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County Clerk
Sherman, TX 75090

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COUNTY OF GRAYSON

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2023 - 29223

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

LUELLA CROSSING

[*GRAYSON COUNTY, TEXAS*]

Declarant: LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., a Texas limited partnership

This Declaration of Covenants, Conditions and Restrictions may be used only in connection with the residential community known as Luella Crossing in Grayson County, Texas and the operation of Luella Crossing Residential Community, Inc., a Texas nonprofit corporation.

Grayson County Clerk

Table of Contents

Page

ARTICLE 1 DEFINITIONS **1**

ARTICLE 2 GENERAL AND USE RESTRICTIONS **6**

2.1 General 6
2.2 Conceptual Plans 7
2.3 Single-Family Residential Use 7
2.4 Subdividing 8
2.5 Hazardous Activities 9
2.6 Insurance Rates 9
2.7 Mining and Drilling 9
2.8 Noise 9
2.9 Animals - Household Pets 9
2.10 Rubbish and Debris 10
2.11 Maintenance 10
2.12 Street Landscape Area-Owner's Obligation to Maintain Landscaping 11
2.13 Antennas 11
2.14 Location of Permitted Antennas 11
2.15 Signs 12
2.16 Flags – Approval Requirements 13
2.17 Flags – Installation and Display 13
2.18 Tanks 14
2.19 Temporary Structures 14
2.20 Outside Storage Buildings 14
2.21 Unsightly Articles; Vehicles 15
2.22 Mobile Homes, Travel Trailers and Recreational Vehicles 15
2.23 Basketball Goals; Permanent and Portable 15
2.24 Compliance with Restrictions 15
2.25 Liability of Owners for Damage to Common Area 16
2.26 No Warranty of Enforceability 16
2.27 Party Wall Fences; Party Walls 17
2.28 Playscapes and Sports Courts 18
2.29 Decorations and Lighting 18
2.30 Water Quality Facilities, Drainage Facilities and Drainage Ponds 19
2.31 Shared Mailboxes 19
2.32 Cell Tower and Telecommunications Equipment 19
2.33 Release and Indemnity 19

ARTICLE 3 CONSTRUCTION RESTRICTIONS **20**

3.1 Approval for Construction 20
3.2 Rentals 20
3.3 Fences; Sidewalks 20

Table of Contents (continued)

		Page
3.4	Trash Containers	21
3.5	Drainage	21
3.6	Construction Activities	21
3.7	Roofing	21
3.8	Swimming Pools	22
3.9	Compliance with Setbacks	22
3.10	Solar Energy Device	22
3.11	Rainwater Harvesting Systems	23
3.12	Xeriscaping	24
3.13	Utility Lines	26
3.14	Garages	26
ARTICLE 4 LUELLA CROSSING RESIDENTIAL COMMUNITY, INC.		**26**
4.1	Organization	26
4.2	Membership	26
4.3	Governance	28
4.4	Voting Allocation	28
4.5	Powers	28
4.6	Conveyance of Common Area to the Association	32
4.7	Indemnification	32
4.8	Insurance	33
4.9	Bulk Rate Contracts	33
4.10	Community Services and Systems	34
4.11	Protection of Declarant's Interests	34
4.12	Administration of Common Area	35
4.13	Right of Action by Association	35
ARTICLE 5 INSURANCE AND RESTORATION		**35**
5.1	Insurance	35
5.2	Restoration	35
5.3	Mechanic's and Materialmen's Lien	36
ARTICLE 6 COVENANT FOR ASSESSMENTS		**37**
6.1	Assessments	37
6.2	Maintenance Fund	37
6.3	Regular Assessments	37
6.4	Working Capital Assessment	38
6.5	Special Assessments	38
6.6	Individual Assessments	39
6.7	Amount of Assessment	39
6.8	Late Charges	40
6.9	Owner's Personal Obligation; Interest	40
6.10	Assessment Lien and Foreclosure	40

Table of Contents (continued)

Page

6.11 Exempt Property 42
6.12 Fines and Damages Assessment 42

ARTICLE 7 ARCHITECTURAL CONTROL COMMITTEE 43
7.1 Construction of Improvements 43
7.2 Architectural Control Committee 43

ARTICLE 8 MORTGAGE PROVISIONS 46
8.1 Notice of Action 46
8.2 Examination of Books 47
8.3 Taxes, Assessments and Charges 47

ARTICLE 9 EASEMENTS 47
9.1 Right of Ingress and Egress 47
9.2 Reserved Easements 48
9.3 Roadway and Utility Easements 48
9.4 Entry and Fencing Easement 48
9.5 Landscape, Monumentation and Signage Easement 48
9.6 Easement for Special Events 49
9.7 Solar Equipment Easement 49
9.8 Cellular Tower and Telecommunications Easement 49
9.9 Easement to Inspect and Right to Correct 50

ARTICLE 10 DEVELOPMENT RIGHTS 50
10.1 Development by Declarant 50
10.2 Special Declarant Rights 51
10.3 Addition of Land 51
10.4 Withdrawal of Land 51
10.5 Notice of Plat Recordation 52
10.6 Assignment of Declarant's Rights 52

ARTICLE 11 GENERAL PROVISIONS 52
11.1 Term 52
11.2 Eminent Domain 53
11.3 Amendment 53
11.4 Enforcement 54
11.5 No Warranty of Enforceability 54
11.6 Declarant Fine Authority 55
11.7 Higher Authority 55
11.8 Severability 55
11.9 Conflicts 55
11.10 Gender 55
11.11 Acceptance by Owners 55

Table of Contents (continued)

		Page
11.12	Damage and Destruction	56
11.13	No Partition	56
11.14	View Impairment	57
11.15	Safety and Security	57
11.16	Notices	57
ARTICLE 12 DISPUTE RESOLUTION		**58**
12.1	Introduction and Definitions	58
12.2	Mandatory Procedures	59
12.3	Claim Affecting Common Areas	59
12.4	Claim by Lot Owners	63
12.5	Notice	64
12.6	Negotiation	64
12.7	Mediation	65
12.8	Binding Arbitration-Claims	65
12.9	Allocation of Costs	67
12.10	Waiver of Rights under Certain Statutory Provisions	67
12.11	General Provisions	67
12.12	Period of Limitation	67
12.13	Funding the Resolution of Claims	68

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LUELLA CROSSING

This Declaration of Covenants, Conditions and Restrictions for Luella Crossing (the "**Declaration**") is made by **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.**, a Texas limited partnership (the "**Declarant**"), and is as follows:

RECITALS:

A. This Declaration is filed with respect to that certain real property located in Grayson County, Texas, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "**Property**"). Declarant is the owner of the Property.

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

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

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

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

ARTICLE 1
DEFINITIONS

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

"**Applicable Law**" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Property in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision, and all other ordinances and any other applicable building codes, zoning restrictions and permits or other applicable

regulations. Statutes and ordinances specifically referenced in the Restrictions are "Applicable Law" on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"**Architectural Control Committee**" or "**ACC**" means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot. As provided in *Article 7* below, the Declarant acts as the ACC and the ACC is not a committee of the Association until the Declarant has assigned its right to appoint and remove all ACC members to the Association in a Recorded written instrument.

