



\*VG-240-2021-74647\*

Walker County  
Kari A. French  
Walker County Clerk

Instrument Number: 74647

Real Property

RESTRICTIVE COVENANTS

Recorded On: December 03, 2021 09:15 AM

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

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

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PO BOX 9  
PORT LAVACA TX 77979



STATE OF TEXAS  
COUNTY OF WALKER

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

Kari A. French  
Walker County Clerk  
Walker County, TX

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES, AND LIENS  
FOR  
THE RANCHES AT ROYAL PINES SUBDIVISION  
WALKER COUNTY, TEXAS**

**NOTE: THIS DECLARATION CONTAINS BINDING, IRREVOCABLE AGREEMENT TO ARBITRATE AND IS SUBJECT TO ARBITRATION PURSUANT TO THE STATE CODE STATUTE OR UNIFORM ARBITRATION ACT THAT IS APPLICABLE REGARDING BINDING ARBITRATION.**

<b>STATE OF TEXAS</b>	<b>§</b>	
	<b>§</b>	<b>KNOWN ALL MEN BY THESE PRESENTS</b>
<b>COUNTY OF WALKER</b>	<b>§</b>	

THIS DECLARATION made by Waxhaw Premier Properties, LLC a Florida Limited Liability Company Partnership, hereinafter referred to as the "Declarant" or "Developer":

**WITNESSETH:**

WHEREAS, the Declarant is the owner of that certain tract of land located in Walker County, Texas, being more fully described on the map and plat recorded under Volume 7, Page 115, of the Map and Plat Records of Walker County, Texas, and desires to develop thereon a residential Subdivision known as The Ranches at Royal Pines Subdivision (hereinafter, together with any property added thereto, called the "Subdivision"); and

WHEREAS, the Declarant desires to maintain design criteria, location and construction specifications, and other controls to assure the integrity of the Subdivision; and

WHEREAS, each owner of a Lot in the Subdivision will be required to maintain and construct homes in accordance with the design criteria herein contained; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in the Subdivision and for the maintenance of common areas and facilities, if any, and to this end, desires to subject the Subdivision, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth (hereinafter referred to as "Declaration" or "Restrictions"), each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Subdivision, to create an association to which will be delegated and assigned the powers of maintaining and administering the Subdivision, promulgating rules and regulations for the usage of Common Area and those necessary to promote the recreation, health, safety and welfare of the Members of the Association in accordance with this Declaration, administering and enforcing the covenants, conditions and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of

Texas, a not-for-profit corporation to be known as The Ranches at Royal Pines Property Owners' Association, Inc. for the purpose of exercising the aforesaid functions;

NOW THEREFORE, the Declarant declares that the real property known as The Ranches at Royal Pines Subdivision and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Texas Property Code and subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

## **ARTICLE I**

### **Definitions**

Section 1.01. Definitions. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Annual Assessments" or "Assessments" shall mean an equal assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots and the operation, maintenance and repair of the Common Area.
- (b) "Architectural Review Committee" or "ARC" shall mean and refer to the Architectural Review Committee established under Article VIII hereof.
- (c) "Association" shall mean and refer to The Ranches at Royal Pines Property Owners' Association, Inc., its successors and assigns, a non-profit Texas Corporation.
- (d) "Common Area" shall mean and refer to the portions of the Subdivision, including any applicable easements, owned by the Association for the common use and enjoyment of the Members including, but not limited to, all roads, entrance gate, landscaping, entrance lighting and walking path into the Sam Houston National Forest, together with such other property as the Association may acquire in the future for the common use and enjoyment of the Members.
- (e) "Common Area Expense" means all expense necessary to maintain, replace, repair and expand the Common Area as well as all necessary expense to operate the Association including, but not limited to, casualty and liability insurance, directors and officer's liability insurance and all other reasonable and necessary expenses of the Association. Additionally, Common Area Expense shall include (a) the cost of repair and maintenance of the roads, (b) mowing of the Common Area (c) Common Area maintenance and replacement of landscaping, (d) the maintenance, expenses for upkeep and insurance on all improvements located within any Common Area, including but not limited to the entrance gate, (e) as well as such other expense and capital enhancements as may be determined by the Board of Directors to promote the safety, health, recreation and welfare of the Members and maintain the Subdivision in an attractive manner.
- (f) "Control Transfer Date" shall mean the earlier date of: 1.) Developer no longer owns any part of the entire Subdivision, including but not limited to Common Area; 2.) Fifteen (15) years from date of recordation of this Declaration; or 3.) Developer, in its sole discretion, voluntarily relinquishes control of the Association as set forth in Article IV,

Section 4.01 or Article VIII, Section 8.01 hereof. Notwithstanding this provision, on or before the 120th day after the date seventy five percent (75%) of the lots that may be created and made subject to this Declaration are conveyed to owners other than Developer, at least one-third of the board members must be elected by owners other than the Developer.

(g) “Declarant” or “Developer” shall mean and refer to Waxhaw Premier Properties, LLC a Florida Limited Liability Company, its successors and/or assigns.

(h) “Declaration” or “Restrictions” shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for The Ranches at Royal Pines, as it may be amended from time to time.

(i) “Dwelling” shall mean and refer to the completed single family home located upon a Lot that is to be the main residence on the Lot.

(j) “Governing Documents” shall mean and refer to this Declaration, the Certificate of Formation of the Association, the Bylaws of the Association, the Architectural Guidelines (“Guidelines”), all Resolutions of the Association, the Rules and Regulations of the Association and the Texas Property Code.

(k) “Lot” shall mean and refer to the 98 individual tracts of land identified on the Plat or any amendments thereto. In the event any Lot is increased in size by combination under the regulations set forth herein, the same shall nevertheless be and remain a lot for the purposes of this Declaration.

(l) “Member” shall mean and refer to an Owner who is a member of the Association as provided in Article V hereof.

(m) “Owner” or “Lot Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s) later developed, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner. The Declarant shall not be deemed an Owner.

(n) “Plans and Specifications” means any and all drawings and documents describing the construction or erection of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, foundation plans, drainage plans, fencing plans, elevation drawings, floor plans, specifications concerning building products and construction techniques, samples of exterior colors and materials, plans for utility services, and all other documentation or information relevant to the construction or installation of any Improvement.

(o) “Plat” shall mean and refer to the plat of The Ranches at Royal Pines Subdivision that was filed on November 30, 2021 under Volume 7, Page 115 in the Map and Plat Map and Plat Records of Walker County, Texas, and any amendments filed thereto.

(p) “Roads” Roads or Road means property or any road located within the Subdivision

which has been dedicated for the purpose of ingress and egress through the Subdivision for the benefit of the Lot Owners. The maintenance of the Roads shall be sole the responsibility of The Ranches at Royal Pines Property Owners' Association.

(q) "Setback" shall mean an area along the boundary of a Lot where no building or other structures including, without limitation, swimming pools, fences, patios or decks shall be permitted, without the express written permission of Declarant.

(r) "Subdivision" shall mean and refer to all property including Lots, Common Area, on the Plats of the Subdivision filed by the Declarant in the Plat Records of Walker County Texas and all areas subject to this Declaration, together with any additional phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto. All references to "The Ranches at Royal Pines" means this Subdivision as defined in this Section(s).

(s) "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration.

(t) "Vote of the Members" means the affirmative vote of two thirds (2/3) of the Members entitled to vote who are present at a meeting of Members, either in person or by written proxy. In accordance with Article V, Section 5.04, only one Member is entitled to vote for each Lot and only one vote shall be counted for each Lot even though a Lot may have several Owners.

