

STATE OF TEXAS

COUNTY OF EL PASO

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

**THE OVERLOOK AT MISSION RIDGE**

**Prepared by / upon recording please return to:**

Hyatt & Stubblefield, P.C.  
1979 Lakeside Parkway, Suite 250  
Atlanta, Georgia 30084

## TABLE OF CONTENTS

	<u>Page</u>
INDEX TO DEFINED TERMS .....	v
BACKGROUND STATEMENT.....	1
DECLARATION OF COVENANT .....	1
PART ONE: INTRODUCTION TO THE COMMUNITY .....	2
<b>Article 1 Governing Documents .....</b>	<b>2</b>
1.1.    Scope and Applicability.....	2
1.2.    Definitions.....	2
1.3.    Interpretation of Certain References.....	3
1.4.    Conflicts and Ambiguities .....	3
<b>Article 2 Community Administration.....</b>	<b>4</b>
2.1.    Declarant.....	4
2.2.    The Association and its Board.....	5
2.3.    The Owners .....	5
2.4.    Builders.....	5
2.5.    Mortgagees.....	5
2.6.    Municipal Utility District.....	6
<b>Article 3 Community Structure and Organization.....</b>	<b>6</b>
3.1.    Units.....	6
3.2.    Common Area.....	6
3.3.    Area of Common Responsibility.....	7
3.4.    Service Areas .....	7
3.5.    Other Properties.....	7
<b>Article 4 Association Membership and Voting Rights.....</b>	<b>8</b>
4.1.    Membership .....	8
4.2.    Voting.....	8
PART TWO: COMMUNITY STANDARDS.....	8
<b>Article 5 Architecture, Landscaping, and Aesthetic Standards .....</b>	<b>8</b>
5.1.    General .....	8
5.2.    Design Review Authority.....	9
5.3.    Guidelines and Procedures.....	10
5.4.    Right to Appeal to Board .....	12
5.5.    No Waiver of Future Approvals.....	12
5.6.    Variances.....	12
5.7.    Limitation of Liability .....	13
5.8.    Certificate of Compliance .....	13
5.9.    Building Types .....	13
<b>Article 6 Maintenance, Repair, and Replacement .....</b>	<b>13</b>
6.1.    Maintenance of Units .....	13
6.2.    Maintenance of Other Properties .....	14
6.3.    Responsibility for Repair and Replacement.....	14
6.4.    Maintenance and Repair of Party Walls and Similar Structures .....	14
<b>Article 7 Use and Conduct.....</b>	<b>15</b>
7.1.    Use, Occupancy, and Transfer of Interests in Units.....	15
7.2.    Rulemaking Authority and Procedures .....	18
7.3.    Protection of Owners and Others .....	19
7.4.    Owners' Acknowledgment and Notice to Purchasers .....	20

**TABLE OF CONTENTS**  
(continued)

<b>Article 8 Compliance and Enforcement.....</b>	<b>20</b>
8.1. Compliance .....	20
8.2. Remedies for Non-Compliance .....	21
8.3. Board Decision to Pursue Enforcement Action .....	22
8.4. Attorneys' Fees and Costs .....	22
8.5. Enforcement of Ordinances.....	23
<b>PART THREE: ASSOCIATION OPERATIONS.....</b>	<b>23</b>
<b>Article 9 Property Management.....</b>	<b>23</b>
9.1. Acceptance and Control of Association Property .....	23
9.2. Maintenance of Area of Common Responsibility .....	23
9.3. Discontinuation of Operation.....	24
9.4. Restoring Damaged Improvements.....	24
9.5. Relationships with Other Properties .....	25
9.6. Provision of Services to Units.....	25
<b>Article 10 Association Insurance .....</b>	<b>26</b>
10.1. Required Coverages.....	26
10.2. Deductibles.....	26
10.3. Policy Requirements .....	27
10.4. Insurance Premiums .....	28
<b>Article 11 Association Finances .....</b>	<b>28</b>
11.1. Association Expenses.....	28
11.2. Budgeting for and Allocating Association Expenses .....	28
11.3. Special Assessments.....	30
11.4. Specific Assessments.....	30
11.5. Authority to Assess Owners; Time of Payment.....	30
11.6. Obligation for Assessments.....	31
11.7. Lien for Assessments .....	33
11.8. Exempt Property.....	34
11.9. Capitalization of Association .....	34
11.10. Use and Consumption Fees .....	34
<b>PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY .....</b>	<b>34</b>
<b>Article 12 Easements.....</b>	<b>34</b>
12.1. Easements in Common Area.....	34
12.2. Easements of Encroachment .....	35
12.3. Easements for Utilities and Infrastructure.....	35
12.4. Easements to Serve Additional Property .....	36
12.5. Easements for Maintenance, Emergency, and Enforcement.....	37
12.6. Easement for Fence and Landscape Maintenance .....	37
12.7. Private Streets and Alleys .....	37
12.8. Easements Over Property of MUD .....	38
<b>Article 13 Disclosures and Waivers.....</b>	<b>38</b>
13.1. Public Access.....	38
13.2. Nonresidential and Neighboring Uses.....	38
13.3. Safety and Security.....	39
13.4. Changes in Development Plan.....	39
13.5. View Impairment.....	39
13.6. Construction and Development Activity .....	39
13.7. High Voltage Power Lines; Radio and Telecommunication Towers .....	40

## TABLE OF CONTENTS (continued)

13.8.	Utility Easements.....	40
13.9.	High Pressure Gas Lines and Drill Sites.....	40
13.10.	Schools.....	40
13.11.	Natural Conditions.....	40
13.12.	MUD Disclosure Upon Transfer of Unit.....	41
<b>Article 14 Rights of Lenders .....</b>		<b>41</b>
14.1.	Provision of Mortgagee Information.....	41
14.2.	No Priority .....	41
14.3.	Failure of Mortgagee to Respond.....	41
14.4.	Amendment by Board.....	41
<b>PART FIVE: COMMUNITY DEVELOPMENT .....</b>		<b>42</b>
<b>Article 15 Expansion of the Community.....</b>		<b>42</b>
15.1.	Expansion by Declarant.....	42
15.2.	Expansion by the Association.....	42
15.3.	Additional Covenants and Easements .....	42
15.4.	Effect of Filing a Supplement.....	42
<b>Article 16 Additional Rights Reserved to Declarant.....</b>		<b>43</b>
16.1.	Special Development Rights .....	43
16.2.	Marketing and Sales Activities; Capture and Use of Images.....	43
16.3.	Right to Make Improvements, Replat.....	44
16.4.	Right to Approve Changes in Community Standards.....	44
16.5.	Additional Covenants and Restrictions.....	44
16.6.	Exclusive Rights to Use Name of Development.....	44
16.7.	Easement to Inspect and Right to Correct.....	44
16.8.	Right to Notice of Design or Construction Claims .....	45
16.9.	Right to Transfer or Assign the Declarant's Rights.....	45
16.10.	Termination of Rights.....	46
<b>Article 17 Dispute Resolution and Limitation on Litigation.....</b>		<b>46</b>
17.1.	Agreement to Encourage Resolution of Disputes Without Litigation .....	46
17.2.	Dispute Resolution Procedures.....	47
17.3.	Initiation of Litigation by Association .....	48
<b>PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS.....</b>		<b>49</b>
<b>Article 18 Changes in the Common Area.....</b>		<b>49</b>
18.1.	Assignment and Reassignment of Limited Common Area .....	49
18.2.	Condemnation.....	49
18.3.	Partition.....	49
18.4.	Transfer, Mortgaging, or Dedication of Common Area .....	50
<b>Article 19 Termination and Amendment of Declaration.....</b>		<b>50</b>
19.1.	Term and Termination .....	50
19.2.	Amendment.....	50

## TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	Land Initially Submitted to the Declaration
B	Land Subject to Annexation
C	Initial Rules
D	Certificate of Formation of The Overlook at Mission Ridge Association, Inc.
E	By-Laws of The Overlook at Mission Ridge Association, Inc.
F	Initial Design Guidelines

## INDEX TO DEFINED TERMS

Applicable Law, 3	General Budget, 29
Approval, 3	Governing Documents, 2
Area of Common Responsibility, 7	Improvements, 8
Association, 1	Lease and Leasing, 16
Base Assessment, 29	Limited Common Area, 6
Benefitted Units, 14	Maintenance, 3
Board, 4	Member, 8
Bound Parties, 46	Mortgage, 5
Builders, 5	Mortgagee, 5
By-Laws, 2	MUD, 6
Certificate of Formation, 2	MUD Facilities, 38
Claim, 46	Notice, 47
Claimant, 47	Other Properties, 7
Common Area, 6	Owner, 5
Common Expenses, 28	Owner Membership, 8
Community, 1	Party Structure, 14
Community-Wide Standard, 3	Person or Persons, 3
Consent, 3	Private Street, 37
Covenant to Share Costs, 25	Recorded, Recordation, or Recording, 3
Declarant, 1	Resale Certificate, 17
Declarant Affiliate, 4	Respondent, 47
Declarant Control Period, 4	Reviewer, 10
Declarant Membership, 8	Rules, 2
Declarant Rights, 4	Service Area, 7
Declaration, 1	Service Area Assessment, 29
Defect, 45	Service Area Budget, 29
Design Guidelines, 2	Service Area Expenses, 29
Design Review Committee or DRC, 9	Special Assessments, 30
Development and Sale Period, 4	Specific Assessments, 30
Development Plan, 4	Supplement, 2
Discretion or Determination, 3	The Overlook at Mission Ridge, 1
Fannie Mae, 27	Unit, 6
Freddie Mac, 27	

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
THE OVERLOOK AT MISSION RIDGE**

This Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge (as it may be amended and supplemented, the "**Declaration**") is established by Hunt Mission Ridge, LLC, a Texas limited liability company (together with its successors and assigns, "**Declarant**").

**BACKGROUND STATEMENT**

The Overlook at Mission Ridge is a planned community located in El Paso County, Texas. This Declaration set forth various covenants, easements, restrictions, rights and obligations that together provide a governance structure and flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of property within The Overlook at Mission Ridge.

Declarant has organized The Overlook at Mission Ridge Association, Inc., a Texas nonprofit corporation (with its successors or assigns, the "**Association**"), to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration and to own, operate, and/maintain various common areas and community improvements serving The Overlook at Mission Ridge, as described herein. The owner of each Unit or home now or hereafter made subject to this Declaration is automatically a member of the Association, as further described in this Declaration.

This document provides for automatic and mandatory membership in a property owners association as defined in Tex. Prop. Code Section 202.001. This document does not create a condominium under Texas law.

**DECLARATION OF COVENANT**

Declarant, as the owner of the property described in Exhibit "A" to this Declaration, hereby declares that such property and any additional property made subject to this Declaration in the future by amendment or supplement, shall constitute the "**Community**" known as "**The Overlook at Mission Ridge**," as such terms are used in this Declaration. This Declaration shall run with the title to such property, shall govern the development and use of the Community, and shall be binding upon and inure to the benefit of Declarant, the Association, and the current and future owners of any portion of the Community, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of the Community.

# PART ONE: INTRODUCTION TO THE COMMUNITY

## ARTICLE 1 GOVERNING DOCUMENTS

### 1.1. Scope and Applicability

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, collectively referred to in this Declaration as the "**Governing Documents**," include this Declaration and the other documents described in Table 1.1 below, as they may be amended and supplemented. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents. All owners and occupants shall be held accountable and liable for the actions of their tenants, guests, and invitees.

GOVERNING DOCUMENTS	
<b>Declaration:</b> (recorded)	this Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge, which creates obligations that are binding upon the Association and all current and future owners of property in the Community
<b>Supplement:</b> (recorded)	a recorded Supplement to this Declaration, which may submit additional property to this Declaration, impose additional obligations, restrictions, or easements on such property and/or designate special areas as described below
<b>Certificate of Formation:</b> (filed with the Secretary of State; copy attached as <u>Exhibit "D"</u> )	the Certificate of Formation of The Overlook at Mission Ridge Association, Inc., as it may be amended, which establishes the Association as a nonprofit corporation under Texas law
<b>By-Laws:</b> (Board adopts; copy attached as <u>Exhibit "E"</u> )	the By-Laws of The Overlook at Mission Ridge Association, Inc., as they may be amended, which govern the Association's internal affairs, such as membership, voting, elections, meetings, etc.
<b>Design Guidelines:</b> (Declarant adopts; initial set attached as <u>Exhibit "F"</u> )	the architectural and aesthetics standards adopted pursuant to Article 5, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
<b>Rules:</b> (initial set attached as <u>Exhibit "C"</u> )	the rules of the Association adopted pursuant to Article 7, which regulate use of property and activities within the Community
<b>Board Resolutions</b>	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and regulate the operation and use of property which the Association owns or controls

Table 1.1 – Governing Documents

### 1.2. Definitions

Capitalized terms used in the Governing Documents have the meaning ascribed to them in the paragraph where they first appear in bold print. An index to defined terms may be found following the Table of Exhibits



at the beginning of this document. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

### **1.3. Interpretation of Certain References**

**Community-Wide Standard.** Where the Governing Documents require compliance with the "Community-Wide Standard," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community; or (b) the minimum standards described in this Declaration, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Article 5). The Community-Wide Standard may or may not be set out in writing. Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

**Consent or Approval.** All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

**Discretion and Determination.** All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

**Maintenance.** All references in this Declaration to "**maintenance**" shall refer to maintenance, repair, and replacement, unless otherwise specified.

**Notice.** All references in this Declaration to "**notice**" shall refer to notice delivered in accordance with the provisions for notice set forth in the By-Laws.

**Person.** References in the Governing Documents to a "**Person**" or "**Persons**" shall refer to an individual or to a corporation, partnership, limited liability company, trust, or other legal entity.

**Recording.** All references in the Governing Documents to a "**recorded**" legal instrument, or to "**recordation**" or the "**recording**" of a legal instrument, shall refer to an instrument filed in, or the filing of a legal instrument in, the Office of the County Clerk of El Paso County, Texas or such other place designated as the official location for filing documents affecting title to real estate in El Paso County in order to make them a matter of public record.

**Statutes and Laws.** All references and citations to specific statutes or laws shall refer to such statute and law as it may be amended or renumbered from time to time.

### **1.4. Conflicts and Ambiguities**

If there are conflicts between any of the Governing Documents and applicable federal, state, or local laws and ordinances (collectively, "**Applicable Law**"), Applicable Law shall control. If there are conflicts between or among any of the Governing Documents, then this Declaration, the Certificate of Formation, the By-Laws, the Design Guidelines, and the Rules (in that order) shall control to the extent not inconsistent with Applicable Law. For purposes of this section, a "conflict" shall exist when the requirements of a document and Applicable Law, or two or more documents, are inconsistent and mutually exclusive. If provisions of two or more documents or laws address the same matter, but are not inconsistent or mutually exclusive, both shall be complied with, it being the intent that the Governing Documents shall supplement, and may be more restrictive or expansive than, Applicable Law to the extent permitted by Applicable Law, and that one document may be more restrictive or detailed than another document so long as not in conflict with the document that would control under this section in the event of a conflict.

The Governing Documents use diagrams, tables, and keynotes (text set apart in boxes with "key" icons) to emphasize or explain concepts and highlight certain key points. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

The Board may, by resolution, resolve any ambiguities in the Governing Documents, and the Board's reasonable interpretation of an ambiguous provision shall be determinative. If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

## ARTICLE 2 COMMUNITY ADMINISTRATION

### 2.1. Declarant

Declarant has established the vision for the Community and, through the Governing Documents, has set forth the principles that will guide the Community during the development and sale period and thereafter. Declarant's proposed plan of development of the Community (the "**Development Plan**") encompasses all of the property described in Exhibit "A" and may include all or a portion of the property described in Exhibit "B." However, Declarant is not obligated to submit property shown on the Development Plan to this Declaration. In addition, Declarant may submit property to this Declaration that is not shown on the Development Plan.

Declarant has reserved in the Governing Documents various rights and easements, including, without limitation, rights and easements with respect to development, expansion, marketing, sale, and administration of the Community and the Association (collectively, the "**Declarant Rights**"). Declarant may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which Declarant, any "Declarant Affiliate," or any "Builder" (defined in Section 2.4) owns real property in the Community or has an unexpired option to expand the Community pursuant to Article 15. A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with Declarant, and any Person that is an owner, a member, a partner, or a shareholder of Declarant.

Declarant has reserved other rights that may be exercised only during the "**Declarant Control Period**," which is the period of time that Declarant is entitled to appoint a majority of the members of the Association's board of directors (the "**Board**"). The Declarant Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 85% of the total number of Units permitted by applicable zoning for the property described in the Development Plan have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale;

(b) December 31, 2042; or

(c) when, in its discretion, Declarant so determines and declares in a recorded instrument.

Declarant has certain approval rights for a limited period as provided in the By-Laws after the termination of the Declarant Control Period. Other Declarant Rights, including easements, have no stated termination and are intended to continue beyond termination of the Development and Sale Period.