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

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

"**Association**" means **LUELLA CROSSING RESIDENTIAL COMMUNITY, INC.**, a Texas nonprofit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 4* and elsewhere in this Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

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

"**Bulk Rate Contract**" or "**Bulk Rate Contracts**" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property. Each Bulk Rate Contract must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"**Bylaws**" means the Bylaws of the Association.

"**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.

"**City**" means the City of Sherman, Grayson County, Texas.

"**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 (i) held by the Declarant for the benefit of the Association or its Members or (ii) designated by the Declarant as Common Area in accordance with *Section 4.6*. Upon the Recording of such designation, the portion of the Property identified therein shall be considered Common Area for the purpose of this Declaration. 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 shall be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be designated by the Declarant or the Board for the use and enjoyment of the Owners and members of the public.

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

"**Declarant**" means **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.**, a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.**, a Texas limited partnership, as Declarant, must be expressly set forth in writing and Recorded.

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

"**Design Guidelines**" means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot adopted pursuant to *Section 7.2.3*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. At Declarant's option, Declarant may adopt or amend from time to time Design Guidelines for the Property or any portion thereof. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines for the Property or any portion thereof.

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"**Development Period**" means the period of time beginning on the date when this Declaration has been Recorded, and ending thirty (30) years thereafter, unless earlier terminated by a Recorded written instrument executed by the Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property.

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

"**Improvement**" means all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, alteration of drainage flow, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennas, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"**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.

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

"**Manager**" has the meaning set forth in *Section 4.5.8*.

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

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

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

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

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

"**Property**" means that certain real property located in Grayson County, Texas, as more particularly described on Exhibit "A", attached hereto and incorporated herein, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 10.3* and *Section 10.4* of this Declaration.

"**Record, Recordation, Recorded and Recording**" means recorded or to be recorded in the Official Public Records of Grayson County, Texas.

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

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

"**Rules and Regulations**" 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 or the Common Area, including any amendments and/or supplements to those instruments. Until expiration or termination of the Development Period, the Declarant may unilaterally amend the Rules and Regulations and must approve any amendment to the Rules and Regulations adopted by a Majority of the Board.

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

TABLE 1: RESTRICTIONS

Declaration (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Certificate of Formation (Recorded)	Establishes the Association as a Texas nonprofit corporation.
Bylaws (Recorded)	Governs the Association's internal affairs, such as elections, meetings, etc.
Community Manual (Recorded)	Establishes Rules and Regulations and policies governing the Association.

TABLE 1: RESTRICTIONS	
Design Guidelines (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto. The Declarant shall have no obligation to adopt the Design Guidelines.
Rules and Regulations (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property or the Common Area.
Board Resolutions (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners and Association.
Notice of Withdrawal of Land (Recorded)	Withdraws and removes land from the Property so that such land is no longer burdened by the terms of this Declaration and no longer under the jurisdiction of the Association.
Notice of Addition of Land (Recorded)	Adds additional land to the Property, so such land will be considered part of the Property and subject to the terms of this Declaration and under the jurisdiction of the Association.
Notice of Plat Recordation (Recorded)	Identifies specific residential Lots within a Plat. Upon recordation of a Notice of Plat Recordation, the Property included within the Plat not comprising a residential Lot will automatically be withdrawn from the terms and provisions of this Declaration. Declarant shall have no obligation to Record a Notice of Plat Recordation.

ARTICLE 2
GENERAL AND USE RESTRICTIONS

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

2.1 General.

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

2.1.2 Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the

Grayson County Clerk

ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations or encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

NOTICE

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

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

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

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or Resident may conduct business activities within a residence so long as: (i) such activity complies with all Applicable Law; (ii) the business activity is conducted without the employment of persons other than the Residents of the home constructed in the Lot; (iii) the business activity does not involve customers, contractors, clients, or the general public visiting the residence to conduct activities related to the business; (iv) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business on any Lot, sound, or smell from outside the residence;

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(v) the business activity does not involve door-to-door solicitation of Residents within the Property; (vi) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vii) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property as may be determined in the sole discretion of the Board; and (viii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the residence nor Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

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

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

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

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

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

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

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

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

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

2.9 **Animals - Household Pets**. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, exotic snakes or lizards, monkeys, chickens, or other exotic animals). The Board may determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the

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Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed, and inoculated as required by Applicable Law. If the Board determines, in its sole discretion, that a pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

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

2.11 **Maintenance**. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section 2.11* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Board, in its sole discretion:

(i) Prompt removal of all litter, trash, refuse, and wastes.

(ii) Lawn mowing and edging.

(iii) Tree and shrub pruning.

(iv) Watering of lawn and landscaping.

(v) Keeping exterior lighting and mechanical facilities in working order.

(vi) Keeping lawn and garden areas alive, free of weeds, and attractive.

(vii) Keeping planting beds free of turf grass.

(viii) Keeping sidewalks and driveways in good repair.

(ix) Complying with Applicable Law.

(x) Repainting of Improvements.

(xi) Repair of exterior damage, and wear and tear to Improvements.

2.12 **Street Landscape Area-Owner's Obligation to Maintain Landscaping**. Each Owner will be responsible, at such Owner's sole cost and expense, for maintaining mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the curb of any adjacent right-of-way, street or alley (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area is performed by the Association and/or the City. If the maintenance of any ST Landscape Area is the responsibility of the City, and the City fails to properly maintain the ST Landscape Area as determined in the sole and absolute discretion of the Board, the Association, if allowed by Applicable Law, may have the responsibility for maintaining such ST Landscape Area and the costs incurred, or estimated to be incurred by the Association, shall be discharged through Assessments.

2.13 **Antennas**. Except as expressly provided below, no exterior radio or television antennas, or aerial or satellite dish or disc, nor any Solar Energy Device, shall be erected, maintained or placed on a Lot without the prior written approval of the ACC; provided, however, that:

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

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

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

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

2.14 **Location of Permitted Antennas**. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an

acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

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

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

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

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

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

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

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

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

(iv) candidate or measure signs may be erected provided the sign: (a) is erected no earlier than the ninetieth (90th) day before the date of the election to which the sign relates; (b) is removed no later than the tenth (10th) day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one sign may be erected for each candidate or measure. In addition, signs which

include any of the components or characteristics described in Section 259.002(d) of the Texas Election Code are prohibited;

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

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

(vii) one (1) "no soliciting" and "security warning" sign near or on the front door of the residence, provided, that the sign may not exceed twenty-five (25) square inches.

For Lease and For Rent signs are expressly prohibited.

2.16 **Flags – Approval Requirements**. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States armed forces, or one (1) flag with official insignia of a college or university (**"Permitted Flag"**) and to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence (**"Permitted Flagpole"**). Only two (2) Permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot (**"Freestanding Flagpole"**).

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

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

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

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

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

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

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

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

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

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

2.18 **Tanks**. The ACC must approve any tank used or proposed in connection with a residence, including tanks for storage of fuel, water, oil, or liquid petroleum gas (LPG), and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the ACC. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the ACC. This provision will not apply to a tank used to operate a standard residential gas grills, nor will it apply to barrels used as part of a Rainwater Harvesting System with capacity of less than fifty (50) gallons, so long as such barrels are actively being used for rainwater collection and storage.