## **ARTICLE II Uses of Property**

Section 2.01. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, swimming pool or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

Section 2.02. Subdivision of Lot. No Lot shall be subdivided except as hereinafter provided and no building or residence, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the Setbacks or easements as hereinafter established except as herein provided. Provided, however, two or more Lots may be combined to provide one building site in accordance with this Declaration. Any combined lots will still pay assessments based upon the original recorded Plat as though the Lots were not combined.

Section 2.03. Alteration of Setback Lines in the Best Interest of Development. Where because of size, configuration, natural terrain, or any other reason in the sole opinion of the Declarant, it would be in the best interest of the development of the Subdivision that the setback lines of any Lot should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to grant a variance to the Lot Owner or in the case of a Lot owned by Declarant, the Declarant may change said setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Architectural Review Committee hereinafter established. Any such alteration made as provided herein shall meet the minimum standards of the Walker County Subdivision Ordinance.

Section 2.04. Completion of Improvements. With the exception of construction which is interrupted or delayed due to strikes, national emergencies, or physical damage to the work in progress (such as damage due to fire, lightning, windstorm, flood, hail, riot or civil commotion, explosion, or theft), any Dwelling constructed upon a Lot must be completed within one (1) year subsequent to commencement of construction, except with the written consent of Declarant, its successors or assigns, or, if the Declarant so designates, by the ARC. The Owner of the Lot on which the improvements are being constructed shall at all times keep public and private streets contiguous to the Lot free from any dirt, mud, gravel, garbage, trash or other debris which might be occasioned by construction of the improvements. During construction, the Owner shall require its contractors to maintain the Lot upon which such work is being done in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, the Owner shall cause its contractors to immediately remove all equipment, tools, and construction material, and debris from the Lot.

In the event that completion of the Dwelling, outbuildings, or other improvements on any Lot is not completed within one year, and it is determined that construction progress has diminished to such an extent that completion of the Dwelling, outbuildings, or other improvements is unlikely within 120 days, notice will be given to the Owner that the Owner has the obligation, within 30 days, to remove all construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the Lot so that it is restored to its natural grade level. The Declarant or the Association (after termination of Class B membership) shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and place a lien upon the Lot upon Owner's failure to pay these charges.

**No building under initial construction shall be occupied until construction is completed and all necessary approvals of the ARC and any governmental authorities have been obtained.**

Section 2.05. Residential Use of Lots. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family Dwelling constructed in accordance with the Plans and Specifications herein defined in Article III per each Lot to be used for single family residential purposes only. One guest house may be built provided that it is approved in writing by the ARC, it contains a minimum of 700 square feet airconditioned space, and it must be constructed after, or simultaneously with, the Dwelling. All Lots shall be used for single family residential purposes exclusively, except for limited home office uses permitted under Section 2.11 of this Article II. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached. Ancillary buildings or other out buildings shall conform to the architectural scheme and appearance of the Dwelling. Declarant or its assignee may maintain a sales office, models and construction office upon one or more Lots until all Lots to be located within the Subdivision have been sold.

Section 2.06. Maintenance and Mowing of Lots. Each Owner must keep all shrubs, grass, and plantings of every kind on the Owner's improved Lot cultivated, pruned, free of trash, and other unsightly material. All Improvements on any Lot must at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of the Lot. Declarant, the Association, and the Architectural Committee have the right at any reasonable time to enter on any Lot to replace, maintain, and cultivate shrubs, grass, or other plantings as

deemed necessary, to paint, repair, or otherwise maintain any Improvements in need of maintenance, and to charge the cost to the Owner of the Lot in the same manner as provided for the Association in Section 7.04. Grass height shall not exceed 10 inches in height at any time.

Section 2.07. Rubbish and Debris. No rubbish or debris of any kind will be placed or permitted to accumulate on a Lot, and no odors will be permitted to arise from it so as to make the Lot or any portion of it unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and the containers must be kept within enclosed structures or appropriately screened from view. Each Owner must contract with an independent disposal service to collect all garbage or other wastes if collection service is not provided by a governmental entity.

Section 2.08. Fires. No open fires shall be allowed on any Lot other than normal barbecuing in proper equipment for that purpose, and the burning of leaves and brush which shall only be allowed to be burned in proper receptacles for such purpose and under conditions which will not endanger adjoining property. Properly constructed fire pits are allowed.

Section 2.09. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals, junk, junk automobiles, or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot so as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a Dwelling located on an adjoining Lot. Bottled gas containers and oil tanks shall be screened from public view. No Lot shall be used for storage of building materials prior to the issuance of the building permit for the primary residence.

Section 2.10. Signs. No sign of any nature shall be placed on any Lot without prior written approval of the ARC or the Declarant, except for signs that are part of Declarant's overall marketing or construction plans or activities for the Subdivision or one (1) sign no more than five (5) square feet in total size advertising a Lot within the Subdivision for sale. Political signs for a political candidate or ballot item for election, as set forth in the Texas Election Code §259.002, may be displayed on a Lot but can only be displayed on or after the 90<sup>th</sup> day before the date of the election to which the sign relates and must be removed 11 days after the election. The sign must be ground mounted, 2'x 3' in size and a Lot Owner may only display one sign for each candidate or ballot item. Should it be determined that a sign erected on a Lot or in the Common Area does not conform to ARC guidelines, the Association, the Declarant, its agents or assigns shall have the right from time to time to enter said Lot without any liability for damage, wrongful entry, trespass or otherwise for the purpose of removing the nonconforming sign. The Declarant or the Association has the right from time to time to revise the rules and regulations regarding signs in order to meet the needs of the community or satisfy any governmental regulations.

Section 2.11. Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, landscape business, professional office or beauty shop or the like or any trade of any kind whatsoever (in which clients or members of the public regularly come to any Lot or any significant business traffic is generated in the Subdivision) shall be carried on upon any Lot or Lots. Provided, however, that

nothing contained herein shall be construed so as to prohibit use of any portion of a residence as a home office, so long as no clients or members of the public regularly come to any Lot and no significant business traffic is generated in the Subdivision on account of such use. Provided further, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots or the showing of said houses for the purpose of selling houses in the Subdivision. Nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the Subdivision.

Section 2.12. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Subdivision shall be permitted (except licensed contractors may burn construction debris during the period of construction of improvements on any Lot if they have been properly permitted). Provided, however, that the Declarant or the Association shall be permitted to modify the requirements of this Section 2.12 where necessary to comply with orders of governmental bodies.

Section 2.13. Temporary Structures. No structure of a nonpermanent character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main Dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction. Prior to placement on any Lot, all temporary construction shelters must be approved in writing by the ARC.

Section 2.14. Accessory Buildings. Accessory Buildings including barns, stables, detached garages and sheds are allowed, should be of a similar style and color as the Dwelling, but may also be made of metal. All such buildings shall be erected behind the Dwelling. No Accessory Building shall be used as a residence at any time.

Section 2.15. Other Structures. No home, tent (other than small overnight tents used by children which remain in place for less than 24 hours), shack, trailer, mobile home, manufactured home, modular home, or other similar out-building or structure shall be placed on any Lot at any time either temporarily or permanently, except as provided in Section 2.13 above.

Section 2.16. Swimming Pools. Above ground pools shall be prohibited. In ground pools are allowed and shall require ARC approval as to location and design. Owner shall install a security fence around the perimeter of the pool.

