

facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Rules.

2.30 Compliance with Documents. Each Owner, his or her family, the Owner's tenants, guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Documents as the same may be amended from time to time. Failure to comply with any of the Documents shall constitute a violation of the Documents and may result in a fine against the Owner in accordance with *Section 5.14* of the Covenant, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the Water Crest on Lake Conroe Reviewer or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Documents, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in the Covenant for Assessments and may be collected by any means provided in the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **Each such Owner shall indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.30* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.**

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

ARTICLE 3 CONSTRUCTION RESTRICTIONS

3.01 Construction of Improvements. Unless prosecuted by the Declarant, no Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon

any portion of the Development Area unless approved in advance and in writing by the Water Crest on Lake Conroe Reviewer in accordance with *Article 6* of the Covenant.

3.02 Garages. Each residence constructed upon a Lot shall have a private garage for not less than two (2) automobiles and off-street parking for a minimum of two (2) automobiles. The location, orientation and opening of each garage to be located on a Lot shall be approved in advance of construction by the Water Crest on Lake Conroe Reviewer. No garage may be permanently enclosed or otherwise used for habitation.

3.03 Fences; Sidewalks. All fences and walls shall comply with all Applicable Law. Unless otherwise approved by the Water Crest on Lake Conroe Reviewer, no fence, wall or hedge will be erected or maintained on any Lot within the Development Area nearer to the street than the front elevation of the residence constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices. The Water Crest on Lake Conroe Reviewer will have the sole discretion to determine the front elevation of the residence for the purpose of this *Section 3.03*. All perimeter fences (except for those heretofore or hereinafter installed by Declarant) must be approved in advance by the Water Crest on Lake Conroe Reviewer. No chain link or agricultural fences may be installed or maintained on a Lot within the Development Area. If required by the Plat, the Owner of each Lot within the Development Area shall construct, at such Owner's sole cost and expense and prior to occupying any Improvement, a sidewalk on such Owner's Lot within the Development Area, located and designed in conformance with the Plat.

3.04 Landscaping. All open, unpaved space within the Development Area must be landscaped and maintained in a manner deemed appropriate by the Water Crest on Lake Conroe Reviewer. The yard may be sodded with grasses approved by the Water Crest on Lake Conroe Reviewer. The installation of native and/or xeriscaping shrubs is encouraged.

3.05 Building Restrictions. Within the Development Area, all building materials must be approved in advance by the Water Crest on Lake Conroe Reviewer and only new building materials shall be used for constructing any Improvements. All projections from a residence or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the Water Crest on Lake Conroe Reviewer match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

3.06 Construction Activities. The Documents will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant or a Homebuilder) upon or within the Development Area. Specifically, no such construction activities will be deemed to constitute a

nuisance or a violation of the Documents by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Water Crest on Lake Conroe Reviewer in its sole and reasonable judgment, the Water Crest on Lake Conroe Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Water Crest on Lake Conroe Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith.

3.07 Roofing. The roofs of all buildings shall be constructed or covered with fiberglass or dimensional shingles of a weathered wood color or other color approved by the Water Crest on Lake Conroe Reviewer. Any other type of roofing material shall be permitted only with the advance written approval of the Water Crest on Lake Conroe Reviewer. In addition, roofs of buildings may constructed with “**Energy Efficiency Roofing**” with the advance written approval of the Water Crest on Lake Conroe Reviewer. For the purpose of this *Section 3.07*, “**Energy Efficiency Roofing**” means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The Water Crest on Lake Conroe Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth the Documents. In conjunction with any such approval process, the Owner should submit information which will enable the Water Crest on Lake Conroe Reviewer to confirm the criteria set forth in this *Section 3.07*. Any other type of roofing material shall be permitted only with the advance written approval of the Water Crest on Lake Conroe Reviewer.

3.08 Swimming Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all Applicable Law and be approved in advance by the Water Crest on Lake Conroe Reviewer. Nothing in this *Section 3.08* is intended or shall be construed to limit or affect an Owner’s obligation to comply with any Applicable Law concerning swimming pool enclosure requirements. Unless otherwise approved in advance by the Water Crest on Lake Conroe Reviewer, above-ground or temporary swimming pools are not permitted on a Lot.