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

2.20 **Outside Storage Buildings**. Outside storage buildings located in a fenced rear yard of a Lot are allowed with the prior written approval of the ACC. One (1) permanent storage building will be permitted if: (i) the surface area of the pad on which the storage building is constructed is no more than one hundred (100) square feet; (ii) the height of the storage building, measured from the surface of the Lot, is no more than eight feet (8'); (iii) the exterior of the storage building is constructed of the same or substantially similar materials and of the same color as the

Grayson County Clerk

principal residential structure constructed on the Lot; (iv) the roof of the storage building is the same material and color as the roof of the principal residential structure constructed on the Lot; and (v) the storage building is constructed within all applicable building setbacks. No storage building may be used for habitation.

2.21 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (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 shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property or the Common Area.

2.22 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes, travel trailers or recreational vehicles shall be parked or placed on any street right of way, Lot, or used as a residence, either temporary or permanent, at any time. However, such vehicles may be parked temporarily for a period not to exceed seventy-two (72) consecutive hours during each two (2) month period. Notwithstanding the foregoing, sales trailers or other temporary structures expressly approved by the ACC or allowed pursuant to *Section 10.2* of this Declaration will be permitted.

2.23 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted in the front of the residence on a Lot provided the basketball goal is located a minimum of twenty feet (20′) from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Neither permanent nor portable basketball goals are permitted in any street right-of-way. Portable basketball goals are permitted on a Lot, but must be stored in the rear of the Lot or inside garage from sundown to sunrise. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the ACC prior to being placed on any Lot.

2.24 Compliance with Restrictions. Each Owner, his or her family, Residents of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine

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

2.25 **Liability of Owners for Damage to Common Area**. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board and the Declarant during the Development Period. Each Owner shall be liable to the Association for any and all damages to: (a) the Common Area and any Improvements constructed thereon; or (b) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in *Section 6.10* of this Declaration.

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

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

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

2.27.2 Right to Repair. If the Party Wall is damaged or destroyed from any cause, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the other Owner or Owners that the Party Wall serves will thereafter contribute to the cost of restoration thereof in equal proportions without prejudice, subject however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions. The Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the ACC in accordance with *Article 7* of this Declaration.

2.27.3 Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Grayson County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this *Section 2.27* is appurtenant to the Lot and passes to the Owner's successors in title. If the Owners of adjoining Lots fail to maintain the Party Wall located upon such Owner's Lot in good condition and repair, the Association may undertake such measures as may be required to maintain and/or repair the Party Wall, and, in such event, the Association will levy an Individual Assessment on the Lot Owners responsible for maintenance of the Party Wall.

2.27.4 Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition,

Grayson County Clerk

or appearance of the Party Wall to the adjoining Lot. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the ACC.

2.27.5 Dispute Resolution. In the event of any dispute arising concerning a Party Wall, or under the provisions of this *Section 2.27* (the "**Dispute**"), the parties will submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board will appoint a mediator. If the Dispute is not resolved by mediation, the Dispute will be resolved by binding arbitration. Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board, the Board will appoint an arbitrator. The decision of the arbitrator will be binding upon the parties and will be in lieu of any right of legal action that either party may have against the other. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable. If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association in conjunction therewith. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

2.28 Playscapes and Sports Courts. Playscapes and sport courts are permissible at the sole discretion of the ACC. If allowed, these facilities must be: (i) properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties; (ii) the height of a playscape, measured from the surface of the Lot, is no more than ten (10) feet; (iii) the canopy cover of any playscape will be constructed of earth tone materials; and (iv) sport courts may not be lighted or enclosed with netting. Tennis courts are not permitted.

2.29 Decorations and Lighting. No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments will be placed on the residence or on the front yard or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Customary seasonal decorations for holidays are permitted without approval by the ACC but will be removed within thirty (30) days of the applicable holiday. Outside lighting fixtures will be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding residences or yards. No mercury vapor, sodium or halogen light will be installed on any Lot which is visible from any street unless otherwise approved by the ACC.

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

2.31 **Shared Mailboxes**. Mailbox kiosks (the "**Shared Mailboxes**") may be installed on the Property to serve the Owners. Such Shared Mailboxes, if installed, shall be Common Area, and the Association will maintain the Shared Mailboxes in good condition and repair in accordance with United States Postal requirements. The costs incurred, or estimated to be incurred, by the Association for maintenance of the Shared Mailboxes, if installed, shall be discharged through Assessments. Notwithstanding the foregoing, individual Owners are required to replace the locks and/or keys as needed and are responsible for the cost associated therewith. Neither the Association, the Declarant nor any Homebuilder shall be responsible for any locks or key replacements.

2.32 **Cell Tower and Telecommunications Equipment**. Telecommunications, cellular, video and digital equipment, including without limitation, broadcast antennas and related equipment, cell towers, cell tower equipment, or other wireless communication antennas 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 or may be constructed on or near the Property. As more particularly described in *Section 9.8* of this Declaration, Declarant has reserved the right, for the benefit of itself, its affiliates and assigns, to construct, install, use, maintain, repair, replace, improve, remove, and operate CTT Equipment upon all or any portion of the 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.

2.33 **Release and Indemnity**. EACH OWNER AND OWNER'S FAMILY MEMBERS, GUESTS, TENANTS, INVITEES, AGENTS, AND CONTRACTORS (EACH, A "**USER**" HEREIN) HEREBY RELEASE AND HOLD HARMLESS THE ASSOCIATION, DECLARANT, THE ACC AND THEIR AFFILIATES, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF USER'S USE OF ANY COMMON AREA PROPERTY, COMMUNITY AMENITIES, OR COMMUNITY FACILITIES. EVERY USER IDENTIFIED ABOVE SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, DECLARANT, THE ACC AND THEIR AFFILIATES, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE,

Grayson County Clerk

EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION FOR PERSONAL INJURY OR PROPERTY DAMAGE INCURRED OR THAT MAY ARISE BY REASON OF THE USE OF OR ENTRY UPON ANY COMMON AREA PROPERTY, COMMUNITY AMENITIES, OR COMMUNITY FACILITIES (INCLUDING ANY COST, FEES, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S OR DECLARANT'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION OR DECLARANT'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. "**GROSS NEGLIGENCE**" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. USE OF ANY COMMON AREA PROPERTY, COMMUNITY AMENITIES, OR COMMUNITY FACILITIES IS CONDITIONED UPON ACCEPTANCE OF THE FOREGOING RELEASE AND INDMENITY OBLIGATIONS.

ARTICLE 3
CONSTRUCTION RESTRICTIONS

3.1 **Approval for Construction**. Unless prosecuted by the Declarant, no Improvements will hereafter be placed, maintained, erected, or constructed upon any Lot without the prior written approval of the ACC in accordance with *Article 7* of this Declaration.

3.2 **Rentals**. Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least thirty (30) days. All leases will be in writing. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease.

3.3 **Fences; Sidewalks**. All fences and walls must comply with all Applicable Law. Unless otherwise approved by the ACC, no fence, wall or hedge will be erected or maintained on any Lot nearer to the street than the front elevation of the residence constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices. The ACC will have the sole discretion to determine the front elevation of the residence for the purpose of this *Section 3.3*. No chain-link, metal cloth or agricultural fences may be installed or maintained on a Lot, except by Declarant. Each Owner must maintain all fences on such Owner's Lot in good condition, including but not limited to periodically re-staining all fences using stain substantially similar to the stain applied to the fences as originally constructed by Declarant or Homebuilder, as determined by the ACC. The Board, in its sole discretion, may undertake the maintenance and staining of the fences for corner Lots and on the main streets or public rights-of-way of the subdivision. If required by the Plat, the Owner of each Lot will construct, at such Owner's sole cost and expense and prior to occupying any Improvement, a sidewalk on such Owner's Lot, located and designed in conformance with the Plat.