Section 2.17. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

Section 2.18. Vehicles and Off-Street Parking. There are no areas where permanent on street parking is allowed. Temporary on street parking may be allowed for 24 hours maximum. Each Owner shall provide for parking of vehicles off alleys, private lanes, streets and roads within the Subdivision. Except as otherwise specifically provided for in this Declaration, no parking shall be permitted in or along any of the alleys, private lanes or streets in the Subdivision. There shall be no outside storage or parking upon any portion of the Subdivision of



any mobile home, modular home, trailer (either with or without wheels), motor home, tractor, truck (other than personal-use pick-up trucks and sport utility vehicles), commercial vehicles of any type (including, without limitation, cars or trucks with advertising signs or lettering), camper, motorized camper or trailer, motorcycle, motorized go-cart, golf carts or other related forms of transportation devices, except if adequately screened from view or otherwise permitted in writing by the Declarant or the Association. No Owners or other occupants of any portion of the Subdivision shall repair or restore any vehicle of any kind upon or within a property subject to this Declaration except: (i) within an enclosed garage, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Violators of the prohibitions contained in this Section 2.18 shall be subject to having their vehicles towed, at the Owner's expense, by or at the direction of the Association, and to the levy of fines by the Association in such amount as may be determined from time to time by the Board of Directors. Additional rules and regulations regarding use, repair and storage of vehicles in the Subdivision may be promulgated from time to time by the Board.

Section 2.19. RV's. Recreational Vehicles ("RV's") shall be allowed but must be stored in an enclosed garage. Notwithstanding the foregoing, RVs shall not be used as a residence except during the construction of the primary residence, which shall not exceed 12-months.

Section 2.20. Fireworks. No fireworks of any variety shall be discharged upon a Lot or the Common Area.

Section 2.21. Livestock and Animals. Except as provided below, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept on said Lots provided they are not kept, bred or maintained for commercial purposes and do not become a nuisance or threat to other Lot Owners. Unless leashed, all animals must remain within the boundaries of the animal Owner's Lot(s).

No exotic, wild and/or dangerous animals or emus, peacocks, ostriches, reptiles, roosters, hogs or swine of any nature shall be permitted within the Subdivision. There shall be no commercial livestock feeding operations conducted on any Lot.

Subject to limitations contained in this Section, each Lot in the Subdivision may be used, in addition to other permitted uses, for the purposes of raising, training and breeding the hereafter names domestic livestock and animals. Unless otherwise approved in writing by the Association, only the following livestock and animals, and in the following numbers, may be kept, raised, trained or bred upon any Lot in the Subdivision.

Group A: Horses, Cattle, Donkeys, Sheep & Goats - no more than one (1) Group A animal is allowed per acre owned by Owner.

Group B: Rabbits, Ducks, Turkeys, Laying Chickens, Pigeons, and other varieties of birds and small animals (other than the prohibited animals listed above) - no more than an aggregate of three (3) Group B animals are allowed per acre owned by Owner.

The offspring of Group A animals shall be permitted on the Lot for a period not to exceed 1-year before becoming subject to the above provision. The offspring of Group B animals shall be permitted on the Lot for a period not to exceed 6-months before becoming subject to the

above provision.

The Owner shall comply with general accepted livestock raising and breeding practices. Specifically, but without limitation, no animal may be brought into the Subdivision unless it is free of communicable diseases. The Board may request a current health certificate at any time. The Board shall have the right to prohibit any animal that is or becomes a nuisance regardless of type or breed.

Section 2.22. Driveways. All driveways in the Subdivision shall be constructed of concrete or asphalt for the first 70 feet from the opposite side of the road. Driveways shall be paved with a minimum of 20 feet in width and 70 feet from the opposite side of the road in length. All driveways shall have a skirt of at least 28 feet on the road frontage or any minimum as may be established by governmental authorities from time to time. Anything beyond the first 70 feet from the opposite side of the road may be a material of the owner's choosing. Please see the Architectural Guidelines for additional information on driveways.

Section 2.23. Water Wells, Septic and Irrigation Systems. Water wells, septic systems and irrigation wells will be allowed. All water wells and septic systems shall be subject to any local or state governmental regulations and approval. Rainwater collection is not required, but is encouraged on each Lot. If a rainwater collection system is installed, any tank must be wrapped in wood boards or stone and must be located towards the rear of the Dwelling, or to the rear or side of any other approved structure unless a variance is approved by the Declarant or ARC. Any rainwater collection system must receive prior written approval from the Developer or the ARC after the Control Transfer Date.

Section 2.24. Energy Conservation Equipment. No solar energy device shall be constructed or installed on any Lot, other than on the roof of a Dwelling or in a fenced yard or patio owned and maintained by the Owner. If a solar energy device is mounted on the roof of the Dwelling it shall not extend higher than or beyond the roofline, it must conform to the slope of the roof, be parallel to the roofline, and all frames, support brackets or visible piping or wiring must be silver, bronze or the black tone commonly available in the marketplace. If the solar energy device is located in a fenced yard or patio it cannot be taller than the fence line. Installation of any solar energy device must receive prior written approval from the ARC.

Section 2.25. Pastures and Fields. Pastures shall be fenced and maintained at all times and shall be located behind the residential structure. Agricultural fields shall be located behind the residential structure. Agricultural fields must be in accordance with local industry standards and practices as to not endanger neighboring plants and or animals. All pesticides, fertilizers and herbicides must be applied in accordance with applicable rules, laws and industry standards.

Section 2.26. Marketing and Sales Activities. Declarant and its affiliates, may construct and maintain upon portions of the Common Area and other property they own, such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and Builders may park vehicles in areas other than garages or driveways, including on streets. Builder's rights under this Section are subject to

Declarant's prior written approval.

Section 2.27. Construction of Subdivision Improvements. Declarant reserves the right (but shall not have the obligation) which right shall survive the closing on a Lot, to place, move or remove dirt or trees on a Lot to construct the Subdivision improvements, facilitate drainage, or to provide the uniformity of grade with surrounding Lots, should the foregoing be deemed necessary or appropriate in the sole discretion of the Declarant.

Section 2.28. Construction Site. During the construction phase of the Subdivision, only authorized workers, employees, and agents (and their invitees) of the Developer/Declarant shall be allowed on the property without express written permission in the sole discretion of the Developer/Declarant. This provision is in effect until, at the sole discretion of the Developer/Declarant, all construction has been completed by Developer/Declarant.

Section 2.29. Restrictions on Plat. The Plat of the Subdivision dedicates for the use as such, subject to the limitations as set forth thereon, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Subdivision. All dedications, restrictions, and reservations created and shown on the Plat of the Subdivision shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of the Developer, conveying a Lot within the Subdivision or any part thereof whether specifically referred to therein or not.

### **ARTICLE III**

#### **Construction in Accordance with Plans and Specifications**

Section 3.01. General. All structures of every type and description shall be constructed, placed or erected within the Subdivision in accordance with the provisions of this Article III together with other applicable provisions of this Declaration. Only new construction of residential buildings shall be permitted, it being the intent of this covenant to prohibit the moving of an existing building or portion thereof on a Lot and remodeling or converting same into a Dwelling. All notes indicated on recorded plats must be adhered to. Portable storage buildings are allowed, so long as they receive ARC approval.

Section 3.02. Size of Residences and Lot Coverage. All interior lot residences to be constructed shall have a minimum of 1,400 square feet of enclosed air conditioned living area (exclusive of porches, decks and garages and other unairconditioned spaces).

Section 3.03. Setbacks. No building or structure, including porches, decks, swimming pools or projections of any kind (including eaves), shall be erected so as to extend over or across any of the Setback lines shown on the recorded Plat, or if not shown, then the front setback shall be 100 feet (100'), the rear setback shall be fifty feet (50') and the side setback shall be fifty feet (50'). In order to account for unusual topography, natural site features, streetscape or other extenuating circumstances, in its sole discretion, the Declarant and/or ARC reserves the right to require alternate setbacks and to determine house and structure locations at the time of the ARC review.

Section 3.04. Fences, Walls and Animal Pens. All perimeter fences erected on any Lot shall be of new material and erected in accordance with professional fence building standards regarding quality and appearance.