3.09 Compliance with Setbacks. No residence or any other permanent structure or Improvement may be constructed on any Lot nearer to a street than the minimum building setback lines shown on the Plat and no building shall be located on any utility easements. The Water Crest on Lake Conroe Reviewer may require additional setbacks in conjunction with the review and approval of proposed Improvements in accordance with *Article 6* of the Covenant.

3.10 Solar Energy Device. During the Development Period this *Section 3.10* does not apply and the Declarant must approve in advance and in writing the installation of any Solar Energy Device, as such is defined in *Article 1*. Until expiration or termination of the Development Period, the Declarant may prohibit the installation of any Solar Energy Device. After expiration or termination of the Development Period, Solar Energy Devices may be installed with the advance written approval of the Water Crest on Lake Conroe Reviewer.

(a) **Application.** To obtain Water Crest on Lake Conroe Reviewer approval of a Solar Energy Device, the Owner shall provide the Water Crest on Lake Conroe Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 6* of the Covenant.

(b) **Approval Process.** The Water Crest on Lake Conroe Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 6* of the Covenant. The Water Crest on Lake Conroe Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 3.10(c)* below **UNLESS** the Water Crest on Lake Conroe Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.10(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Development by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Water Crest on Lake Conroe Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) **Approval Conditions.** Unless otherwise approved in advance and in writing by the Water Crest on Lake Conroe Reviewer each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

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

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

3.11 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the Water Crest on Lake Conroe Reviewer.

(a) Application. To obtain Water Crest on Lake Conroe Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Water Crest on Lake Conroe Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner.

(b) Approval Process. The decision of the Water Crest on Lake Conroe Reviewer will be made in accordance with *Article 6* of the Covenant. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Water Crest on Lake Conroe Reviewer each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

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

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

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

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

(v) If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, or another Owner's Lot, the Water Crest on Lake Conroe Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.11(d)* for additional guidance.

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

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

(a) **Application.** Approval by the Water Crest on Lake Conroe Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Water Crest on Lake Conroe Reviewer for Xeriscaping, the Owner shall provide the Water Crest on Lake Conroe Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Water Crest on Lake Conroe Reviewer is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the Water Crest on Lake Conroe Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

(b) **Approval Conditions.** Unless otherwise approved in advance and in writing by the Water Crest on Lake Conroe Reviewer each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

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

(ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over ten percent (10%) of such Owner's front yard or ten percent (10%) of such Owner's back yard.

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

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

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Water Crest on Lake Conroe Reviewer installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Water Crest on Lake Conroe Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of the Covenant and may subject the Owner to fines and penalties. Any requirement imposed by the Water Crest on Lake Conroe Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

ARTICLE 4 DEVELOPMENT

4.01 Notice of Applicability. Upon Recording, this Development Area Declaration serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Development Area Declaration. This Development Area Declaration will apply to and burden a portion or portions of the Property upon the filing of a Notice of Applicability in accordance with *Section 9.05* of the Covenant describing such Property by a legally sufficient description and expressly providing that such Property will be subject to the terms, covenants conditions, restrictions and obligations of this Development Area Declaration.

To add land to the Development Area, Declarant will be required only to Record a Notice of Applicability filed pursuant to *Section 9.05* of the Covenant containing the following provisions:

- (a) A reference to this Development Area Declaration, which will include the recordation information thereof;
- (b) A statement that such land will be considered a part of the Development Area for purposes of this Development Area Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Development Area Declaration will apply to the added land; and
- (c) A legal description of the added land.

4.02 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Development Area and remove and exclude from the burden of this Development Area Declaration any portion of the Development Area. Upon any such withdrawal this Development Area Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development Area withdrawn. To withdraw lands from the Development Area hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (A) A reference to this Development Area Declaration, which will include the recordation information thereof;
- (B) A statement that the provisions of this Development Area Declaration will no longer apply to the withdrawn land; and
- (C) A legal description of the withdrawn land.

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

ARTICLE 5 GENERAL PROVISIONS

5.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Development Area Declaration will run with and bind the portion of the Development Area described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal

representatives, heirs, successors, and assigns, for a term beginning on the date this Development Area Declaration is Recorded, and continuing through and including January 1, 2064, after which time this Development Area Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 5.01*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. Notwithstanding any provision in this *Section 5.01* to the contrary, if any provision of this Development Area Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date of the Recording of this document, descendants of Elizabeth II, Queen of England.

