

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**CHERRY PINES**

This Declaration of Covenants, Conditions and Restrictions for Cherry Pines is made on the date hereinafter set forth by Declarant (as hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The development and improvement of the Property may be accomplished by successors and assigns of Declarant as future owners or developers of the Property and Declarant is not in any manner agreeing to or obligating itself to undertake development activities with respect to the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Cherry Pines Homeowners Association, Inc. to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Areas and Common Maintenance Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

Compliance with this Declaration is not a substitute for compliance with Applicable Law (as defined herein). Please be advised that this Declaration does not purport to list or describe each restriction which may be applicable to a Lot located within Cherry Pines. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot. Furthermore, an approval by the ACA (as defined herein) should not be construed by the Owner that any improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot.

All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or Cherry Pines, including any statements or projections as to assessments, and expressly including any of the foregoing prepared by the Declarant (collectively, the "**Conceptual Plans**") are conceptual in nature and/or estimates only. The land uses, including without limitation any depictions of Common Areas or open spaces, reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within Cherry Pines may include uses which are not shown on the Conceptual Plans and such land uses may be changed from time to time and at any time by the Declarant without notice to any Owner. It is also understood and agreed that assessments will change based on actual expenses incurred by the Association and no assurances are provided regarding the accuracy of any estimated assessments. The Declarant makes no representation or warranty concerning the Conceptual Plans, proposed land uses, proposed planned improvements, proposed Common Areas or open spaces, or assessments attributable to all or any portion of Cherry Pines, and no Owner will be entitled to rely upon the Conceptual Plans, or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, proposed or planned improvements, proposed Common Areas or open spaces, or assessments, when making the decision to purchase any property or

construct any improvements within Cherry Pines. Each Owner who acquires a Lot within Cherry Pines acknowledges that Cherry Pines is part of a master planned community, the development of which will extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

## ARTICLE I. DEFINITIONS

1.1 "ACA" or "Architectural Control Authority" shall have the meaning provided such terms in Section 6.2 herein.

1.2 "ACA Standards" means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

1.3 "Applicable Law" means all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over Cherry Pines, specifically including applicable zoning restrictions and permits.

1.4 "Association" means Cherry Pines Homeowners Association, Inc., a Texas nonprofit corporation established, or to be established, for the purposes set forth herein, or such other Texas nonprofit corporation as the Board shall determine to operate as the Association under this Declaration, provided that only one such nonprofit corporation shall be in existence as the Association at any one time.

1.5 "Association Easement" means any easement intended for the construction, installation, operation, location or repair of any subdivision improvement, including, without limitation, the Association Maintenance Feature, any subdivision sign, screening wall, monument or entry feature, retaining, screening or perimeter wall, drainage facility or other improvement owned by or otherwise for the benefit of the Association.

1.6 "Association Maintenance Features" means a fence, screening wall, monument, entrance signage or other decorative features installed, or that may be installed, by Declarant along or within any roadway or Common Area, or along or near the exterior boundary, of the Property, or any other fence, screening wall, monument, signage or other feature installed by Declarant or the Association.

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

1.8 "Builder" means any person or entity that purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.9 "By-laws" means the by-laws of the Association.

1.10 "Certificate" means the Certificate of Formation of the Association, or any subsequent amendment or restatement thereof.

1.11 "City" means the City of Tomball, Texas;

1.12 "**Common Area**" and "**Common Areas**" means all areas (including the improvements and buildings thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members, including, without limitation, any recreational facilities, areas within public rights-of-way, private streets, easements (public and private), permanent access easements or any other area of the Property not designated as a Lot by any Plat of the Property, portion of a Lot, public parks, landscaping, entry features, fence or similar areas that either the Board deems necessary or appropriate to maintain for the common benefit of the Members or that is shown on a Recorded plat of the Property or portion thereof as being maintained by the Association. The Common Areas will include, without limitation, the areas of the Property, and the real property and improvements described on Exhibit "B" attached hereto.

1.13 "**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas.

1.14 "**Common Maintenance Areas**" means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portion of a Lot, public parks, landscaping, entry features, fences, vehicular access gate(s), pedestrian access gate(s) or similar areas that either the Board deems necessary or appropriate to maintain for the common benefit of the Members or that is shown on the Plat or any subsequent Recorded plat of the Property or portion thereof as being maintained by the Association.

1.15 "**County**" means Harris County, Texas.

1.16 "**Declarant**" means Meritage Homes of Texas, LLC, and its successors and assigns as provided in Section 12.12 herein.

1.17 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Cherry Pines, and any amendments and supplements thereto made in accordance with its terms.

1.18 "**Designated Interest Rate**" means the interest rate designated by the Board from time to time, subject to any interest limitations under Texas law. If the Board fails to designate an interest rate, then the interest rate shall be the lesser of 12% per annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 12.6 herein.

1.19 "**Development Period**" means the period of time beginning on the date when this Declaration has been Recorded, and ending at such time as Declarant no longer owns any of the Property, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, or the right to direct the size, shape and composition of the Property.

1.20 "**Dwelling**" means any residential dwelling situated upon any Lot.

1.21 "**Entry Signs**" means the entry feature signs for the subdivision that are or may be placed by the Declarant or its agents on the Common Area or Common Maintenance Areas.

1.22 "**Lot**" means any separate residential building parcel shown on the Plat or any subsequent Recorded subdivision plat of the Property. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.23 **"Member"** means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.

1.24 **"Owner"** means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.25 **"Plat"** means each plat that is described on Exhibit "A" attached hereto, and any other plat that may be filed of record and that includes any of the Property.

1.26 **"Property"** means the real property described on Exhibit "A" attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.27 **"Record," "Recording" or "Recorded"** means the filing of a legal instrument in the Public Records of Harris County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

## ARTICLE II. PROPERTY RIGHTS

2.1 **Owners' Easements of Use and Enjoyment.** Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules.** The right of the Declarant during the Development Period, and the Association, with the advance written approval of the Declarant during the Development Period, and the Association thereafter, to establish and publish rules and regulations governing the use of the Common Areas and/or the Property.

b. **Suspension of Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid except with respect to any election (i) of members of the Board, or (ii) concerning such Owner's rights and responsibilities.

c. **Construction of Improvements.** The right of the Declarant, during the Development Period, and the Association thereafter, to cause such improvements and features to be constructed upon the Common Areas, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

d. **Conveyance of Common Area.** The right of the Declarant during the Development Period, and the Association thereafter, to dedicate, sell or transfer all or any part of the Common Areas. However, following the Development Period no such dedication, sale or transfer will be effective unless there is an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

e. **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common Areas

cannot be mortgaged or liened without an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

**2.2 Prohibitions on Easement of Use and Enjoyment.** Each Owner's right and easement of use and enjoyment in and to the Common Area is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

b. **No Partition.** Except as provided in Section 2.1.d herein, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

**2.3 Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the By-laws and any reasonable rules of the Board. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

**2.4 Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots; (ii) to maintain improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of improvements by Declarant will not be considered a nuisance, and the right and privilege to conduct the activities enumerated in this Section 2.4 will remain until two (2) years after the expiration or termination of the Development Period.

