



**FOR FILING IN FORT BEND COUNTY, TEXAS**

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

**FOR**

**WALNUT CREEK COMMUNITY ASSOCIATION, INC.  
(AMENDMENT)**

THIS SUPPLEMENTAL AND AMENDED DECLARATION (this "Amendment") is executed by LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., a Texas limited partnership d/b/a FRIENDSWOOD DEVELOPMENT COMPANY (the "Declarant"):

**W I T N E S S E T H:**

WHEREAS, Declarant executed that one certain Declaration of Covenants, Conditions and Restrictions for Walnut Creek recorded under Fort Bend County Clerk's File No. 2007020558, as amended by those certain Supplemental Declarations of Covenants, Conditions and Restrictions for Walnut Creek (Amendment) recorded under Fort Bend County Clerk's File Nos. 2008032351, 2009049204, 2012035441 and 2023020927 (as may be further amended, the "Declaration"); and

WHEREAS, Declarant now wishes to further amend certain terms of the Declaration; and

WHEREAS, Declarant has the unilateral right to amend the Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in the Declaration, whether originally described therein or annexed thereto, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Amendment and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE 1.  
Definitions**

All capitalized terms herein shall have the meanings set forth in the Declaration, unless defined otherwise herein.

**ARTICLE 2.**  
**Property Subject to the Declaration**

The real property which is, by the recording of the Declaration and any Supplemental or Amended Declarations, subject to the covenants and restrictions set forth in the Declaration and which, by virtue of the recording of this Amendment, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Amendment, is the real property described in such Declaration and any Supplemental or Amended Declarations annexing additional real property thereto.

**ARTICLE 3.**  
**Amendment**

Pursuant to Article XI, Section 3, of the Declaration, the Declaration may be amended by the filing of a recorded instrument executed by the Declarant, without the joinder or consent of any other party. Accordingly, the following amendments are made to the Declaration by the Declarant:

1. Article I, Section 8, the defined term "Declarant" is hereby amended by deletion of the definition and is replaced with the following, as if originally a part thereof:

"8. **Declarant**" shall mean and refer to Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership, d/b/a Friendswood Development Company, and its successors and assigns, provided that any assignment of the rights of Lennar Homes of Texas Land and Construction, Ltd. d/b/a Friendswood Development Company, as Declarant, must be expressly set forth in writing and be recorded."

2. Article I, Section 10, is hereby amended by the deletion of the definition and is replaced with the following, as if originally a part thereof:

"10. **Development Period**" shall mean and refer to that period of time beginning on the date when this Declaration has been recorded, and ending eighteen (18) months after the Declarant no longer owns any portion of the Property, or additional property annexed into the Association. At such time as additional property is annexed into the Association by Declarant, the Development Period shall, if it had previously terminated, be reinstated and shall apply to all Lots and Commercial Units owned by Declarant in the newly annexed portion of the Property. Declarant may terminate the Development Period at any time by an instrument executed by Declarant and recorded. The Development Period is defined in Section 209.002(4-a) of the Texas Property Code as the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property."

3. Article III is hereby amended by the addition of the following language as Section 4, as if originally a part thereof:

“4. **National Electrical Safety Code Notice.** Center Point Energy has installed high voltage electrical lines (“Overhead Power Lines”) on certain Lots and Reserves on the Property. Owners are advised that applicable State and Federal laws mandate the requirement to maintain safe clearance distances from such Overhead Power Lines (as well as other electrical facilities) as prescribed by O.S.H.A., Chapter 752 of the Texas Health and Safety Code, the National Electric Code, and the National Electric Safety Code.”

4. Article V, Section 2, is hereby amended by the deletion of such section and is replaced with the following, as if originally a part thereof:

“2. **Purposes of Assessment.** The assessments levied by the Association shall be used for the purposes of promoting the health, safety and welfare of the Members of the Association and for the improvement and maintenance of the Common Areas including the improvements and landscaping thereon as well as the private streets and/or private access easements and private utility easements as noted on any plat of any portion of the Property, and for goods or services contracted for by the Association for the benefit of all of the Members as well as any other purpose determined by the Board of Directors to be in the best interests and/or for the good of the Association, all as may be more specifically authorized from time to time by the Board of Directors. Regular Annual assessments may also be used to fund and accumulate reserves for the repair and/or replacement of improvements and landscaping on Common Areas and other expenditures of a capital nature as needed from time to time. The judgment of the Board of Directors as to expenditures shall be final and conclusive so long as its judgment is exercised in good faith.”