3.4 **Trash Containers**. Trash containers and recycling bins must be stored in one of the following locations:

(i) inside of the garage of the single-family residence constructed on the Lot; or

(ii) behind the single-family residence, retaining wall, or fence constructed on the Lot, or concealed by landscaping, in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot.

The Board will have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

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

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

3.7 **Roofing**. The roofs of all buildings must be approved by the ACC. In addition, roofs of buildings may be constructed with "**Energy Efficient Roofing**" with the advance written approval of the ACC. For the purpose of this *Section 3.7*, "Energy Efficient Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the Property; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the

Grayson County Clerk

Property; and (iii) match the aesthetics of adjacent Lots. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in this *Section 3.7*. Any other type of roofing material will be permitted only with the advance written approval of the ACC.

3.8 **Swimming Pools**. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all Applicable Law and be approved in advance by the ACC. Nothing in this *Section 3.8* is intended or will be construed to limit or affect an Owner's obligation to comply with any Applicable Law concerning swimming pool enclosure requirements. Unless otherwise approved in advance by the ACC, above-ground or temporary swimming pools are not permitted on a Lot.

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

3.10 **Solar Energy Device.** Solar Energy Devices may be installed with the advance written approval of the ACC, in accordance with the procedures and requirements set forth below.

3.10.1 Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application. The Solar Application shall be submitted in accordance with the provisions of *Article 7* of this Declaration.

3.10.2 Approval Process. The ACC will review the Solar Application in accordance with the terms and provisions of *Article 7* of this Declaration. The ACC will approve a Solar Energy Device if the Solar Application complies with *Section 3.10.3* below **UNLESS** the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.10.3*, will create a condition that substantially interferes with the use and enjoyment of the property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on Common Area or property owned or maintained by the

Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.10* when considering any such request.

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

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

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

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

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

3.11.2 Approval Process. The decision of the ACC will be made in accordance with *Article 7* of this Declaration. Any proposal to install a Rainwater Harvesting System on

Grayson County Clerk

Common Area must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.11* when considering any such request.

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

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

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

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

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

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

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

3.12.1 Application. Approval by the ACC is required prior to installing Xeriscaping. To obtain the approval of the ACC for Xeriscaping, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard

to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The ACC is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

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

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the ACC. For purposes of this *Section 3.12*, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the ACC determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

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

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

3.12.3 Process. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 3.12* when considering any such request.

3.12.4 Approval. Each Owner is advised that if the Xeriscaping Application is approved by the ACC, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently

prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the ACC may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the Property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.13 **Utility Lines**. No sewer, drainage or water lines 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 constructed, placed or maintained underground. No 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.

3.14 **Garages**. All garages must be built to accommodate at least two (2) full-sized automobiles. No garage may be permanently enclosed or otherwise used for habitation. Each driveway must be built to accommodate at least two (2) vehicles in front of the garage. Rear, detached garages are permitted so long as they are constructed in accordance with this Declaration and Applicable Law.

ARTICLE 4
LUELLA CROSSING RESIDENTIAL COMMUNITY, INC.

4.1 **Organization**. The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas nonprofit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Unless expressly provided in the Restrictions, the Association acts through a Majority of the Board. Certain acts and activities of the Association and the Board must be approved by the Declarant during the Development Period. If Declarant approval is required, Declarant's approval must be evidenced in writing.

4.2 **Membership**.

4.2.1 Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred,

pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, if requested by the Board, an Owner must provide the Association with: (i) a copy of the recorded deed by which the Owner has acquired title to the Lot; (ii) the Owner's address, email address, phone number, and driver's license number, if any; (iii) any Mortgagee's name and address; and (iv) the name, phone number, and email address of any Resident other than the Owner.

If you acquire a Lot you automatically become a member of the Association. Membership is Mandatory!

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

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

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

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

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

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

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

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

4.3 Governance. As more specifically described in the Bylaws, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board and all officers of the Association until the tenth (10th) anniversary of the date this Declaration is Recorded. Not later than the tenth (10th) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board shall hold a meeting of Members of the Association for the purpose of electing one-third (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.**

4.4 Voting Allocation. The number of votes which may be cast to elect members to the Board (except as provided by *Section 4.3*) and on all other matters the Members may vote on shall be calculated as set forth below.

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

4.4.2 Declarant Votes. In addition to the votes to which Declarant is entitled by reason of *Section 4.4.1*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this *Section 4.4.2* 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.

4.4.3 Co-Owners. When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 4.4*.

4.5 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 Declaration. 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:

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

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

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

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

4.5.5 Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility or removing any item to conform to the Restrictions. The expenses incurred by the Association in connection with the entry upon any Lot and the removal or maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY**

Grayson County Clerk

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 4.5.5* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

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

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

(i) Parks, parkways or other recreational facilities or structures;

(ii) Roads, streets, sidewalks, signs, street lights, walks, perimeter fencing, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 4.5.7* must be approved in advance and in writing by the Declarant. In addition, the Association (with the advance written approval of Declarant during the Development Period) and Declarant are expressly authorized and permitted to convey easements over and across Common Area for the benefit of property not otherwise subject to the terms and provisions of this Declaration.

4.5.8 Manager. To retain and pay for the services of a person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent

Grayson County Clerk

permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

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

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

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

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

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

4.5.14 Allocation of Votes. To determine votes when permitted pursuant to *Section 4.4* above.

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

Grayson County Clerk

4.6 **Conveyance of Common Area to the Association**. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant, and its assignees, reserve the right, from time to time and at any time, to designate, convey, assign or transfer, by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Property identified therein will be considered Common Area for the purpose of this Declaration, and the Association shall have an easement over and across the Common Area as necessary or required to discharge the Association's obligations under this Declaration, subject to any terms and limitations to such easement set forth in the designation. Declarant and its assignees may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, for the Property and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Recordation, and without further action by the Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment. Declarant and/or its assignees may construct and maintain upon portions of the Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

4.7 **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 such person is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by such person in connection with such

Grayson County Clerk

action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (i) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

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

4.9 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 4.5* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of non-payment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the

office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

4.10 Community Services and Systems. The Declarant, or an affiliate or designee of the Declarant, is specifically authorized, but not required, to install, provide, maintain or furnish, or to enter into contracts with other persons to install, provide, maintain or furnish, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring) and utility services (*e.g.*, electricity, solar, gas, water), and related components, including associated infrastructure, equipment, hardware, and software to serve all or any portion of the Property ("**Community Services and Systems**"). The Community Services and Systems may be located on Common Area and on or in any Improvements constructed upon the Common Area, and an easement is herein reserved in favor of Declarant, Declarant's affiliate or its designee for the purpose of installing, operating, managing, maintaining, upgrading and modifying the Community Services and Systems. In the event the Declarant, or an affiliate or designee of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Property, the Declarant or an affiliate or designee of the Declarant, may enter into an agreement with the Association with respect to such services. In the event Declarant, or any affiliate or designee of the Declarant, enters into a contract with a third party for the provision of any Community Services and Systems to serve all or any portion of the Property, the Declarant or an affiliate or designee of the Declarant may assign any or all of the rights or obligations of the Declarant or an affiliate or designee of the Declarant under the contract to the Association or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or its affiliate or designee determines appropriate. **Each Owner acknowledges that interruptions in Community Services and Systems will occur from time to time. The Declarant and the Association, or any of their respective affiliates, directors, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.**

4.11 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots or any portion of the Property 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 the Declarant agrees otherwise in advance and in writing, 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.