**2.5 Property Characteristics.**

a. On the date of this Declaration, some or all of the mineral interests and water rights will have been reserved by a prior owner or owners of the Property, including but not limited to rights to all oil, gas, or other minerals and water lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests and water rights were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a lot, every owner acknowledges the existence of the outstanding mineral and water rights and/or reservations and the attendant rights in favor of the owner or owners of the mineral interests.

b. The Property includes one or more Common Areas that are or are intended to be part of the Property's surface water drainage and detention system. These Common Areas may not have an independent water source, such as an underground spring. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees do not guaranty the existence, quality, condition, quantity, or appearance of water in any of these Common Areas, which may at times be dry and at other times may have water, and are not liable to any owner or resident for claims that a view from a Lot has been damaged by changes to any such Common Area, such as a lack of water.

c. The Property is bisected by a pipeline that transports oil, gas and/or other petroleum products and that is recorded as Document No. U523760 in the Official Public Records of Harris County, Texas and as affected by the Release of Easement and Right-of-Way Agreement recorded as Document No. RP- 2018-472596 in the Official Public Records of Harris County, Texas. This pipeline and the easement for its location is located within portions of the Common Area. Owners of Lots are advised to determine for themselves the impact of the pipeline on their individual Lot and/or ownership of a Lot in the community. Declarant makes no representations or warranties as to the pipeline or its ownership or continued maintenance and use.

d. During Declarant's investigation of the Property, Declarant became aware of blanket pipeline easements that at one time affected the Property. Such easements have been released and Declarant is unaware of any pipelines being abandoned in place on the Property. All Owners should take precautions to ensure that no pipelines are located on their Lots prior to any digging and/or excavation on their Lots.

### ARTICLE III. MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot will be a member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot.

3.2 **Voting Rights.** The voting rights in the Association shall be as follows:

a. **Members other than Declarant.** Except as provided in Section 3.2.b below, Members shall be entitled to one vote for each Lot owned. However, when more than one person or Member holds an interest in any Lot, only one vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

b. **Declarant.** In addition to the votes to which Declarant is entitled by reason of Section 3.2.a, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this Section 3.2, shall be considered a Member for the purpose of casting such votes, and is not required to own any portion of the Property in order to cast any vote.

### ARTICLE IV. ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to and except as provided in this Article IV, each Owner of any Lot by acceptance of a deed therefor, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges as provided in Section 4.3 herein, (ii) special assessments as provided in Section 4.6 herein, or (iii) specific assessments as provided in Section 4.7 herein.

4.2 **Rate of Assessments.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, regardless of a Lot's location or size or the value of the Dwelling.

Notwithstanding the foregoing, the Declarant, during the Development Period, may decrease the amount of annual or special assessments payable by a Builder to an amount determined by Declarant for the period prior to the conveyance of the Lot from the Builder to an Owner.

4.3 **Annual Assessment – Increases.** The amount of the initial annual assessment shall be an amount as determined by the Board. The annual assessment may be increased at any time by the Board, provided that the Board gives written notice to the Members of the increase. The effective date of the increase shall not be sooner than 60 days from the date of the notice. No vote or other approval shall be required for the increase to be effective, unless the increase is more than 10% of the prior annual assessment. If the increase is more than 10%, then the increase may be disapproved by a 67% or greater vote of the votes of Members entitled to be cast, provided that the vote occurs within 60 days of the date of the increase notice.

4.4 **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to Declarant, a Builder or an entity that assumes the Declarant status as provided herein), unless the Board elects to commence the annual assessment earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board. The Board shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.5 **Assessment Obligation of Declarant.** During the Development Period, subject to the limitations set forth below in this Section 4.5, Declarant may annually elect, by written notice to the Association, to pay assessments as otherwise set forth in this Article IV, or to pay to the Association the difference between the Association's operating expenses and the assessments received by the Association (the "**Budget Deficit**") from the other Owners; provided that if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment, special or specific assessments, the Association will diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse the Declarant for any Budget Deficit funded from Declarants from the amounts, if any, so collected. If Declarant fails to provide a written notice to the Association specifying Declarant's election above, Declarant will be deemed to have elected to pay assessments as otherwise set forth in this Article IV. Notwithstanding the foregoing, in no circumstance shall Declarant have any obligation to pay any portion of a Budget Deficit that exceeds the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year. If Declarant elects, in Declarant's sole and absolute discretion, to fund Budget Deficits that exceed the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year, such amounts shall be treated as a loan to the Association, which loan shall bear interest at the lesser of the maximum rate of interest permitted under Applicable law or a rate of eighteen percent (18%) per annum until repaid (a "**Deficit Loan**"). Deficit Loans shall be repaid by the Association to Declarant as non-reserve funds become available or, at Declarant's sole option and discretion, may be offset against all past, current or future assessments payable by the Declarant under this Declaration.

4.6 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget,

provided, that any such special assessment must have an affirmative vote of 67% or greater of all outstanding votes of the Members entitled to be cast.

**4.7 Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines.

**4.8 Purpose of Annual and Special Assessments - Reserve.** Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, inspection, repair and replacement of improvements to the Common Maintenance Areas.

**4.9 Personal Obligation to Pay Assessments.** Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

**4.10 Capitalization of Association - Payment.** Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to three months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-laws.

**4.11 Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within 10 days after the due date, and subject to Section 4.12 below, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; (iii) charge costs and fees related to the collection of the sum due; and/or (iv) exercise any other remedies available to the Association as provided elsewhere in this Declaration. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

**4.12 Payment Plans.** If an Owner is unable to pay any assessment or other sum due herein, then upon written notice to the Association delivered no later than two (2) business days following the due date of such payment, the Association shall extend to such Owner a payment plan on the following terms (a "Payment Plan"):

a. The amount due herein may be paid in three equal partial payments, due one (1) month, two (2) months and three (3) months following the original due date of such payment.

b. Such amounts shall be subject to (i) interest at the Designated Interest Rate from the due date until the date the sum is paid; and/or (ii) reasonable costs related to the collection of the sum due.

c. The Association is not obligated to extend a Payment Plan to an Owner who failed to honor the terms of a previous Payment Plan during the two (2) years following such Owner's default under the previous Payment Plan.

Notwithstanding the terms of this Section 4.12, the Association may adopt an alternative payment plan to the extent permitted by Applicable law.

#### 4.13 **Lien.**

a. **Creation of Lien.** The Association shall hereby have a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments), as well as interest at the Designated Interest Rate, late charges, and costs of collection, including, without limitation, court costs and reasonable attorneys' fees, and any other fees or charges that are authorized under or pursuant to this Declaration. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or, if an owner agrees in writing at the time the foreclosure is sought to waive judicial foreclosure pursuant to Section 209.0092 of the Texas Property Code, by nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of Applicable law, such as Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the By-laws and Applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first purchase money mortgage or deed of trust against a Lot.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in herein. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided herein.

e. **Effect of Foreclosure.** The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term first in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

## ARTICLE V. THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate, By-laws, and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Certificate and the By-laws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Certificate and the By-laws. The Board shall have the powers granted in this Declaration, the Certificate, the By-laws, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. At the first meeting of the Association after the expiration of the Development Period, the Board may be increased to consist of five (5) persons if approved by the Board. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the 10<sup>th</sup> anniversary of the date this Declaration is Recorded. No later than the 10<sup>th</sup> anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board must have held a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.**

5.3 **Limitation on Liability.** Neither the Declarant nor any officer, director, employee or agent of the Association, nor any member of the ACA shall be liable to any person or entity, including any Owner, for any act or omission in the performance of the duties of the Declarant or such officer, director or agent, or member of the ACA, unless such act or omission is finally determined to constitute fraud or

intentional willful misconduct. The liability of an officer, director or committee member of the Association shall be further limited as provided in the Certificate.