5. Article 5, Section 5, is hereby amended by the deletion of such section and is replaced with the following, as if originally a part thereof:

“5. **Rate of Assessment.** Lots or Commercial Units which are owned by or transferred to a Builder or which are occupied by residents shall each be subject to a full regular annual assessment beginning on the date described in Section 5.07 below. Lots or Commercial Units which are owned by Declarant shall be assessed at the rate of one-fourth (1/4) of the regular annual assessment beginning on the date described in Section 5.07 below; however, said assessment shall become payable by Declarant only in the event and then only to the extent that assessments from Lots or Commercial Units owned by other than Declarant are not sufficient to meet the operating budget of the Association. The Board of the Association may borrow funds, if needed, for deficit funding, and may instruct officers of the Association to execute promissory note(s) to evidence such borrowed money and the obligation to repay such borrowed money. Declarant may, but is not obligated to, fund such operating deficit. Any deficit funding paid to the Association by Declarant will be treated as a loan. Any deficit funding and loan obligations shall be disclosed as a line item in the annual budget prepared by the Board and reflected on the Association’s balance sheet. The advance by the Declarant for a deficit in any given year will not obligate

Declarant to continue to deficit fund the Association in future years. Declarant may require the Board (whether the Board is the same as Declarant, their agents, servants, or employees and without being liable for any claim made by any Member of the Association that the Board's fiduciary duty to the other Members of the Association has been breached due to a conflict of interest) to execute promissory notes and/or other instruments evidencing any debt the Association owes the Declarant for monies expended by the Declarant on the Association's behalf or loaned to the Association by Declarant for and on behalf of the Association for obligations of the Association; provided, however, such promissory notes shall not be secured by a lien on any of the Common Area conveyed by Declarant to the Association. Any promissory note(s) will be payable on demand, will accrue interest on past due amounts at 18% per annum and may be unilaterally assigned by Declarant as payee to any affiliate or successor of Declarant, with or without consideration. If unpaid when due, the promissory note(s) may be sent to collection or to an attorney for enforcement and the prevailing party will be paid all costs and expenses, including reasonable attorneys' fees and court costs."

6. Article 5, Section 8, is hereby amended by the deletion of such section and is replaced with the following, as if originally a part thereof:

"8. **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment charged against each Lot and Commercial Unit shall be due and payable, in advance, on the date of the sale of such Lot or Commercial Unit by Declarant for that portion of the calendar year remaining, and on the first (1st) day of each January thereafter, or other such date or dates as determined by the Board. Any assessment which is not paid and received by the Association within thirty-one (31) days after its due date shall be deemed to be delinquent, and, without notice, shall bear interest at the rate of eighteen percent (18%) per annum from the date originally due until paid. Further, the Board of Directors of the Association shall have the authority to impose a monthly late charge on any delinquent assessment. The monthly late charge, if imposed, shall be in addition to interest. To secure the payment of any assessments levied hereunder and any other sums due hereunder (including, without limitation, interest, late fees, fines, administrative charges, attorney's fees or delinquency charges), there is hereby created and fixed a separate and valid and subsisting continuing vendor's lien upon and against each Lot or Commercial Unit and all Improvements thereto for the benefit of the Association, and superior title to each Lot and Commercial Unit is hereby reserved in and to the Association. The lien described in this Section and the superior title herein reserved shall be deemed subordinate to any mortgage for the purchase or improvement of any Lot or Commercial Unit and any renewal, extension, rearrangements or refinancing thereof, as set forth in Section 5.09 below. The collection of such annual maintenance charge and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, administrative charges, delinquency charges, costs and attorney's fees shall be chargeable to and be a personal obligation of the defaulting Owner. Further, the voting rights of any owner in default in the payment of any assessment, or other charge owing hereunder for which an Owner is