Section 3.05. Building Materials. All Dwellings must be built with brick, stone, wood, stucco, concrete board (a.k.a. “hardy-board”) or a combination of any of these materials. Barndominiums style structures are permitted and may be constructed of metal. Log cabins are allowed. No building material of lesser quality shall be allowed. Vinyl or aluminum will be allowed for home facade trim only. Roofing material must be quality architectural shingles or standing seam metal roofing. All roofing colors must be approved by ARC.

Section 3.06. Prohibited Building Materials. Exposed exterior walls composed of concrete block (unless covered with stucco or other approved material), imitation asphalt brick siding, tar paper, and imitation asphalt stone siding shall be prohibited. All other materials are subject to the approval of the ARC, which may approve or reject such materials in its discretion, on purely aesthetic grounds.

Section 3.07. Foundations. Minimum finished slab elevation for all structures shall be two feet above the 100-year flood plain elevation, or other level as may be established by the Commissioner’s Court or County Engineer of Walker County, Texas, and other applicable governmental authorities.

#### **ARTICLE IV**

#### **DEVELOPER’S RIGHTS AND RESERVATIONS**

Section 4.01. Period of Developer’s Rights and Reservations. Developer shall have, retain and reserve certain rights as set forth in these Restrictions with respect to the Association from the date hereof, until the earlier of the date the Developer gives written notice to the Association of Developer’s termination of the rights described in this Article IV or the Control Transfer Date. The Developer rights set forth in these Restrictions shall not be released until such time as a document relinquishing said rights is filed of record or the Developer no longer holds record title to any Common Area or a Lot in the Subdivision. The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each conveyance by the Developer whether or not specifically stated therein. The rights, reservations and easements set forth herein shall be prior and superior to any other provisions of this Declaration and may not, without Developer’s prior written consent, be modified, amended, rescinded or affected by any amendment to this Declaration. Developer’s consent to any amendment shall not be construed as consent to any other amendment.

Section 4.02. Developer’s Rights to Grant and Create Easements. Developer shall have and hereby reserves the right, without the consent of any Owner or the Association, to grant or create temporary or permanent easements throughout the Subdivision, for ingress, egress, utilities, cable and satellite television systems, communication and security systems, drainage, water and other purposes incidental to the development, sale, operation and maintenance of the Subdivision. The rights reserved to the Developer under this Section 4.02 apply to the entire Subdivision.

Section 4.03. Developer’s Rights to Convey Common Area to the Association. Developer shall have and hereby reserves the right, but shall not be obligated to, convey real property and improvements thereon, if any, to the Association for use as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other Owner or Association.

Section 4.04. Developer Control of Association and ARC. Until such time Developer elects to establish the Association and the ARC all authority and powers reserved to the Association, the Board of Directors or the ARC shall be held and exercised by the Developer. The Developer may elect to transfer control of the Association or the ARC at the same time or at different times in which case the Control Transfer Date may be different for the Association and the ARC. The initial Board of Directors of the Association, made up of Owners, shall be designated by the Developer.

## **ARTICLE V**

### **Membership and Voting Rights in the Association**

Section 5.01. Membership. Every person or entity who is an Owner of any Lot which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 5.02. Board of Directors. Initially, there shall be three (3) members of the Board of Directors of the Association who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called for at the request of the president of the Association, by a majority of the directors, or as called for in the Bylaws. The foregoing notwithstanding, so long as the Declarant, or its successors and assigns as Declarant, is the Class B Member, Declarant shall have the sole right to select the Board of Directors and shall have the right to remove, without cause, any or all of the Directors. Declarant may select board members who are not Owners.

Section 5.03. Certificate of Formation and Bylaws. The Certificate of Formation of the Association and Bylaws of the Association shall be adhered to in the administration and operation of the Association.

Section 5.04. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 5.01 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, such purchaser automatically becomes a Class A Member.

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot owned. Class B membership shall cease and become converted to Class A membership upon the Control Transfer Date. From and after the Control Transfer Date the Class "B" Member shall be deemed to be a Class "A" Member and entitled to one vote for each Lot owned in the manner provided above.

## **ARTICLE VI**

### **Property Rights in the Common Area/Miscellaneous Easements**

Section 6.01. Member's Easements of Enjoyment. Subject to the provisions of Section 6.03 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Area, subject to the rules and regulations of the Association, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees.

Section 6.02. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that within fifteen (15) years from the date of recording of this Declaration, it will convey to the Association, by Quit-Claim Deed, fee simple title to the Common Area upon the conditions set forth herein, subject to those rights reserved unto Declarant pursuant to this Declaration and to the provisions of this Declaration.

NOTICE IS HEREBY GIVEN THAT THE STREETS, ROADS AND ROAD RIGHTS OF WAY INSIDE THE SUBDIVISION ARE PRIVATE STREETS, AND ARE NOT TO BE MAINTAINED BY ANY PUBLIC ENTITY. THE STREETS, ROADS AND ROAD RIGHTS OF WAY SHALL BE PART OF THE COMMON AREA TO BE MAINTAINED BY THE ASSOCIATION.

Section 6.03. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of Declarant, and/or of the Association, to dedicate, transfer or convey all or any part of the Common Area, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Area by the Members of the Association.

(b) The right of the Declarant, and/or of the Association, to grant and reserve easements and rights-of-way for maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Declarant to grant and reserve easements and rights-of-way through, over and upon and across the Common Area for the completion of the Subdivision, for the operation and maintenance of the Common Area and perpetual non-exclusive easements for ingress and egress and utility installation and maintenance to any other property of Declarant regardless of whether or not made subject to this Declaration.

(c) The right of the Association, as provided in its Bylaws to suspend the enjoyment rights of any Member in the Common Area (but not access to a Member's Lot) for any period during which any assessment remains unpaid, and for a period not to exceed thirty (30) days from any infraction of its published rules and regulations. The Association must send written notice to the Owner by certified mail, return receipt requested as per Texas Property Code §209.006 describing the violation that is the basis for the suspension action, charge or fine and state the amount that is due to the Association from the Owner. Owner shall be entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months. The Owner may request a hearing

under Texas Property Code §209.007 on or before the 30<sup>th</sup> day after the date the Owner receives the notice.

(d) The rights of the Association, in accordance with law, its Certificate of Formation and Bylaws, to borrow money for the purpose of improving the Common Area and in pursuance thereof, to mortgage the same.

Section 6.04. Maintenance. The Association shall at all times maintain, including applicable taxes regardless of ownership and insurance, all portions of and structures situated on the Common Area, and the Association shall maintain the Common Area in good repair, and shall repair or replace as often as necessary, any paving, drainage structures, landscaping, entrance signage and lighting, and other amenities situated on the Common Area. The Association shall also maintain any additional property, which may include a Lot, for which the Association, in its sole discretion, assumes maintenance responsibility under this Declaration, a Supplemental Declaration, or a contract, covenant, or agreement which the Association enters into (or which Declarant enters into on the Association's behalf). The Board of Directors acting by a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Area and all other common expenses. All work pursuant to this Section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with Article VII. Excluded here from shall be paving and maintenance of individual Lot driveways which shall be maintained by each Owner. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

Section 6.05. Additional Structures. Prior to the Control Transfer Date neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant, erect, construct or otherwise locate any structure or other improvement in the Common Area.

Section 6.06. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 6.01 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the Subdivision. Family shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one person who is not so related as a single household unit and one household employee of such household unit. It is not the intent of the Declarant to exclude from a residence any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 6.01 of this Article may be delegated by the Owner to the Owner's tenants who occupy a residence within the Subdivision.