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

5.5 **Insurance.**

a. **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, the following insurance coverage, if reasonably available:

i. **Property Insurance – Common Area.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership.

ii. **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

b. **Additional Insurance.** The Board may obtain additional insurance as the Board determines advisable, including, without limitation, directors and officers liability insurance, fidelity insurance and any insurance to comply with any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the U. S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), to the extent applicable. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary the Board shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

c. **Review of Policies.** The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

5.6 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities, including without limitation municipal utility districts; provided, any such agreement shall require approval of the Board. The Board may employ for the Association a management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Association is hereby authorized to negotiate with, exchange with, delegate to, convey to, and accept from a utility district or other special district certain functions, properties (including Common Areas), authorities, and obligations, provided the action is not prohibited by Applicable law.

5.7 **Books and Records.** The books and records of the Association shall be made available to the Members for inspection as provided in the By-laws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the By-laws.

5.8 **Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association, shall be conveyed as provided in the Certificate.

5.9 **Adoption of Rules.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, rules not in conflict with this Declaration, as it deems proper, covering any and all aspects of Cherry Pines (including the operation, maintenance and preservation thereof) or the Association. Any rules, and any modifications thereto, proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Without limiting the generality of the foregoing, the Association, acting with authorization of the Board, shall be entitled to make rules and regulations relating to parking, traffic flow, on-street parking, and other uses of streets and drives within the Property.

5.10 **Enforcement – Notice.** The Association may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with and subject to the applicable procedures set forth in this Declaration, the By-laws and Applicable law, including Chapter 209 of the Texas Property Code, as amended. Specifically, written notice and opportunity for a hearing must be given prior to the Association exercising its remedies if such notice and hearing is required by this Declaration, the By-laws and Applicable law, including Chapter 209 of the Texas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines.** The Association may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights.** As set forth in Section 2.1b above, the Association may suspend an Owner's right to vote, except with respect to any election (i) of members of the Board or (ii) concerning such Owner's rights and responsibilities.

c. **Suspension of Rights to Use Common Area.** The Association may suspend any person's or entity's right to use any Common Area; provided, however, nothing herein shall authorize the Association to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Association may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

e. **Right to Require Removal.** The Association may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Association or its designee shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Association may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Association has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the Records and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

5.11 **Pursuit of Action.** The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Association's sole and absolute discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

## ARTICLE VI. ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic or play equipment or facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the same color or design as originally constructed by Declarant or in accordance with the approved color and design scheme approved by the ACA; (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required; or (v) repair or replacement of worn out or damaged improvements if such repair or

replacement is with substantially similar materials. Any improvements pursuant to clauses (iii) and (v) immediately preceding must be in compliance with any applicable ACA Standards.

**6.2 Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The “ACA” or “Architectural Control Authority” shall be the following entity:

a. **Declarant - During Development Period.** The Declarant shall be the ACA during the Development Period, unless the Declarant in writing has terminated its rights as the ACA.

b. **Architectural Committee - After the Development Period.** The Architectural Committee shall be the ACA after the Declarant's right to act as the ACA has either expired or voluntarily been terminated.

**6.3 Architectural Committee.** A committee to be known as the “Architectural Committee” consisting of a minimum of 3 members will be established after the Declarant's right to act as the ACA has either expired or voluntarily been terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board. The Architectural Committee will act by simple majority vote. The Board may also designate that the Association's property management company may act on behalf of the ACA for certain approvals otherwise required to be granted by the ACA, such as by example but without limitation, approval of the color of shingles to be used.

**6.4 Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing by Declarants during the Development Period to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

**6.5 Plan Review.**

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this ARTICLE VI, the ACA will have 30 days in which to review said plans and other documents and materials submitted pursuant to Section 6.4 herein. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 30 days after the ACA's receipt of all materials requested by the ACA to complete the submission,

then such failure by the ACA to issue its written approval shall be deemed disapproved. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements within the Property; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time.

6.6 **Timing of Completion of Approved Items.** All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 **Improvements Impact on Drainage.** With respect to any improvements performed on a Lot and/or any alterations to the grade of a yard, the Owner shall take proper precautions to insure that such improvements do not cause the surface water drainage on the Lot to (i) drain onto an adjoining Lot in an amount more than the drainage amount prior to the improvement or alteration, or (ii) collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

6.8 **No Waiver.** The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 **Variances.** The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing or estop the ACA from denying a variance in other circumstances.

6.10 **Architectural Control Authority Standards.** The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 **Enforcement; Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation of this ARTICLE VI. to the same extent as if made without prior approval of the ACA. In addition to the Association's rights in Section 5.10 herein, the Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alteration to any improvement on any Lot that is not approved by the ACA.

6.12 **Limitation of Liability.** Neither the Declarant, the Association, the Board, nor the ACA or any member of the ACA, nor any employee, servant or agent of the Association, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Review and approval of any submission or application is made on the basis of aesthetic considerations only and not for engineering, structural design or quality of materials. No approval of any plans by either the ACA or the Declarant shall be construed to mean that the plans comply with any Applicable law, building code, or governmental regulation. Neither Declarant, the Association, the Board, the ACA, any member of the foregoing, nor any employee, servant or agent of the Association, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. Declarant and members of the ACA shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious. The ACA and its members, and any employee, servant or agent of the Association, shall be defended and indemnified by the Association as provided in Section 5.4 herein.

## ARTICLE VII. USE RESTRICTIONS AND COVENANTS

7.1 **Single Family Residential Use.** All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above in this Section 7.1 shall be made by the Board in their sole and absolute discretion. The business activity prohibition will not apply to the use by Declarant or any Builder (i) of any Dwelling as a model home, construction office and/or sales office, or (ii) of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot; any of which uses may be for the benefit of real property owned by Declarant or any Builder located within or outside of the Property.