liable, and/or any services provided by the Association, may be suspended by action of the Board for the period during which such default exists, unless prohibited by law. Notice of the lien referred to in the preceding paragraph may, but shall not be required to, be given by the recordation in the office of the County's Real Property Records of an affidavit, duly executed, and acknowledged by an officer or authorized agent of the Association, setting forth the amount owned, the name of the Owner or Owners of the affected Lot or Commercial Unit, according to the books and records of the Association, and the legal description of such Lot or Commercial Unit. Each Owner, by acceptance of a deed to his Lot or Commercial Unit, hereby expressly recognizes the existence of such continuing vendor's lien as being prior to his ownership of such Lot or Commercial Unit and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid annual maintenance charge and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including both judicial and non-judicial foreclosure pursuant to Chapters 51 and 209 of the Texas Property Code (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to his Lot or Commercial Unit, each Owner expressly grants, bargains, sells and conveys a power of sale to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot or Commercial Unit, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid assessment, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time and grants to such trustee such power of sale. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and filed in the office of the County's Real Property Records. In the event of the election by the Board to foreclose the lien herein provided for nonpayment of sums secured by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, to enforce the lien and to sell such Lot, and all rights appurtenant thereto, in accordance with the provisions of Chapters 51 and 209 of the Texas Property Code as same may hereafter be amended. At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot or Commercial Unit shall be required to pay a reasonable rent for the use of such Lot or Commercial Unit and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot or Commercial Unit by forcible detainer without further notice."

7. Article VII, Section 1 is hereby amended by the addition of subsection (i) set forth below, as if originally a part thereof:

**"(i) To have all rights and powers conferred on property associations by applicable law, in effect from time to time, *provided, however, that the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner or Member. Notwithstanding anything to the contrary in Article XI, Section***

***3 hereof, any proposed amendment to this Article VII, Section 1(i) shall be adopted only upon an affirmative vote of Members holding 100% of the total votes of the Association and the affirmative vote of the Declarant during the Development Period.***

8. Article VII is hereby amended by addition of the following language as Section 2, as if originally a part thereof:

“2. **Litigation.** Except as provided in this Section 2, the Association shall not commence any judicial or administrative proceeding without the approval of seventy-five percent (75%) of the total eligible Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration and/or any rules or policies (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article V; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.”

9. Article IX, Section 2, is hereby amended by the deletion of such section and is replaced with the following, as if originally a part thereof:

“2. **Prohibition of Offensive or Commercial Use.** No professional, business, or commercial activity shall be conducted on any Lot, except an Owner or Member may conduct business activities incidental to residential use so long as: (i) such activity complies with all the applicable zoning ordinances; (ii) the business activity is conducted without the employment of persons other than the residents of the home constructed on the Lot; (iii) the business activity does not involve customers, contractors, clients, or the general public visiting the residence to conduct activities related to the business; (iv) the existence or operation of the business activity is not apparent or detectable by sight (including, but not limited to, signs advertising the business), sound, or smell from outside the residence; (v) the business activity does not involve door-to-door solicitation within the Property; (vi) the business does not, in the Board’s sole judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vii) the business activity, in the Board’s sole judgment, is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property; and (viii) the business does not require the installation of any machinery other than that customary to normal household operations. For the purpose of obtaining any business or commercial license, neither the residence nor Lot will be considered open to the public. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a

fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

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

- (a) Declarant and/or its licensees may construct and maintain upon portions of the Common Area and any Lot owned by the Declarant such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees shall have an easement over and across the Common Area for access and use of such facilities at no charge; and
- (a) Declarant and/or its licensees will have an access easement over and across the Common Area for the purpose of making, constructing and installing Improvements upon the Common Area.
- (b) No activity which may be offensive or becomes an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner of such Owner's Lot or which shall degrade property values or distract from the aesthetic beauty of the Property shall be conducted thereon. No repair work, dismantling, or assembling of boats, motor vehicles or other machinery shall be done in any driveway or adjoining street. Notwithstanding the above, Declarant, its successors or assigns, or Builders may use the Property for model homes display and sales offices and construction offices during the Development Period, or until all new homes on the Property have been sold."