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

5.03 Amendment. This Development Area Declaration may be amended or terminated by the Recording of an instrument setting forth the amendment executed and acknowledged by (i) the Declarant, acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 5.03*, it being understood and

agreed that any such amendment must be approved by a vote of the Members, with each Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period. Specifically, and not by way of limitation, Declarant may unilaterally amend this Development Area Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot or Condominium Unit; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots or Condominium Units; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

5.04 Enforcement and Nonwaiver. Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Development Area Declaration. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of this Development Area Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Development Area Declaration and subject to all of the enforcement procedures set forth herein. The failure to enforce any provision of the Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Documents.

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

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

5.07 Conflicts. If there is any conflict between the provisions of the Covenant, this Development Area Declaration, or any Rules adopted pursuant to the terms of such documents, the provisions of the Covenant, then the Development Area Declaration, then the Rules, in that order, will govern.

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

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

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

5.11 **Interpretation.** The provisions of this Development Area Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Development Area Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Development Area Declaration will be construed and governed under the laws of the State of Texas.

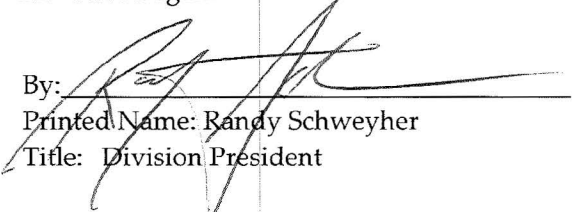
[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective the 18 day of JUNE, 2014.

DECLARANT:

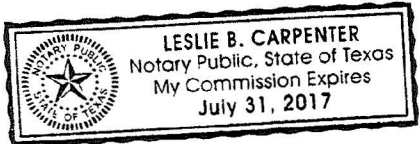
D. R. HORTON – TEXAS, LTD., a Texas limited partnership

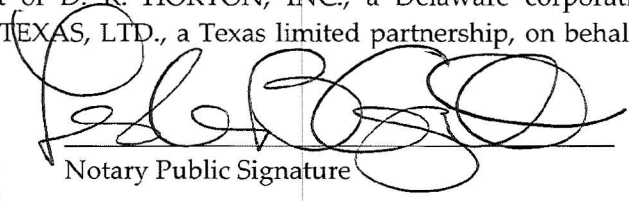
By: D. R. HORTON, INC., a Delaware corporation, its authorized agent

By: 
Printed Name: Randy Schweyher
Title: Division President

THE STATE OF TEXAS §
COUNTY OF Montgomery

This instrument was acknowledged before me this 18 day of JUNE, 2014 by Randy Schweyher, Division President of D. R. HORTON, INC., a Delaware corporation, authorized agent of D. R. HORTON – TEXAS, LTD., a Texas limited partnership, on behalf of said corporation and partnership.




Notary Public Signature

APPENDIX A-1

RETAINING WALL SUPPLEMENT

SECTION 1. GENERAL. Retaining walls are used to stabilize soil, modify slopes, level sites, and adjust for grade or elevation differences between adjoining parcels of land, such as between two Lots. As used in this Supplement, "parcel" means any piece of real property that contains, abuts, or is benefitted by a retaining wall, such as a residential Lot or common area.

1.1. Definitions Based on Location. As originally constructed, retaining walls within the Development or the Property may be located (a) wholly within an individual Lot and not near or along a boundary of the Lot (an "**Internal Wall**"), (b) on or along the boundary between two residential Lots or between a residential Lot and a common area (a "**Shared Boundary Wall**"), or (c) on or along the boundary between a Water Crest on Lake Conroe parcel and either a public street or a parcel of land that is not subject to the Development Area Declaration (a "**Perimeter Wall**"). Internal Walls, Shared Boundary Walls, and Perimeter Walls may be referred to, collectively and individually, as "retaining walls."

1.2. Definitions Based on Elevation. In its relation to the retaining wall, the parcel having the higher elevation is referred to as the "Higher Parcel," and the parcel having the lower elevation is referred to as the "Lower Parcel."