7.2 **Parking of Motor Vehicles.** Vehicles that are not prohibited below may park on public streets only if the City allows curbside parking, and in designated parking areas, subject to the continuing

right of the Association to adopt reasonable rules if circumstances warrant. Certain areas within the community may be designated as guest parking areas (“**Guest Parking Areas**”). No Resident may park in Guest Parking Areas for more than twenty four (24) hours. The Association may promulgate rules related to the Guest Parking Area. No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than 1 ton carrying capacity; (ii) has less than 3 axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

**7.3 Trailers, Boats, Commercial and Recreational Vehicles.** No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with 3 or more axles or greater than 1 ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is operable and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above in this Section 7.3. Upon an adverse determination by the Board, the Owner will cause the item to be removed and/or otherwise brought into compliance with this Section 7.3. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

**7.4 Fences.**

a. **Required Fencing.** The backyard of each Lot must be fully enclosed with a perimeter fence. To the extent Declarant or a Builder constructs a fence which fully or partially encloses a rear or side yard, then the Owner of that Lot must at all times maintain such fence in accordance with the terms of this Declaration, unless that Owner obtains the ACA’s written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

b. **Type of Fencing.** Except as provided below, all perimeter fences will be wood and will be of the same type and design as originally installed by Declarant. No other type of fencing including, without limitation chain link, shall be permitted. All fencing shall comply in all respects (including size and location) with applicable City requirements. All perimeter fences shall be six feet (6’0”) in height unless another height is approved by the ACA and shall be a color approved by the ACA. Unless approved by the ACA, fences may not be stained or painted, except that fences may be stained with the same color stain as originally applied by the Declarant. The portion of all fences which exterior or side faces a street adjoining such Owner’s Lot (front, side or rear streets, but not alleys) shall have the smooth surface of the fence materials facing the

applicable street. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard.

c. **Location of Fence.** Unless approved by the City and the ACA, no fence or wall will be placed (i) on any Lot in a location nearer to the street than the front building setback line for such Lot, or (ii) on those certain corner Lots whose rear boundary line adjoins any portion of the front yard of a Lot behind the corner Lot, in a location nearer to the front building setback line for the street that is in front of the adjoining Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences. Fences shall not be constructed in any manner that would change or impede drainage onto or from a Lot.

d. **Maintenance of Fencing. Except with respect to any Association Maintenance Feature,** each Owner shall maintain both sides of the portion of fencing on or along the boundary of such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in Section 7.4.f) herein shall share in the cost of such maintenance as provided in Section 7.4.f herein. The Association shall be responsible to maintain any Association Maintenance Feature.

e. **No Changes / Repairs.** All repairs and replacements to the perimeter fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this Section 7.4.e, no fencing may be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

f. **Common Fencing.** Except for any Association Maintenance Feature, side and rear yard fences that are installed by Declarant or the Builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "**Common Fence**") shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "**Arbitration**" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

#### 7.5 **Common Retaining Wall.**

a. **Maintenance of Common Retaining Wall.** If a retaining wall, or a portion of a continuous retaining wall (in either case, a "**Common Retaining Wall**"), is installed on a common boundary of two Lots or is located on a Lot, but adjacent to (generally within not more than 3 feet) and generally parallel with the boundary of another Lot, the Common Retaining Wall shall be maintained as provided in this Section 7.5. As the owner of the Lot at the higher elevation (the

“**Higher Lot**”) has more control over the conditions that affect the stability and structural integrity of the Common Retaining Wall, the owner of the Higher Lot is solely responsible for all maintenance, repair and reconstruction of the Common Retaining Wall (unless due to the negligence or willful act or misconduct of the owner of the Lot at the lower elevation (the “**Lower Lot**”), in which case such costs shall be paid by the owner of the Lower Lot). A retaining wall that is entirely within the boundaries of a Lot and not on or near a dividing line between two Lots is solely the responsibility of the Lot owner. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, as originally installed, unless the ACA’s approval is obtained. In the case of a dispute between owners of Lots as to which Lot is the Lower Lot and which lot is the Higher Lot, the decision of the ACA shall be final and binding upon the owners.

b. **Easements for Common Retaining Wall.** Common Retaining Walls may not be located exactly on the common boundary line between two Lots. Therefore, there is hereby created an easement in and on the Lot where the Common Retaining Wall is actually located. The easement area shall be limited to the area that is within five (5) feet of the common boundary line. The easement shall be for the benefit of the Owner of the Lot that is responsible for maintenance of the Common Retaining Wall so that such Owner can maintain the Common Retaining Wall as provided in Section 7.5.a.

c. **Right of Enjoyment.** The owner of the Lower Lot is granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Common Retaining Wall for use as a perimeter wall or fence of the Lower Lot. The owner of the Lower Lot is responsible for maintaining the Lower Lot up to the Common Retaining Wall, even if the Common Retaining Wall is inside the boundaries of the Higher Lot.

7.6 **Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, and sheds shall be erected, placed or constructed upon any Lot, unless (i) the building is approved by the ACA prior to the installation or construction of the building; (ii) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the building is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the walls (excluding the roof) is not greater than 8 feet; (vi) the total height of the building (including walls and roof) is not greater than 10 feet; and (vii) the building is less than 200 square feet of floor space. In addition, the Owner is required to comply with any applicable City requirements, including, without limitation, any necessary permits.

7.7 **Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board. 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 By-laws. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.8 **Signs.** Except for Entry Signs, no sign or emblem of any kind, including "for rent" or "for lease" signs, may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (i) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size; (ii) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of a Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours; (iii) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards; or (iv) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject the Declarant, the Board, the Association or the Association's officers to any liability in connection with such removal.

7.9 **Trash; Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated in writing by Declarant during the Development Period.

7.10 **Nuisances.** No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.11 **Antennae and Satellite Dishes.** Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes or other apparatuses that are one meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a "**Permitted Device**"), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.11 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this Section 7.11 and the ACA Standards shall not require the

ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this Section 7.11 and the ACA Standards.

**7.12 Air-Conditioning Units.** Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling, on the ground on the side of the Dwelling or such other location as may be approved by the ACA. No air-conditioning apparatus or evaporative cooler may be located in or on the front of any Dwelling or attached to any roof, wall or any window of any Dwelling.

**7.13 No Temporary Structures as a Residence.** No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

**7.14 Sidewalks.** The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

**7.15 Landscaping Maintenance.** All yards must be sodded or grassed within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front yard may not exceed 25% of the total area of the front yard. All trees, grass and other landscaping located on any Lot (or located adjacent to such Lot within the right-of-way of a street, alley or other right-of-way, including, for example, the area adjacent to a Lot between the boundary of such Owner's Lot and the back of the curb of any adjacent public or private right-of-way, street or alley) must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA.

An Owner may install and maintain drought-resistant landscaping or water-conserving natural turf on any portion of the Lot that is maintained by the Owner (not the Association), subject to the following conditions.

i. If the ACA has published xeriscaping guidelines, the Owner is not required to apply for ACA approval for installations that comply strictly with the guidelines. Otherwise, the Owner must submit landscape plans or descriptions that are sufficiently detailed to permit the ACA to determine if the proposed xeriscaping is aesthetically compatible with the surrounding neighborhood for landscaping. The ACA's determination of aesthetic compatibility must be reasonable.

ii. An Owner may use gravel, rocks, or cacti in place of turf on the unfenced portions of a Lot only if the Owner obtains the ACA's prior written approval of the Owner's detailed landscape plan. The ACA may prohibit, limit, or regulate the use of gravel, rocks, and cacti in a landscape plan based on aesthetics and surface water drainage, in addition to water conservation

7.16 **Exterior Improvement Maintenance.** All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion.

7.17 **Garages.** Each Dwelling must have a garage that will accommodate a minimum of two (2) automobiles. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.18 **Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot, except within the Dwelling.

7.19 **Window Treatment.** No aluminum foil, newspaper, reflective film, bed sheets or similar linens, or similar treatment will be placed on windows or glass doors of a Dwelling.