10. Article IX, Section 14, is hereby amended by the deletion of such section and is replaced with the following, as if originally a part thereof:

"14. **Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" does not mean or include non-traditional pets such as **pot-bellied pigs, miniature horses, chickens, exotic snakes or lizards, ferrets, monkeys or other exotic animals**). **The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words.** No Owner or Occupant may keep on a Lot more than three cats and dogs, in the aggregate, without prior written consent of the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the residence, or the fenced

yard space associated therewith, unless confined to a leash. The Board may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside areas of the Lot. All pet waste will be removed and appropriately disposed of by the owner of the pet in a timely manner. All pets must be registered, licensed and inoculated as required by Applicable Law. All pets not confined to a residence must wear collars with appropriate identification tags and all outdoor cats are required to have a bell on their collar. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Occupant, upon written notice, may be required to remove the pet from the Property. If the animal owner fails to remove the animal from the Lot after the Board's request, the Board may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws.”

11. Article IX, Section 22 regarding storage of automobiles, boats, etc.. is hereby amended by the deletion of such section and is replaced with the following, as if originally a part thereof:

“22. **Storage of Non-Passenger Vehicles & Restrictions on Street Parking.** Except as otherwise specifically provided in this Declaration, no Owner, lessee, tenant or occupant of a Lot (including all persons who reside with such Owner, lessee or occupant on the Lot, and any guests), shall park, keep, or store any vehicle for any duration on any Lot or street if the vehicle is visible from any street or any neighboring Lot in the Subdivision (including, but not limited to, boats, trailers, modified trailers, ATVs, Recreational Vehicles/RV’s, motorhomes, motor bus, (motorcycles, bicycles, commercial vehicles (as defined by the Texas Administrative Code, a motor vehicle, other than a motorcycle or moped, designed or used primarily for the transportation of property, including any passenger car that has been reconstructed to be used, and is being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mail, must be registered as a commercial vehicle), construction equipment, lawn mowers, lawn tractors and similar equipment, and non-operational vehicles). This prohibition does not include a passenger vehicle or light truck, provided the passenger vehicle or light truck is parked on the driveway for a period not exceeding forty-eight (48) consecutive hours, and is not parked overnight on any street in the Subdivision. No vehicle shall be parked, kept, or stored, for any duration, in a manner that blocks, or partially blocks, any sidewalk within the Property or on any Lot.

For purposes of these Restrictions, the term "passenger vehicle" is limited to any vehicle that displays a passenger vehicle license plate issued by the State of Texas or which, if displaying a license plate issued by another state, would be eligible to obtain a passenger vehicle license plate from the State of Texas, and is used primarily for the personal transportation of passengers and not transportation of passengers or goods for compensation or transportation of passengers or goods or equipment in connection with business use. The term “passenger vehicle” does not include vehicles that, in the sole

discretion of the Board, have been adapted or modified for commercial use or that were intended for use as a residence. Such commercial modifications may include, but are not limited to, business signage on the vehicle, removal of passenger seating, or any other conversions that limit the passenger vehicle's ability to transport passengers.

The term "light truck" is limited to a pickup truck, sports utility vehicle, or van. A "light truck" may not exceed one (1) ton capacity and does not include RV's, motorhomes or motor bus. The term "light truck" does not include vehicles that, in the sole discretion of the Board, have been adapted or modified for commercial use or that were intended for use as a residence. Such commercial modifications may include, but are not limited to, business signage on the vehicle, removal of passenger seating, installation of storage for tools or other trade items, or any other conversions that limit the light truck's ability to transport passengers.

All streets and/or roads within the Property are subject to the restrictions and covenants contained within this Declaration, and all conveyances of streets and/or roads, whether by easement or in fee-simple, are specifically made subject to the restrictions and covenants contained within this Declaration, and any amendments thereto."