Declarant may assign its status as the Declarant and any or all of the Declarant Rights to others in accordance with Section 16.9.



**DECLARANT RETAINS VARIOUS RIGHTS TO FACILITATE THE DEVELOPMENT AND SALE OF THE COMMUNITY, INCLUDING THE RIGHT DURING THE "DECLARANT CONTROL PERIOD" TO APPOINT A MAJORITY OF THE MEMBERS OF THE ASSOCIATION'S BOARD OF DIRECTORS.**

## **2.2. The Association and its Board**

Declarant has established the Association as the primary entity responsible for administering the Community in accordance with the Governing Documents. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or Applicable Law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers which the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents, except as specifically limited in the Certificate of Formation, this Declaration, and the By-Laws. It may also take any action reasonably necessary to effectuate any such right or privilege. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members, and shall have no authority to institute or intervene in litigation, arbitration, or other proceedings in the name of or on behalf of any Owner or Owners pertaining to the design or construction of any improvements on a Unit.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

## **2.3. The Owners**

Each Person that holds record title to a "Unit" (as defined in Section 3.1) is referred to in the Governing Documents as an "**Owner**." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a deed of trust, mortgage, or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents. Where the Governing Documents or applicable law require notice to an Owner or member of the Association, notice given to any co-Owner of a Unit shall be deemed notice to all co-Owners of such Unit.

Every Owner has a responsibility to comply with the Governing Documents and uphold the Community standards described in Part Two of this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Article 4 and in the By-Laws.

## **2.4. Builders**

"**Builders**" are those Persons who purchase one or more unimproved Units to construct dwellings for resale in the ordinary course of their business. Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, Declarant may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

## **2.5. Mortgagees**

If a Unit is made subject to a recorded deed of trust or other form of security instrument affecting title to a Unit (a "**Mortgage**"), then the holder or beneficiary of that Mortgage (a "**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Article 14.

## **2.6. Municipal Utility District**

The Overlook at Mission Ridge is located within Paseo Del Este Municipal Utility District Nos. 1 and 4 (the "MUD"), a special taxing district created pursuant to Texas law, to acquire, construct, finance, issue bonds for, improve, own, operate, maintain, and repair water and sewer infrastructure, roads, storm damage, and certain related improvements within the Community. The MUD may impose and levy ad valorem taxes or assessments, or both, on all or portions of property within the Community. Such taxes and assessments are in addition to assessments and fees levied by the Association pursuant to this Declaration or by El Paso County and other taxes and assessments authorized by law. The MUD may also issue general obligation or revenue bonds to finance its operations.

Although the MUD may own real property and/or improvements subject to this Declaration, and shall be obligated to comply with this Declaration as to any such property, the MUD shall not be a member of the Association nor shall it have any seat on the Board. The MUD has no voting rights in or obligation to pay assessments to the Association, except to the extent that the property it owns constitutes a Unit, as defined in Section 3.1.

At any time, and from time to time, Declarant or the Association may transfer ownership and/or maintenance responsibility for properties within the Community to the MUD and vice versa. As a result of any such transfer, the scope of the Association's maintenance responsibilities under this Declaration may be reduced or expanded.

## **ARTICLE 3 COMMUNITY STRUCTURE AND ORGANIZATION**

### **3.1. Units**

The Governing Documents refer to the homes and home sites in the Community as "**Units.**" A "Unit" is a portion of the Community depicted as a separately identified lot or parcel of land or airspace in a recorded subdivision plat, survey, or condominium instrument, which portion may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single household. However, any property conveyed to the Association as "Common Area" (as described below) shall not be considered a "Unit," even though such property may be identified as a separate lot on a recorded subdivision plat and originally intended for construction of a dwelling. Likewise, property dedicated to the public or the MUD shall not be considered a "Unit." The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on such land. A parcel of land intended for development as one or more Units shall be treated as a single Unit until a subdivision plat or survey is recorded dividing it into more than one Unit. The subdivision and combination of Units is subject to the provisions of Section 7.1(d).

### **3.2. Common Area**

**(a) Common Area.** Any real property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Common Area.**" The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association. Declarant and others may establish and convey Common Area to the Association as provided in Section 9.1.

**(b) Limited Common Area.** Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of two or more Units. Limited Common Areas might include things such as alleys, private drives, and paseos, among other things, that benefit only individual Units or a portion of the Community. Declarant may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this

Declaration. At any time during the Development and Sale Period, Declarant may assign use of the same Limited Common Area to additional Units.

### **3.3. Area of Common Responsibility**

All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "**Area of Common Responsibility**," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way and public parks. The initial Area of Common Responsibility is described in Article 9.

### **3.4. Service Areas**

Units may be assigned to one or more "**Service Areas**" in which the Units share Limited Common Areas or receive special services or benefits from the Association that the Association does not provide to all Units. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits and services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous. The costs incurred by the Association for the benefit of a Service Area shall be allocated among the Units within such Service Area as provided in Article 11 or in the Supplement or Board resolution establishing such Service Area.

During the Development and Sale Period, Declarant may (i) designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" to this Declaration or in a Supplement executed and recorded in accordance with Article 15; and (ii) unilaterally amend this Declaration or any Supplement to designate or change Service Area boundaries; provided, any action under this paragraph shall require the consent of the Owners of any Units added or withdrawn from the Service Area, if not owned by Declarant.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of at least 67% of the Units proposed to be included in such Service Area, provided that during the Development and Sale Period, the written consent of Declarant shall also be required.

The Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent, and act on behalf of, the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

### **3.5. Other Properties**

In addition to the above, the Community may include property dedicated to the public and property owned or controlled by the MUD or another governmental or quasi-governmental entity (collectively, "**Other Properties**"). Any Other Properties shall be subject to the provisions of this Declaration, including, without limitation, the provisions of Part Two of this Declaration relating to community standards, the easements set forth in Article 12, and the rights of Declarant described in Article 16, except to the extent that applicability of such provisions is specifically limited to Units; however, Other Properties shall not be subject to assessment by the Association for Common Expenses, and the owners of Other Properties shall have no membership or voting rights in the Association by virtue of ownership of such Other Properties, unless such property would fall within the definition of a "Unit" under Section 3.1 if owned by any other Person.

## ARTICLE 4

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

#### 4.1. Membership

The Association initially has two classes of membership: the Owner Membership (comprised of all Owners, including Builders) and the Declarant Membership (consisting solely of Declarant).

**(a) Owner Membership.** Every Owner is automatically a "**Member**" of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, a limited liability company, or other legal entity, its membership rights may be exercised by any officer, director, partner, managing member, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Area recreational facilities available for use by Owners.

**(b) Declarant Membership.** Declarant holds the sole Declarant Membership. The Declarant Membership shall terminate two years after expiration of the Declarant Control Period, or on such earlier date as Declarant determines and declares in a recorded instrument.

#### 4.2. Voting

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 11.8.

If there is more than one Owner of the Unit, the right to vote, consent, or grant approval for such Unit shall be exercised, if at all, as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit or grant consent or approval as the Owner of the Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting (in the case of a vote taken, or consent or approval granted, outside of a meeting). If more than one co-Owner attempts to cast the vote or consent for any Unit, the Unit's vote shall be suspended unless one of the co-Owners presents, at the time the vote is cast, evidence satisfactory to the President or other person presiding over the meeting or balloting to establish majority agreement of the co-Owners as to how the vote is to be cast, in which case the vote may be cast in such manner. In no event shall more than one vote be cast for any Unit.

## PART TWO: COMMUNITY STANDARDS

### ARTICLE 5

#### ARCHITECTURE, LANDSCAPING, AND AESTHETIC STANDARDS

#### 5.1. General

All site work, landscaping, structures, improvements, modifications, and items placed on a Unit or on Other Properties in a manner or location visible from outside of any existing structures on the Unit or Other Properties, including fences, sports, play, and maintenance equipment, outdoor furniture and storage, and decorative items (collectively, "**Improvements**"), are subject to standards for design, development, landscaping, and aesthetics adopted pursuant to this Article ("**Design Guidelines**") and the approval procedures set forth in this Article, except to the extent that Tex. Prop. Code Chapters 202 and 209, this Article, or the Design Guidelines may otherwise provide.

No prior approval is necessary to repaint the exterior of previously painted surfaces of existing structures using the most recently approved color scheme or to repair or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures; however, the Owner shall notify the Association before undertaking such activities. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of porches and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee in its sole discretion otherwise approves. Approval under this Article is not a substitute for any approvals or reviews required by El Paso County, Texas, or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

Nothing in this Article or the Design Guidelines shall be applied or construed to prohibit or restrict the Owner of a Unit on which a dwelling is located from using an adjacent Unit owned by such Owner for any Improvements customarily appurtenant to a dwelling and of a type that would be permitted on the Unit containing the dwelling, subject to prior approval of the proposed Improvements as to size, location, shielding, and aesthetics. A Unit shall be considered "adjacent" to the Unit containing a dwelling if it is contiguous to such Unit and fronts on the same street or, in the case of a dwelling on a corner Unit, is contiguous to the side or rear property line of such corner Unit. Any Owner who elects to use an adjacent Unit for purposes permitted in this paragraph shall be subject to the requirements of Tex. Prop. Code Section 209.015 upon resale or transfer of either or both of such Units.

This Article shall not apply to Declarant's design and construction activities or to the Association's activities during the Declarant Control Period.

## **5.2. Design Review Authority**

**(a) Declarant.** Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings that are substantially complete and occupied or ready for occupancy. Declarant may designate one or more persons to act on its behalf in reviewing any application. Declarant may also establish a committee comprised of such persons as Declarant deems appropriate (which may but need not include Builders, architects, engineers, or other professionals) to review applications and make recommendations to Declarant of approval or disapproval during the period of time that Declarant holds reviewing authority under this Article. In reviewing and acting upon any request for approval, Declarant and its designee act solely in Declarant's interest and owe no duty to any other Person.

From time to time, Declarant may delegate any or all of its rights under this Article to other Persons or committees, including the Board or the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior control, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as Declarant has any rights under this Article, the jurisdiction of others shall be limited to such matters as Declarant specifically delegates.

**(b) Design Review Committee.** Upon Declarant's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of Declarant's rights under this Article, the Board shall assume jurisdiction over matters within the scope of the delegated authority or this Article, respectively. The Board may, but shall not be required to, appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume responsibility for such matters. If appointed, the DRC shall consist of at least three, but not more than five, persons who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any,

as the Board may determine appropriate consistent with applicable law. In the absence of the appointment of a separate committee, the Board shall serve as the DRC under this Article.

During the Development and Sale Period, the DRC shall notify Declarant in writing within seven business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this Article. A copy of the application and any additional information Declarant may require shall accompany the notice. Declarant shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

**(c) Reviewer.** For purposes of this Article, the entity or committee having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

**(d) Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application and conduct a final inspection for compliance with approved plans. The Board may include the compensation of such persons in the Association's annual operating budget.

**(e) Construction Deposit.** As a condition of approval of any application hereunder, the Reviewer may require the applicant to post a construction deposit. The Association shall be entitled to draw upon the construction deposit to cover costs that it incurs in cleaning up dirt or debris and repairing damage to any subdivision improvements or Common Areas which the Board determines, after notice to the applicant and an opportunity for a hearing in accordance with the By-Laws, is attributable to the construction activities of the applicant or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the applicant's property. The applicant shall provide funds to restore the construction deposit to its original amount within 10 days after written request from the Association notifying the applicant of the amount of any disbursement from the applicant's construction deposit. Upon completion of all work in accordance with the approved plans, the applicant shall be entitled to a refund of the applicant's construction deposit (or if any portion has been applied to cover the Association's costs pursuant to this section and not restored, then the balance remaining, if any).

### **5.3. Guidelines and Procedures**

**(a) Design Guidelines.** The initial Design Guidelines are attached as Exhibit "E." but are subject to amendment as provided in this section. The Design Guidelines may contain general provisions applicable to the entire Community as well as specific provisions that vary among locations within the Community and may also include rules governing construction activities within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless Declarant also delegates the power to amend to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC may amend the Design Guidelines with the Board's consent. No amendment shall be inconsistent with the provisions of Tex. Prop. Code Chapter 202.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to, or removal of, any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such



amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive. Any amendment to the Design Guidelines shall be effective upon recording.

The Reviewer shall make the Design Guidelines, as they may be amended, available to Owners and their contractors upon request.

**(b) Procedures.** Except as this Declaration or the Design Guidelines provide otherwise, no activities within the scope of this Article (as described in Section 5.1) may begin on any portion of the Community until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner and other applicant acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

Subject to the provisions of Tex. Prop. Code Chapter 202 and this Declaration, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article 17 or judicial review so long as they are made in good faith and in accordance with required procedures, Tex. Prop. Code Chapter 202, and applicable laws and restrictive covenants.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to Declarant's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, the applicant may notify the Reviewer in writing by certified mail, return receipt requested, demanding a response and, if the Reviewer fails to respond within 14 days after receipt of such demand, approval shall be deemed given, but only to the extent that the application is in conformance with the Design Guidelines. No approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.6.

Notwithstanding the above, while Declarant is the Reviewer, it may dispense with the written application and approve plans and specifications for construction by any Builder pursuant to the terms of the agreement of sale between Declarant and such Builder. Any such plans shall be deemed approved hereunder, provided that such approval is set forth in a written instrument signed by Declarant or its authorized representative identifying the approved plans and specifications, and then subject to any conditions set forth in such instrument.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless

otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

Upon completion of all work for which approval has been granted, the applicant shall notify the Reviewer in writing that construction is complete. The Reviewer may conduct an inspection within 30 days thereafter and notify the applicant in writing as to any deviations or deficiencies noted from the approved plans. If deviations or deficiencies are noted, the applicant shall promptly take such action as the Reviewer has specified in such notice to conform the work to the approved plans.

The Reviewer may exempt certain activities from the application and approval requirements of this Article if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

#### **5.4. Right to Appeal to Board**

After termination of Declarant's review authority under Section 5.2(a), any decision by the DRC denying an application for proposed Improvements may be appealed to the Board. A written notice of the denial must be provided to the Owner by mail, hand delivery, or electronic delivery and shall:

(a) describe the basis for the denial in reasonable detail and changes, if any, to the application or proposed Improvements as a condition to approval; and

(b) inform the Owner that the Owner may request a hearing before the Board on or before the 30<sup>th</sup> day after the date the notice was sent to the Owner.

If a hearing is requested, the Board shall hold a hearing under this section not later than the 30<sup>th</sup> day after the Board receives the Owner's hearing request and shall notify the Owner of the date, time, and place of the hearing not later than the 10<sup>th</sup> day before the hearing date. Only one hearing is required on any application. During a hearing, the Board or the Association's designated representative and the Owner or the Owner's designated representative shall each have the opportunity to discuss, verify facts, and attempt to resolve the denial of the Owner's application, and the changes, if any, requested by the DRC in the notice of denial provided to the Owner. Either the Board or the Owner may request a postponement of the hearing for up to 10 days, and such request shall be granted. Additional or longer postponements may be granted by agreement of the parties. The Board may affirm, modify, or reverse, in whole or in part, any decision of the DRC.

#### **5.5. No Waiver of Future Approvals**

The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **5.6. Variances**

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. However, no variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. Any variance requires Declarant's written consent during the Development and Sale Period and, thereafter, the Board's written consent.

## **5.7. Limitation of Liability**

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they shall not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, the Association, the Reviewer, any committee, and any director, officer, shareholder, employee, agent, or member of any of the foregoing shall not be liable for: (a) soil conditions, alteration of drainage patterns, or other general site work performed by Owners or their contractors; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction or modifications to any Unit. In all matters arising under this Article, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

## **5.8. Certificate of Compliance**

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

## **5.9. Building Types**

Permitted uses on a Unit include one detached, single family dwelling, together with a private garage and other customary appurtenances to private dwellings, including porches, patios, and small storage buildings that are reasonable and appropriate for the Community, as determined by the Reviewer. No more than one dwelling shall be erected on any Unit. The dwelling on each Unit shall have an enclosed, attached or detached garage for not less than two nor more than three vehicles.

# **ARTICLE 6 MAINTENANCE, REPAIR, AND REPLACEMENT**

## **6.1. Maintenance of Units**

Each Owner shall maintain such Owner's Unit, including all structures, landscaping, and other improvements comprising the Unit, in a good, clean, and neat condition and in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplement, or by law. All grass, vegetation, and other landscaping must be properly irrigated and maintained and trimmed at regular interval; weeds shall be regularly removed. Shrubs, vines, plants, and trees that are damaged, diseased, or dead shall be promptly removed from the Unit and must be replaced if necessary to comply with the minimum landscape requirements.