1.3. Deemed Benefit. A Shared Boundary Wall is hereby deemed to benefit the parcel on each side of the wall ~ to be mutually beneficial ~ even though the wall may be entirely within the legal boundaries of only one of the parcels. Accordingly, the Owner of each parcel has an interest in, and an obligation for, the Shared Boundary Wall. Although a Perimeter Wall also benefits the parcel on each side of the wall, this Supplement cannot create an obligation for the parcel that is not subject to the Development Area Declaration.

1.4. Applicability. In addition to applying to Owners of residential Lots with or benefitted by retaining walls, this Supplement also applies to the Association as the Owner of a Common Area with or benefitted by a retaining wall. Although Perimeter Walls on and within the boundaries of Water Crest on Lake Conroe are subject to this Supplement, the parcel on the other side of a Perimeter Wall and the Owner of that parcel are not subject to the Documents, including but not limited to this Supplement.

1.5. Rule of Law. To the extent not inconsistent with the provisions of this Supplement, a retaining wall is subject to the general rules of law regarding party walls, retaining walls, and liability for property damage due to negligence, willful acts, or omissions.

1.6. Materials. Unless the Water Crest on Lake Conroe Reviewer grants a variance, the material used to repair or reconstruct an existing retaining wall must substantially match the original retaining wall in quality and appearance. If the repair or reconstruction is on a

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segment of a continuous wall, an effort must be made to blend the work with the continuous wall of which it is part. The surfaces of new retaining walls that are visible from a street, Common Area, or adjacent parcel must be made of stone or other masonry material approved in writing by the Water Crest on Lake Conroe Reviewer. Wood, including railroad ties, may not be used for retaining walls.

SECTION 2. ALLOCATION OF RESPONSIBILITY. This Section addresses the responsibility for maintaining a retaining wall, depending on its location.

2.1. Continuous Retaining Walls. A "continuous" retaining wall is one that extends ~ on either side ~ beyond the boundaries of a particular parcel, thereby serving two or more parcels on at least one side of the wall. In applying this Supplement to a continuous retaining wall, each parcel Owner is responsible for only the segment of the continuous retaining wall that abuts the Owner's parcel. Owners of parcels with segments of a continuous retaining wall may be required to cooperate in performing maintenance, repair, and reconstruction ~ if and when needed.

2.2. Owner of a Higher Parcel with a Perimeter Wall. This Section contravenes a possible common misperception that a retaining wall on the perimeter of a subdivision is automatically a "common area" and the responsibility of the Association. Unless a publicly recorded document to which Declarant or the Association is a party specifically assigns Perimeter Wall responsibility, the Owner of a Higher Parcel with a Perimeter Wall is responsible for the Perimeter Wall. If the Higher Parcel is a residential Lot, the Owner of the residential Lot is responsible. If the Higher Parcel is a Common Area, the Association is responsible.

2.3. Owner of a Parcel with an Internal Retaining Wall. A retaining wall that is entirely within the boundaries of a parcel and not on or near a boundary between two parcels is solely the responsibility of the parcel Owner, who acts as Owner of the Higher Parcel and as Owner of the Lower Parcel for purposes of keeping the retaining wall in good repair.

NOTICE

Individual home Owners may be responsible for portions of retaining walls on the perimeter of Water Crest on Lake Conroe, along public streets, and around Common Areas.

2.4. Owner of the Higher Parcel. The Owner of the Higher Parcel is solely responsible for all aspects of the retaining wall, except what is identified below for the Owner of the Lower Parcel. This allocation of responsibility is warranted because the Owner of the Higher Parcel has more control over the conditions that affect the stability and structural integrity of the retaining wall. Regarding a Shared Boundary Wall between a residential Lot and a Common Area, this Section's allocation of responsibility may contravene a possible

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common misperception that a retaining wall bordering a common area is automatically the responsibility of the Association. If the Common Area is the Higher Parcel, the Association is responsible. However, if the residential Lot is the Higher Parcel, the Owner of the residential Lot is responsible. Specifically, the Owner of the Higher Parcel, at the Owner's sole cost and expense, has the following retaining wall responsibilities:

- a. From time to time, as conditions warrant, perform the Maintenance Guidelines published in the Retaining Wall Maintenance Specifications for Water Crest on Lake Conroe.
- b. From time to time, as needed, perform the Routine Repairs published in the Retaining Wall Maintenance Specifications for Water Crest on Lake Conroe.
- c. Obtain and maintain property insurance on the retaining wall to the extent such insurance is reasonably available.

