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11.7.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *Section 11.7* but subject to *Section 11.8*. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (a) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (b) conclusions of law that are erroneous; (c) an error of federal or state law; or (d) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

11.7.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Midland County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

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

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

11.10 Approval and Settlement. The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 11* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless

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the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

[SIGNATURE PAGE FOLLOWS]

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

DECLARANT:

BOOT LAKE RANCH PROPERTY OWNER, LLC,
a Delaware limited liability company

By: Boot Lake Ranch Development Company, LLC, a Delaware limited liability company, its Manager

By: _____
Name: Adam Cunyus
Title: Co-President

THE STATE OF TEXAS §

COUNTY OF Midland §

This instrument was acknowledged before me this 10 day of July, 2023 by Adam Cunyus, the Co-President of Boot Lake Ranch Development Company, LLC, a Delaware limited liability company, Manager of BOOT LAKE RANCH PROPERTY OWNER, LLC, a Delaware limited liability company, on behalf of said entities.

(SEAL)

_____
Notary Public Signature

JESSICA FRANCO
Notary ID #125232871
My Commission Expires
September 29, 2024

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CONSENT AND JOINDER

The undersigned is the owner of a portion of the Property: (a) consents to the execution and recordation of the foregoing Covenant; (b) ratifies, affirms and adopts the terms of the foregoing Covenant; and (c) agrees that the portion of the Property owned by the undersigned is subject to the terms of the foregoing.

Executed to be effective as of the effective date of the foregoing Covenant.

NUEVA BOOT:

NUEVA BOOT, LLC, a Texas limited liability company

By: _____
Name: Austin J Agnew
Title: Manager

THE STATE OF TEXAS §

COUNTY OF Midland §

This instrument was acknowledged before me this 10th day of July 2023 by Austin Agnew, the Manager of Nueva Boot, LLC, a Texas limited liability company, on behalf of said company.

(SEAL)

Judy Estes
Notary Public Signature

JUDY ESTES
Notary ID #131758757
My Commission Expires
October 12, 2026

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EXHIBIT "A"
DESCRIPTION OF PROPERTY

TRACT ONE (1):

LOT ONE (1), BLOCK TWENTY-ONE (21), GRASSLAND ESTATES, SECTION 16, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof, recorded in Cabinet F, Page 157, Plat Records of Midland County, Texas.

SAVE AND EXCEPT:
A 0.279 Acre Tract of Land recorded in Document Number 2020-32262, Official Public Records of Midland County, Texas, and being further described as:

A 0.279 acre Right-of-Way tract located in Lot 1, Block 21, Grassland Estates, Section 16, an addition to the City of Midland, Midland County, Texas as recorded in Cabinet F, Page 157 of the Midland County Plat Records and being a portion of the land conveyed to Midland-Odessa Golf Corp. by deed as recorded in Doc. No. 2014-20729 of the Midland County Deed Records and being more fully described as follows:

Beginning at an iron rod with cap found in the west line of said Lot 1 at the beginning of a curve to the right and having a coordinate of N= 10,699,283.30 ft., E= 1,725,850.30 ft., an iron rod with cap found for the northwest corner of said Lot 1 as shown on Grassland Estates, Section 16 plat bears N 14° 32'51" W a distance of 13.78 ft.,

Thence along said curve to the right having a radius of 15.00 ft., an arc length of 22.29 ft. with a chord of 20.29 ft. and chord bearing of N 27° 46'01" E to a found iron rod with cap at the end of this curve and the beginning of another curve to the right,

Thence along the north line of said Lot 1 and said curve to the right having a radius of 1450.00 ft., an arc length of 124.32 ft. with a chord of 124.28 ft. and a chord bearing of N 73° 03'32" E to a found iron rod with cap at the end of this curve,

Thence N 75° 30'54" E along the north line of said Lot 1 a distance of 236.77 ft. to a set 1/2 " diameter iron rod with cap for the east corner of the herein described tract,

Thence S 71° 07'15" W along the southern line of the herein described tract a distance of 38.13 ft. to a set 1/2" diameter iron rod with cap at the beginning of a curve to the left,

Thence along said curve to the left having a radius of 940.00 ft., an arc length of 350.00 ft. with a chord bearings of S 60° 26'20" W and a chord distance of 348.48 ft. to a set 1/2" diameter iron rod

with cap in the west line of said Lot 1 and the east line of a tract to the City of Midland, Texas as recorded in Vol. 1798, Pg. 305 of the said deed records,

Thence N 14° 32'52" W along the west line of said Lot 1 a distance of 73.21 ft. to the place of beginning and containing 0.279 acres.