Each Owner is responsible for maintaining, repairing, and replacing as necessary the sidewalk(s) along street rights-of-way on or abutting the Owner's Unit. The Owner shall also maintain the landscaping within that portion of any public right-of-way located between the sidewalk or Unit boundary and the street curb.

Notwithstanding the foregoing, no Owner or occupant of a Unit may modify the building exterior or landscaping on his or her Unit or within adjacent public right-of-way without prior approval pursuant to Article 5. In addition, nothing in this Declaration shall be construed to require irrigation of landscaping to the extent that such irrigation would otherwise be prohibited during any period in which the Governor of the State of Texas, any agency of the State of Texas, or any unit of local government having jurisdiction over the Community has imposed water conservation measures..

## **6.2. Maintenance of Other Properties**

The MUD or any other entity which owns or has responsibility for Other Properties (as described in Article 3) shall maintain such Other Properties in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants. The Association may assume maintenance responsibility for any property in the Community upon the Board's determination, pursuant to Article 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association may assess the cost of such maintenance against the benefitted property as a Specific Assessment pursuant to Section 11.4.

## **6.3. Responsibility for Repair and Replacement**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on such Owner's Unit, less a reasonable deductible. The Association may, but shall have no obligation to, monitor compliance with this requirement. Each Owner shall furnish a certificate of insurance to the Association within 10 days of the Association's request.

Within 90 days after any damage to or destruction of a structure on a Unit or Other Properties, the Owner or Person responsible for repair and replacement thereof shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Article 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Unit shall be cleared of debris and thereafter maintained in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner or Person responsible for repair and replacement of Other Properties requiring repair or replacement hereunder shall pay any costs that insurance proceeds do not cover.

This section shall apply to the MUD and any other Person which owns or is responsible for maintaining Other Properties in the same manner as if the MUD or other Person were an Owner and its property were a Unit.

## **6.4. Maintenance and Repair of Party Walls and Similar Structures**

Except as may otherwise be provided by state law, a written agreement between Owners, or other recorded documents applicable to affected Units:

**(a) Original Construction.** Each wall, fence, driveway, or similar structure built as part of the original construction on Units which serves and/or separates any two or more adjoining Units, and any replacement thereof, shall be considered a "**Party Structure**." The cost of reasonable repair and maintenance of a Party Structure shall be shared equally by the Owners who use or whose Units are served by the Party Structure ("**Benefitted Units**"), except that: (i) the cost of maintenance or repairs that affect only one side of a Party Structure shall be the sole responsibility of the Owner of the Unit undertaking such maintenance or repairs; and (ii) if any maintenance or repairs are necessitated by the conduct of the Owners, occupants, or guests of only one of the Benefitted Units, then the Owner of the Unit whose conduct (or the conduct of guests or

occupants) necessitated the maintenance or repairs shall be liable for the full cost of any necessary maintenance or repairs.

Upon not less than 10 days prior written notice from the Owner of any Benefitted Unit to the Owner of each other Benefitted Unit, specifying the need for maintenance or repairs to a Party Structure and the estimated cost thereof, the Owner giving such notice may perform any necessary maintenance or repair. Maintenance or repair specified in such notice shall be presumed "necessary" unless an Owner of a Benefitted Unit gives written notice within such 10-day period to the Owner of each other Benefitted Unit and to the Board, challenging the necessity of such maintenance or repair, in which case the Board may determine whether the maintenance or repair is necessary and appropriate, and the Board's determination shall be final and binding. Within 30 days after receipt of a written request for reimbursement for any necessary maintenance or repair, accompanied by evidence of the total cost incurred, the Owner(s) of the other Benefitted Units served by such Party Structure shall reimburse the Owner who has incurred such cost for their pro rata share of the reasonable cost it has incurred in performing such maintenance or repair. If an Owner responsible for reimbursement fails to pay the amount due within 30 days after receipt of such request, the Owner who has incurred the cost shall have the right to file a lien against the Benefitted Unit of the Owner from whom reimbursement is due to secure the amounts due plus interest at 10% per annum from the 30<sup>th</sup> day after the date of such request, which lien may be filed in the same manner as a construction lien under Texas law and subject to the same notice requirements.

The right to and the obligation of contribution for Party Structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title. To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any Party Structure. Any dispute concerning a Party Structure shall be subject to the provisions of Article 17.

**(b) Fence Additions.** If an Owner installs, constructs, or erects a fence on the common boundary line between such Owner's Unit and an adjacent Unit, and the Owner of the adjacent Unit thereafter attaches another section of fence to it or otherwise makes use of such fence for the purpose of enclosing all or a portion of the adjacent Unit, then such fence shall become a Party Structure for the purpose of each Owner's responsibility for contributing to the maintenance, repair, and replacement of such fence. However, nothing herein shall confer any ownership interest in or right to remove any such fence on the Owner of the adjacent Unit.

**(c) Failure to Maintain.** In the event that the Owners who share a Party Structure fail to provide necessary maintenance or repairs to the Party Structure within 10 days after the date of written notice from the Association advising of the need for such maintenance or repairs, the Association shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owners and their Units.

## **ARTICLE 7**

### **USE AND CONDUCT**

#### **7.1. Use, Occupancy, and Transfer of Interests in Units**

**(a) Residential and Related Uses.** Units may be used only for residential and related purposes, except as Declarant may otherwise authorize with respect to construction, marketing, and sale activities of Declarant and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable law and zoning requirements;

(iii) does not violate Section 7.1(c) or involve: (A) the sale of controlled substances or firearms; (B) the propagation, growing, sale, or distribution of cannabis or cannabis derivatives for any purpose, whether or not legal; (C) regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees; or (D) door-to-door solicitation within the Community; and

(iv) is consistent with the Community's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Provision of child care on a limited basis for a fee shall not be considered a "business" in violation of this subsection so long as the child care provider: (i) resides in the home where the child care is provided; (ii) does not employ other persons to assist in the provision of child care; and (iii) does not provide child care to more than two children at a time who do not reside in the home where the child care is provided, or more than four children total, including the children of the child care provider. The Board is specifically authorized to adopt rules regulating child care operations within the Community, including rules limiting parking of vehicles, traffic flow, and use of recreational facilities in connection with child care operations, in order to minimize the impact of such operations upon any portion of the Community.

**(b) Leasing.** For purposes of this Declaration, the terms "**Lease**" and "**Leasing**" shall refer to the granting of a right of exclusive occupancy of a Unit to any Person other than the Owner for which the Owner receives any consideration or benefit. Leasing of Units shall be subject to strict compliance with the following:

(i) Any Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling or outbuildings on a Unit may not be separately leased;

(ii) The leasing of multiple Units by a single Owner, or the leasing of multiple Units by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to restrict the leasing of two or more Units by an institutional lender upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure;

(iii) No signs shall be posted in the Community or on the right-of-way adjacent to the Community advertising the availability of the Unit for rent, except that the Owner of a Unit being offered for lease may post one standard real estate sign on such Unit advertising the Unit for rent during any period that the Unit is vacant and authorized to be rented hereunder and within the 90 day period immediately prior to expiration of the term of any lease which is not being renewed, provided that such sign complies with the Design Guidelines adopted pursuant to Section 5.3 and any applicable sign ordinances;

(iv) Any lease shall be in writing and shall provide for a minimum initial term of at least 30 days. The Unit may not be subleased, and the lease may not be assigned during the initial 30-days of the lease term. In the event of termination of the lease within the first 30 days after the tenant has taken occupancy, the Owner may not enter into a new lease with a term commencing within 30 days after the commencement of the previous lease without prior approval from the Board, which shall not be granted unless the Board determines, after consideration of the facts and circumstances, that the Owner acted in good faith, with no intent to circumvent the requirements of this subsection (b), and could not reasonably have anticipated the early termination of the previous lease at the time the lease was signed; and

(v) All leases shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide: (A) an alternate mailing address for the Owner; (B) the name of the Owner's local management agent responsible for managing the lease of the Unit and such agent's contact information; (C) the commencement date and term of the lease; (D) contact information, including the name, mailing address, phone number, and email address, of each adult who will reside in the Unit under the lease; and (E) such additional information the Board may reasonably require consistent with Tex. Prop. Code Section 209.016. The Owner shall give the tenant copies of the Governing Documents prior to the tenant taking occupancy of the Unit.

In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing. Such Rules may require that Owners use Board-approved lease forms or include specific lease terms in any lease.

If and to the extent that any provision of this subsection (b) would disqualify a Unit for a federally-insured or federally-guaranteed Mortgage loan, any Unit that would otherwise be eligible for such a Mortgage loan shall be exempt from such provision during any period that: (i) any application for such a Mortgage loan is pending; (ii) such Mortgage is insured or guaranteed under any federal program providing insurance for repayment of or guaranteeing such Mortgage loan; or (iii) the Unit is owned by the Mortgage holder or by any federal agency pursuant to such federal program following the exercise of the Mortgage holder's remedies due to the borrower's default under the terms of the Mortgage.

**(c) *Transient or Lodging Use; Timesharing.*** No Person shall advertise or operate any Unit, or any room, garage, or other portion of a Unit, as a hotel, inn, "bed and breakfast," vacation rental, or for other short-term lodging purposes, nor shall any Unit be used for lodging of persons other than the Owner or a tenant who resides in the Unit pursuant to a lease complying with Section 7.1(b), members of their respective households, and their occasional, non-paying guests. Except as provided above, no Unit shall be used for overnight lodging of a business' employees, customers, or invitees when the Owner, tenant, or another permanent resident of the Unit is not present in the Unit. Notwithstanding the foregoing, if a Unit is owned by a legal entity, such entity may permit the Unit to be occupied on a long-term or short-term basis by any member, trustee, director, officer, partner, or employee of such entity which the Owner identifies in advance by written notice to the Association, provided that no more than one such person is permitted to occupy the Unit in any 30-day period. No Unit shall be used for operation of any type of timesharing, fraction-sharing, residence club, vacation club, destination club, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule, on a reservation basis, or on such other basis as may be set forth in the terms of the program.

**(d) *Transfer of Title; Resale Certificate.*** Any Owner other than Declarant desiring to sell or otherwise transfer title to such Owner's Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

Within 10 business days after the Association's receipt of a written request from an Owner, an Owner's agent, a purchaser of a Unit, a purchaser's agent, or a title insurance company acting on behalf of the Owner or purchaser of a Unit, specifying the name and address of the person to whom it is to be delivered, the Association shall deliver to the person specified in such request a resale certificate containing all information required by Tex. Prop. Code Section 207.003(b) ("**Resale Certificate**"), along with a current copy of the Governing Documents. If the requestor is a purchaser or purchaser's agent, the Association may require reasonable evidence that the purchaser has a contractual or other right to acquire the Unit prior to preparing the Resale Certificate. The Resale Certificate shall be prepared as of a date which is not more than 60 days prior to the date of delivery and delivered by mail, hand delivery, or such alternative method of delivery as

may be specified in the written request. At any time within 180 days after the date of the initial request, the requestor may request an update to such certificate, which update shall contain the information required by Tex. Prop. Code Section 207.003(f) and shall be delivered not later than the seventh business day after the date of such request. The Association may charge a reasonable fee, not to exceed the limitations set forth in Tex. Prop. Code Section 207.003(c), to prepare, assemble, copy, and deliver a Resale Certificate and accompanying information, and any update thereto, and may require such fee to be paid before preparing the Resale Certificate or update.

If the Resale Certificate indicates that there are known conditions on the Unit which violate the Governing Documents, or that there are amounts due and unpaid to the Association on account of the Unit, the Owner shall be responsible for curing such violations and paying any such amounts due prior to transfer of title and, upon doing so, may request an update to the Resale Certificate to reflect such action. If the transferring Owner fails to cure violations or pay amounts due prior to transfer of title, the new Owner shall be jointly and severally responsible with the prior Owner for curing such violations and paying any amounts due and unpaid.

The Association may require each new Owner of a Unit, upon acceptance of title to a Unit, to pay to the Association a reasonable administrative fee in such amount as the Board may determine necessary to cover the costs the Association incurs to update the Association's records, not to exceed the limitations set forth in Tex. Prop. Code Section 207.003(c).

**(e) Subdivision and Combination of Units.** No Person, other than Declarant and Builders whom Declarant may authorize in writing, shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

## **7.2. Rulemaking Authority and Procedures**

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, in addition to such amendments as may be adopted pursuant to Article 19, Declarant, the Board and the Members are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

**(a) Declarant Authority.** So long as Declarant has the right unilaterally to amend this Declaration pursuant to Section 19.2, Declarant may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules.

**(b) Board Authority.** Subject to the notice requirements in subsection (d) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to Declarant's approval.

**(c) Membership Authority.** Subject to the notice requirements in subsection (d), Members entitled to cast at least a majority of the total votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to Declarant's approval.

**(d) Notice.** The Board shall send notice to all Owners or publish notice in a Community newsletter or on a Community intranet or website concerning any Rule change proposed under subsections (b) or (c) above at



least five business days prior to the meeting of the Board or the Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

**(e) *Effective Date.*** A Rules change under this Section 7.2 shall be reflected in an amendment to Exhibit "C" executed by Declarant or the Association, or both, as applicable, and recorded. Any such amendment shall take effect upon recording or 30 days after the date on which written notice of the Rules change is given to the Owners, whichever is later.

**(f) *Administrative and Operating Policies.*** The procedures set forth in this section do not apply to administrative policies or to procedures and operating policies that the Board may adopt relating to the Areas of Common Responsibility, such as hours of operation of any Common Area facilities, safety regulations, or method of allocating or reserving use of a facility (if permitted), notwithstanding that such policies may be referred to as rules or published as part of the Rules.

**(g) *Conflicts.*** No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration other than the Rules, nor shall it interfere with the authority of the Reviewer under Article 5. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

### **7.3. Protection of Owners and Others**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

**(a) *Similar Treatment.*** Similarly situated Units shall be treated similarly; however, the Rules may vary by housing type, location, or other distinct characteristics that the Board deems to justify such variations.

**(b) *Flags and Other Displays.*** No Rule shall abridge the right of the Owner or occupant of a Unit to display the official flag of the United States of America in accordance with 4 U.S.C. Sections 5-10, the flag of the State of Texas in accordance with Chapter 3100 of the Texas Government Code, or an official or replica flag of any branch of the United States armed forces, on the Unit owned or occupied by such Owner, except that Rules may regulate the location, size, use and manner of display of such flags and flagpoles and associated lighting to the extent permitted by Tex. Prop. Code Chapter 202.

No Rule regulate the content of political signs, except that the Association may adopt time, place, and manner restrictions with respect to such signs, symbols, and displays as are visible from outside structures on the Unit, including reasonable limitations on size, number, and time period within which they may be displayed, consistent with Tex. Prop. Code Chapter 202 and any other applicable provisions of Texas law.

No Rule shall prohibit an Owner or occupant of a Unit from displaying on such Unit:

(i) one or more religious items, the display of which is motivated by the Owner's or occupant's sincere religious belief, provided that such display does not threaten the public health or safety, violate a law other than a law prohibiting the display of religious speech, or violate any applicable building line, setback requirement, or easement, is not attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture, and is not, in the Board's determination, patently offensive to a passerby for reasons other than its religious content; or

(ii) holiday symbols and decorations of the kind normally displayed in single-family residential neighborhoods; however, the Association may adopt time, place, and manner restrictions with respect to holiday signs, symbols, decorations, and displays visible from outside structures on the Unit, including reasonable limitations on size, number, illumination, and noise.

**(c) Household Composition.** No Rule shall interfere with an Owner's freedom to determine the composition of its household, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on the size and facilities comprising the dwelling on the Unit and its fair share use of the Common Area.

**(d) Activities Within Dwellings.** Except as otherwise specifically provided in this Declaration, no Rule shall interfere with the lawful activities carried on within a dwelling, except that the Rules may prohibit activities inconsistent with this Declaration or otherwise inconsistent with a residential use of the property. The Rules may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance to persons outside the dwelling, as the Board may determine.

**(e) Allocation of Burdens and Benefits.** No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article 11.

**(f) Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit, except as provided in Section 7.1.

**(g) Abridging Existing Rights.** No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Governing Documents in effect at the time such personal property was brought onto the Unit; provided, this exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule. No Rule shall regulate the operation of licensing of a golf cart in a manner inconsistent with the rights afforded under Tex. Trans. Code Section 551.403.

**(h) Reasonable Rights to Develop.** No Rule adopted pursuant to Section 7.2 may unreasonably interfere with Declarant's ability to develop, market, and sell property in the Community.

**(i) Interference with Easements.** No Rule adopted pursuant to Section 7.2 may unreasonably interfere with the exercise of any easement.

#### **7.4. Owners' Acknowledgment and Notice to Purchasers**

By accepting title to a Unit, each Owner acknowledges and agrees that the use, enjoyment, and marketability of such Owner's Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

## **ARTICLE 8**

### **COMPLIANCE AND ENFORCEMENT**

#### **8.1. Compliance**

Every Owner and occupant of a Unit, their tenants and guests, and any other visitor entering the Community, and every Person which owns or controls Other Properties, must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the

occupants, tenants, guests, or invitees to their Units, and for any damage to the Area of Common Responsibility that such Persons may cause.