Section 6.07. Power to Adopt Rules and Regulation. The Association shall have the power to make reasonable rules and regulations regarding the use of the Common Area. The

Association shall also have the right to promulgate such rules and regulations with respect to the Subdivision so long as the Board of the Association deems such rules and regulations necessary to promote the recreation, health, safety and welfare of the Members of the Association, or may be necessary or desirable to further the common interest of the Members and to improve and enhance the attractiveness, desirability and safety of the Subdivision all in accordance with the provisions of these Restrictions. The rules and regulations may be enforced in the same manner as any other provision of these Restrictions.

Section 6.08. Easement for Utilities and Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas, and easement areas on each Lot as shown on the recorded map of the Subdivision and/or as set forth herein and over, upon, across and under the Common Area for maintenance and/or the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment, Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by the licensee of the Declarant but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the Subdivision which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, other than Declarant, no Owner shall erect any structure, including, without limitation, walls, fences or paving within any areas designated on the Plat of the Subdivision and/or as set forth herein as a "Road Right of Way", "Utility Easement" or "Common Area", nor shall any Owner change the grade of any such easement area, provided however, that driveways may cross utility and drainage easements at the front of the Lots subject to prior approval of Declarant or the ARC and that any planting in easement areas shall not interfere with the applicable easement and shall be limited to grassing and small shrubbery. Each Owner shall keep drainage ditches and swales located on such Owner's Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity. The easements referred to in this paragraph are, without limitation, those shown upon the recorded Plat of the Subdivision; as set out in easements of record; upon the plans of the Subdivision; as set forth herein or which are located on, over or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under the Common Area and all streets and roads within the Subdivision for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines and other utilities which serve or shall serve



property presently owned by Declarant. Declarant, its agents, contractors, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Road Right of Way", "Common Area", "Utility Easement", on the Plat of the Subdivision for the purpose of providing drainage of the Subdivision and lands now or hereafter adjacent to the Subdivision or in the vicinity thereof (whether or not a part of the Subdivision) and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, employees and assignees may enter upon any of the easement areas so designated on the recorded Plat of the Subdivision for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches, and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. No Owner shall erect any structure or fence within such easement areas without the prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures, plants, trees, or other items which may be located in such utility and drainage easements and Declarant shall have no obligation to replace any such structures which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, perpetual, alienable, commercial easements over and under all Lots along an area 5 feet in width inside each side boundary line of each Lot and 10 feet along the front and rear of each Lot Line and along street right of ways for the purpose of installation, construction, maintenance, repair, replacement, use and operation of utilities and utility systems of all kinds (including but not limited to water, sewer, electric, and natural gas), drainage (including but not limited to storm water and surface drainage), and access. These easements shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Subdivision which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Subdivision and whether or not such property adjoins the Subdivision.

Section 6.09. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to, any property manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours, whenever practicable.

Section 6.10. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Subdivision for the maintenance of signs, sales offices, rental offices, property management offices and construction offices, together with such other facilities as in the sole opinion of Declarant reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Lots or Common Area. The Declarant also reserves the right to grant to any builder or builders the right to operate

and maintain builder sales offices at any location within the Subdivision upon such terms and conditions as the Declarant in the Declarant's sole discretion may determine.

Section 6.11. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any improved portions of any Lot for the purpose of landscaping, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing rubbish and trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Declarant or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement, but not the obligation, to maintain and/or repair the outer portions of any building, if the Owner shall fail to maintain such building in keeping with the standards of the Subdivision. The cost of such maintenance and/or repair shall constitute a special assessment against the Lot on which the building is located and the Owner of said Lot as provided in Article VII herein.

Section 6.12. Road Construction Easement. Declarant reserves a temporary construction easement of twenty-five (25) feet in width along both sides and running parallel to streets and roads, alleys and private lanes which easements shall expire thirty-six (36) months after the particular road construction commences. Should it be necessary due to terrain and site conditions, Declarant has at its sole discretion the right to extend the width of the temporary construction easement.

## **ARTICLE VII**

### **Assessments for the Maintenance and Operation of Common Area and Facilities**

Section 7.01. Assessments, Liens and Personal Obligations Therefore, and Operation Maintenance of Common Area Solely by the Association.

(a) Each and every Owner of any Lot(s) and each and every owner of the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, and (3) individual assessments. Said assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot(s) against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot(s) at the time when the assessment fell due.

(b) The Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of Owners of Lots in the Subdivision, and in particular for the improvement and maintenance of the Common Area and, upon determination by the Board of Directors, improvements located outside of the Subdivision (including, without limitation, identification and/or directional signage [including landscaping] either exclusively or

in cooperation with other association or parties) now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, the employment of attorneys, accountants, property managers and other professionals to represent the Association when necessary and such other needs as may arise. In the event that Declarant performs any of the foregoing services for Association, including, but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefore and such shall not be deemed to be a conflict of interest.

Section 7.02. Amount and Payment of Annual Assessment. The initial annual assessment payable by each Owner shall be \$995.00 per Lot, per calendar year. Upon the closing of the initial sale of each Lot by Declarant, the purchaser of each Lot shall pay to the Association the annual assessment prorated for the current year. The annual assessment may be increased or decreased by the Board of Directors of the Association without a Vote of the Members to an amount not more than ten (10%) percent difference in the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease differs from the assessment for the previous year by more than ten (10%) percent. In determining the annual assessment, the Board of Directors of the Association shall appropriate an amount sufficient to pay the costs of insuring, maintaining, replacing, protecting and operating the Common Area and performing the other exterior maintenance required to be performed by the Association under this Declaration including establishing and maintaining adequate reserves. The Board shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period (which shall be based on a calendar year), and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner. In the event that any Lot is subject to an assessment for only part of a calendar year, then the amount of such assessment shall be prorated based on the portion of the assessment period for which such Lot is subject to an assessment.

In the event that two Lots are combined for the purpose of providing one building site, such Owner shall pay an assessment for each of the original Lots as if they had not been combined.

Each annual Assessment shall be fully payable in advance on the 1st day of January each year, but the Board of Directors of the Association shall have the option to permit payments in such installments and at such times as it shall determine. The exact amount of each annual Assessment shall be fixed by the Board of Directors of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for any assessment, a certificate in writing, signed by an officer of the Association or by the Association Manager, setting forth whether said assessment has been paid. Such certificate shall be in recordable form and shall be conclusive evidence of payment status of any assessment therein stated to have been paid.

Section 7.03. Special Assessments. In addition to the Annual Assessment, the Association, upon the Vote of the Members, may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted.

Section 7.04. Individual Assessment. The Association may levy an individual assessment upon any Owner to cover the costs incurred by the Association due to that Owner's failure to maintain their Lot and improvements pursuant to the standards set forth in this Declaration, or to reimburse the Association for any damage to any Common Area property caused by any Owner or their tenant or invitee, or for any other purpose permitted by this Declaration or any Supplemental Declaration (the "Individual Assessments"). Individual Assessments shall be due and payable within thirty (30) days after written notice from the Association.

Section 7.05. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties.

Section 7.06. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment (or reimbursement as outlined in this Declaration) is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot(s) which shall bind such Lot(s) in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the Board of Directors of the Association, with such interest rate to not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is \$25.00 and shall be charged as to any assessment that is not paid within 30 days of its due date. Any assessment which is not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Board of Directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.

Section 7.07. Creation of Lien and Personal Obligation. In order to secure the payment of the Assessments, each Owner of a Lot hereby grants the Association a contractual lien on such Lot which may be foreclosed by non-judicial foreclosure, pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said section 51.002 of the Texas Property Code, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the association by means of written instrument executed by the President or any Vice-President of the Association and filed of record in the Official Public Records of Real Property of Walker County, Texas. In the event the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended. Upon request by the Association, the Trustee shall give any further notice of foreclosure sale as may be required by the Texas

Property Code as then amended, and shall convey such Lot to the highest bidder for cash by Trustee's Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with collecting the Assessments and foreclosing on the Lot, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of the Assessment in default; and third, the remaining balance shall be paid to the Lot Owner or Lien Holder for the benefit of the Lot Owner. Following any such foreclosure, each occupant of a Lot which is foreclosed upon shall be deemed a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action for forcible detainer.