7.20 **Oil and Gas Drilling or Mining.** No drilling, refining, quarrying or mining operation of oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any oil derrick, well, tank, storage facility or other related equipment be permitted on any Lot. This section shall not prohibit subsurface drilling activities that begin upon and are conducted from the surface of real property not subject to these restrictions, provided, however, in no event shall the directional drilling or sub-surface activities be at depths less than two hundred feet (200') below the overlying surface of the Property and no closer than two hundred feet (200') from the boundary line of the Property, and no such drilling shall interfere with or result in damage to or subsidence of the surface of the Property, the structures located at any time thereon, or the support of any such structures.

7.21 **Mail Boxes.** Mailboxes shall be of similar type as originally installed, unless the ACA approves additional types of mail boxes.

7.22 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed 12 feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

7.23 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.24 **Flags, Flagpoles, Lawn Decorations and Sculptures.** The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags, flagpoles and similar items on any portion

of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is not taller than the fence. To maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community. Each Homeowner is authorized to mount two temporary or permanent flagstuffs on the front, rear or side of their Dwelling by wall bracket. Homeowners may not locate a flag or flagpole on the Common Area or any portion of the Property owned by Declarant. Additionally:

a. The flag of the United States of America, the flag of the State of Texas and flags of any branch of the United States armed forces are the only permitted flags that may be flown on a Lot. All other flags, pennants, banners, kites or similar types of display are not permitted without the prior written approval of the ACA.

b. Flagpoles must not exceed twenty (20) feet in height, and only one (1) such flagpole may be erected on each Owner's Lot in the front yard, provided the Lot has a front building setback of at least 15 feet. Installations in front yards with smaller setbacks require the ACA's prior written approval. No more than one in-ground flagpole per Lot is permitted without the ACA's prior written approval. No part of a flagpole base may be above-grade (on the surface) or visible from a street without the ACA's prior written approval. In lieu of an in-ground flagpole in the front yard, a flag may be flown from a flagstaff wall-mounted to the first floor façade of the house and projecting at an angle of approximately 45 degrees. Without the ACA's prior written approval, a flagpole may not be installed in the side yard of a corner Lot or the rear yard of a Lot that backs up to a street or Common Area. Such flags may contain no more than twenty-four (24) square feet of material. Flags and flagpoles must be maintained in good condition, and the ACA may require any deteriorated flag or flagpole to be repaired, replaced or removed.

c. Flagstuffs should not exceed six (6) feet in length. The suggested location for bracket mounting is on the garage doorframe or near the garage door. No roof-mounted flagstaff is allowed. Multiple flag configurations and any flagstaff in excess of six (6) feet must be approved by the ACA prior to installation or display. Such flags may contain no more than twenty-four (24) square feet of material and must be of good taste and presentation.

d. Notwithstanding anything in this section to the contrary, an Owner may display religious objects on the front door or doorframe of the Owner's Dwelling, unless such objects contain patently offensive language or symbols or the object is more than twenty-five (25) square inches in size.

**7.25 No Lot Consolidation or Division.** No Lot may be subdivided. Lots may be replatted by the Lots directly affected by the replatting and subject to compliance with Applicable Law. A copy of the replat will be provided to the Association, provided that replatting will not affect or alter the number of votes or assessments allocated to the Lots as originally platted.

**7.26 Drainage Alteration Prohibited.** Unless approved by the ACA, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

7.27 **Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration 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 diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

7.28 **Declarant and Builder Development and Construction.** Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

7.29 **Roofing.** The ACA may restrict the installation of roofing shingles that are primarily designed to be wind and hail resistant, provide heating and cooling efficiencies or provide solar generation capabilities (“**Specialized Shingles**”) on any Dwelling if such Specialized Shingles do not resemble shingles used on other Dwellings, are less durable than shingles used on other Dwellings or do not match the aesthetics of the property surrounding the Lot on which such Dwelling is located.

7.30 **Leasing of Homes.** An owner has an affirmative but restricted right to lease the Dwelling on his Lot, subject to the terms of this Declaration, including without limitation, the ongoing right of the Board and the Association to make rules governing the occupancy and leasing of Dwellings.

a. **General Rules.** No Dwelling may be used for transient or hotel purposes. No house may be subdivided for rent purposes. Not less than an entire house may be leased (i.e., no boarding house use). Whether or not it is so stated in a lease, every lease is subject to this Declaration. An owner is responsible for providing his tenant with copies of this Declaration and rules promulgated by the Association and notifying him of changes thereto.

b. **Inspections by Owner.** The Owner of a leased Lot is responsible to the Association for periodic inspection and supervision of the appearance, condition, and maintenance of the yards and the exteriors or all improvements to ensure that the improvements and Lot are maintained to a level that is at least commensurate with the neighborhood standard and in compliance with this Declaration. An owner may not delegate to the occupants of the leased Lot the Owner's responsibility for inspection and supervision.

c. **Violations by Tenant.** Failure by the tenant or his invitees to comply with this Declaration, federal or state law, or local ordinance is hereby deemed to be a default under the lease, whether or not it is so stated in the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The Owner of a leased lot is liable to the Association for

any expenses incurred by the Association in connection with enforcement of this Declaration against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of this Declaration against the Owner's tenant.

d. **Applicability.** This Section applies to every Owner of every Lot, and to agents of Owners, except that this Section does not apply to a house used for a purpose that is expressly protected by public ordinance or law.

7.31 **Xeriscaping.** Drought-resistant landscaping or water-conserving turf known as xeriscaping (“**Xeriscaping**”) may be installed on a Lot. Approval by the ACA is required prior to installing Xeriscaping:

a. To obtain ACA approval of Xeriscaping, the Owner shall provide a request to the ACA in accordance with the Declaration, including 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**”).

b. The decision of the ACA will be made in accordance with Article VI. 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 of directors of the Association, and the board need not adhere to this policy when considering any such request.

c. Each Owner is advised that if the Xeriscaping Application is approved by the ACA, 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 ACA may require the Owner to: (iv) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (v) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner’s failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACA 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.

d. Unless otherwise approved in advance and in writing by the ACA, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must be aesthetically compatible with other landscaping in the Property as reasonably determined by the ACA. For purposes of this Xeriscaping policy, “aesthetically compatible” shall mean overall and long-term aesthetic compatibility within the Property. For example, an Owner’s Lot plan may be denied if the ACA determines that: (i) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall Property; and/or (ii) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an

adjacent Owner, resulting in a reduction of aesthetic appeal of the adjacent Owner's Lot.

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

a. To obtain ACA approval of a Rainwater Harvesting System, the Owner shall provide the ACA 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").

b. The decision of the ACA will be made in accordance with Article VI of the Declaration. Any proposal to install a Rainwater Harvesting System on Common Areas must be approved in advance and in writing by the ACA, and the ACA need not adhere to this policy when considering any such request.

c. Unless otherwise approved in advance and in writing by the ACA, each Rain System Application and 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 within the Owner's Lot, as reasonably determined by the ACA.

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 within the Owner's Lot and any adjoining or adjacent street.

iv. There is sufficient area within the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACA.

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, common area, or another Owner's Lot, the ACA may regulate the size, type, shielding of, and materials used in the construction of Rainwater Harvesting System.