## **8.2. Remedies for Non-Compliance**

The Association, Declarant, the MUD, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the terms of Article 17 and Article IX of the By-Laws, as applicable; provided, prior to the Association filing suit against an Owner, other than a suit to collect assessments or foreclose the Association's lien under Article 11, the Association shall provide written notice to the alleged violator and an opportunity for a hearing in accordance with the By-Laws. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

**(a) Sanctions Requiring Compliance with Enforcement Provisions of By-Laws.** Subject to compliance with Article IX of the By-Laws, to the extent applicable, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit. This subsection (a)(ii) shall not preclude Association personnel or facility staff from immediately ejecting from a Common Area facility any person who violates safety rules or threatens the safety of other users;

(iii) suspend services the Association provides to the Unit or to occupants thereof (except that no opportunity for a hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(iv) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 5, including the Design Guidelines, from continuing or performing any further activities in the Community;

(vi) levy Specific Assessments pursuant to Section 12.4(b) to cover costs the Association incurs in bringing a Unit or Other Properties into compliance with the Community-Wide Standard or other requirements under the Governing Documents or to reimburse the Association for property loss or damage arising from the conduct of the Owner or occupants of the Owner's Unit;

(vii) record a notice of violation with respect to any Unit or Other Properties on which a violation exists;

(viii) subject to Tex. Prop. Code Sections 209.006(a) and 209.0065, as applicable, report any delinquency in paying amounts due to the Association to a credit reporting agency; and

(ix) file suit at law or in equity against an Owner or other Person responsible for Other Properties, except that compliance with Article IX of the By-Laws shall not be required prior to filing a suit described in Section 8.2(b)(v) hereof.

Notwithstanding the above, if within six months after the Owner has been given notice and the opportunity to exercise any rights to which the Owner was entitled under Article IX of the By-Laws, the violation continues, is repeated, or recurs, the Board may impose any of the above sanctions without further compliance with Article IX of the By-Laws.

**(b) Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing, and the enforcement procedures in Article IX of the By-Laws shall not apply to these actions:

(i) exercise self-help or take action to abate a violation on a Unit or Other Properties in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) and levy a Specific Assessment against the Unit and the Owner thereof, or the Person responsible for Other Properties, for all costs reasonably incurred in so doing, except that any action to collect such Specific Assessment shall be subject to compliance with the procedures set forth in Article IX of the By-Laws;

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or other Person responsible for maintenance under Article 6, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the property for which such Person is responsible that is in violation of the Community-Wide Standard or other requirements under the Governing Documents, to correct deficiencies or deviations from the plans approved pursuant to Article 5, and in an appropriate case, to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or other Person responsible for maintenance under Article 6 fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; and/or

(v) file a lawsuit: (A) to collect any assessments due under this Declaration; (B) to foreclose the Association's lien under Article 11; (C) to obtain temporary restraining order or temporary injunctive relief; or (D) in any situation in which the subject of the lawsuit is a continuation, repetition, or recurrence of a violation for which the Owner has been given notice under Article IX of the By-Laws and the opportunity to exercise any rights which the Owner was entitled under such Article in the preceding six months.

### **8.3. Board Decision to Pursue Enforcement Action**

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case: (a) the Association's position is not strong enough to justify taking any or further action; (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (c) 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 (d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

### **8.4. Attorneys' Fees and Costs**

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

## **8.5. Enforcement of Ordinances**

The Association, by contract or agreement, may enforce applicable county and municipal ordinances. In addition, El Paso County and any municipality or other governmental division within the jurisdiction of which any portion of the Community lies may enforce its ordinances within such portion of the Community, as applicable.

# **PART THREE: ASSOCIATION OPERATIONS**

## **ARTICLE 9 PROPERTY MANAGEMENT**

### **9.1. Acceptance and Control of Association Property**

**(a) *Transfers and Conveyances by Declarant.*** Declarant and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon Declarant's written request, the Association shall reconvey to Declarant, or any Declarant Affiliate or Builder, any unimproved real property that Declarant, the Declarant Affiliate, or Builder, as applicable, originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan. Declarant shall have the right to convey any property to the Association as Common Area subject to easements permitting persons who are not members of the Association to use and enjoy such Common Area upon payment to the Association of reasonable use fees.

Declarant may also transfer and assign to the Association, by this Declaration or by separate assignment, any continuing obligations and responsibilities under development agreements or conditions of development approvals relating to The Overlook at Mission Ridge, including any obligation to post or maintain maintenance bonds on improvements within public rights-of-way or other portions of the Area of Common Responsibility. The Association shall accept, assume, and fulfill all such obligations and responsibilities as Declarant shall assign to it.

**(b) *Management and Control.*** The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association, in the Board's discretion, may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use and access.

### **9.2. Maintenance of Area of Common Responsibility**

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area and all improvements thereon;

(b) any private streets or alleys within the Community, and associated landscaped medians and parkways, that serve two or more Units, to the extent such streets or alleys are not the responsibility of the MUD or another governmental or quasi-governmental body, or are not maintained to the Community-Wide Standard by the responsible party;

(c) landscaping, street furniture (*i.e.*, benches, trash cans, etc.), community identification signs, and directional and traffic signage installed within public rights-of-way and public parks within or abutting the Community, to the extent that the same are not the responsibility of the MUD or another governmental or quasi-governmental body, or the Owner of the adjacent property pursuant to Section 6.1, or are not maintained to the Community-Wide Standard by the responsible party;

(d) street lights installed within public rights-of-way and public parks within or abutting the Community, to the extent that they are not the responsibility of the MUD, El Paso County, a municipality, or the electric service provider;

(e) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplement, any Covenant to Share Costs recorded pursuant to Section 9.5, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(f) any property and facilities that Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Declarant shall identify any such property and facilities by written notice to the Association, and they may remain part of the Area of Common Responsibility until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property it does not own, including, without limitation, Units and property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

The Association shall specifically be authorized to enter into agreements with El Paso County, the MUD, and other owners of property in or near the Community for the sharing of maintenance responsibility and/or costs associated with any property or services which the Board deems to benefit the Association and its Members.

### **9.3. Discontinuation of Operation**

The Association shall maintain the Common Area facilities in continuous operation unless Declarant, during the Development and Sale Period, and Members entitled to cast at least 67% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall require the written consent of Declarant, during the Development and Sale Period, and at least 67% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in operation, as the Board may determine appropriate for staffing reasons or to perform cleaning, maintenance, or repairs.

### **9.4. Restoring Damaged Improvements**

In the event of damage to or destruction of any portion of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims; provided, the Board may use its judgment in determining whether to file an insurance claim or repair the damage out of available funds in order to avoid deductibles and potential negative impact on the Association's claims history. Whether or not the Board elects to file a claim, the Board shall obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless: (a) this Declaration has terminated pursuant to Section 19.1; (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or (c) Declarant, during the Development and Sale Period, and Members entitled to cast at least 67% of the total votes in the Association, or in the case of

damage or loss to Limited Common Area, Owners of at least 67% of the Units to which such Limited Common Area is assigned, decide not to repair or reconstruct. If either insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed, except that nothing herein shall limit the contractual rights of any holder of a deed of trust encumbering the Common Area to participate in such determination under the terms of such deed of trust or any security agreement referenced therein.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The insurance proceeds attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or their respective lien holders, as their interests may appear, in proportion to their relative liability for Association expenses. The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Article 10.

#### **9.5. Relationships with Other Properties**

Declarant may prepare, execute, and record a document creating a covenant to share costs obligating the Association to provide, or to contribute to the cost of providing, maintenance or other services for the mutual benefit of the Association's Members and properties owned by Persons who are not Association members (a "**Covenant to Share Costs**"). In addition, the Association may contract with other entities, including Declarant, the MUD, any governmental body, any owners association, or the owner of any neighboring property, to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

#### **9.6. Provision of Services to Units**

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units or less than all Units, such as Units within a Service Area or only Units which have been improved with a completed dwelling, or it may offer various services at the option of each Owner, or any of the foregoing. By way of example and not limitation, such services might include such things as cable television, high speed internet service, and collection of trash and recyclables.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing services or components in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as part of the Base Assessment or as a Service Area Assessment or Specific Assessment levied pursuant to Article 11.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

## **ARTICLE 10**

### **ASSOCIATION INSURANCE**

#### **10.1. Required Coverages**

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" for all insurable improvements on the Common Area and other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty. The limits of Association property insurance policies, before application of deductibles, shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its members, employees, or agents while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$2 million per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) If the Association has employees, workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Automobile (hired and non-owned) liability and physical damage insurance;

(e) Directors and officers liability coverage with a minimum limit of \$1 million per occurrence; and

(f) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the Annual Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Texas. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

#### **10.2. Deductibles**



***THE BOARD MAY HOLD ANY PERSON WHO CAUSES DAMAGE TO INSURED IMPROVEMENTS RESPONSIBLE FOR SUCH DAMAGE, AS WELL AS THE INSURANCE DEDUCTIBLE PAYABLE ON ANY INSURANCE CLAIM RELATED TO SUCH DAMAGE.***

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 10.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or Service Area Expense, as applicable. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment pursuant to Section 11.4. The Association



shall have no duty to file an insurance claim and nothing herein shall be construed to relieve the person responsible for the damage from liability for his or her actions or the full amount of the resulting damages.

### 10.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner. The Association may charge to the requesting Owner any costs which it incurs for issuance of such certificate upon request of the Owner, which costs may be assessed against the Owner and the Owner's Unit as a Specific Assessment pursuant to Section 11.4. To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Texas which satisfies any requirements of the Federal National Mortgage Association ("Fannie Mae"), or the Federal Home Loan Mortgage Corporation ("Freddie Mac") for planned unit developments, or any requirements of such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its Members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) be primary and not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a member);

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.



**SUBROGATION IS A LEGAL CONCEPT BY WHICH ONE PERSON IS SUBSTITUTED IN THE PLACE OF ANOTHER WITH RESPECT TO A LAWFUL CLAIM OR RIGHT. FOR EXAMPLE, ONCE THEY HAVE PAID A CLAIM BY AN INSURED PARTY, INSURANCE COMPANIES GENERALLY HAVE THE RIGHT TO STEP INTO THE SHOES OF THE INSURED PARTY AND SUE ANYONE THAT THE INSURED PARTY COULD HAVE SUED.**

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners (as a class) as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(ii) a waiver of the insured's right to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross-liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, relating to the loss.

#### **10.4. Insurance Premiums**

Unless the Board reasonably determines that other treatment of insurance premiums is more appropriate, premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Limited Common Areas assigned to particular Units shall be allocated as a Service Area or Specific Assessment to the benefitted Units.

### **ARTICLE 11 ASSOCIATION FINANCES**

#### **11.1. Association Expenses**

**(a) Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, in enforcing the Governing Documents, and otherwise for the general benefit of the Owners are considered "**Common Expenses**." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate, but shall not include Service Area Expenses as defined in Section 11.1(b).

Common Expenses shall not include any expenses incurred during the Declarant Control Period for new development or original construction costs unless Owners representing a majority of the Units owned by persons other than Declarant approve such expenditure. This approval requirement shall not apply to payments due under any leases of capital improvements which are commonly leased in lieu of purchasing, such as street lights.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplement, or any other recorded covenants or agreements.

**(b) Service Area Expenses.** All expenses that the Association incurs or expects to incur in providing services to the Units within any Service Area, and all costs incurred in connection with the ownership, maintenance, and operation of any Limited Common Area assigned to a Service Area, including any operating reserve or reserve for repair and replacement of such Limited Common Area, are considered "**Service Area Expenses**."

#### **11.2. Budgeting for and Allocating Association Expenses**

**(a) Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year (the "**General Budget**"). In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses, if any, that the Association expects to incur with respect to such Service Area in the coming year ("**Service Area Budget**").

The estimated expenses in each budget may include, in addition to any operating reserves, a contribution to a reserve fund, in such amount as the Board determines appropriate pursuant to this subsection, for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required, if any, to provide adequate funding for repairs needed to extend the useful life of each asset and/or replace each asset at the end of its useful life. In determining the amount of reserve contribution to be included in the General Budget and Base Assessment levied thereunder pursuant to subsection (b) below, the Board may consider funding provided from other sources, including facility use fees and fees from recreational licensees, if any.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments or Service Area Assessments, as applicable, pursuant to subsections (b) and (c).

**(b) Calculation of Base Assessments.** The total budgeted Common Expenses, less any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 11.5 and levied as a "**Base Assessment**," subject to the provisions of subsection (e).

**(c) Calculation of Service Area Assessments.** The total Service Area Expenses under any Service Area Budget shall be allocated among all Units within the Service Area and levied as a "**Service Area Assessment**," subject to the provisions of subsection (e). Unless otherwise specified herein or in any Supplement applicable to a particular Service Area, Service Area Assessments shall be set at a uniform rate per Unit subject to assessment under Section 11.5. All amounts the Association collects as Service Area Assessments shall be held in trust and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

**(d) Declarant's Subsidy Option.** Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any assessments or other amounts paid by the Declarant under Section 11.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

**(e) Notice of Budget and Assessment; Right to Disapprove.** The Board shall send a copy or summary of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessment to be levied pursuant to such budget. The General Budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total votes in the Association and by the Declarant Member, if such exists. Each Service Area Budget shall automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units subject to assessment thereunder, and by the Declarant Member, if such exists.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the General Budget, on petition of the Members as provided for special meetings in the By-Laws, and in the case of a Service Area Budget, on petition of Owners of at least a majority of the Units within such Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

**(f) Budget Revisions.** The Board may revise any General Budget or Service Area Budget and adjust the assessment levied thereunder anytime during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (e) above.

### **11.3. Special Assessments**

The Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the votes attributable to Units subject to assessment under Section 11.5 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Members representing more than 50% of the total votes allocated to Units on which such Special Assessment is to be levied and shall be allocated in the same manner as Service Area Assessments under Section 11.1(c). In addition, as long as the Declarant Membership exists, any Special Assessment shall also be subject to Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### **11.4. Specific Assessments**

The Association may levy "**Specific Assessments**" against a particular Unit or Other Properties as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit or Other Properties upon request of the Owner or occupant thereof, or other Person responsible for Other Properties, pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 9.6). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

(b) to cover costs incurred in bringing the Unit or Other Properties into compliance with the Governing Documents, or to reimburse the Association for property loss, damage, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner or Person responsible for maintenance of Other Properties prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b);

(c) for monetary fines assessed by the Association pursuant to Section 8.2;

(d) to cover any insurance deductible assessed against the Owner of Unit pursuant to Sections 10.2 and 10.4; and

(e) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Owner or levy against any particular Unit.

### **11.5. Authority to Assess Owners; Time of Payment**

(a) Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. Except as otherwise provided in Section 11.6(b) with respect to Units owned by Declarant, the obligation to pay assessments shall commence as to each Unit on the first day of the month following the date on which the Unit is made subject to this Declaration or the effective date of the Association's first General Budget, whichever is later. The first annual Base Assessment and any Service Area Assessment levied on a Unit which has been made subject to this Declaration after assessments have been levied on other Units shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the annual Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year.

(c) If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately. However, if requested by the delinquent Owner, the Board shall establish an alternative payment schedule by which the Owner may make payments to the Association to satisfy the delinquency over a period of not less than three months nor more than 18 months from the date of such Owner's request without accruing additional monetary penalties (reasonable costs associated with administering the payment plan or interest are not considered monetary penalties hereunder), except that the Association shall not be required to enter into a payment plan with an Owner who has defaulted under the terms of a previous payment plan entered into within the preceding two years. The Board shall adopt and record guidelines for establishing the payment schedule under an alternative payment plan pursuant to this section. It shall be a condition of any alternative payment plan that the Owner keep current on all assessments accruing after the date of commencement of the alternative payment plan. If an alternative payment plan is requested and agreed to by a delinquent Owner, the Association shall not sue to collect any delinquent amounts or to foreclose its lien under Section 11.7 so long as the Owner is not in default under the terms of such alternative payment plan.

(d) Payments received from an Owner by the Association shall be applied to the amounts owed by such Owner in the following order of priority:

- (i) first to delinquent assessments;
- (ii) then to any current assessment;
- (iii) then to any reasonable attorneys' fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure, to the extent authorized in Section 11.6(a);
- (iv) then to any other reasonable attorneys' fees incurred by the Association which the Association is entitled to charge to such Owner's account;
- (v) then to any reasonable fines assessed by the Association against such Owner or the occupants of such Owner's Unit; and
- (vi) then to any other reasonable amount owed by such Owner to the Association.

Notwithstanding the above, if the Owner is in default under a payment plan entered into pursuant to subsection (c) at the time the Association receives a payment from an Owner, the Association shall not be required to apply the payment in the order of priority specified herein. However, in applying the payment, a fine assessed by the Association may not be given priority over any other amount due.