In the event of non-payment by any Owner of any Assessment or other charge, fee, assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, exercise all other rights and remedies available at law or in equity, including but not limited to bringing an action at law against the Owner personally obligated to pay the same.

It is the intent of the Provisions of this Section 7.07 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale. In the event of the amendment of Section 51.002 of the Texas Property Code, the Association, acting without joinder of any Owner or Mortgagee, may, by amendment to these Restrictions, file any required amendments to these Restrictions so as to comply with said amendments to Section 51.002 of the Texas Property Code or any other statute applicable to foreclosures.

**Notwithstanding anything contained this Article VII, all notices and procedures relating to foreclosures shall comply with Chapter 209 of the Texas Property Code.**

Section 7.08. Notice of Lien. In addition to the right of the Association to enforce the Assessment, the Association may file a claim of lien against the Lot of the delinquent Owner by recording a Notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have been accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed, and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Association to cover the preparation and recordation of such release of lien instrument.

Section 7.09. Liens Subordinate to Mortgages. The lien described in this Article shall be deemed subordinate to any lien in favor of any bank, mortgage company, real estate lending establishment, financial institution, insurance company, savings and loan association, or any other third party lender, including the Developer, who may have advanced funds, in good faith, to any Lot Owner for the purchase, improvement, equity lending, renewal, extension, rearrangement or refinancing of any lien secured by a Lot, provided that any such lien holder has made due inquiry as to the payment of any required assessments at the time the lien is recorded. Any consensual lien holder who obtains title to any Lot pursuant to the remedies provided in a

deed of trust or mortgage or by judicial foreclosure shall take title of the Lot free and clear of any claims for unpaid assessments or other charges against said Lot which accrued prior to the time such holder acquired title to such Lot. No such sale or transfer shall relieve such holder from liability for any Assessments or other charges or assessments thereafter becoming due. Any other sale or transfer of a Lot shall not affect the Association's lien for Assessments or other charges or assessments. The Association shall make a good faith effort to give each such mortgage sixty (60) days advance written notice of the Association's foreclosure of an Assessment lien, which notice shall be sent to the nearest office of such mortgage by prepaid United State registered or certified mail, return receipt requested, and shall contain a statement of delinquent Assessment or other charges or assessments upon which the said action is based, provided however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article.

Section 7.10. Purpose of the Assessments. The Annual Assessments and Special Assessments shall be used exclusively for the purpose of promoting the health, safety, security and welfare of the Subdivision and the maintenance of the Common Area. In particular, the Assessments shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described herein, including the maintenance of any drainage easements, Common Area, Common Area Expenses, the enforcement of these Restrictions and the establishment and maintenance of reserve funds. The Assessments may be used by the Association for any purpose which, in the judgment of the Association's Board of Directors, is necessary or desirable to maintain the property value of the Subdivision, including but not limited to, providing funds to pay all taxes, insurance, repairs, utilities and any other expense incurred by the Association. Except for the Association's use of the Assessments to perform its duties as described in these Restrictions, the use of the Assessments for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Board of Directors as to the expenditure of Assessments shall be final and conclusive so long as such judgment is exercised in good faith.

Section 7.11. Handling of Assessments. The collection and management of the Assessment shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer, and upon transfer, the Association, shall maintain a separate account for these funds.

Section 7.12. Developer Exemption. In consideration of the Subdivision infrastructure, the Developer shall be exempt from the payment of all Assessments.

Section 7.13. Exempt Property. All Common Area subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

Section 7.14. Developer Exemption. In consideration of the Subdivision infrastructure, the Developer shall be exempt from the payment of any assessments, including Annual, Special or Individual Assessments.

**ARTICLE VIII**  
**Architectural Standards and Control**

The Board of Directors shall have the authority and standing, on behalf of the

Association, to enforce in courts of competent jurisdiction decisions of the Committee established in Section 8.01 of this Article VIII. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration.

No construction, which term shall include, without limitation, staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements hereof have been fully met and until the written approval of the Architectural Review Committee has been obtained.

Section 8.01. Architectural Review Committee. The Architectural Review Committee (ARC) shall have exclusive jurisdiction over all construction on any portion of the Subdivision, including but not limited to the authority to review and approve all proposed Site plans showing where improvements are to be erected. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate Architectural Review Guidelines ("Guidelines") which include the and such other Rules and Regulations as the ARC deems necessary. The Guidelines, Review Process and Rules and Regulations shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend in its sole discretion these documents. It shall make them available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Subdivision and who shall conduct their operations strictly in accordance therewith. As long as Declarant owns any part of the entire Subdivision, including but not limited to Common Areas, which are subject to this Declaration or retains the right to add additional phases, the Declarant retains the right to appoint all members of the ARC, which shall consist of at least three (3), but no more than five (5) persons. The members of the ARC do not have to be Owners. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC. Members of the ARC may not include a board member, a board member's spouse, or anyone living in a board member's household. The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots, Buffer Areas, and Common Areas. The right of approval herein reserved and granted shall include, without limitation, the right to designate or re-designate which Lot line shall be the "front" in the case where a Lot is bordered by more than one street.

The ARC shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: Plans and Specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions, or alterations shall be submitted in advance to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved Plans and Specifications.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his/her Dwelling or to paint the interior any color desired. In the event the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) calendar days after submission, the plans shall be deemed approved; provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal or approval of plans,

specifications, and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of the ARC, may deem sufficient. The approvals required pursuant to this Article shall be in writing and are in addition to any approvals required by other applicable governmental authority.

Nothing in this Declaration shall be construed to prohibit the ARC from promulgating different Guidelines and/or Procedures for each Phase or portion thereof of the Subdivision and the ARC is specifically authorized to do so. Additionally, all reasonable costs incurred by the ARC in reviewing and approving applications to the ARC shall be the responsibility of the applicant. Unless specifically waived by the ARC, all applications and submissions of plans for approval by the ARC must be accompanied by an architectural review fee of \$1,000.00 or such other sum as is established by the ARC from time to time. Optional, preliminary plan approval may be obtained by submitting plans accompanied by a preliminary review fee of \$100.00 or such other sum as is established by the ARC from time to time.

Actual construction of Dwellings and other improvements shall be the responsibility of the Owner of the Lot and the Owner's builder. Any permission granted for construction under this covenant and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or the ARC or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such buildings or other improvements.

Section 8.02. Buildings, Fences, Walls, Etc. No building, or other structure, or any other item originally approved by the ARC, shall be commenced, erected, or maintained upon a Lot, nor shall any exterior addition to or change be made until the Plans and Specifications showing the nature, kind, shape, materials, color, and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures by the ARC. Any change in exterior appearance of any building, or other structural improvements shall be deemed an alteration requiring approval.

Section 8.03. Declarant's right to exercise Architectural Review Authority. Notwithstanding the above sections, Declarant, in Declarant's sole judgment and discretion, reserves the right and option to exercise Architectural Review Authority without establishing an ARC until such time as Declarant relinquishes Class B membership status.

Section 8.04. Construction Bonds.

(a) Contractor Performance Bond. Prior to commencement of work, builders will be required to post a Contractor Performance Bond with the ARC in the amount of \$1,500.00 or such other sum as is established by the ARC from time to time, to ensure that the contractor, during construction, keeps the Lot in a neat, clean, workmanlike manner and to ensure that the contractor completes improvements in accordance with the approved Plans and Specifications. Should the same not be done at the end of any business day or the end of construction, as appropriate, some or all of the bond may be used to bring the contractor into compliance with approved plans, and for any necessary site maintenance. Any portion of the Contractor Performance Bond remaining at the end of construction and issuance of the certificate of occupancy will be refunded to builder/contractor. Nothing in this subparagraph shall prevent Declarant or the Association from pursuing any legal right, claim or remedy it may have for damages in



excess of the bond amount.