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, or another Owner's Lot, the ACA may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, common area, or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, Common Area or another Owner's Lot, any additional regulations imposed by the ACA 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 ACA.

7.33 **Solar Energy Systems.** In connection with the residential development of the Lots, Declarant may offer devices and/or structures that are used primarily to transform solar energy into thermal, chemical or electrical energy including roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices that collect solar energy and generate energy by exposure to the sun (“**Solar Energy Systems**”). The components of the Solar Energy Systems may change in the future with the availability of newer technology or as may be installed by an Owner, subject to this Declaration. Solar Energy Systems may not be placed on or around any Dwelling during the Development Period except as may be installed by Declarant or otherwise as approved by Declarant. Following the Development Period, except with the written permission of the ACA, no Solar Energy Systems may be placed on or around any Dwelling. The ACA may deny permission to place Solar Energy Systems on or around any Dwelling if (1) the Solar Energy System does not comply with applicable laws; (2) the Solar Energy System is to be placed on any Common Area or any portion of the Property owned by the Declarant; (3) the Solar Energy System is to be placed anywhere other than an Owner’s roof, patio or within such Owner’s fenced yard; (4) the Solar Energy System is to extend beyond the roofline of any Dwelling; or (5) the Solar Energy System is to be taller than the Owner’s fence.

a. **Shading Restrictions.** The generation of energy by Solar Energy Systems will be reduced or even eliminated if trees, other landscaping, structures or other improvements are allowed to cause shading of the Solar Energy Systems. Therefore, for optimal operation and efficiency it is essential that the Solar Energy Systems have direct access to sunlight. To ensure optimal operation of the Solar Energy Systems, Declarant desires to set forth herein certain restrictions relating to the Solar Energy Systems and restrictions on obstruction to the Solar Energy Systems. Subject to Section 7.31.b, neither the Association nor any Owner shall allow any trees, other landscaping, structures or other improvement(s) to be installed or maintained within the Property, which cast or may at any time in the future cast a shadow over greater than ten percent (10%) of a solar collector absorption area upon the solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local time (“**Prohibited Shading**”). Before constructing or installing any improvements, including, but not limited to, trees, other landscaping, structures or other improvements on a Lot or any Common Area the Owner, or the Association as the case may be, shall ensure all such improvements comply with the Shading Restrictions. In addition, each Owner shall comply with the architectural review and other requirements set forth in the Declaration and the requirements set forth in Section 7.30g below. All Owners and the Association must consider the height at maturity of all trees, shrubs and other landscaping and the location and the height of all structures and other improvements installed on their respective Lot, in order to prevent Prohibited Shading of any Solar Energy Systems. Each Owner and the Association shall not permit the planting of any tree or other landscaping on any portion of the Property that, at its generally-accepted mature height, will likely cause Prohibited Shading whether the Solar Energy Systems are located on the Owner’s Lot or on a neighboring Lot.

b. **Application of Shading Restrictions.** The Shading Restrictions shall not apply to improvements that were installed or constructed by an Owner in compliance with the Shading Restrictions, prior to the installation of the Solar Energy Systems that are being shaded (“**Existing Improvements**”). Notwithstanding the foregoing, if an Owner has Existing Improvements which are causing or may in the future cause Prohibited Shading on Lots being developed by Declarant, such Existing Improvement shall be subject to the Shading Restrictions and Declarant shall have the right to require such Existing Improvements be removed at the sole cost and expense of the Owner on whose property the Existing Improvements are located. The Shading Restrictions are intended to apply, control and be enforceable regardless of the fact that an applicable local governmental agency or the ACA has issued an approval, authorization or permit for the

improvement causing the Prohibited Shading. These Prohibited Shading restrictions do not apply to shading caused by the residential structures or any other improvements constructed or installed by Declarant within the Property.

c. **Maintenance Requirements.** Each Owner and the Association shall continually prune, cut-back and otherwise limit the height and fullness of trees, shrubs and other landscaping located within the Property owned or required to be maintained by the respective Owner and/or the Association to prevent Prohibited Shading within the Property.

d. **Impact of Shading Restrictions.** The Shading Restrictions mean that the dimensions of some Lots may not accommodate (i) the planting of any trees, or the planting of medium or large trees, in the yard area of the Lot, (ii) the installation of any upper-floor additions, roof-top structures or other tall improvements, and/or (iii) the growth of trees and shrubs to mature heights. For example, the planting of shade trees and the construction of upper-floor additions may be prohibited as a result of the restriction against Prohibited Shading. Also, the Shading Restrictions may have the foregoing impacts on Lots on which no Solar Energy Systems are installed or constructed. Each Owner must carefully review and comply with the Shading Restrictions, in connection with the planning of all improvements.

e. **Tree Selection.** Once the planned height and distance of trees has been determined, the Owner and the Association, in making any selection of trees to be planted on their respective Lots, shall select a tree species that has the appropriate mature height restriction.

f. **No Restriction on Adjacent Property.** In some cases the Lots may be adjacent to other real property that is not encumbered by this Declaration, similar prohibited shading covenants, or similar prohibitions against shading imposed by law. In such cases, adjacent real property might not be restricted from causing Prohibited Shading of any roof-mounted Solar Energy System installed on one or more of the Lots.

g. **Limited Scope of Review of Improvements.** As provided under this Declaration, all improvements installed by Owners other than Declarant shall be approved by the ACA prior to installation in accordance with the procedures set forth in this Declaration. As part of such review, the ACA shall consider whether the improvements will result in a violation of the Shading Restrictions, including without limitation, whether any trees or shrubs which have the potential to grow to a height that would result in a violation of the Shading Restrictions. The ACA's obligation shall be limited to requiring the Owner to obtain a certification from a landscape architect or solar or other consultant otherwise acceptable to the ACA ("**Shading Certification**"), as applicable, that the proposed improvement will not result in Prohibited Shading of existing Solar Energy Systems, and the ACA shall be entitled to rely upon such Shading Certification and shall have no obligation to conduct any other independent review and shall have no liability to any Owner or the Association for any inaccuracies in the Solar Certification. The ACA shall not issue any approval to any Owner if the improvements planned would result in Prohibited Shading of any Solar Energy Systems, including, without limitation, a Solar Energy System installed by Declarant. The ACA shall not be allowed to issue variances from the Shading Restrictions.

h. **Declarant Exemptions.** Declarant shall be exempt from any Shading Restrictions relating to improvements constructed by Declarant.

i. **Declarant Solar Energy Systems.** Neither the Board of Directors nor the ACA as applicable shall approve and the Association shall not allow to be maintained any improvement in the Property, which would result in Prohibited Shading of any Solar Energy Systems installed by Declarant or that may be constructed at a later date. Therefore the Board of Directors or ACA shall consider, as part of the application process under this Declaration, whether the improvements proposed to be installed within a Lot will result in a violation of the Shading Restrictions, including without limitation, improvements planned to be installed by Declarant on future Homes that could be shaded by the improvements planned by the Owner.

## ARTICLE VIII. COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title. The Association shall maintain, at the Association's cost, the Common Area and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas, at the Association's cost, to the extent the Board determines that such maintenance is desirable or is required by Applicable law. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during the Development Period.