The Association shall not report any delinquency to a credit reporting service except in compliance with the requirements of Tex. Prop. Code Sections 209.006(a) and 209.0065.

#### **11.6. Obligation for Assessments**

**(a) Personal Obligation.** By accepting title to a Unit or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum, subject to the limitations of Texas law), late charges determined by Board resolution (not to exceed 10% of the delinquent amount), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full; provided, the Association's right to recover fees of a collection agent

retained by the Association and certain other costs of collection shall be subject to the provisions of Tex. Prop. Code Sections 209.0064 and 209.008. Upon a transfer of title to a Unit, the new Owner shall be jointly and severally liable with the previous Owner for any assessments and other charges due at the time of conveyance, except as otherwise provided in Section 11.7(c).

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and any applicable Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.



**BY TAKING TITLE TO A UNIT IN THE COMMUNITY EACH OWNER AGREES TO PAY ALL ASSESSMENTS LEVIED AGAINST SUCH OWNER'S UNIT, PURSUANT TO THIS DECLARATION. IF THE OWNER DOES NOT PAY ON TIME, THAT OWNER WILL BE CHARGED LATE FEES AND INTEREST ON ALL PAST DUE AMOUNTS. OWNERS MAY NOT CLAIM A REDUCTION IN THEIR ASSESSMENTS DUE TO ACTION OR INACTION BY THE ASSOCIATION.**

No Owner may exempt himself or herself from liability for assessments due hereunder by non-use of Common Area, abandonment of such Owner's Unit, or non-use of services provided to all Units. The obligation to pay such assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**(b) Declarant's Financial Obligations to Association.** Notwithstanding anything to the contrary herein, Declarant shall not be liable for Base Assessments or Service Area Assessments for Common Expenses on any Units it owns during any period for which Declarant elects to fund the shortfall, if any, under the Association's General Budget and Service Area Budget(s), such shortfall to be calculated as the amount by which the sum of general operating expenses incurred by the Association and budgeted contributions to reserves exceeds the Base Assessments and Service Area Assessments receivable from other Owners plus other income received by the Association during the period from sources other than Special Assessments or Specific Assessments for Common Expenses related to particular Units. To the extent that the cumulative shortfalls funded by Declarant pursuant to this subsection (b) exceed the assessments that would otherwise be payable by Declarant on Units it owns, such excess shall be treated as an advance against future assessments levied on Units owned by Declarant during any period for which Declarant elects to pay assessments in lieu of funding shortfalls. Declarant shall be deemed to have elected to fund shortfalls unless and until it otherwise advises the Association in writing and may change such election, to be effective prospectively or retroactively, at any time.

Regardless of Declarant's election under this section, any of Declarant's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

**(c) Assessment Statement.** Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments, and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith.



### 11.7. Lien for Assessments

**(a) Existence of Lien.** The Association shall have a lien against each Unit to secure payment of assessments due hereunder, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys' fees and expenses). Except as otherwise provided by Texas law, the Association's lien shall be superior to all other liens except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit.

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 Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

**(b) Enforcement of Lien.** Subject to Section 11.5 and this subsection (b), the Association's lien may be foreclosed in accordance with Tex. Prop. Code Sections 51.002 and 209.0092, as they may be amended, by all methods available for the enforcement of such liens and in like manner of any deed of trust on real property, after compliance with the procedures set forth in Chapters 51 and 209 of the Tex. Prop. Code, if applicable. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Section 51.002, as it may be amended. The Association shall not foreclose its lien if the debt secured by the lien consists solely of (i) fines or attorneys' fees solely associated with fines, (ii) charges related to the compilation, production, or reproduction of information requested pursuant to the Owner's right to inspect the Association's books and records under the By-Laws; or (iii) charges assessed to the Owner's account in connection with any vote recount requested by the Owner pursuant to Tex. Prop. Code Section 209.0057.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association.

Subject to Section 11.5, the Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

**(c) Effect of Sale or Transfer.** Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish the Association's lien for assessments which became payable prior to such sale or transfer. A purchaser at a foreclosure sale or subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such foreclosure. Such unpaid assessments, if not collected from the prior Owner, shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 11.5, including such acquirer, its successors and assigns. Any such sale or transfer pursuant to foreclosure shall not relieve the purchaser or transferee of the Unit from liability for, nor the Unit so sold or transferred from the lien of, any assessments thereafter becoming due.



**IF AN OWNER DOES NOT PAY THE ASSESSMENTS LEVIED BY THE ASSOCIATION ON TIME, THE ASSOCIATION MAY FORECLOSE ITS LIEN ON THE OWNER'S UNIT, CAUSING IT TO BE SOLD TO PAY THE PAST DUE ASSESSMENTS. THE ASSOCIATION MAY ALSO SUE THE OWNER IN COURT TO RECOVER PAST DUE ASSESSMENTS.**

### **11.8. Exempt Property**

The following property shall be exempt from payment of Annual Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility; and

(b) Any property owned by the MUD or dedicated to and accepted by any governmental authority or public utility for public purposes.

### **11.9. Capitalization of Association**

The first Owner of each Unit other than Declarant, a Declarant Affiliate, or a Builder designated by Declarant shall make a contribution to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title for its use in covering initial start-up expenses, operating expenses, and other expenses it incurs pursuant to this Declaration and the By-Laws, which, in the Board's discretion, may include funding of capital reserves for repairs and replacements of Common Area improvements.

### **11.10. Use and Consumption Fees**

The Board may charge use and consumption fees to any Person electing to use Association services or facilities which are provided at the option of the user and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners). For example, the Association may organize, sponsor, and charge additional fees for participation in sports leagues, classes, lectures, clubs, youth camps, facilities rental, and the like.

## **PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

### **ARTICLE 12 EASEMENTS**

#### **12.1 Easements in Common Area**

Declarant grants to each Owner a nonexclusive right and easement appurtenant to such Owner's Unit for use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated as Limited Common Area;

(d) The Board's right to:

(i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;

(ii) suspend an Owner's right to use Common Area facilities pursuant to Article 8;



(iii) grant easements for utilities and other purposes no inconsistent with the intended use of the Common Area without membership approval, and dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in Section 18.4 or elsewhere in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area, except as otherwise specifically provided in this Declaration or any deed conveying the Common Area to the Association;

(v) rent or grant a license to use any portion of any clubhouse or other Common Area facility or amenity on an exclusive or non-exclusive short-term basis to any Person on such terms as the Board may determine;

(vi) permit use of any amenities within the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;

(vii) permit any Person to use Common Area, at such charge or no charge as the Board may determine, for the purpose of conducting special events, or offering and conducting classes or similar activities that may be of special interest to the Owners and occupants of Units and such other individuals as the Board may specify, whether offered on a fee basis, for profit or otherwise; and


(viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to such approval requirements as may apply under Section 18.4 and the By-Laws; and

(e) the rights of Declarant and its designees under Section 16.2.

Any Owner may extend the Owner's right of use and enjoyment to the members of such Owner's family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases such Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

## **12.2. Easements of Encroachment**

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

 ***AN ENCROACHMENT OCCURS WHEN A PERSON'S HOME, FENCE, OR OTHER STRUCTURE EXTENDS ONTO HIS OR HER NEIGHBOR'S PROPERTY. THIS SECTION PERMITS MINOR, INADVERTENT ENCROACHMENTS TO REMAIN.***

## **12.3. Easements for Utilities and Infrastructure**

**(a) Installation and Maintenance.** During the Development and Sale Period, Declarant reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve the Community, including, but not limited to, drainage systems, telecommunication receiving and distribution systems (*e.g.*, cable television, high speed

data/Internet/intranet services, telephone, security monitoring and similar systems), and related components, including associated infrastructure, equipment, hardware and software;

(ii) install walkways, pathways and trails, street lights, and signage on property Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

**(b) Specific Easements.** Declarant also reserves the nonexclusive right and power to grant and record such specific easements consistent with Section 12.3(a) as it deems necessary to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

**(c) Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

#### **12.4. Easements to Serve Additional Property**

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property. This easement shall also include, without limitation, the right to make any or all of the Common Area facilities available on a temporary or permanent basis to owners of any portion of the property described on Exhibit "B."

If the above easement grants permanent access to and from any property which is not submitted to this Declaration, or permanent use privileges to the owners of any property which is not submitted to this Declaration, Declarant, or its successors or assigns, shall establish, by agreement with the Association or covenant on the benefited property, a reasonable arrangement by which the owners of the benefited property or any mandatory membership owners association having jurisdiction over such property shall: (a) share on a reasonable basis the costs which the Association incurs in connection with the ownership, maintenance, repair, replacement, operation, and insurance, of the Common Area improvements of which use is shared pursuant to this easement, including any management fees; or (b) provide reciprocal rights to the Members to use comparable facilities within such portion of the Additional Property; or (c) a combination of (a) and (b). The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property. Notwithstanding the foregoing, Declarant and the Association may grant easements to the general public for use of property or facilities owned or maintained by the Association without seeking compensation or reimbursement for use by the general public.

## **12.5. Easements for Maintenance, Emergency, and Enforcement**

By this Declaration, Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Sections 6.3 and 9.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

## **12.6. Easement for Fence and Landscape Maintenance**

Declarant reserves for itself, the Association, the MUD, and their successors, assigns, and designees a perpetual, nonexclusive right and easement for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping:

- (a) within 20 feet of the perimeter boundary of the Community;
- (b) within 20 feet of the back-of-curb of public or private streets and alleys within the Community; and
- (c) between any fence or wall easement shown on a recorded plat of any portion of the Community and the back-of-curb of the nearest street running generally parallel to such fence or wall easement.

Nothing in this section shall obligate Declarant, the Association, the MUD, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the sole discretion of Declarant, the Association, the MUD, and Builders, as applicable, subject to such approvals as may be required under Article 5 of this Declaration.

## **12.7. Private Streets and Alleys**

**(a) Rights of Association and Owners.** From the date of completion of construction and final inspection of any street or alley within the Community which has not been dedicated or conveyed to and accepted by a local governmental authority ("**Private Street**") until Declarant conveys it to the Association or dedicates it to the MUD or the general public, the Private Street shall be subject to a temporary, nonexclusive easement for access, ingress, and egress for the benefit of the Association, each Unit and the Owner thereof, and each other portion of the Community.

Use of any Private Street shall be subject to and in accordance with any rights and easements set forth in this Declaration, on the recorded plat, and in any law, ordinance, or regulation governing the use of such street. Use of any Private Street may be restricted by plat or Supplement to the Owners of Units shown on the plat depicting such Private Street and their guests and invitees.

**(b) Service Easements.** Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over any Private Street for law enforcement, firefighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage and/or recycling collection service to the Community, provided that such easement shall not authorize any such Persons to enter the Private Streets except while acting in their official capacities.

The existence of these easements shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access over any Private Street to portions of the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise the easements granted in this subsection (b) without unreasonable interference or delay.

## **12.8. Easements Over Property of MUD**

Declarant may designate for conveyance and convey to the MUD certain property within the Community for development, use, and operation as a lake, pond, park, open space, trail system, and/or related amenities and improvements (collectively, the "**MUD Facilities**"). Declarant hereby reserves for itself and grants to the Association and its Members, for the benefit of the Owners and occupants of Units and their guests, a nonexclusive right and easement of use, access, and enjoyment over any MUD Facilities designed and intended for recreational use, whether owned by Declarant, the MUD, or their successors, successors-in-title, or assigns, subject to: (a) such reasonable rules and operating policies as the owner of the respective MUD Facilities may establish and apply uniformly to all authorized users of the MUD Facilities; and (b) such Rules as the Association may establish governing conduct and activities within the Community.

## **ARTICLE 13 DISCLOSURES AND WAIVERS**

### **13.1. Public Access**

The general public may be able to gain access to the Community and Common Areas, including, but not limited to, sidewalks, parks, trails and paths, and other neighborhood spots conducive to gathering and interaction. The Association may, but shall have no obligation to, control public access to or monitor Common Areas or other portions of the Community to identify and eject unauthorized persons. Neither Declarant nor the Association shall have any obligation to construct or install walls or fences or to implement any other measures to secure the perimeter boundaries of the Community or any part of the Community in order to prevent or restrict entry by the general public.

### **13.2. Nonresidential and Neighboring Uses**

The Overlook at Mission Ridge is within the larger Mission Ridge development, which contains commercial and other nonresidential uses. Some of such uses may be located within close proximity of Units, and the particular mix of nonresidential uses may change from time to time. Such uses could include restaurants, bars, and other establishments that draw crowds and generate traffic, noises, odors, and light which may affect surrounding properties. By accepting title to or taking occupancy of a Unit, each Owner and occupant expressly assumes the risk of such Unit being affected by traffic, parking, noise, odors, and lights from the existence or operations of any permitted non-residential use and Persons providing service or supplies in connection with such permitted use.

Every neighborhood is impacted by conditions which different people may find objectionable. Each Owner and occupant of a Unit, by taking title to or occupying a Unit, acknowledges and agrees that there may be conditions within and outside of the Community which he or she may find objectionable and that it shall be the Owner's or occupant's sole responsibility to become acquainted with conditions within and surrounding The Overlook at Mission Ridge which could affect the use and enjoyment of the Unit. No representations are made regarding the use or zoning of adjacent property or that the category to which adjacent property is zoned may not change in the future.

Each Owner agrees that Declarant, the Association, and any Declarant Affiliate or agents shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Owner's Unit to any nonresidential use or other objectionable uses outside of The Overlook at Mission Ridge, including without limitation, any claim arising in whole or in part from the negligence of Declarant, any Declarant Affiliates, or their agents, or the Association. The Owner agrees to indemnify and hold harmless Declarant, Declarant Affiliates and agents, and the Association against any and all such claims by Owner's visitors, tenants, and others upon such Owner's Unit.

### **13.3. Safety and Security**

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

No representation or warranty is made that any systems or measures, including any security monitoring systems or mechanism or system for limiting access to the Community or Common Areas 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 shall be responsible for informing any tenants and other occupants of such Owner's Unit, that the Association, its Board and committees, and Declarant, Declarant Affiliates, and their respective directors, officers, members, employees, or agents, are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

### **13.4. Changes in Development Plan**

Each Owner acknowledges that Mission Ridge is a master planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Community, or (b) changes in the Development Plan as it relates to property outside the Community, without Declarant's prior written consent. Declarant makes no representation regarding the future uses of neighboring properties.

### **13.5. View Impairment**

Neither Declarant, the MUD, nor the Association guarantee or represent that any view over and across the Units, any open space or parks within or outside of The Overlook at Mission Ridge, or any body of water will be preserved without impairment. Neither Declarant, the MUD, nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping to provide or maintain views except as may otherwise be required under a separate covenant or agreement. Declarant, the MUD, and the Association shall have the right to add trees and other landscaping on property they own or control from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

### **13.6. Construction and Development Activity**

Each Owner acknowledges that construction and development activities will be taking place in the Community until The Overlook at Mission Ridge is completely built out and thereafter as properties are improved, repaired, and modified from time to time. There may be some inconvenience and disturbance during the course of such activities, including such things as construction noise, traffic diversions, and dust and noise emanating from the property upon which such activities are occurring. Neither Declarant nor the Association shall have any duty to take action to abate such inconveniences or disturbances, nor shall either have any liability for personal injury or property damage resulting from such activities or entry into such areas.

### **13.7. High Voltage Power Lines; Radio and Telecommunication Towers**

Every Owner and occupant of a Unit is hereby advised that high voltage power transmission lines and radio and telecommunication towers and related equipment may now or hereafter be located within in the vicinity of the Community. While various studies have failed to establish any causal relationship between living in proximity to high voltage power transmission lines or radio towers and cancer or other diseases, there remains some speculation that such a relationship may exist. Every Owner and occupant of a Unit must evaluate such risk for themselves prior to making a decision to purchase and occupy a Unit. Declarant, any Declarant Affiliate, Builders, the Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any person or property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, high voltage power transmission lines and/or radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of the Community.

### **13.8. Utility Easements**

Portions of the Community may be subject to easements for power transmission lines, natural gas pipelines, and other utility transmission devices. The Association shall have no responsibility for providing maintenance to such areas or improving them to the Community-Wide Standard.

### **13.9. High Pressure Gas Lines and Drill Sites**

There may be high pressure gas lines and natural gas drill sites located in the vicinity of the Community. Drill sites may be activated at any time in the sole discretion of the property owner or applicable easement holder, and no prior approval of or notice to any Owner shall be required except as may be required by Texas law. Such drill sites are not necessarily identified as such and may be open space or used for recreational purposes until drilling activity commences. High pressure gas lines and gas-producing drill sites can pose a risk of rupture, explosion, fire, or other safety hazards to persons in the vicinity of such gas lines or drill sites. When active, drill sites may operate 24 hours per day and generate noise audible to persons in homes in the vicinity of the drill site. When no longer in use, they may continue to emit hissing sounds or other noises. Neither Declarant, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents, or employees of any of the foregoing, have the ability to control the location or operation of such gas lines or drill sites, and none of them shall have any liability for any damages or injury to any person or property arising out of or related to the location, operation, or existence of such gas lines or drill sites.