12. Article IX is hereby amended by the addition the following language as Section 27, as if originally a part thereof:"

"27. **Liability of Owners for Damage to Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board and the Declarant during the Development Period. Each Owner shall be liable to the Association for any and all damages to: (a) the Common Area and any Improvements constructed thereon; or (b) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be a Parcel Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in Article 5 of this Declaration."

13. Article IX is hereby amended by the addition the following language as Section 28, as if originally a part thereof:

"28. **Leases/Rentals.** Nothing in this Declaration shall prevent the lease of any Lot and the Improvements thereon by the Owner thereof for single-family residential purposes; provided that all leases must be for terms of at least six (6) months, must include full service landscape maintenance in the base rent, and must lease the entirety of the Lot and all improvements thereon for the duration of the lease. Any lease for a duration of less than (6) months, or any lease, regardless of duration, that leases only a portion of the Lot, or any improvements on the Lot, are expressly prohibited. For purposes of this provision, leases include any conveyance other than fee-simple conveyance (e.g. rentals).

All leases shall be in writing and provide to the Association along with the name and contact information of the renter and the Owner. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The lease of any Lot and the Improvements thereon by the Owner shall not relieve the Owner of their Personal Liability for damages to Common Area, or any costs of enforcement of the Declaration.

14. Article XI, Section 1, is hereby amended by the deletion of the first paragraph of such section and such deleted first paragraph is replaced with the following, as if originally a part thereof:

“1. **Enforcement.** These Restrictions shall run with the Property and shall be binding upon and inure to the benefit of and be enforceable by Declarant, the Association, each Owner and occupant of a Lot, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. If notice and an opportunity to be heard are given, the Association shall be entitled to impose reasonable fines (per day or per occurrence) for violations of the restrictions or any rules and regulations adopted by the Association or the Architectural Review Committee pursuant to any authority conferred by either of them by these restrictions and to collect reimbursement of actual attorney's fees and other reasonable costs incurred by either of them relating to violations of the restrictions. Such fines, fees and costs may be added to the Owner's assessment account and collected in the manner provided in Article 5 of this Declaration.”

The balance of Article XI, Section 1 remains unchanged.

15. The Declaration is hereby amended by the addition of the following language as Article XII, as if such Article was originally a part thereof:

## ARTICLE XII DISPUTE RESOLUTION

“12.01 **Introduction; Definitions; Amendment.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the “Parties” or individually, a “Party”) agree to encourage the amicable resolution of disputes and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. This Article may only be amended with the prior written approval of the Declarant (until the end of the Development Period), the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

12.01.1. “**Claim**” means:

- (i) Claims relating to the rights and/or duties of Declarant or the Association under the Restrictions.
- (ii) Claims relating to the acts or omissions of the Declarant or Board members of the Association and any claim asserted against the Declarant or any appointed member of the Architectural Review Committee.
- (iii) Claims relating to the design or construction of any Improvements by the Declarant or claims relating to the design or construction of any Improvements by any developers, contractors, subcontractors, suppliers and/or design professionals alleging construction and/or design defects.

13.01.2. “**Claimant**” means any Party having a Claim against any other Party.

13.01.3. “**Respondent**” means any Party against which a Claim has been asserted by a Claimant.

12.02 **Mandatory Procedures.** Claimant may not initiate any proceeding against the Declarant before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in Section 12.07 below, a Claim will be resolved by binding arbitration. In the event that the Association intends to assert a Claim against the Declarant, the Declarant must first be given the opportunity to inspect and the right to address or cure the Claim in a reasonable amount of time after such inspection. In the event the Association still asserts a Claim against the Declarant after such inspection and cure period, the Association must obtain the approval from Members holding seventy-five percent (75%) of the votes in the Association to provide the Notice described in *Section 12.03*, initiate the mandatory dispute resolution procedures set forth in this *Article*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of the meeting of Members to approve prosecution of the Claim must be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the “**Engagement Letter**”); (iii) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not to proceed with the Claim; (iv) a summary of the steps previously taken, and proposed to be taken, by the Board to resolve the Claim; (v) the manner in which the Association proposes to fund the cost of prosecuting the Claim; (vi) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be

prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 12.03*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

**12.03 Notice.** Claimant must notify Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim; (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. If the Claim is not resolved during negotiation, mediation pursuant to *Section 12.05* is required without regard to the monetary amount of the Claim.