8.2 **Use of Common Areas at Own Risk.** Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board, its officers and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Area assumes all risks of personal injury and loss or damage to property, resulting from the use and enjoyment of any portion of the Common Area.

8.3 **Condemnation of Common Area.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Area any improvements that were on condemned Common Area, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 **Damage to Common Area.** If the Common Area or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 67% or greater votes of all outstanding votes of the Members entitled to be cast within 90 days after the loss not to repair or reconstruct. If said 67% vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 **Conveyance of Common Areas by Declarant to Association.** Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or

districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the Records.

8.6 **Annual Inspection of Common Area - Budget.** From the period commencing at the expiration of the Development Period until 10 years thereafter, the Association shall at least annually examine the condition of the Common Area to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.

## ARTICLE IX. EASEMENTS

9.1 **Easement for Utilities on Common Area.** During the Development Period, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for the construction, installation, use and maintenance for utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this Section 9.1.

9.2 **Easement to Correct Drainage on Property.** For a period of 5 years after the expiration of the Development Period, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, 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 9.3 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST,**

**LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

9.4 **Easement for Right to Enter and Inspect Common Area.** For a period of 10 years after the date of the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting and repairing the Common Area and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any inspections or repairs.

9.5 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.6 **Association Easement.** Declarant hereby reserves the Association Easement over, upon and across each Lot for the benefit of the Declarant and the Association for the purpose of placing, constructing and maintaining the Entry Signs, the Association Maintenance Feature, and landscaping owned and/or maintained by the Association in a Common Area.

**ARTICLE X.**

**ANNEXATION AND WITHDRAWAL; SUPPLEMENTAL DECLARATIONS**

10.1 **Annexation by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant may, at its sole option, annex real property into the Association and subjecting such real property to the terms hereof, including, without limitation, any property platted as part of the Cherry Pines community, in which case such additional property and any common areas will be included in the definition of "Property" or "Common Area", as appropriate, and any reference to "Cherry Pines" will include such additional property; provided; however, Declarant shall not have the right to annex real property that is located more than 1 mile from the Property (as such term may be amended), without a vote as provided in Section 10.2 below.

10.2 **Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of 67% or greater of all outstanding votes that are entitled to be cast.

10.3 **Recording of Annexation.** The annexation of such real property shall be evidenced by a written Recorded document.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property.** While Declarant owns any real property subject to this Declaration, Declarant may amend this Declaration to withdraw any real property that does not have a Recorded plat from the definition of the Property and from the coverage of this Declaration, provided that the owner of real property to be withdrawn consents to such withdrawal.

10.6 **Supplemental Declarations.** From time-to-time while Declarant owns any real property subject to this Declaration, Declarant may file one or more Supplemental Declarations that, may contain such other provisions established by Declarant in Declarant's sole and absolute discretion.

## ARTICLE XI. DISPUTE RESOLUTION

11.1 **Introduction & Definitions.** The Association, the Owners, Declarant, and all persons subject to this Declaration (individually a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Association and/or the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

a. "**Claim**" means any claim, grievance, or dispute between the Parties arising from or related to this Declaration, the By-laws or the Certificate for the Property or related to the Common Areas or any improvements of any kind to the Common Areas, except Exempt Claims as defined below. Claims include, without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of this Declaration; (ii) Claims relating to the rights and/or duties of Declarant as Declarant under this Declaration; and (iii) Claims relating to the design, construction or maintenance of the Common Maintenance Areas and/or the Property.

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

c. "**Exempt Claims**" means the following claims or actions, which are exempt from this Article: (i) the Association's claim for assessments, and any action by the Association to collect assessments; (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration; (iii) enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration; (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article; and (v) a dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

d. "**Respondent**" means the Party against whom the Claimant has a Claim.

11.2 **Mandatory Procedures.** It is intended that all Claims will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board, and all Owners shall be bound by the following dispute resolution procedures of this ARTICLE XI.

11.3 **Notice.** Claimant must notify Respondent in writing of a Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision(s) of the Declaration, By-laws, Certificate or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section 11.3.

11.4 **Right to Cure.** If the Notice sets forth a Claim regarding an alleged defect or defects (whether one or more, the "Alleged Defects") in any improvements on any portion of the Common Area or the Property, Respondent shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

a. **Notice of Alleged Defect.** If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the other Party who constructed the improvement with respect to which the Alleged Defect relates.

b. **Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Party of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Party, such Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, or any other portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary such Party at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

c. **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article shall be construed to impose any obligation on a Party to inspect, test, repair, or replace any item or Alleged Defect for which such Party is not otherwise obligated under Applicable law or any warranty provided by such Party. The right reserved to a Party to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to such Party except by a Recorded, written document executed by such Party.

11.5 **Legal Actions.** All legal actions initiated by a Claimant shall be brought in accordance with and subject to this ARTICLE XI. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, mediation, or arbitration alleging (1) damages for costs of repairing an Alleged Defect ("Alleged Defect Costs"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Owners prior to initiation of any legal action, regulatory action, cause of action, proceeding, mediation or arbitration which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the other Party to correct such Alleged Defect and the opportunities provided to the other Party to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Texas that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name

and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the Claim; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

#### 11.6 **Alternative Dispute Resolution.**

a. **Negotiation.** Each Party to a Claim shall make every reasonable effort to meet in person and confer for the purpose of resolving a Claim by good faith negotiation. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such negotiation.

b. **Mediation.** If the Parties cannot resolve their Claim within such time period as may be agreed upon by such Parties (the "**Termination of Negotiations**"), the Party instituting the Claim (the "**Disputing Party**") shall have thirty (30) days after the Termination of Negotiations within which to submit the Claim to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the Parties to the Claim may mutually agree. No person shall serve as a mediator in any Claim in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Claim. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Claim to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Claim and all other Parties to the Claim shall be released and discharged from any and all liability to the Disputing Party on account of such Claim; provided, nothing herein shall release or discharge such Party or Parties from any liability to persons or entities not a Party to the foregoing proceedings.

c. **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each Party to the Claim shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all Parties to the Claim shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the Parties to the Claim mutually agree to extend the mediation period. The mediation shall be held in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.

d. **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Parties to the Claim and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties to the Claim agree to obtain and assume the expenses of obtaining such advice as provided in Section 11.6.g below. The mediator does not have the authority to impose a settlement on any Party to the Claim.

e. **Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

f. **Parties Permitted at Sessions.** Persons other than the Parties to the Claim may attend mediation sessions only with the permission of all Parties to the Claim and the consent of the mediator. Confidential information disclosed to a mediator by the Parties to the Claim or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.

g. **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Claim unless agreed to otherwise. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such mediation.

11.7 **Final and Binding Arbitration.** If the Parties cannot resolve their Claim pursuant to the procedures described in Section 11.6 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Claim to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 11.7. If the Disputing Party does not submit the Claim to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Claim and all other Parties to the Claim shall be released and discharged from any and all liability to the Disputing Party on account of such Claim; provided, nothing herein shall release or discharge such Party or Parties from any liability to a person or entity not a Party to the foregoing proceedings.