### **13.10. Schools**

No representations are made regarding the future or continued operation of public or private schools, daycare centers, or early childhood programs that currently or may in the future serve the Community, and Declarant makes no commitment to construct or organize any such school or program.

### **13.11. Natural Conditions**

Open space within or adjacent to the Community may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes and other reptiles, and other animals, some of which may pose hazards to persons or pets coming into contact with them. Each Owner and occupant of a Unit, and every person entering the Community: (a) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or throughout the Community; (b) assumes all risk of personal injury arising from the presence of such plants and wildlife in the Community. Neither the Association, Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents, or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

The natural areas described in this section may also contain creeks, ponds, streams, and other bodies of water or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant shall enter upon or disturb, or permit their guests or any other person acting on their behalf to enter upon or disturb, such areas in any way without the Association's or Declarant's prior written approval.

#### **13.12. MUD Disclosure Upon Transfer of Unit**

Prior to transfer of title to a Unit, the Owner shall provide to the purchaser or other transferee the statutory notification relating to the MUD required by Texas Water Code Section 49.452.

### **ARTICLE 14 RIGHTS OF LENDERS**

#### **14.1. Provision of Mortgagee Information**

Upon the Association's request, each Owner shall provide the Association with the name and street address of the holder or guarantor of any Mortgage encumbering such Owner's Unit. If the Association has not been notified of the name and street address of the holder or guarantor of a Mortgage on a Unit, the Association may send any notice to Mortgagees to the Owner at the Unit address with a request that the Owner provide such notice to its Mortgagee, and such act shall be deemed sufficient notice to the Mortgagee of such Unit for all purposes under this Declaration and the By-Laws.

#### **14.2. No Priority**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards.

#### **14.3. Failure of Mortgagee to Respond**

Any Mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 60 days after the Mortgagee actually receives proper notice of the proposal by certified or registered mail, return receipt requested.

#### **14.4. Amendment by Board**

The purpose of this Article 14 is to facilitate financing of Unit purchases by compliance with secondary mortgage market requirements or standards for planned unit developments. Should any institutional or governmental lender, purchaser, insurer, or guarantor of residential mortgage loans, including, for example, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development, or the Department of Veterans Affairs, hereafter eliminate, create, or otherwise revise any of their respective requirements to make, purchase, insure, or guarantee mortgage loans on Units, the Board, without approval of the Owners or Mortgagees, may cause an amendment to this Article to be recorded to comply with such revised requirements. Any amendment adopted by the Board in accordance with this section shall comply with the provisions of Tex. Prop. Code Section 205.004. Each Owner, by accepting title to a Unit, and each Mortgagee, by accepting a Mortgage on a Unit, acknowledges and agrees to such amendments and grants to the Board the authority to make changes to this Article 14 as contemplated by this section.

## **PART FIVE: COMMUNITY DEVELOPMENT**

### **ARTICLE 15**

#### **EXPANSION OF THE COMMUNITY**

##### **15.1. Expansion by Declarant**

From time to time, Declarant may submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not Declarant.

Declarant's right to expand the Community under this section expires when all property described in Exhibit "B" has been submitted to this Declaration or 25 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever. Declarant may submit different parcels of property to this Declaration at different times. Declarant gives no assurances as to the boundaries of the parcels that may be submitted to this Declaration, to the order in which Declarant may submit parcels of property to this Declaration, or to whether buildings erected on any additional property submitted to this Declaration will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, size, or price.

##### **15.2. Expansion by the Association**

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Members casting more than 50% of the total votes in the Association and by the owner of the property to be submitted. In addition, during the Development and Sale Period, Declarant's consent is required. The Association's President and Secretary, the owner of the property, and Declarant, if Declarant's consent is required, shall sign the Supplement.

##### **15.3. Additional Covenants and Easements**

Any Supplement that Declarant records may impose additional covenants, restrictions, and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Specific Assessments. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

##### **15.4. Effect of Filing a Supplement**

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration by such Supplement shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration. However, the Board shall have no obligation to reallocate assessment liability



or adjust assessments previously levied for any year in which additional property is made subject to the Declaration, nor to refund or credit any portion of such assessment paid.

## **ARTICLE 16**

### **ADDITIONAL RIGHTS RESERVED TO DECLARANT**

#### **16.1. Special Development Rights**

In addition to the rights specifically reserved to Declarant under Article 16 with respect to expanding the Community, Declarant reserves the right, during the Development and Sale Period to:

(a) subdivide and replat any property and create Units, Common Areas, Limited Common Areas, and roadways within any portion of the Community that it owns;

(b) grant or reserve easements over any portion of the Community which it owns;

(c) combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;

(d) adjust the boundaries of any Units that it owns;

(e) cause the Association to convey or reconvey portions of any Common Area or Limited Common Area which is not improved with structures as necessary to make minor adjustments in boundary lines between such Common Area or Limited Common Area and adjacent properties;

(f) amend this Declaration or any Supplement to withdraw property from the Community and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal; and

(g) authorize any Builder to exercise any of the above rights with respect to property owned by such Builder.

#### **16.2. Marketing and Sales Activities; Capture and Use of Images**

(a) Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period, Declarant and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, information centers, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and its employees, agents, and designees may park vehicles in designated parking areas. The rights described in this Section 16.2(a) shall specifically include the right of Declarant and its designees to use Common Area facilities at no charge and to restrict use or access to such facilities by the Association, its Members, and others so long as they are being used for the purposes described in this subsection (a) Declarant may authorize Builders to use similar privileges. There shall be no limit on the number or location of such facilities, except as otherwise restricted by applicable zoning or other applicable law.

(b) Declarant reserves for itself and its designees the right, without the consent of or payment of compensation to any Person, to take photographs and to capture, produce, and reproduce, by any method and in any format or media, images of any structures, streetscapes, landscapes, signage, public spaces, or other elements located on Units, Common Area, or public property within the Community which are visible from

public streets or Common Area, and to use such images in advertising, marketing materials, displays, presentations, and publications of any kind relating to the Community, including, without limitation, newspaper, internet, television, and other media. Each Owner, by accepting a deed to any Unit, shall be deemed to have consented to the exercise by Declarant and its designees of the rights described in this subsection (b) and to have waived any personal or proprietary right such Owner may have in connection with such images.

### **16.3. Right to Make Improvements, Replat**

During the Development and Sale Period, Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and streets and alleys within the Community for the purpose of:

(a) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such improvements to the Common Area and to the Exhibit "B" property as it deems appropriate;

(b) exercising any rights reserved to Declarant under this Declaration; and

(c) making repairs or correcting any condition on the Common Area or any Unit.

In addition, during the Development and Sale Period, Declarant may replat property that it owns and convert Units it owns into Common Area.

### **16.4. Right to Approve Changes in Community Standards**

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant.

### **16.5. Additional Covenants and Restrictions**

During the Development and Sale Period, no one other than Declarant may record any additional covenants or restrictions affecting any portion of the Community without Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

### **16.6. Exclusive Rights to Use Name of Development**

No Person other than Declarant or a Declarant Affiliate shall use the name "Overlook at Mission Ridge" or any derivative of such name, or any logo or depiction associated with The Overlook at Mission Ridge, in any printed or promotional material or any Internet website without Declarant's prior written consent. However, Owners may use the name "Overlook at Mission Ridge" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Association shall be entitled to use the word "Overlook at Mission Ridge" in its name.

### **16.7. Easement to Inspect and Right to Correct**

The Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The Person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of such Owner's Unit.

## **16.8. Right to Notice of Design or Construction Claims**

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 17, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing, by certified mail, and given an opportunity to meet with the Association and/or the Owner of any affected Unit or Common Area to discuss the concerns, conduct their own inspection, and take action to remedy any problem in accordance with this section. Any notice to Declarant under this section shall include a description of the alleged defect in design or construction ("**Defect**"), a description of any damage suffered as a result of the Defect, the date on which the Defect was discovered and dates and times during ordinary business hours that Declarant and any Builder may meet with the Owner of the affected Unit or a representative of the Association to conduct an inspection.

Nothing in this section shall obligate Declarant or any Builder to inspect, repair, replace, or cure any alleged Defect. However, if Declarant or the Builder elects to repair any alleged Defect, it will so notify the Association (if the alleged Defect involves the Common Area) or the Owner of the affected Unit (if the alleged Defect is in a Unit) within 30 days after conducting such inspection, and the Association or Owner shall permit Declarant or the Builder and their respective contractors, subcontractors, and agents, access as needed during ordinary business hours to make such repairs as they deem appropriate which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances. All applicable statutes of limitation shall be tolled during the period of inspection and cure under this Section 16.8, not to exceed the earlier of: (i) 120 days after the date Declarant receives written notice of the alleged Defect in accordance with this section; or (ii) Declarant's delivery to the claimant of written notice that Declarant does not intend to take any action or further action to remedy the alleged Defect.

In the event there is any dispute as to the adequacy of the proposed repairs to resolve the alleged Defect or as to whether repairs that Declarant, any Builder, or their respective contractors or subcontractors have performed have remedied the Defect, Declarant may appoint a third-party inspector who is knowledgeable and experienced in construction of the type at issue to inspect the alleged Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied.

If the Association or any Owner fails to comply with this Section 16.8, neither Declarant nor any Declarant Affiliate or Builder shall be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had Declarant been given the notice and opportunity to repair described in this section. Nothing herein and no action taken by Declarant or any Builder pursuant to this section shall be construed as an admission that an alleged Defect actually exists or as an admission of liability for any alleged Defect or otherwise create liability for Declarant or the Builder.

## **16.9. Right to Transfer or Assign the Declarant's Rights**

Declarant may assign its status as the Declarant and the Declarant Rights to any Person who takes title to any portion of the property described in Exhibits "A" or "B" to this Declaration and who agrees to assume the obligations of Declarant under this Declaration as of the effective date of such assignment. There shall be no more than one Person holding the status of Declarant at any time; however, Declarant may partially assign, or permit other Persons to exercise on a limited basis, any or all of the Declarant Rights without transferring the status of Declarant and without relinquishing the right to continue to exercise such Declarant Rights itself. For example, Declarant may authorize a Builder to exercise, with respect to any property described on Exhibits "A" or "B" that such Builder owns, any right that Declarant could exercise with respect to property Declarant owns.

Any assignment of Declarant Rights may impose such conditions upon the exercise of such Declarant Rights as the assignor deems appropriate, and any assignment of the status of Declarant may reserve to the

assignor the right to exercise such Declarant Rights as are specified therein. However, Declarant may not assign a broader right than that which it has under the Declaration, nor relieve itself of any obligations except to the extent such assignment states that obligations are assumed by the assignee. No transfer or assignment of Declarant's status shall be effective unless it is in a recorded instrument signed by Declarant and the assignee. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record the written assignment unless desired to evidence Declarant's consent to such exercise.

#### **16.10. Termination of Rights**

Except as otherwise specified above, the rights contained in this Article shall not terminate until the earlier of: (a) termination of the Development and Sale Period; or (b) Declarant's recording of a written statement that all sales activity has ceased.

### **ARTICLE 17 DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

#### **17.1. Agreement to Encourage Resolution of Disputes Without Litigation**

**(a) Bound Parties.** Declarant, the Association, the MUD, and their respective officers, directors, trustees and committee members, all other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.2 in a good faith effort to resolve such Claim, and then subject to the provisions of Section 19.3, if applicable.

**(b) Claims.** Except as otherwise provided in subsection (c), as used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Article 5, which shall not be subject to review and shall not be subject to this Article.

**(c) Exceptions.** The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of Community standards);
- (iii) any suit that does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any suit which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 17.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 17.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;

(vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit; and

(vii) any suit by the holder of a deed of trust recorded prior to this Declaration and encumbering any portion of the Community to enforce the terms of such deed of trust or such holder's rights under this Declaration.

## **17.2. Dispute Resolution Procedures**

**(a) Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

**(b) Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

**(c) Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the El Paso metropolitan area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, subject to the approval requirements set forth in Section 17.3, if applicable. Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall pay an equal share of the mediator's fees; provided, if there is more than one Claimant or more than one Respondent, 50% of the costs shall be shared equally by the Claimants and 50% of the costs shall be shared equally by the Respondents.

**(d) Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then

any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section 17.2, but subject to the provisions of Section 17.3, if applicable. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

### **17.3. Initiation of Litigation by Association**

Litigation involving the Association can create a significant financial burden and exposure for the Association and its Members in terms of legal fees and costs as well as potential liability to third parties, interfere with the resale and financing of Units, and create uncertainty and tension within the Community, all of which can negatively impact property values and marketability of Units and impose financial burdens on Owners for their share of the costs. Therefore, this section imposes the following requirements that must be met prior to the Association initiating litigation (with certain exceptions as noted in subsection (a) below), in order to ensure that the membership is fully informed and supports the initiation of proceedings.

**(a) Membership Approval.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial, administrative, or proceeding unless first approved by a vote of Members entitled to cast at least 67% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

(i) initiated during the Declarant Control Period unless Declarant, by written notice to the Association, elects to have the proposal to initiate proceedings be approved by the Members hereunder, in which case such approval shall be required;

(ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies entered into by the Association; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**(b) Information to be Provided to Members.** Prior to any vote required under subsection (a):

(i) the Board shall comply with Section 16.8, if applicable;

(ii) if the Association's claim involves alleged defects in the design or construction of improvements in the Community, the Board shall engage an independent professional engineer licensed by the Texas Board of Professional Engineers to conduct an inspection and provide a report detailing the condition of such improvements, describing and providing photographs of the alleged defects in design or construction, providing the engineer's recommendations for remediation and/or repair, and providing estimated costs of such remediation and repairs, which estimates shall be obtained from qualified, independent third-party contractors holding all necessary licenses to perform the recommended work; and

(iii) the Board shall provide written notice to each Member of the meeting at which the vote is to be conducted, which notice shall be accompanied by: (A) a copy of any report required under clause (ii); (B) a description of the claim, the relief sought, the anticipated duration of the proceedings, and the estimated likelihood of success; (C) a copy of the proposed engagement agreement between the Association and the law

firm and/or attorney selected by the Association to assert or provide assistance with the claim setting forth the proposed financial arrangements between the Association and such lawyer or law firm; (D) a description and estimate of the legal fees, consultant fees, expert witness fees, and court costs, which the Association may incur directly or indirectly, or for which it may be liable, as a result of pursuing the claim; (E) a description of the manner in which the Association proposes to fund such costs; (F) a summary of the steps previously taken by the Association to resolve the claim; and (G) a statement that initiating the lawsuit or administrative or arbitration proceeding to resolve the claim may affect the market value, marketability, or refinancing of a Unit while the claim is being pursued.

## **PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS**

### **ARTICLE 18**

#### **CHANGES IN THE COMMON AREA**

##### **18.1. Assignment and Reassignment of Limited Common Area**

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Members representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's written consent.

Upon approval of the Owners of a majority of the Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units or the general public to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

##### **18.2. Condemnation**

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 18.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area, to the extent sufficient land is available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Members representing at least 67% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.3 regarding funds for restoring improvements shall apply; or

(b) If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 18.4.

##### **18.3. Partition**

No Person shall bring any action for judicial partition of the fee title to any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 18.4.

#### **18.4. Transfer, Mortgaging, or Dedication of Common Area**

The Association may transfer or dedicate portions of the Common Area or subject Common Area to a security interest:

- (a) upon request of Declarant pursuant to Section 9.1 or Article 16;
- (b) if Common Area other than Limited Common Area, upon the written direction of Members representing at least 67% of the total votes in the Association, and Declarant during the Development and Sale Period; or
- (c) if Limited Common Area, upon written approval of Owners of at least 67% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by the Members approving such sale at the time of such approval. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized. No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

### **ARTICLE 19 TERMINATION AND AMENDMENT OF DECLARATION**

#### **19.1. Term and Termination**

This Declaration shall be effective and remain in effect for 50 years from the date of recording. Thereafter, this Declaration shall be extended automatically for successive 10-year periods unless at least 51% of the then Owners sign a document stating that the Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

If any provision of this Declaration would be unenforceable, void, or voidable by reason of any rule restricting the period of time that provisions of that type can affect title to property to a period tied to the life of a now-living person, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### **19.2. Amendment**

**(a) By the Declarant.** In addition to the specific amendment rights granted elsewhere in this Declaration, during the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose.

**(b) By Members.** Except as otherwise specifically authorized above or elsewhere in this Declaration, this Declaration may be amended only by affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total votes in the Association or such greater percentage as required by other provisions of this Declaration. In addition, during the Development and Sale Period, any amendment pursuant to this subsection (b) shall also require the Declarant's written consent.