2.5. Owner of the Lower Parcel. The Owner of a Lower Parcel has the following retaining wall responsibilities, at the Owner's sole cost and expense:

- a. Maintain the grounds up to the retaining wall, even if the retaining wall is inside the boundaries of the Higher Parcel.
- b. Provide access to the Owner of the Higher Parcel for purposes of periodic inspection, repair, and replacement of the retaining wall.
- c. Prevent or refrain from taking any action on the Lower Parcel that may damage the retaining wall.
- d. Report to the Owner of the Higher Parcel any condition or change of condition that may have an adverse effect on the retaining wall, if the condition is known to the Owner of the Lower Parcel.

2.6. Allocations Varied by Agreement. Nothing in this Section may be construed to prevent the Owners of parcels that share a retaining wall from agreeing in writing to a different allocation of responsibilities between themselves. Such an agreement is not binding on a subsequent Owners of either parcel unless the agreement is in the form of a deed restrictions or mutual covenant, signed by the Owners of both parcels, and recorded in the Real Property Records of Montgomery County, Texas. In the absence of such an agreement, the above allocations apply.

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SECTION 3. SHARED BOUNDARY WALLS.

3.1. Encroachments & Easement. If the retaining wall is on one parcel or another due to an error in construction, the retaining wall is nevertheless deemed to be on the dividing line for purposes of this Section. The Owner of the parcel on each side of the retaining wall hereby grants to the Owner of the parcel on the other side of the retaining wall the following easements across his parcel:

a. A reciprocal access easement for maintenance, repair, replacement, or reconstruction of the retaining wall, as appropriate and necessary to effect the purposes and provisions of this Supplement.

b. An easement for the existence and continuance of any encroachment by the retaining wall as a result of construction, repair, shifting, settlement, or movement in any portion of the retaining wall, so that the encroachment may remain undisturbed as long as the retaining wall stands.

3.2. Use by Higher and Lower Parcel Owners. The Owner of the Higher Parcel hereby grants to the Owner of the Lower Parcel a non-exclusive and perpetual right and easement of enjoyment and use over (1) the exterior surface of the retaining wall for use as a perimeter wall or fence of the Lower Parcel, and (2) any lower portion of the Higher Parcel that is contiguous to the Lower Parcel and appears to be part of it. The Owner of the Lower Parcel hereby grants to the Owner of the Higher Parcel a non-exclusive and perpetual right and easement of enjoyment and use over any elevated portion of the Lower Parcel that is contiguous to the Higher Parcel and appears to be part of it.

3.3. Additional Fences in Connection with Retaining Wall. The Owner of either the Higher Parcel or the Lower Parcel may construct a fence in connection with the retaining wall. The Owner of the Higher Parcel may construct or install a fence inside the retaining wall on the elevated surface of the Higher Parcel, or, with the prior approval of the Lower Parcel Owner, on the retaining wall itself. The Owner of the Lower Parcel may construct or install a fence on his Lot, provided the fence does not interfere with his duty to maintain the grounds up to the retaining wall.

3.4. Right to Repair. If the retaining wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the retaining wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt retaining wall.

3.5. Maintenance Costs. Regardless of which Lot contains the retaining wall, the Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the retaining wall, subject to the right of one Owner to call for larger contribution from the other

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under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the retaining wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the retaining wall, available remedies include the following:

a. The Owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Montgomery County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien; provided the claim of lien is filed within ninety (90) days after the date of repairs or replacements to the retaining wall, and suit is filed within one year after the date the lien is filed. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

b. The Association may (but is not required to) perform or fund the defaulting Owner's share of the work on the retaining wall, the cost of which may be levied against the defaulting Owner and his Lot as an individual assessment.