(b) Road Bond. Prior to commencement of construction, the Contractor shall submit a \$3,500.00 road bond, or such other sum as is established by the ARC from time to time to ensure that streets and curbs in front of subject Lot are maintained, throughout the construction process, in the same good quality condition as they were in when construction began and to ensure the proper reseeding, and clean-up of right-of-ways and drainage swales for any damage by contractor and its agents. Any portion of the road bond not applied to necessary repairs will be refunded at the end of construction. Nothing in this subparagraph shall prevent Declarant or the Association from pursuing any legal right, claim or remedy it may have for damages in excess of the bond amount.

Section 8.05. Variances. The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration or the Architectural Review Guidelines, including without limitation restrictions upon size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by at least two (2) members of the ARC and shall be effective upon delivery to the Owner. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Architectural Review Guidelines for any purpose except as to the particular Lot and improvements and the particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Owner's Lot.

Section 8.06. Diligent Construction. All construction, or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed House or other Improvement shall be permitted to exist on any Lot except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Review Committee. Any damage to the Roadways, curbs or sidewalks or any part of the Common Area or any utility system caused by an Owner or Owner's builder or his subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and his subcontractors shall keep a Lot free of construction debris, in accordance with the construction rules established by the Architectural Review Committee or, in the absence of such rules, in accordance with standard construction practices, and shall similarly keep the Lot and contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Subdivision to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area, or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Subdivision and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or his subcontractors during the construction of Improvements.

## **ARTICLE IX**

### **Exterior Maintenance, Reasonable Access and Maintenance of Common Area**

Section 9.01. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner after receiving proper notice and the opportunity to be heard, may enter upon the Lot and remove the violating condition, document the violating condition and/or cure the violation, at the expense of the Owner, and the violating Owner shall pay on demand all costs and expenses, including reasonable attorney's fees, incurred by the Association in removing such violating condition. All notices under this Section shall be given as required by Chapter 209 of the Texas Property Code.

Section 9.02. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 9.03. Maintenance of Common Area. It shall be the responsibility of the Association to maintain the Common Area. However, should the Declarant (prior to conveyance to the Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Area to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

Section 9.04. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by others.

(b) Declarant and its designees may convey to the Association, and the Association shall accept "as is", personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Association shall reconvey to Declarant any portions of the Common Area which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

Section 9.05. Removal of Obstructions, Debris, and Materials. The Association may remove any obstructions of any nature located within road right-of-ways or other Common Area including trees and shrubs which, in the opinion of the Association, either might produce a hazard or might interfere with the maintenance of the roads.

**ARTICLE X**

## **Rights of Mortgagees**

Section 10.01. Rights of Mortgagees or Third Parties. Should a mortgagee or third party acquire the rights of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contained within the property contiguous to the property subject to this declaration, as same may exist from time to time, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within the Subdivision for the purpose of serving such adjoining or neighboring areas. These rights shall also inure to the benefit of Declarant should it retain or be the Owner of any portion of said property. Any of such parties may elect to bring additional phases under this Declaration.

## **ARTICLE XI** **Insurance and Casualty Losses**

Section 11.01. Insurance. Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, Association, and its Members for all damage or injury caused by the negligence of Association or any of its Members or agents.

Premiums for all insurance required under this Section shall be Common Area Expenses of the Association. This policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be a Common Area Expense of Association.

Cost of insurance coverage obtained by Association for the Common Area shall be included in the assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Texas which holds a Best's rating of A or better as is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;
- (b) All policies on the Common Area shall be for the benefit of Association and Declarant shall be named as additional insured;
- (c) Exclusive authority to adjust losses under policies in force on the Common Areas obtained by Association shall be vested in Association's Board of Directors;

(d) In no event shall the insurance coverage obtained and maintained by Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners; and

(e) Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against Association's Board of Directors, its manager, and Owners and their respective tenants, agents, and guests;

(ii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of Association or its duly authorized manager without prior demand in writing delivered to Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by Association, its manager, its Owner, or mortgage;

(iii) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(iv) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the Class B Member exists. The amount of fidelity coverage shall be determined in the Directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers' and directors' liability insurance, if reasonably available, and the Board of Directors of Association approves the purchase of same. However, every director and every officer of the Property Owners Association shall be indemnified by Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or in which he/she may be become involved by reason of his/her being or having been a director or officer of Association, whether or not he/she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 11.02. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of Association and placed in a capital improvements account.

(b) If it is determined, as provided in Section 11.03 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Subsection (a) above. However, repair or replacement of the affected Common Area must be made unless prevented by law or governmental rule or regulation.

Section 11.03. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the properties covered by insurance written in the name of Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. 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 reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days.

(c) In the event that it should be determined in the manner described above that the damage and destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the affected portion of the Common Area shall be restored to their natural state and maintained by Association in a neat and attractive condition.

Section 11.04. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a Vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned; provided, if the damage or destruction involves a Lot(s), only Owners of the affected Lot(s) shall be subject to such assessment. Additional assessments may be made in like

manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE XII Dispute Resolution and Limitation on Litigation**

Section 12.01. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”) agree to encourage the amicable resolution of disputes involving the Subdivision, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 12.02 below (“Claims”) shall be resolved using the procedures set forth in Section 12.03 below in lieu of filing suit in any court.

Section 12.02. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on a Lot shall be subject to the provisions of Section 12.03 below.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.03 below:

- a. any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments for the Maintenance and Operation of Common Area and facilities);
- b. any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief and such other ancillary relief as permitted to enforce the provisions of Article II (Uses of Property) or VIII (Architectural Standards and Control);
- c. any suit in which any indispensable party is not a Bound Party; and
- d. any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.03 below.

### Section 12.03. Mandatory Procedures.

- a. Notice. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) (collectively the “Parties”) shall notify each Respondent in writing (the “Notice”), stating plainly and concisely:
  1. the nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
  2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

3. claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of any Texas dispute resolution center or such other independent mediator providing similar services upon which the Parties mutually agree. If the parties cannot agree on a mediator then the mediator shall be selected by a District Judge of the District Court of Walker County, Texas.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided however, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five (5) days after the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

c. Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration of the American Arbitration Association or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be

released and discharged from any and all liability to Claimant arising out of such Claim; provided however, nothing herein shall release or discharge Respondent from any liability to Persons other than the Claimant.

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

Section 12.04. Allocation of Costs of Resolving Claims.

a. Subject to Section 12.04(b), each Party shall bear its own costs, including any attorney's fees incurred, and each Party shall secure equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

b. Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

Section 12.05. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Section 12.03(b) and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party, thereafter fails to comply with the Award, then the other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Section 12.03. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties pro rata) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.

Section 12.06. Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by Members of the Association entitled to vote at a regular or special meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving the proceeding. This Section will not apply, however, to actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); the imposition and collection of Assessments; proceedings involving challenges to ad valorem taxation; counterclaims brought by the Association in proceedings instituted against it; or actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article XII, if applicable.