TRACT TWO (2):

A 0.049 acre Tract of Land in Section 25, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas and recorded in Document Number 2020-38555, Official Public Records of Midland County, Texas, and further described as:

A 0.049 acre tract located in Section 25, Block 40, T-1-S, T.&P. RR. Co. Survey, Midland County, Texas and being a portion of the land conveyed to the City of Midland, Texas by deeds as recorded in Doc. No. 2019-36116 and Vol. 1934, Pg. 276 of the Midland County Deed Records and being more fully described as follows:

Beginning at a set 1/2" diameter iron rod for the most westerly corner of the herein described tract in the south line of a 1.855 acre tract conveyed to the City of Midland, Texas by deed as recorded in said Doc. No. 2019-36116 of the said deed records and being in the north line of a tract to Midland-Odessa Coml Corp. as recorded in Doc. No. 2014-20729 of the said deed records and also being in the north line of Lot 1, Block 21 of the Grassland Estates, Section 16 an addition to the City of Midland, Texas and having a coordinate of N= 10,699,396.70 ft., E= 1,726,207.89 ft., a found 1/2" diameter iron rod for the southeast corner of the said 1.855 acre tract bears N 74°41'32" E a distance of 124.96 ft.,

Thence N 71° 07'14" E along the north line of the herein described tract a distance of 494.99 ft. to a set 1/2" diameter iron rod with cap for the most easterly corner of the herein described tact at the beginning of a curve to the left,

Thence along the north line of said Lot 1 and said curve to the left having a radius of 1925.65 ft. an arc length of 97.44 ft. with a chord bearing of S 70° 28'34" W and a chord distance of 97.43 ft. to a point at the end of this curve,

Thence S 68° 59'57" W along the north line of said Lot 1 a distance of 172.00 ft. to a point at the beginning of a curve to the right,

Thence along the north line of said Lot 1 and said curve to the right having a radius of 1550.00 ft., an arc length of 175.41 ft. with a chord bearing of S 72° 17'37" W and a chord distance of 175.31 ft. to a point at the end of this curve,

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Thence S 75° 30'57" W along the north line of said Lot 1 a distance of 50.55 ft. to the place of beginning and containing 0.049 acres.

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EXHIBIT "B"
USE RESTRICTIONS

1. **Prohibited Uses and Activities.** The Boot Lake Ranch Reviewer shall determine, in its sole and absolute discretion, whether any use or activity is permitted or prohibited as set forth herein. Any portion of the Property must be used solely for activities that conform to all applicable zoning requirements, if any, and Applicable Law. Without limiting the generality of the foregoing, no portion of the Property may be used for: (a) a business that specializes in bankruptcy or liquidation sales or the selling of fire damaged items or "tent" sales; (b) an auction house, flea market, or pawn shop; (c) reserved; (d) an establishment for the sale of commercial trucks (non-passenger vehicles), mobile homes or recreational motor vehicles; (e) an adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials (including without limitation, magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (f) any sexually oriented massage parlor, nude modeling studio, or bar, tavern, restaurant or other establishment that employs or uses nude or topless entertainers or staff, or any other sexually oriented business (as used herein, the term "sexually oriented business" will have the same meaning assigned to such term by Section 243.002 of the Texas Local Government Code as of the date hereof); (g) bingo, lotto, off-track betting hall or other gambling establishment (which will not be deemed to include state lottery tickets lawfully sold); (h) a mortuary, crematorium or funeral home; (i) any type of facility which sells drug-related paraphernalia for use with illicit drugs; (j) any type of facility or business that sells fuel; or (k) any dry cleaning plant or central laundry facility performing on-site dry cleaning; provided, however that the foregoing shall not prohibit (i) a coin operated laundromat or (ii) a drop off dry cleaner which does not perform on-site dry cleaning but instead merely collects and distributes cleaned garments. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2. **Trash.** Solid waste collection bins and dumpsters shall be equipped with lids and look substantially like the adjacent building(s) on the remaining three sides. Owners and Tenants will place trash entirely within trash receptacles located within the Property, which receptacles must be approved as to location and design by Declarant, and may not place trash outside, next to, or on top of the receptacle. Boxes and large objects should be crushed or broken down before being placed in a receptacle. Receptacles are to be closed at all times when not in use. Owners and Tenants must arrange privately for removal of discarded furnishings or any unusually large volume of debris.

3. **Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Board will be permitted to remain within the Property so as to be visible from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, commercial

trucks (other than pickups), boats, tractors, campers, wagons, buses, all-terrain vehicles and garden maintenance equipment belonging to any Owner or Tenant must be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas and storage areas must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash may be stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible within or parked on any roadway within the Property. Mobile homes are prohibited.

4. **Outside Burning.** There will be no exterior fires, except that barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles for such purposes and in areas designated and approved by the Board shall be permitted. No Owner or Tenant will permit any condition to exist within the Property which creates a fire hazard or violates Applicable Law.

5. **Storage and Loading Areas.** The outdoor storage of any materials, supplies, inventory, and/or equipment, whether in cargo containers or similar containers or buildings, is prohibited except on a temporary basis for construction-related purposes. Unless approved in advance and in writing by the Boot Lake Ranch Reviewer, no materials, supplies or equipment shall be loaded or unloaded or stored upon any portion of the Property, except in designated loading and unloading areas or inside a closed building or otherwise behind a visual barrier screening such materials, supplies or vehicles.

6. **Utility Lines.** Unless otherwise approved by the Boot Lake Ranch Reviewer, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other structures.

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Midland County
Alison Haley
Midland County
Clerk

Instrument Number: 24962

eRecording - Real Property

Recorded On: October 18, 2023 08:14 AM

Number of Pages: 60

" Examined and Charged as Follows: "

Total Recording: $258.00

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********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	24962
Receipt Number:	20231017000129
Recorded Date/Time:	October 18, 2023 08:14 AM
User:	Amanda D
Station:	cc10297

Record and Return To:

Simplifile

TX

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STATE OF TEXAS
COUNTY OF MIDLAND

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

Alison Haley
Midland County Clerk
Midland County, TX

Alison Haley

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