Any amendment pursuant to this subsection (b) shall be prepared, executed, certified, and recorded on behalf of the Association by any officer designated for such purpose or, in the absence of such designation, by the Association's President.



**(c) Validity and Effective Date.** Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Declarant Member without the written consent of Declarant or the Declarant Member (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**(d) Exhibits.** Exhibits "A" and "B" are incorporated by this reference, and this Article shall govern amendment of those exhibits, except as otherwise specifically provided in this Declaration. Exhibit "C" is attached for informational purposes only and may be amended as provided in Article 7 or pursuant to this Section 19.2. Exhibits "D" and "E" are attached for information purposes only and may be amended as provided in those exhibits, respectively. Exhibit "F" is attached for informational purposes only and may be amended as provided in Section 5.3. Amendments to Exhibits "C," "D," "E," or "F" shall not constitute amendments to this Declaration, and notice thereof may be recorded without compliance with the approval requirements of this Section 19.2, notwithstanding that they may reference this Declaration or be styled or titled as amendments to this Declaration for purposes of providing record notice of the amendments to such exhibits.

In witness of the foregoing, the Declarant has executed this Declaration this 16<sup>th</sup> day of July, 2022.

**DECLARANT: HUNT MISSION RIDGE, LLC** a Texas limited liability company

By: Hunt Communities Development Co.,  
LLC, a Texas limited liability company,  
its Sole Member

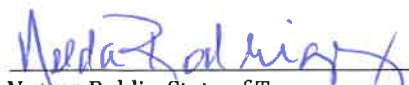
By:   
Name: Jose Lares  
Its: Vice President

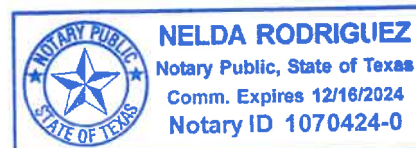
STATE OF TEXAS           §  
                                      §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on this 16<sup>th</sup> day of July, 2022, by Jose Lares, Vice President of Hunt Communities Development Co., LLC, a Texas limited liability company, as sole member of HUNT MISSION RIDGE, LLC, a Texas limited liability company, on behalf of said company, for the purposes therein stated.

[Notarial Seal]

573811/CADocs/Declaration-042022-jlb

  
Notary Public, State of Texas



## **EXHIBIT "A"**

### **Land Initially Submitted to the Declaration**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in El Paso County, Texas, and shown on that final plat for Painted Sky at Mission Ridge Unit 3 prepared by ZWA Surveyor, recorded in the Official Public Records of El Paso County, as more particularly described as follows:

**DESCRIPTION OF A 97.023 ACRE TRACT OF LAND, SITUATED IN A PORTION OF THE C.D. STEWART SURVEY SECTION NO. 319 AND SECTION 18 AND 22, BLOCK 79, TOWNSHIP 3, TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS, EL PASO COUNTY, TEXAS, SAID 97.023 ACRE TRACT BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING** at a 5/8 inch iron rod found at the northeast corner of said C.D. Stewart Survey No. 18, being also the southeast corner of the C.D. Stewart Survey No. 15, being also the southwest corner of the C.D. Stewart Survey No. 14 and being the northwest corner of C.D. Stewart Survey No. 19;

**THENCE S 02°21'59" W**, with the common line of said C.D. Survey No. 18 and said C.D. Survey No. 19, for a distance of **3933.91** feet to a 5/8 inch iron rod with cap stamped "ZWA" set for the northeast corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE S 02°21'59" W**, along the common line of said section 18 and section 19, for a distance of **1362.74** feet to a 5/8 inch iron rod with cap stamped "ZWA" set to a corner of the herein described tract;

**THENCE S 86°57'02" E**, along the common line of said section 19 and section 22, for a distance of **1783.10** feet to a 5/8 inch iron rod with cap stamped "ZWA" set to a corner of the herein described tract;

**THENCE** departing said common section line and continuing over and across C.D. Stewart Survey, Section 319, Section No. 22, and Section No. 18 of the herein described tract the following twenty (20) courses and distances

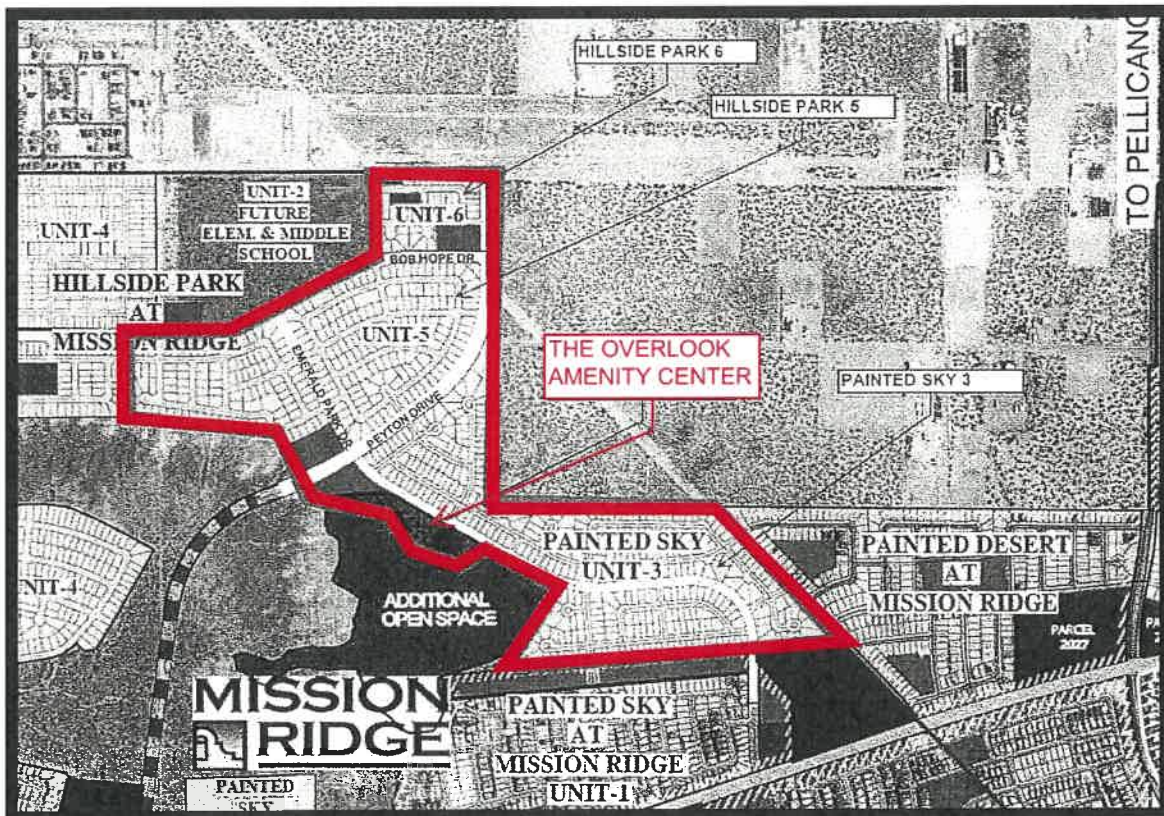
- 1) **S 42°03'19" E**, for a distance of **1491.14** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 2) **S 87°10'05" W**, for a distance of **674.24** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 3) **S 1°54'19" W**, for a distance of **434.18** feet to a 5/8 inch iron rod with cap stamped "ZW A" set;
- 4) **N 88°05'41" W**, for a distance of **76.00** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 5) **N 1°54'19" E**, for a distance of **234.40** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 6) **S 87°12'19" W**, for a distance of **2394.31** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 7) **N 2°47'41" W**, for a distance of **200.01** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 8) **N 87°12'20" E**, for a distance of **488.32** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 9) **N 32°36'23" E**, for a distance of **767.26** feet to a 5/8 inch iron rod with cap stamped "ZW A" set at the beginning of a curve to the right;
- 10) along said curve to the right, having an arc length of **200.95** feet, a radius of **1038.00** feet, a delta angle of **11°05'31"**, with a chord bearing of **N 63°25'47" W**, for a chord distance of **200.63** feet to a 5/8 inch iron rod with cap stamped "ZW A" set;

- 11) **N 57°53'01" W**, for a distance of **628.34** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 12) **S 32°06'59" W**, for a distance of **200.00** feet to a 5/8 inch iron rod with cap stamped "ZW A" set;
- 13) **N 57°53'01" W**, for a distance of **218.00** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 14) **N 32°06'59" E**, for a distance of **200.00** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 15) **N 57°53'01" W**, for a distance of **483.98** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 16) **N 89°59'59" W**, for a distance of **669.93** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 17) **N 13°51'32" E**, for a distance of **97.55** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 18) **N 22°19'37" W**, for a distance of **110.00** feet to a 5/8 inch iron rod with cap stamped "ZWA" set at the beginning of a curve to the left;
- 19) along said curve to the left, having an arc length of **652.44** feet, a radius of **3445.00** feet, a delta angle of **10°51'04"**, with a chord bearing of **N 62°14'51" E**, for a chord distance of **651.47** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 20) **N 56°49' 19" E**, for a distance of **524.01** feet to a 5/8 inch iron rod with cap stamped "ZW A" set at the beginning of a curve to the left;
- 21) along said curve to the left, having an arc length of **652.39** feet, a radius of **1045.00** feet, a delta angle of **35°46'10"**, with a chord bearing of **N 38°56'14" E**, for a chord distance of **641.84** feet to a 5/8 inch iron rod with cap stamped "ZWA" set;
- 22) **S 68°56'50" E**, for a distance of **116.73** feet to a 5/8 inch iron rod with cap stamped "ZWA" set to the **POINT OF BEGINNING**, and containing more or less **97.023** acres of land.

## EXHIBIT "B"

### Land Subject to Annexation.

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in El Paso County, Texas, and being more particularly depicted below:



LESS AND EXCEPT that property described on Exhibit "A."

#### Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Article 15 of this Declaration.

## EXHIBIT "C"

### Initial Rules

The following initial Rules shall be subject to amendment or modification in accordance with Section 7.2 of the Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge (the "Declaration").

1. **General.** All Units shall be subject to the restrictions on use, occupancy, and transfer of Units set forth in Section 7.1 of the Declaration, except as otherwise provided in that section.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by the Board, the following activities are prohibited within the Community:

#### **2.1. *Parking and Motor Vehicles.***

(a) The parking of any boat trailer, recreational vehicle, camper or camping unit, bus, commercial use truck or van, self-propelled or towable equipment or machinery of any sort, or any inoperable vehicles on any public or private street within the Community or on any Unit for more than 12 consecutive hours is prohibited unless in an enclosed garage, and parking of any other vehicle on a Unit in places other than the garage or driveway serving the Unit is prohibited, except that Declarant and authorized Builders may park and use construction vehicles, trailers, and other equipment on a Unit or Common Area in connection with their construction, development, marketing, and sale of property in the Community;

(b) No garage may be used for storage or other activities that preclude its use for parking of that number of vehicles for which it was designed. Any vehicle parked outside of the garage on a Unit must be parked on a concrete or hard surface driveway; parking in the yard is prohibited;

(c) Vehicles shall not be parked on any public or private street within the Community unless all available spaces in both the garage and driveway serving the Unit are occupied with vehicles;

(d) No vehicles shall be parked in such manner as to block or obstruct any public or private street, sidewalk, driveway, or mailbox, or the view of traffic;

(e) No vehicle, regardless of size, shall be parked anywhere in the Community that transports inflammatory or explosive cargo;

(f) The repair or maintenance of motor vehicles is prohibited, except that an occupant of a Unit may perform minor, routine maintenance to the occupant's passenger vehicle while parked inside the garage on the Unit; and

(g) Golf carts may not be operated on public or private streets within the Community, except as the Association may specifically authorize and then subject to Texas law and such additional rules as the Board may adopt, which may include, without limitation, specific requirements as to registration, licensing, and size, type, color, and equipping of any golf carts operated within the Community and requirements as to the minimum age of operators.

*Notwithstanding the foregoing, the Association shall not be obligated to enforce parking and traffic violations occurring on public streets. Residents should report all parking and traffic violations on public streets to the El Paso County Sheriff's Office at (915) 479-3838. Such reporting should include inoperable vehicles, abandoned vehicles, and vehicles with expired tags.*

2.2. **Animals and Pets.** Raising, breeding or keeping animals, reptiles, birds or fowl is prohibited, except that dogs or cats (not to exceed a total of three) and a reasonable number of other small common household pets of the type typically confined to cages or tanks (*e.g.*, birds, hamsters, fish, etc.) may

**EXHIBIT "C"**  
(continued)

be kept inside the dwelling on a Unit, provided they are not kept, bred, or maintained for any commercial purpose. This shall not preclude the occupant of a Unit from taking a dog or cat outside the dwelling; however, those pets which are permitted to roam free or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law and kept in compliance with the El Paso County Animal Regulations.

*Residents should report any violation of the Animal Regulations to the El Paso County Sheriff's Office Animal Control Unit at (915) 546-2280, to the Animal Welfare Department at (915) 538-2116, or to Animal Control at (915) 842-1000.*

**2.3. Noxious and Offensive Activities.** Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units is prohibited. No activity may be undertaken or engaged in in the Community that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation. No hobbies or other activities may be pursued that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit, or that involve erection of structures which are visible from property outside of the Unit. No noxious or offensive activity shall be permitted that, in the reasonable determination of the Board, tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units.

**2.4. Outdoor Burning.** No outside burning of trash, leaves, garbage, debris, or other materials is permitted.

**2.5. Sounds and Noise.** No radio, stereo, speaker, loudspeaker, horn, whistle, bell, or other sound device shall be used or discharged so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes.

**2.6. Fireworks and Firearms.** No firecrackers or other fireworks may be use or discharged in the Community. The discharge of firearms is prohibited; provided, the Board shall have no obligation to take action to stop or prevent such discharge.

**2.7. Trash.** The accumulation of rubbish, trash, or garbage is prohibited, except between regular garbage pick-ups, and then only in approved containers (this provision shall not restrict composting of grass clippings, leaves, brush, or other vegetation in a manner approved pursuant to Article 5 of the Declaration). All trash, garbage, or other waste matter shall be kept in adequate containers constructed of metal, plastic, or masonry materials, with tight-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. During construction of improvements on the Unit, all construction trash and debris must be placed in a closed container and otherwise comply with the applicable requirements of any governmental authority having jurisdiction over the Unit with respect to trash disposal.

**2.8. Storage.** No Unit shall be used for outdoor storage of any kind, except in areas, if any, approved pursuant to Article 5 of the Declaration and screened in an approved manner from view of neighboring property and streets. Notwithstanding the foregoing, new building materials used in the construction of improvements on the Unit may be placed on the Unit at the time construction is commenced and maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which time the construction materials shall be removed from the Unit or stored in an enclosure on the Unit approved in accordance with Article 5. There shall be no on-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency



**EXHIBIT "C"**  
(continued)

purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

**2.9. Excavation.** There shall be no excavation of sand, gravel, rock, clay, dirt, soil, or coal on any Unit, except in connection with a grading and/or building plan approved pursuant to Article 5.

**2.10. Hunting and Fishing.** The hunting of birds, reptiles, or mammals, and fishing in ponds in the Community is prohibited.

**2.11. Pollution.** Any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community or that use excessive amounts of water or which result in unreasonable levels of sound or light pollution are prohibited.

**2.12. Unsightly Activities.** The outdoor airing or drying of clothes, rugs, bedding, or similar items is prohibited unless screened from view of other properties in the Community by a screening method approved pursuant to Article 5. No window or wall-type air conditioners shall be permitted to be placed on a Unit in any location visible from the street or other properties in the Community unless otherwise approved pursuant to Article 5.

**2.13. Signs.** No sign, signboard, or other visible advertisement or messaging larger than one square foot may be placed on any Unit. A "for sale" sign, builder sign (which may be placed on the Unit only during the construction of improvements), or realtor sign (if the Unit is for sale) may be placed on the Unit; provided, no more than one sign is permitted at any time, and no such sign may be larger than typical "for sale" signs of the prevailing type used in El Paso County for marketing and selling homes. More than one sign at any time is strictly prohibited.

**2.14. Temporary and Non-Residential Structures.** No structure of a temporary character, trailer, motor home, mobile home, tent, shack, yurt, garage, barn or similar structure on a Unit shall be used for residential occupancy, either temporarily or permanently. The conversion of any porch, carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit is prohibited without prior approval pursuant to Article 5.

**2.15. Sales.** Garage sales, estate sales, or other sales of personal or business property is prohibited in the Community, except as part of an annual or semi-annual Community-wide event sponsored or sanctioned by the Association, if any. No signs, balloons, banners, or other items shall be placed in the Community or on adjacent rights-of-way advertising such sale, except that one sign, not to exceed four square feet per side or five feet in height, may be posted on the Unit on which the sale is being conducted to identify the location and hours of the sale; provided, this Rule shall not restrict the sales and marketing activities of Declarant and such others as it may authorize in accordance with Sections 16.1 and 16.2 of the Declaration.