Section 12.07. Miscellaneous Alternative Dispute Resolution Provisions.

a. Conflicting Provisions. Any conflict or discrepancy between the terms and



conditions set forth in this Article XII and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein will control.

b. TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article XII will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

### **ARTICLE XIII General Provisions**

Section 13.01. Enforcement. Subject to the provisions of Article XII hereof, in the event of a violation or breach of any of these restrictions by any Owner or agent, or agent of such Owner, Owners of Lots in the Subdivision, or any of them, jointly or severally, Declarant, and/or Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, Declarant, its successors and assigns, shall have the right, but shall be under no obligation, whenever there shall have been built on any Lot in the Subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of Owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction, or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ counsel to enforce any of the foregoing covenants, condition, reservations, or restrictions because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant/Association's counsel, shall be paid by Owner of such Lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such Lot and shall be enforceable as herein provided. Failure of Declarant, Association, or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. In addition, the Board of Directors shall have the authority to enforce the Covenants and Restrictions, including reasonable rules and regulations as outlined in the Bylaws.

Section 13.02. Fines, Association Administrative Proceedings Including Hearings Regarding Fines and Suspension of Services under Chapter 209 of the Texas Property Code. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a reasonable fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, Lessees or employees to comply with any covenant, restriction, rule or regulation, provided notice and hearing procedures set out in the Texas Property Code are followed. Once imposed, fines shall be treated as an assessment subject to the provisions for the collection of assessments. The Association may conduct any administrative proceedings permitted or provided for under the Declaration, the Act or as otherwise provided by law, including without limitation, the right of the Association, after notice and an opportunity to be heard, to (1) impose reasonable fines for violations of the Declarations, Bylaws, rules and regulations of the Association, or (2) to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association or during any period that

assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer. Prior to pursuing the imposition of a fine or the suspension of privileges or services as allowed by the Act and as provided herein, the offending Owner will be notified and given ten (10) days in which to cure his violation or nonpayment. In the event the violation or nonpayment is not cured within this ten (10) day period, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if the offending Owner should be fined or if privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings shall be held before the Board. The offending Owner charged shall be given notice of the charge, an opportunity to be heard and to present evidence and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs; provided, however, that fines imposed shall be subject to the following minimums:

- (i) The fine for the first violation or the first day of any continuing or repetitive violation shall not be less than \$25.00.
- (ii) The fine for the second violation or the second day of any continuing or repetitive violation shall not be less than \$50.00.
- (iii) The fine for the third violation or the third day and subsequent days of any continuing or repetitive violation shall not be less than \$100.00.

Fines imposed shall be assessments secured by liens under Chapter 209 of the Texas Property Code. If it is decided that a suspension of privileges or services should be imposed, notice under §209.006 shall be given, then the suspension may be continued until the delinquency is paid. The Association may institute actions or proceedings permitted by law or the Act to collect any sums due and owing to it.

Section 13.03. Responsibility of Declarant. Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 13.04. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then, in the event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of Texas, and such provision shall be fully effective for said reduced period of time.

Section 13.05. Binding Effect. All covenants, conditions, limitations, restrictions, easements, and affirmative obligations set forth in this Declaration shall be binding on each and every Owner of a Lot and their respective heirs, successors, and assigns, and shall run with the land. All rights, easements and agreements reserved by or granted to Declarant herein shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement thereof, to the Association, or any assignee of Declarant's development rights. At such time as Declarant, its successors or assigns no longer owns a Lot or

Common Area located within the Subdivision, any right of approval reserved to Declarant by this Declaration shall be exercised by the Association.

Section 13.06. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by Declarant, Association, or Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns. All of the restrictions and covenants set forth in this Declaration will continue and be binding on the Declarant and the Owners and on their successors and assigns for a period of twenty-five (25) years from the date this instrument is filed of record in the Official Records of the Walker County Clerk's Office, Walker County Texas, and will automatically be extended thereafter for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be terminated only by agreement of Owners to which at least ninety percent (90%) of the votes in the Association are allocated.

Section 13.07. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner of the records of Association at the time of such mailing.

Section 13.08. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.09. Amendment. These covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time upon sixty-seven percent (67%) vote of the entire membership in the Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration, the Declarant's consent must be obtained. Provided further, that the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Official Records of the Walker County Clerk's Office, Walker County, Texas.

Section 13.10. Amendment Prior to First Conveyance by Declarant. At any time prior to the closing of the first conveyance of a Lot by Declarant, the Declarant, and any mortgage holder, if any, may amend this Declaration by mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of a contract of sale or a like document.

Section 13.11. Amendment of Declaration Without Approval of Owners. So long as it owns any portion of the Subdivision, the Declarant, without the consent, joinder or approval of any other Owner, shall have the right to amend this Declaration:

- (a) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Subdivision;
- (b) to qualify the Subdivision or any Lots and improvements thereon for mortgage or improvement loans; or

(c) to make amendments which are correctional in nature only and do not involve a change which materially and adversely affects the rights, duties or obligations of any other Owner.

A letter from an official of any such governmental Agency, including without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Governmental National Mortgage Association of the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such agency shall be sufficient to conform to such request or suggestion. Such amendment shall become effective upon the date of its recordation in the Official Records of the Walker County Clerk's Office, Walker County, Texas.

Section 13.12. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it is a Class B Member of the Association, and, thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Official Records of the Walker County Clerk's Office, Walker County, Texas.

Section 13.13. Changes to Plans for the Subdivision. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Subdivision, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration, reserves the right to change any plans for the Subdivision at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions. Any plans for the Subdivision shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration.

Section 13.14. Assignment of Declarant's Rights. Declarant reserves the right to assign its rights to a successor or assign who also assumes Declarant's responsibilities.

Section 13.15. Indemnification of Officers, Directors, and Others. Subject to Texas law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the

Association).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 13.16. Safety and Security. The Association, the Board, its directors and officers, Declarant, and, their respective agents, assigns, or employees shall not be considered insurers or guarantors of security or safety within the Subdivision, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any safety measure or security system, including any mechanism, system, or procedure for limiting access to any portion of the Subdivision, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Owner, resident, guest, and invitee acknowledges and agrees that the Association, the Board, its directors and officers, Declarant, and their respective agents, assigns, and employees are not insurers and that each Owner assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.

Section 13.17. Changes in Ownership of Lots. Each Owner is required to keep the Association apprised at all times of the current name of the Owner and its address. Within ten (10) days following the closing of any transfer of title, the Owner desiring to sell or otherwise transfer title to its Lot shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In addition, within ten (10) days following any change in the name and address of the Lot Owner, the Owner shall give the Board written notice of the changed information and such other information as the Board may reasonably require.

Section 13.18. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of the Walker County Clerk's Office, Walker County, Texas.

Section 13.19. Conflict. The Association shall comply with all terms and conditions of the Texas Property Code. In the event of any conflict herein, the Texas Property Code prevails. Any specific reference to a section in the Texas Property Code shall also include any amendments and/or codifications of the Texas Property Code.

Section 13.20. Exclusive Rights to Use Name of Development. No Person shall use the name "The Ranches at Royal Pines" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "The Ranches at Royal Pines" in printed or promotional matter where such term is used solely to specify that particular property is located within "The Ranches at Royal Pines" and the Association shall be entitled to use the words "The Ranches at Royal Pines" in its name.

Section 13.21. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations, and conditions.

IN WITNESS WHEREOF, The Declarant, Waxhaw Premier Properties, LLC, has caused this instrument to be executed by its proper officers on the 1<sup>st</sup> day of DECEMBER, 2021.

Waxhaw Premier Properties, LLC

By: William G. Allen  
William G. Allen, Manager

STATE OF FLORIDA §  
§  
COUNTY OF COLLIER §

Before me, the undersigned Notary Public, on this day personally appeared William G. Allen who is personally known to me (or proved to me through a federal or state issued ID with photo and signature of person identified) to be the person whose name is subscribed to the foregoing instrument, and who has acknowledged to me that he executed the instrument for the purposes and consideration therein expressed and in the capacity stated herein.

Given under my hand and seal of office on the 1<sup>st</sup> day of DECEMBER, 2021.

Tracey A. Benavides  
Notary Public in and for the State of FLORIDA