4.12 **Administration of Common Area**. The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law, the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

4.13 **Right of Action by Association**. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 12.1* below, relating to the design or construction of Improvements on a Lot (whether one or more). This *Section 4.13* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the Recorded amendment instrument.

ARTICLE 5
INSURANCE AND RESTORATION

5.1 **Insurance**. Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such 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. During the Development Period, Declarant reserves the right to satisfy the insurance obligations of the Association with a master insurance program controlled by Declarant.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot or any Improvements or personal property located on a Lot.

5.2 **Restoration**. In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner shall: (i) promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof or

(ii) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Property within sixty (60) days after the occurrence of such damage. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion, or if the Owner does not clean up any debris resulting from any damage within sixty (60) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement, removal or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed under Applicable Law from commencing such repair, restoration, replacement, removal or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) 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, then at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 5.2*, 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.**

5.3 **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 5*, 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 and 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.

Grayson County Clerk

ARTICLE 6
COVENANT FOR ASSESSMENTS

6.1 Assessments.

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

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

6.1.3 Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. Any subsidy and the characterization thereof may be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

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

6.3 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association (the "**Regular Assessments**") which sets forth: (i) an estimate of the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing any lighting, the cost of administering and enforcing the Restrictions, and (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. The level of Regular Assessments should be based on an accredited cost project analysis with a specific reserve account for maintaining the Common Area in good repair and condition. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination

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

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

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (ii) transfer to, from, or by the Association; or (iii) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent, including conveyances to trusts. Additionally, the Declarant and an Owner who is a Homebuilder will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Lot from the Declarant or a Homebuilder. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, the determination by the Declarant during the Development Period, and the Board thereafter, regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 6.4*. The Working Capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such Assessments. The Working Capital Assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver, which waiver may be temporary or permanent.

6.5 **Special Assessments**. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's

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

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

6.7 Amount of Assessment.

6.7.1 Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in *Section 6.7.2* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 6.3* and *Section 6.5* shall be levied uniformly against each Assessment Unit allocated to a Lot.

6.7.2 Assessment Unit. Each Lot shall constitute one "Assessment Unit" unless otherwise provided in *Section 6.7.3* and *Section 6.7.4*.

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

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

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

6.9 **Owner's Personal Obligation; Interest**. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself or herself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one-half percent (1½%) per month), together with late charges, if any, all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

6.10 **Assessment Lien and Foreclosure**. The payment of all sums assessed in the manner provided in this *Article 6* is, together with late charges as provided in *Section 6.8* and interest as provided in *Section 6.9* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.1.2* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens and governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question, (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record; or (iv) as otherwise required by Applicable Law; provided that, in the case of subparagraphs (ii), (iii) and (iv) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination shall be signed by an authorized officer, agent or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the authorized officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies

Grayson County Clerk

the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.10*, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an authorized officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until

the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

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

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

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

(i) All area dedicated and accepted by a public authority;

(ii) The Common Area; and

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

6.12 Fines and Damages Assessment.

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

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

ARTICLE 7
ARCHITECTURAL CONTROL COMMITTEE

Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 7.2.1* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC.

7.1 **Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 7* and need not be approved by the ACC.

7.2 **Architectural Control Committee**.

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

7.2.2 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 7.2.3* to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Declaration, the ACC may issue an approval to Homebuilders for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Declaration.

7.2.3 Design Guidelines. Declarant shall have the right, but shall have no obligation to, adopt Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to *Section 7.2.1*, will have the power from time to time, to adopt (if not previously adopted by Declarant) and to amend, modify, or supplement the Design Guidelines, if any; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end

of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

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

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

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

7.2.7 Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred twenty (120) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and

specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.2.7* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

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

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

ARTICLE 8
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this *Article 8* apply to this Declaration and the Bylaws of the Association.

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

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

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

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

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

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

ARTICLE 9
EASEMENTS

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

9.2 **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 the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

9.3 **Roadway and Utility Easements**. Declarant hereby reserves for itself, its affiliates and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable 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; (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant; and (iv) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Property and any other property owned by Declarant. Declarant, its affiliate(s) or assigns 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 (i) through (iv) of this *Section 9.3*. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area.

9.4 **Entry and Fencing Easement**. Declarant reserves for itself and the Association, an easement over and across the Property and any Common Area for the installation, maintenance, repair or replacement of certain subdivision entry facilities, walls, and/or fencing which serves the Property, the Common Area or any other property owned by the Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area.

9.5 **Landscape, Monumentation and Signage Easement**. Declarant hereby reserves for itself and the Association, an easement over and across the Property and the Common Area for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Property, the Common Area or any other property owned by the 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.

9.6 **Easement for Special Events**. The Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over the 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 subject to this Declaration 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 the Residents to take no action, legal or otherwise, which would interfere with the exercise of such easement.

9.7 **Solar Equipment Easement**. Declarant hereby reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over and across the Property and Common Area for the installation, maintenance, repair or replacement of a rooftop solar electric generating system designed to deliver electric power to a particular residence built on a Lot or Common Area. Declarant will have the right, from time to time, to Record a written notice which identifies the solar equipment to which the easement reserved hereunder applies. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party.

9.8 **Cellular Tower and Telecommunications Easement**. Declarant hereby grants and reserves for itself, its affiliates and assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area, or any portion of the Property which Declarant intends to designate as Common Area (the "**CTT Easement Area**") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant, its affiliates or 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 to which the CTT Easement Area pertains, and Declarant, its affiliate(s) or 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, its affiliate(s) or assignee(s) hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself, its affiliates and 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 operation of the CTT Equipment. In addition, Declarant hereby reserves for itself, its affiliates and assigns a non-exclusive, perpetual and irrevocable easement over the Property 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, its affiliates and 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, its affiliates and 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 9.8*. The rights reserved to Declarant under this *Section 9.8* shall benefit only Declarant, its affiliates and assigns, and no other Owner or successor-in-title to any portion of the Property shall have any rights to income derived from or in connection with the rights and easements granted in this *Section 9.8*, except as expressly approved in writing by Declarant. EACH OWNER AND RESIDENT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT, ITS AFFILIATES AND 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 AFFILIATES AND ASSIGNS UNDER THIS SECTION (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 9.8* shall not be amended without the written and acknowledged consent of Declarant, its affiliate(s) or the assignee(s) of all or any portion of Declarant's rights hereunder.

9.9 **Easement to Inspect and Right to Correct**. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for the Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual non-exclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 9.9* may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner's Lot and all Improvements thereon for the purposes contained in this *Section 9.9*.