11.8 The existing Parties to the Claim shall cooperate in good faith to ensure that all necessary and appropriate Parties are included in the arbitration proceeding. Subject to the limitations imposed in this Section 11.7, the arbitrator shall have the authority to try all issues, whether of fact or law.

a. **Place.** The arbitration proceedings shall be heard in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.

b. **Arbitration.** A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters which are the subject of the Claim. The arbitrator shall not have any relationship to the Parties or interest in the Property. The Parties to the Claim shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

c. **Commencement and Timing of Proceeding.** The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

d. **Pre-hearing Conferences.** The arbitrator may require one or more pre-hearing conferences.

e. **Discovery.** The Parties to the Claim shall be entitled to limited discovery only, consisting of the exchange between the Parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Claim, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the Parties to the Claim. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

f. **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Texas Arbitration Act, Tex. Civ. Prac. & Rem. Code § 171.001 et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

g. **Motions.** The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

h. **Expenses of Arbitration.** Each Party to the Claim shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such Party. Each Party to the Claim shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the Parties.

i. **Statute of Limitations.** Nothing in this Article shall be considered to toll, stay, or extend any applicable statute of limitations.

11.9 **Enforcement of Resolution.** If the Parties to a Claim resolve such Claim through negotiation or mediation in accordance with Section 11.6 above, and any Party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Section 11.7 and any Party to the Claim thereafter fails to comply with such resolution or award, then the other Party to the Claim may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In such event, the Party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

11.10 **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 a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

11.11 **Litigation Approval and Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial, arbitration or

administrative proceeding without the prior approval of Owners of at least seventy five percent (75%) of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, without limiting the provisions of Section 6.12 hereof, the Association may not initiate any judicial, arbitration or administrative proceeding against Declarant without the approval of Owners of at least seventy five percent (75%) of the Lots. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section 11.11 may not be amended without the approval of Owners of at least seventy five percent (75%) of the Lots.

**11.12 Other Dispute Resolutions.** Notwithstanding Declarant's intent to submit any controversy or Claim (as defined above) arising out of or relating to this Declaration or the Property to arbitration as provided in this ARTICLE XI, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this ARTICLE XI, then the Parties agree to the following provisions:

**11.13 Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION AND ANY CLAIM (AS DEFINED IN ARTICLE XI OF THIS DECLARATION) ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY SUCH CLAIM, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

## **ARTICLE XII. MISCELLANEOUS**

**12.1 Declaration Term - Perpetual.** Unless ninety percent (90%) of all outstanding votes that are entitled to be cast approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the Property and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

### **12.2 Amendments to Declaration.**

a. **Amendment by Declarant.** This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone during the Development Period; 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 number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, and not by

way of limitation, during the Development Period Declarant may unilaterally amend this 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; (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; (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development; or (e) as Declarant may otherwise determine.

b. **Amendment by Association.** The Association may amend this Declaration by an affirmative vote of sixty seven percent (67%) or greater of all outstanding votes of the Members entitled to be cast.

**12.3 Enforcement by Association and/or Owner.** The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

**12.4 Remedies; Cumulative.** In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the By-laws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

**12.5 Notice to Association of Sale or Transfer.** Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee, within 30 days after the date of such transfer of title, and such other information as the Board may reasonably require. With the Board's approval, and subject to Applicable laws, a number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of this Declaration, the By-laws, and/or Certificate, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; transfer to, from, or by the Association; or voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section 12.5 does not obligate the Board or the manager to levy transfer-related fees.

**12.6 Limitation on Interest.** All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by Applicable law. If, under any

circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

**12.7 Construction and Interpretation.** This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

**12.8 Notices.** Except as otherwise provided in the By-laws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice

**12.9 Not a Condominium.** This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

**12.10 Severability.** Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain, in full force and effect.

**12.11 Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the Property and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed. Notwithstanding any provision herein, the rights of Declarant as provided herein shall not run with the land, but instead may only be transferred or assigned as provided in Section 12.12 herein.

**12.12 Assignment of Declarant's Rights.** Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status. Upon designation of a successor Declarant, all rights, obligations and responsibilities of the former Declarant in and to such status as "Declarant" shall cease (but only to the extent assigned, in the case of a partial assignment); provided, however, the former Declarant shall continue to be afforded the protections granted herein to Declarant for actions performed by former Declarant during the time period that the former Declarant was Declarant.

**12.13 Disclaimer Regarding Security.** Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for

any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees, and licensees that the Association, its Board and committees and the Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

**12.14 Adjacent Land Use.** Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the Plat or any future plat shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views or that views will be preserved without impairment, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

**12.15 Mortgage Provisions.** An institutional holder, insurer, or guarantor of a first mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot ("Mortgage") which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

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

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

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

**12.16 Attorneys' Fees and Court Costs.** If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

**12.17 Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

**12.18 Headings.** The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

12.19 **Conflicts.** In the event of conflict between this Declaration and any By-laws, rules, regulations or Certificate, this Declaration will control.

12.20 **Exhibits.** All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

*Signatures on following page.*

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year written below.

**DECLARANT:**

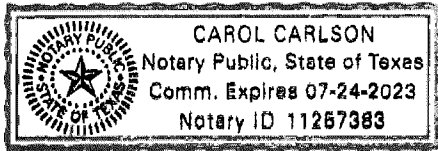
**MERITAGE HOMES OF TEXAS, LLC,**  
an Arizona limited liability company

By: *[Signature]*  
Printed Name: David Jordan  
Title: Sr. Vice President of Land  
Date: 02/27/2020

STATE OF TEXAS                   §  
   §  
COUNTY OF HARRIS           §

The foregoing instrument was acknowledged before me on this the 27<sup>th</sup> day of February, 2020, by David Jordan, the Sr. VP of Land of Meritage Homes of Texas, LLC, an Arizona limited liability company, on behalf of said company.

*[Signature]*  
Notary Public, State of Texas



RP-2020-89869

EXHIBIT "A"

The Property

The following lots as shown on the Final Plat of Cherry Pines Section 1, recorded on March 18, 2019 as Plat Number RP-2019-106919 of the Plat Records of Harris County, Texas:

Block 1, Lots 1-12

Block 2, Lots 1-16

Block 3, Lots 1-13

Block 4, Lots 1-50

Block 5, Lots 1-4

The following lots as shown on the Final Plat of Cherry Pines Section 2, recorded on April 9, 2019 as Plat Number RP-2019-142452 of the Plat Records of Harris County, Texas:

Block 1, Lots 1-21

Block 2, Lots 1-22

Block 3, Lots 1-8

EXHIBIT "B"

Common Areas

The following lots as shown on the Final Plat of Cherry Pines Section 1, recorded on March 18, 2019 as Plat Number RP-2019-106919 of the Plat Records of Harris County, Texas:

Reserve "A"

Reserve "B"

Reserve "C"

Reserve "D"

Reserve "E"

The following lots as shown on the Final Plat of Cherry Pines Section 2, recorded on April 9, 2019 as Plat Number RP-2019-142452 of the Plat Records of Harris County, Texas:

Reserve "A"

Reserve "B"

Reserve "C"

Reserve "D"

RP-2020-89869  
# Pages 45  
02/28/2020 07:41 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
DIANE TRAUTMAN  
COUNTY CLERK  
Fees \$188.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Diane Trautman*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

RP-2020-89869