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

**12.05 Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If the parties are unable to agree to a mediator, the parties will utilize the American Arbitration Association for this role. If Claimant does not submit the Claim to mediation within the 30-day period, or does not appear for the mediation, then the Claimant shall be deemed to have waived the Claim, and the Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

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

**12.07 Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 12.07*. If a Claim has not been resolved after Mediation as required by *Section 12.05*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 12.07* and the rules and procedures of the American Arbitration Association (“AAA”) or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Travis County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA’s “Construction Industry Dispute Resolution Procedures” and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 12.07*, this *Section 12.07* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows: (i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion; (ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and (iii) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties.

**12.08 Exceptions to Arbitration; Preservation of Remedies.** No provision of, nor the exercise of any rights under, this *Section 12.08* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

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

12.10 **Scope of Award; Modification or Vacation of Award.** The arbitrator shall resolve all Claims in accordance with the applicable substantive law. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. By taking title to a Lot or Commercial Unit, each Owner acknowledges and agrees that such Owner has waived and shall be deemed to have waived the right to any award of damages in connection with the arbitration of a dispute other than such Owner's actual damages. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

12.11 **Allocation of Costs.** Each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope or arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees incurred in defending such contest. In addition, if a Party fails to abide by the terms of a mediation settlement or arbitration award, the other Party shall be awarded reasonable attorneys' fees and expenses in enforcing such settlement award.

12.12 **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. The waiver or invalidity of any portion of this Article shall not affect the validity or enforceability of the remaining portions of this Article.

12.13 **Other Dispute Resolutions.** Notwithstanding the parties' obligation to submit any Claim to mediation and arbitration, in the event that a particular Claim is not subject to the arbitrations provisions of this Declaration, then the parties agree to the following provisions: **CLAIMANT ACKNOWLEDGES THAT JUSTICE WILL BE BEST SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. CLAIMANT AND RESPONDENT AGREE THAT ANY CLAIM SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY. CLAIMANT AND RESPONDENT HEREBY WAIVE THEIR RESPECTIVE RIGHT TO A JURY TRIAL.** By taking title to a Lot or Commercial Unit, each Owner acknowledges and agrees that such Owner has waived and shall be deemed to have waived the right to any award of damages in connection with the litigation of a dispute other than such Owner's actual damages. In no event shall a judge award speculative, consequential, or punitive damages for any Claim."

**ARTICLE 4.**

**General**

This Amendment is intended to comply with and does comply with Article XI, Section 3 of the Declaration and Declarant, by its execution and recordation of this Amendment, has amended the Declaration as set forth herein. All real property shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of the Declaration as heretofore amended by any previous amendment and by this Amendment.

All provisions of the Declaration, as amended, shall apply to all of the Owners with the same force and effect as if said originally included in the Declaration, from the recordation of this Amendment forward.

Executed and effective as of this 13<sup>th</sup> day of December, 2023.

**DECLARANT:**

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

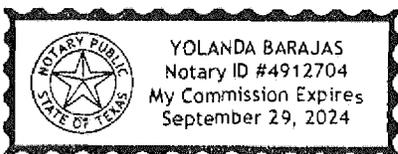
By: US Home, LLC, a Delaware limited liability company (as successor-in-interest by conversion from U.S. Home Corporation, a Delaware corporation), its general partner

By: \_\_\_\_\_  
Name: Michael W. Johnson  
Title: Vice President

STATE OF HARRIS §

COUNTY OF TEXAS §

This instrument was acknowledged before me on the 13<sup>th</sup> day of December, 2023, by Michael W. Johnson, Vice President, of US Home, LLC, as the general partner of Lennar Homes of Texas Land and Construction, a Texas limited partnership, on behalf of said entities.



Yolanda Barajas  
Notary Public in and for  
The State of Texas