3.6. Alterations. The Owner of a parcel with a Shared Boundary Wall may not alter the retaining wall in any manner that affects the use, condition, or appearance of the retaining wall to the other parcel, without the prior written consent of the Water Crest on Lake Conroe Reviewer and the Owner of the other parcel. The retaining wall will always remain in the same location as when erected, unless a change of location is approved by the Owners of both parcels and the Water Crest on Lake Conroe Reviewer.

SECTION 4. PERIMETER WALL NOTICE. Notice is hereby given that a Water Crest on Lake Conroe parcel with a Perimeter Wall may have no lawful right to access the adjacent parcel for purposes of inspecting, maintaining, repairing, and reconstructing the Perimeter Wall, if and when needed. If such access is needed, the Water Crest on Lake Conroe parcel Owner is solely responsible for obtaining permission to lawfully access the adjacent parcel. By acquiring an ownership interest in a Higher Parcel with a Perimeter Wall, each Owner acknowledges that if access to the adjacent Lower Parcel is not available, other options for repairing or replacing the Perimeter Wall may result in excavation and removal of soil from the Higher Parcel, the practical loss of portions of the elevated and usable surface of the Higher Parcel, and substantially more expense than if the Owner of the Higher Lot had unfettered access to the adjacent Lower Parcel to perform the required work.

(End of Retaining Wall Supplement)

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APPENDIX A-2

RETAINING WALL MAINTENANCE SPECIFICATIONS

FOR WATER CREST ON LAKE CONROE

1.1. **INTRODUCTION.** Because deterioration of a retaining wall on or along a boundary may have an adverse effect on more than one parcel of land, as well as on the appearance of Water Crest on Lake Conroe overall, adherence to the following Maintenance Guidelines and Routine Repairs is expected to prolong the stability, functionality, and attractiveness of a retaining wall. These Retaining Wall Maintenance Specifications apply to every Lot and Common Area in Water Crest on Lake Conroe on which a retaining wall is located, or which has a retaining wall on or along one or more of its boundaries. However, if a Lot or Common Area is subject to a parcel-specific publicly recorded document that addresses retaining walls, the parcel-specific document controls the property to which it pertains for the purposes of that document.

1.2. **MAINTENANCE GUIDELINES.** Recommended guidelines for routine maintenance of retaining walls include:

- a. If the wall was engineered with a designated drainage system, periodically inspect and probe the system to ensure it is not clogged, and inspect the wall for evidence that water is leaking through the wall in places other than the designated system.
- b. Maintain the grade at the top and sides of the retaining wall to ensure that water is diverted away from the wall and that changes of grade do not interfere with the wall's engineered drainage system (if any).
- c. Periodically inspect the base of the retaining wall to ensure a proper grade that slopes away from the wall, and to ensure that the ground on which the wall stands is not eroding or moving.
- d. Monitor increases in weight on top of the wall, and periodically inspect the vertical face of the wall for bowing which may occur with increased pressure on the wall.
- e. Monitor plantings above and around the wall to avoid types of plants that have a reputation for active and destructive root systems, or that may adversely affect moisture levels behind or below the wall.

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Specifications for Water Crest on Lake Conroe

f. Monitor normal cosmetic hairline cracks for increases in width that warrant repair. Periodically inspect the wall for missing or deteriorated joint fillers, joint sealant, and mortar joints, particularly after severe freeze and thaw cycles, and after severe wet and dry cycles, both of which may create extra stress on a wall. Periodically inspect the wall for signs of distress, such as severe cracking, tilting or bulging of the wall, and dislodged rocks and stones used to construct the wall.

g. Protect the wall from excavation, trenching, and burrowing animals.

1.3. **ROUTINE REPAIRS.** Routine repairs to retaining walls typically include all of the following:

a. Clear clogs in the wall's drainage system so water can drain the way the wall was engineered.

b. Treat wash-outs when they are small and manageable, using either backfill or flowfill.

c. When chunks of mortar break away, promptly rebuild the mortar joint with professional repainting.

d. Professionally repair hairline cracks that are 1/4 inch in width or great.

(End of Appendix A-2)

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COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY

I hereby certify this instrument was e-FILED in
file number sequence on the date and at the time
stamped herein by me and was duly e-RECORDED in
the Official Public Records of Montgomery County, Texas.

06/19/2014



County Clerk
Montgomery County, Texas