ARTICLE 10
DEVELOPMENT RIGHTS

10.1 **Development by Declarant**. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and

Grayson County Clerk

marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate Lots and Common Areas and to subdivide all or any portion of the Property pursuant to the terms of this *Section 10.1*, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property and the Common Area. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

10.2 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property and the Common Area. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 10.2* until twenty-four (24) months after expiration or termination of the Development Period.

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

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

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

(iii) A legal description of the added land.

10.4 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants conditions, restrictions and obligations set forth

Grayson County Clerk

herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

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

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

(iii) A legal description of the withdrawn land.

10.5 Notice of Plat Recordation. Declarant may, at any time and from time to time, file a notice of plat recordation (a "**Notice of Plat Recordation**"). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Declaration after portions of the Property is made subject to a Plat. Unless otherwise provide in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Declaration (without the necessity of complying with the withdrawal provisions set forth in *Section 10.4*). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Declaration.

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

ARTICLE 11
GENERAL PROVISIONS

11.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2073, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30)

days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 11.1* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants, as of the date this Declaration is Recorded, of Charles III, King of England.

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

11.3 Amendment. This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; (ii) by a Majority of the Board, for the purpose of meeting the requirements, standards, or recommended guidelines of an institutional or governmental lender to enable such lender to make or purchase mortgage loans on the Lots, provided such amendment has been approved by Declarant (until expiration or termination of the Development Period); or (iii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

Subject to any express limitation on amendments set forth in this Declaration, the broad scope of amendment authority set forth in this *Section 11.3* is expressly intended to allow for the addition, removal, or modification of terms, restrictions, conditions, covenants, rights, benefits, reservations, and obligations, including, without limitation, use and occupancy restrictions, leasing restrictions, setbacks, voting rights, lien rights, design criteria, maintenance obligations, and disclosures. EACH OWNER OF A LOT OR OTHER REAL PROPERTY INTEREST IN THE PROPERTY (INCLUDING EACH SUBSEQUENT PURCHASER), BY THE ACCEPTANCE OF A DEED OF CONVEYANCE, ACCEPTS THE SAME SUBJECT TO THE AMENDMENT

AUTHORITY SET FORTH IN THIS *SECTION 11.3*, AND ACKNOWLEDGES, AGREES, AND IS PUT ON NOTICE THAT: (I) AN AMENDMENT TO THIS DECLARATION DULY APPROVED AND RECORDED IN ACCORDANCE HEREWITH SHALL BE VALID AND BINDING ON THE OWNER AND THE OWNER'S LOT; AND (II) THE BROAD SCOPE OF AMENDMENT AUTHORITY MAY RESULT IN AN AMENDMENT TO THIS DECLARATION THAT: (A) ADDS, REMOVES, OR MODIFIES ANY TERM, RESTRICTION, CONDITION, COVENANT, RIGHT, BENEFIT, RESERVATION, OR OBLIGATION OF EVERY CHARACTER HEREBY GRANTED, CREATED, RESERVED OR DECLARED, INCLUDING WITHOUT LIMITATION, USE AND OCCUPANCY RESTRICTIONS, LEASING RESTRICTIONS, SETBACKS, VOTING RIGHTS, LIEN RIGHTS, DESIGN CRITERIA, MAINTENANCE OBLIGATIONS, DISPUTE RESOLUTION PROCEDURES, AND DISCLOSURES; AND/OR (B) MAY RESULT IN CHANGES OR MODIFICATIONS TO USE AND OCCUPANCY RESTRICTIONS, LEASING RESTRICTIONS, SETBACKS, VOTING RIGHTS, LIEN RIGHTS, DESIGN CRITERIA, MAINTENANCE OBLIGATIONS, OR DISPUTE RESOLUTION PROCEDURES THAT ARE EITHER MORE OR LESS RESTRICTIVE THAN THE RIGHTS, RESTRICTIONS, AND OBLIGATIONS APPLICABLE TO THE LOT ON THE DATE THE OWNER ACQUIRED THE LOT. THE FOREGOING LIST IS INTENDED TO BE ILLUSTRATIVE BUT IN NO WAY IMPOSES LIMITATIONS ON THE BROAD SCOPE OF AMENDMENT AUTHORITY SET FORTH IN THIS *SECTION 11.3*.

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

11.5 **No Warranty of Enforceability**. Declarant makes no warranty or representation as to the present or future validity or enforceability of the Restrictions. Any Owner acquiring a

Grayson County Clerk

Lot in reliance on one or more of the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

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

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

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

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

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

11.11 Acceptance by Owners. Each Owner of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each Owner agrees that no assignee or

successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

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

11.12.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 11.12.1*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

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

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

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

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

11.13 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial

Grayson County Clerk

partition unless the portion of the Property or Common Area in question has been removed from the provisions of this Declaration pursuant to *Section 10.4* above. This *Section 11.13* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

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

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

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property or the Common Area, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Residents of such Owner's Lot that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to the property, including any residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

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

Grayson County Clerk

ARTICLE 12
DISPUTE RESOLUTION

This Article 12 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Lots, Common Area, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Lot and the Common Area, this Article 12 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

12.1 Introduction and Definitions. The Association, the Owners, Declarant, Homebuilders, and all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 12* by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots, Common Area or any Improvement within, serving or forming a part of the Property (individually, a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this *Article 12* applies to all Claims as hereafter defined. Notwithstanding anything contained in this *Article 12*, any Claim brought by an Owner related to a residence that is subject to a warranty agreement provided by the Declarant or Homebuilder will not be subject to this *Article 12* and will be governed by the warranty agreement, unless the Parties agree to have the dispute governed by this *Article 12*. A restrictive covenant enforcement action against an Owner that is brought by the Association, the Declarant, or another Owner, is not subject to the alternative dispute resolution procedures that would otherwise require: (1) an inspection; (2) an engineering report; (3) an owner approval vote; (4) negotiation; and (5) mediation. This *Article 12* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding one hundred percent (100%) of the votes in the Association. As used in this *Article 12* only, the following words, when capitalized, have the following specified meanings:

12.1.1 "**Claim**" means:

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

(ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's

Grayson County Clerk

control and administration of the Association, and any claim asserted against the ACC.

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

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

12.1.3 "**Respondent**" means any Party against which a Claim has been asserted by a Claimant.

12.2 Mandatory Procedures. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this *Article 12*. As provided in *Section 12.8* below, a Claim must be resolved by binding arbitration.

12.3 Claim Affecting Common Areas. In accordance with *Section 4.13* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 12.1* above, relating to the design or construction of Improvements on a Lot (whether one or more). Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. Each Lot Owner, by accepting an interest in or to title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event the Association asserts a Claim related to the Common Area, as a precondition to providing the Notice defined in *Section 12.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 12*, or taking any other action to prosecute a Claim related to the Common Area, the Association must:

12.3.1 Obtain Owner Approval of Engagement.

The requirements related to Owner approval set forth in this Section 12.3.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm or attorney engaged by the Association to prosecute a Claim relating to the design or construction of the Common Area. The engagement agreement between the Association and the law firm or attorney may include requirements that the Association pay costs, fees, and expenses to the law firm or attorney which will be paid through Assessments levied against Owners. The financial agreement between the Association and the law firm or attorney may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association and the law firm or attorney is terminated or if the Association agrees to settle the Claim. In addition, the financial arrangement between the Association and the law firm or

attorney may include additional costs, expenses, and interest charges. This financial obligation can be significant. The Board may not engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or execute a written agreement between the Association and a law firm or attorney for the purpose of prosecuting a Claim relating to the design or construction of Common Area unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 12.3.1.

Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area if the agreement between the Association and law firm or attorney includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iii) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association must approve the law firm and attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney.

The approval of the Members required under this *Section 12.3.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between the Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area or Improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots or the Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Area or Improvements affected by such testing and the estimated costs thereof. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding eighty

percent (80%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

12.3.2 Provide Notice of the Inspection. As provided in *Section 12.3.3* below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

12.3.3 Obtain a Common Area Report.

The requirements related to the Common Area Report set forth in this Section 12.3.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.

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

The Common Area Report must be obtained by the Association. The Common Area Report will not satisfy the requirements of this *Section 12.3.3* and is not an "independent" report

Grayson County Clerk

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

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

12.3.5 Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in *Section 9.9* of this Declaration, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

12.3.6 Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association must obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in *Section 12.5*, initiate the mandatory dispute resolution procedures set forth in this *Article 12*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the

Grayson County Clerk

Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 12.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

12.3.7 Provide Officer Certification. Within ten (10) days after a vote of Members called pursuant to this *Article 12*, the secretary or another officer of the Association will provide to Declarant and any Respondent (if different than Declarant): (i) a true and correct copy of the meeting notice provided to Members, for the meeting at which such vote was taken; (ii) copies of the ballots cast at such meeting (whether in person, electronic, or by proxy); (iii) a certification, executed by the issuing officer of the Association that: (a) the information set forth in (i) and (ii) hereinabove is true and correct; (b) the meeting notice provided to Members was provided in accordance with this *Article 12*; and (c) the vote was held in accordance with the Bylaws and this *Article 12*.

12.4 Claim by Lot Owners. Pursuant to *Section 12.3* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, such Owner shall be required, since a Claim affecting the Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 12.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 12*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with *Section 12.3.2* (Provide Notice of Inspection), *Section 12.3.3* (Obtain a Common Area Report), *Section 12.3.4* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 12.3.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 12.3.6* (Owner Meeting and Approval), *Section 12.3.7* (Officer Certification), and *Section 12.5* (Notice). Additionally, class

Grayson County Clerk

action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration.

12.5 Notice. Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 12.5*. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 12.6* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 12.6*, to comply with the terms and provisions of Section 27.004 of the Texas Property Code during such sixty (60) day period. *Section 12.6* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 of the Texas Property Code could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred twenty (120) day period for mediation set forth in *Section 12.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 12.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 12.3.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 12.3.6* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas, the Notice will also include a true and correct copy of the Common Area Report.

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

representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property.

12.7 **Mediation**. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 12.7*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 12.8*.

12.8 **Binding Arbitration-Claims**. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 12.8*.

12.8.1 Governing Rules. If a Claim has not been resolved after mediation in accordance with *Section 12.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 12.8* and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 12.8*, this *Section 12.8* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

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

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

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

12.8.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 12.8* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

12.8.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 12.8*.

12.8.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 12.8* and subject to *Section 12.9* below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In addition, for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, consequential, special, exemplary, treble, or punitive damages for any Claim.

12.8.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Grayson County, Texas. Unless otherwise provided by this *Section 12.8*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding

a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

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

12.10 Waiver of Rights under Certain Statutory Provisions. Each Party expressly waives any right to recovery of attorney's fees and costs under: (i) Texas Civil Practice & Remedies Code § 38.001, *et. seq.*; (ii) Texas Civil Practice & Remedies Code § 37.001, *et. seq.*; (ii) Texas Civil Practice & Remedies Code § 10.001, *et. seq.*; (iii) Texas Civil Practice & Remedies Code § 9.001, *et. seq.*; (iv) Texas Civil Practice & Remedies Code § 27.01, *et. seq.*; (v) Texas Civil Practice & Remedies Code § 17.41, *et. seq.*; (vi) Texas Property Code § 27.001, *et. seq.*; (vii) Texas Property Code § 82.001, *et. seq.*; (viii) Texas Property Code § 209.001, *et. seq.*; (ix) Texas Property Code § 53.001, *et. seq.*; (x) Texas Property Code § 5.006, *et. seq.*; (xi) Texas Finance Code § 392.001, *et. seq.*; and (xii) 15 USC 1562, *et. seq.*

12.11 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.

12.12 Period of Limitation.

12.12.1 For Actions by an Owner or Resident. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, the exclusive period of limitation for a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable statute of limitations for such Claim. In no event shall this *Section 12.12.1* be interpreted to extend any period of limitations.

12.12.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or

defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 12.12.2* be interpreted to extend any period of limitations.

12.13 Funding the Resolution of Claims. The Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 12*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

[SIGNATURE PAGE FOLLOWS]

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

DECLARANT:

LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., a Texas limited partnership,

By: U.S. Home LLC, a Delaware limited liability company (as successor-in-interest by conversion from U.S. Home Corporation, a Delaware corporation), its General Partner

By: _____

Printed Name: _____

Title: Authorized Agent

STATE OF TEXAS §
§
COUNTY OF Dallas §

This instrument was acknowledged before me this 25th day of October, 2023 by _____, Authorized Agent of U.S. Home LLC, a Delaware limited liability company (as successor-in-interest by conversion from U.S. Home Corporation, a Delaware corporation), general partner of LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., a Texas limited partnership, on behalf of said entities.

(SEAL)

LAURA LYNN SALGADO
Notary ID #125169119
My Commission Expires
January 18, 2025

_____
Notary Public Signature

EXHIBIT "A"

PROPERTY DESCRIPTION

BEING a tract of land situated in the Sharrod Dunman Survey, Abstract No. 329, Grayson County, Texas, and being a portion of a called 96.216-acre tract of land, described in a General Warranty Deed to HMI-Sherman 2, LLC, as recorded in Instrument No. 2021-32639 of the Official Public Records of Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the northeast corner of said 96.216-acre tract and the southeast corner of a called 21.05-acre tract of land, described in a Warranty Deed to Grayson County, Texas, as recorded in Volume 888, Page 591 of the Deed Records of Grayson County, Texas, same being in an asphalt road known as Luella Road, an apparent public use road, no record found, from said corner, a found 2-inch iron pipe bears South 74°23'40" West, 28.30 feet;

THENCE in a southerly direction, along the easterly line of said 96.216-acre tract and generally along the center of said Luella Road, the following:

South 15°36'01" East, a distance of 183.95 feet to a point for corner;

South 16°00'51" East, a distance of 478.87 feet to a point for corner;

South 12°06'00" East, a distance of 108.19 feet to a point for corner;

South 05°37'40" West, a distance of 426.89 feet to a point for corner;

South 12°27'14" West, a distance of 86.17 feet to a point for corner;

South 19°41'44" West, a distance of 89.25 feet to a point for corner;

South 31°51'34" West, a distance of 120.10 feet to a point for corner above an 84-inch corrugated metal drainage pipe, from which a found iron rod bears North 33°25' West, 36.95 feet;

THENCE in a westerly direction, departing the easterly line of said 96.216-acre tract and said Luella Road, crossing said 96.216-acre tract, and along the centerline of a creek, the following:

North 47°14'52" West, a distance of 68.16 feet to a point for corner;

North 57°05'46" West, a distance of 34.72 feet to a point for corner;

South 81°57'22" West, a distance of 67.04 feet to a point for corner;

North 89°35'07" West, a distance of 33.17 feet to a point for corner;

South 66°59'13" West, a distance of 8.04 feet to a point for corner;

South 04°58'47" West, a distance of 32.03 feet to a point for corner;

South 68°50'50" West, a distance of 31.12 feet to a point for corner;

South 40°02'31" West, a distance of 21.95 feet to a point for corner;

Grayson County Clerk

South 88°39'01" West, a distance of 27.13 feet to a point for corner;

North 61°17'42" West, a distance of 13.23 feet to a point for corner;

South 78°16'01" West, a distance of 52.32 feet to a point for corner;

South 51°27'25" West, a distance of 50.12 feet to a point for corner;

South 58°37'12" West, a distance of 89.67 feet to a 1/2-inch iron rod with a red plastic cap, stamped "WWJ", found for corner;

North 83°21'57" West, a distance of 58.66 feet to a 1/2-inch iron rod with a red plastic cap, stamped "WWJ", found for corner;

North 79°06'41" West, a distance of 23.93 feet to a point for corner;

North 71°01'16" West, a distance of 27.58 feet to a point for corner;

South 76°03'08" West, a distance of 31.93 feet to a point for corner;

South 26°15'02" West, a distance of 14.79 feet to a 1/2-inch iron rod with a red plastic cap, stamped "WWJ", found for corner;

South 36°32'03" West, a distance of 14.71 feet to a point for corner;

North 89°29'50" West, a distance of 36.12 feet to a point for corner;

South 56°43'55" West, a distance of 37.05 feet to a point for corner, from which a found 1/2-inch iron rod with a red plastic cap, stamped "WWJ", bears South 73°37' West, 33.32 feet;

South 43°06'36" West, a distance of 71.63 feet to a point for corner;

South 23°26'07" West, a distance of 43.59 feet to a point for corner;

South 39°53'43" West, a distance of 52.50 feet to a point for corner, from which a found 1/2-inch iron rod with a red plastic cap, stamped "WWJ", bears North 82°25' East, 10.00 feet;

South 64°45'43" West, a distance of 37.91 feet to a 1/2-inch iron rod with a red plastic cap, stamped "WWJ", found for corner;

North 86°23'55" West, a distance of 43.70 feet to a 1/2-inch iron rod with a red plastic cap, stamped "WWJ", found for corner;

THENCE North 25°06'01" West, departing the centerline of said creek and continuing across said 96.216-acre tract, a distance of 141.37 feet to a point for corner;

THENCE South 60°09'01" West, continuing across said 96.216-acre tract, a distance of 175.28 feet to a point for corner in the center of aforesaid creek;

Grayson County Clerk

THENCE in a westerly direction, continuing across said 96.216-acre tract, and along the centerline of a creek, the following:

North 86°37'16" West, passing at a distance of 155.49 feet, a found 1/2-inch iron rod with a red plastic cap, stamped "WWJ", continuing for a total distance of 170.68 feet to a point for corner;

North 50°00'06" West, a distance of 57.06 feet to a point for corner;

North 85°27'23" West, a distance of 39.35 feet to a point for corner;

North 72°36'30" West, a distance of 114.09 feet to a point for corner;

South 62°50'06" West, a distance of 10.63 feet to a point for corner;

South 37°24'57" West, a distance of 36.96 feet to a point for corner;

South 09°07'22" West, a distance of 33.76 feet to a point for corner;

South 53°44'18" West, a distance of 17.22 feet to a point for corner;

South 80°39'36" West, a distance of 18.65 feet to a point for corner;

South 86°45'52" West, a distance of 24.26 feet to a point for corner on the westerly line of said 96.216-acre tract, same also being on the easterly line of the Burlington Northern Santa Fe Railroad 225' wide right of way;

THENCE North 06°41'12" East, along the westerly line of said 96.216-acre tract and the easterly line of said the Burlington Northern Santa Fe Railroad right of way, a distance of 1,315.90 feet to the northeast corner of said 96.216-acre tract and the southwest corner of aforesaid 21.05-acre Grayson County, Texas tract;

THENCE North 74°23'40" East, along the northerly line of said 96.216-acre tract, the southerly line of said 21.05-acre tract and generally along a chain link fence, a distance of 1,351.65 feet to the POINT OF BEGINNING and containing 47.693 acres (2,077,526 square feet) of land, more or less.

BEING a tract of land situated in the Sharrod Dunman Survey, Abstract No. 329, Grayson County, Texas, and being a portion of a called 96.216-acre tract of land, described in a General Warranty Deed to HMI-Sherman 2, LLC, as recorded in Instrument No. 2021-32639 of the Official Public Records of Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the southwest corner of said 96.216-acre tract and the northwest corner of a called 379.73-acre tract of land, described in a Warranty Deed to Choctaw Creek Ranch, LLC, as recorded in Volume 5607, Page 293 of the Official Public Records of Grayson County, Texas, same also being on the easterly line of the Burlington Northern Santa Fe Railroad 225' wide right of way;

THENCE North 06°40'49" East, along the westerly line of said 96.216-acre tract and the easterly line of said the Burlington Northern Santa Fe Railroad right of way, a distance of 1,559.68 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

THENCE departing the westerly line of said 96.216-acre tract and the easterly line of said the Burlington Northern Santa Fe Railroad right of way, and crossing said 96.216-acre tract, and along the centerline of a creek, the following:

North 86°45'52" East, a distance of 24.26 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 80°39'38" East, a distance of 18.65 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 53°44'18" East, a distance of 17.22 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 09°07'22" East, a distance of 33.78 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 37°24'57" East, a distance of 36.96 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 62°50'06" East, a distance of 10.83 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 72°36'30" East, a distance of 114.05 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 85°27'23" East, a distance of 39.35 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 50°00'06" East, a distance of 57.06 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 88°37'16" East, a distance of 170.68 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 60°09'01" East, a distance of 175.28 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 25°06'01" East, a distance of 141.37 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 86°23'55" East, a distance of 43.70 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 64°45'43" East, a distance of 37.91 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 39°53'43" East, a distance of 52.50 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 23°26'07" East, a distance of 43.59 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 43°08'36" East, a distance of 71.63 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 56°43'55" East, a distance of 37.05 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 89°29'50" East, a distance of 36.12 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 36°32'03" East, a distance of 14.71 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 26°15'02" East, a distance of 14.79 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 76°03'08" East, a distance of 31.93 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 71°01'16" East, a distance of 27.58 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 79°08'41" East, a distance of 23.93 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 83°21'57" East, a distance of 58.86 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 56°37'12" East, a distance of 89.67 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 51°27'25" East, a distance of 50.12 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 78°16'01" East, a distance of 52.32 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 61°17'42" East, a distance of 13.23 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 88°39'01" East, a distance of 27.13 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 40°02'31" East, a distance of 21.95 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 66°50'50" East, a distance of 31.12 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 04°56'47" East, a distance of 32.03 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 60°59'13" East, a distance of 8.04 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 89°35'07" East, a distance of 33.17 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

North 81°57'22" East, a distance of 67.04 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

South 57°05'48" East, a distance of 34.72 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

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