**2.16. Modifications to Units.** The installation and removal of trees, shrubs and other landscaping, and any modification of anything, permanently or temporarily, on the outside portions of the dwelling, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article 5 of the Declaration. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; garbage cans; woodpiles; above-ground swimming pools; hedges; walls; dog runs; animal pens; storage sheds, and satellite dishes or antennas, except that:

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

(b) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed

**EXHIBIT "C"**  
(continued)

services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

- (c) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus.

**3. Prohibited Conditions.** The following shall be prohibited in the Community:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community; and

(b) Structures, equipment, or other items on the exterior portions of a Unit that have become rusty, dilapidated, or otherwise fallen into disrepair.



**EXHIBIT "D"**

**Certificate of Formation of Overlook at Mission Ridge Association, Inc.**

[see attached]



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

The Overlook at Mission Ridge Association, Inc.  
File Number: 804631286

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 07/01/2022

Effective: 07/01/2022



A handwritten signature in black ink, appearing to read "John B. Scott".

John B. Scott  
Secretary of State

**Form 202**

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee: \$25

**Certificate of Formation  
Nonprofit Corporation**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 804631286 07/01/2022  
Document #: 1159799870002  
Image Generated Electronically  
for Web Filing

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**The Overlook at Mission Ridge Association, Inc.**

**Article 2 - Registered Agent and Registered Office**

☒ A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

**Hunt Mission Ridge, LLC**

OR

☐ B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:

**601 N. Mesa, Suite 1900 El Paso TX 79901**

**Consent of Registered Agent**

☐ A. A copy of the consent of registered agent is attached.

OR

☒ B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

☐ A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

☒ B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Joel G Guzman**

Title: **Director**

Address: **601 N. Mesa, Suite 1900 El Paso TX, USA 79901**

Director 2: **Franklin Stubbs**

Title: **Director**

Address: **601 N. Mesa, Suite 1900 El Paso TX, USA 79901**

Director 3: **Kathy Parry**

Title: **Director**

Address: **601 N. Mesa, Suite 1900 El Paso TX, USA 79901**

**Article 4 - Organization Structure**

☒ A. The corporation will have members.

or

☐ B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**to be the "Association" to which reference is made in the Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge, recorded or to be recorded by Hunt Mission Ridge, LLC ("Declarant") in the**

Office of the Clerk for El Paso County, Texas (as it may be amended, the "Declaration").

**Supplemental Provisions / Information**

**The attached Addendum to Certificate of Formation of The Overlook at Mission Ridge Association, Inc. is incorporated herein by reference.**

[The attached addendum, if any, is incorporated herein by reference.]

**Addendum to Cert of Formation-The Overlook at MR-031122-jlb-clean.pdf**

**Effectiveness of Filing**

☒ A. This document becomes effective when the document is filed by the secretary of state.

**OR**

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Initial Mailing Address**

Address to be used by the Comptroller of Public Accounts for purposes of sending tax information.

The initial mailing address of the filing entity is:

**601 N. Mesa, Suite 1900  
El Paso, TX 79901  
USA**

**Organizer**

The name and address of the organizer are set forth below.

**Janet L. Bozeman      1979 Lakeside Pkwy., Ste 250, Atlanta, GA 30084**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Janet L Bozeman**

Signature of organizer.

**FILING OFFICE COPY**

**Addendum to  
CERTIFICATE OF FORMATION  
OF  
THE OVERLOOK AT MISSION RIDGE ASSOCIATION, INC.**

The following Articles shall be added to and be part of the Certificate of Formation of The Overlook at Mission Ridge Association, Inc.:

**Article 6.      Applicable Statute.** The corporation is organized pursuant to the provisions of the Texas Nonprofit Corporation Law, as set forth in Chapters 20 and 22, and the provisions of Title 1 applicable to nonprofit corporations, of the Texas Business Organizations Code, as it may be amended (the "Act").

**Article 7.      Defined Terms.** Capitalized terms used in this Certificate of Formation and not otherwise defined in this Certificate shall have the meanings set forth in the Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge, recorded or to be recorded by Hunt Mission Ridge, LLC, a Delaware limited liability company ("**Declarant**"), in the Office of the County Clerk of El Paso County, Texas, as it may be amended and supplemented (the "**Declaration**"), and in the By-Laws of The Overlook at Mission Ridge Association, Inc., as they may be amended (the "**By-Laws**").

**Article 8.      Powers.** The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws, may be exercised by its Board of Directors:

(a)      all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Texas in effect from time to time;

(b)      all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in this Certificate of Formation, the By-Laws, or the Declaration, including, without limitation, the following:

(1)      to fix and to collect assessments, dues, and other charges to be levied pursuant to the Declaration;

(2)      to manage, control, operate, maintain, repair, and improve property subject to the Declaration or any other property as to which the Association has a right or duty to provide such services pursuant to the Declaration, By-Laws, or any covenant, easement, contract, or other legal instrument;

(3)      to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration, By-Laws, or other recorded covenant;

(4)      to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(5)      to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

- (6) to borrow money for any purpose;
- (7) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;
- (8) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests of such corporations, firms, or individuals;
- (9) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and
- (10) to undertake such community building, social, and recreational activities and opportunities as the Board of Directors may determine to be desirable and appropriate for the community.

(c) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 8 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 8. None of the objects or purposes set out above shall be construed to authorize the Association to do any act in violation of the Act, and all such objects or purposes are subject to the Act.

**Article 9. Membership.** The Association shall be a membership corporation without certificates or shares of stock. Declarant, for such period as is specified in the Declaration, and each Person who is the Owner of a Unit within The Overlook at Mission Ridge (as such capitalized terms are defined in the Declaration), shall be a member of the Association ("**Member**") and shall be entitled to such voting rights and membership privileges as are set forth in the Declaration and the By-Laws.

**Article 10. Board of Directors.** The business and affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

The Board of Directors shall consist of not less than three nor more than five directors, as determined in accordance with the By-Laws. The initial Board of Directors shall consist of three directors identified in this Certificate of Formation, who shall hold office until their successors are elected and have qualified, or until their resignation or removal. The number, the method of selection, removal, and filling of vacancies on the Board of Directors, and the term of office of members of the Board of Directors, shall be as set forth in the By-Laws.

**Article 11. Indemnification of Directors.** The Association shall indemnify its officers, directors and committee members as and to the extent required by the By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**Article 12. Action by Less Than Unanimous Consent.** The Association and the Board of Directors shall be authorized to take action without holding a meeting or providing notice, by less than unanimous consent of the Members or directors, as applicable, in accordance with the provisions of the By-Laws, except where a meeting is required by Texas law.

**Article 13. Dissolution.** The Association may be dissolved only upon a resolution duly adopted by its Board of Directors and approved by the affirmative vote of Members entitled to cast not less than two-thirds (2/3) of the total votes in the Association. In addition, so long as Declarant owns any property subject to the Declaration or which Declarant may unilaterally make subject to the Declaration pursuant to the provisions of the Declaration, the written consent of Declarant shall be required. The Association is authorized, upon its winding up, to distribute its assets in a manner other than as provided by Section 22.304 of the Texas Business Organizations Code, in accordance with a plan of distribution adopted pursuant to Chapter 22 of the Texas Business Organizations Code, which plan may, but shall not be required to, provide for distribution of the remaining property of the Association for tax-exempt purposes to an organization exempt under Section 501(c) of the Internal Revenue Code, or described by Section 170(c)(1) or (2) of the Internal Revenue Code.

**Article 14. Merger and Consolidation.** The Association may merge or consolidate only upon a resolution duly adopted by its Board of Directors and the affirmative vote of Members entitled to cast not less than two-thirds (2/3) of the total votes in the Association. In addition, so long as Declarant owns any property subject to the Declaration or which it may unilaterally make subject to the Declaration, the written consent of Declarant shall be required.

**Article 15. Amendments.** This Certificate of Formation may be amended only upon a resolution duly adopted by the Board of Directors and approved by the affirmative vote of Members entitled to cast not less than two-thirds (2/3) of the total eligible votes of the membership; provided, the Members shall not be entitled to vote on any amendment to this Certificate of Formation adopted for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity or institutional lender authorized to fund, insure or guarantee mortgages on individual Units, which amendments may be adopted by the Board of Directors. In addition, so long as Declarant owns any property subject to the Declaration or which it may unilaterally make subject to the Declaration, the consent of Declarant shall be required for any amendment.

**EXHIBIT "E"**

**By-Laws of Overlook at Mission Ridge Association, Inc.**

[see attached]



**BY-LAWS**  
**OF**  
**THE OVERLOOK AT MISSION RIDGE ASSOCIATION, INC.**

**- TABLE OF CONTENTS -**

	<b><u>Page</u></b>
<b>Article I Name, Principal Office, and Definitions .....</b>	<b>1</b>
1.1. Name .....	1
1.2. Principal Office .....	1
1.3. Definitions .....	1
<b>Article II Membership: Meetings, Quorum, Voting, Proxies .....</b>	<b>1</b>
2.1. Membership .....	1
2.2. Place of Meetings .....	1
2.3. Membership Meetings .....	1
2.4. Notice of Meetings .....	2
2.5. Electronic Participation in Meetings .....	2
2.6. Waiver of Notice .....	2
2.7. Adjournment of Meetings .....	3
2.8. Voting .....	3
2.9. Proxies .....	4
2.10. Quorum .....	4
2.11. Conduct of Meetings .....	4
2.12. Action Without a Meeting .....	5
<b>Article III Board of Directors: Selection, Meetings, Powers .....</b>	<b>5</b>
A. Composition and Selection .....	5
3.1. Governing Body; Qualifications .....	5
3.2. Number of Directors .....	5
3.3. Selection of Directors; Term of Office .....	5
3.4. Nomination and Election Procedures .....	7
3.5. Removal of Directors and Vacancies .....	7
B. Meetings .....	8
3.6. Organizational Meetings .....	8
3.7. Regular Meetings .....	8
3.8. Special Meetings .....	8
3.9. Notice; Waiver of Notice .....	8
3.10. Place of Meetings; Participation in Meetings by Telephonic or Electronic Means .....	9
3.11. Quorum of Board; Voting .....	10
3.12. Conduct of Meetings .....	10
3.13. Open Meetings; Executive Session .....	10
3.14. Action Without a Formal Meeting .....	11
3.15. Board Action During Declarant Control Period .....	11
C. Powers and Duties .....	11
3.16. Powers .....	11
3.17. Duties .....	11
<b>Article IV Officers .....</b>	<b>12</b>
4.1. Officers .....	12
4.2. Election and Term of Office .....	13
4.3. Removal and Vacancies .....	13
4.4. Powers and Duties .....	13
4.5. Resignation .....	13

<b>Article V Committees.....</b>	<b>13</b>
5.1.    General .....	13
5.2.    Covenants Committee.....	13
5.3.    Service Area Committees .....	14
5.4.    Lifestyle Committees.....	14
<b>Article VI Standards of Conduct; Liability, and Indemnification .....</b>	<b>14</b>
6.1.    Standards for Directors and Officers .....	14
6.2.    Liability .....	14
6.3.    Indemnification .....	15
6.4.    Advancement of Expenses.....	15
6.5.    Conflicts of Interest.....	15
6.6.    Board and Officer Training.....	16
<b>Article VII Community Development and Active Living.....</b>	<b>16</b>
7.1.    Recreational Licenses.....	16
7.2.    Lifestyle Activities .....	17
7.3.    Active Living Director.....	18
<b>Article VIII Management and Accounting.....</b>	<b>18</b>
8.1.    Compensation of Directors and Officers .....	18
8.2.    Right of Declarant Member to Disapprove Actions.....	18
8.3.    Managing Agent.....	19
8.4.    Accounts and Reports.....	19
8.5.    Borrowing.....	20
8.6.    Right to Contract.....	20
8.7.    Agreements, Contracts, Deeds, Leases, Checks, Etc.....	20
<b>Article IX Enforcement Procedures .....</b>	<b>20</b>
9.1.    Authority and Applicability.....	20
9.2.    Notice and Response .....	21
9.3.    Hearing.....	22
9.4.    Appeal.....	22
<b>Article X Miscellaneous .....</b>	<b>23</b>
10.1.    Fiscal Year.....	23
10.2.    Parliamentary Rules.....	23
10.3.    Conflicts .....	23
10.4.    Books and Records.....	23
10.5.    Notices.....	25
10.6.    Amendment.....	25

**BY-LAWS  
OF  
THE OVERLOOK AT MISSION RIDGE ASSOCIATION, INC.**

**Article I  
Name, Principal Office, and Definitions**

**1.1. Name**

The name of the corporation is The Overlook at Mission Ridge Association, Inc. (the "**Association**").

**1.2. Principal Office**

The Association may have such offices in the El Paso, Texas metropolitan area as the Board may determine or as the Association's affairs may require.

**1.3. Definitions**

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge recorded by Hunt Mission Ridge, LLC, a Texas limited liability company ("**Declarant**"), in the Office of the County Clerk of El Paso County, Texas (as it may be amended and supplemented, the "**Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number. References in the Governing Documents to "**votes**" or "**total votes in the Association**" shall refer to the total number of eligible votes existing for the Association at a given time, which eligible number does not include any votes of Units or Members for which voting rights have been suspended.

**Article II  
Membership: Meetings, Quorum, Voting, Proxies**

**2.1. Membership**

The Association shall have two classes of membership: Owner Membership and Declarant Membership, as more fully described in the Declaration. Each Owner of a Unit automatically becomes a Member of the Association upon accepting title to a Unit. Additional provisions of the Declaration pertaining to membership are incorporated by this reference.

**2.2. Place of Meetings**

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

**2.3. Membership Meetings**

(a) **General.** The first meeting of the Association's membership, whether an annual or special meeting, shall be held within one year after the conveyance of the first Unit to a Member other than Declarant or a Declarant Affiliate.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings of the Members to occur within 90 days after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings of the Members. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or within 30 days after receipt of a petition stating the purpose of the meeting and signed by Members holding at least 10% of the total votes in the Association.

## **2.4. Notice of Meetings**

(a) At least 10 but not more than 60 days before any meeting of the membership, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter required by Texas Business Organizations Code Sections 22.253 and 22.303. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.5 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 10.5.

(b) The Board shall set a record date for determining who is entitled to receive notice of a meeting, which shall not be earlier than the 60th day before the meeting date, and shall prepare an alphabetical list of the names of all Members entitled to vote, indicating (i) the address of each Member, and (ii) the number of votes each Member is entitled to cast at the meeting. Not later than the second business day after the date notice of the meeting is given, and continuing through the meeting, the list shall be made available at the Association's principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the meeting notice, for inspection and copying by Members entitled to vote at the meeting, or their agents, for the purpose of communication with other Members concerning the meeting. The Association shall also make the list available at the meeting for inspection at any time during the meeting or any adjournment of the meeting.

## **2.5. Electronic Participation in Meetings**

The Association may hold Association meetings and/or allow Members to participate in any Association meeting by conference telephone or similar communications equipment or another suitable electronic communications system, including videoconferencing technology or the Internet, if the telephone or other equipment or system permits each person participating in the meeting to communicate concurrently with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Member voting at the meeting by means of remote communication is sufficiently identified.

## **2.6. Waiver of Notice**

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed a waiver by such Member and all co-Owners of such Member's Unit of notice of the time, date, and place thereof, unless the Member or the Member's proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

## 2.7. Adjournment of Meetings

If any Association meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members and proxies present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration or applicable law for specific actions, must approve any action taken.

## 2.8. Voting

(a) **Voting Rights.** Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference.

(b) **Notice of Vote.** Not later than the 10th day or earlier than the 60th day before the date of any election or vote, the Association shall give written notice of the election or vote to each Member entitled to vote.

(c) **Method of Voting.** A membership vote on any matter shall be conducted by written ballot signed by the Member entitled to cast the vote represented by such ballot, unless the vote is conducted by secret ballot and the Association has adopted procedures to reasonably ensure that (i) the Member cannot cast more votes than he or she is eligible to cast, and (ii) the Association counts every eligible vote cast. Ballots on any matter may be cast in person at a meeting, by mail or electronic transmission (including facsimile transmission, electronic mail, or by means of an Internet website), or by any combination of those methods; provided, any ballot submitted electronically must be submitted in a manner that permits confirmation of the identity of the Member casting the vote and allows the Member to receive a receipt evidencing the transmission and receipt of the ballot.

A ballot to be submitted by mail or electronic transmission (an "**Absentee Ballot**") shall:

(i) describe each proposed action and provide an opportunity to vote for or against each proposed action; and

(ii) include the following language or such other language as may be authorized in lieu of the following language by future amendment of Texas Property Code Chapter 209:

By casting your vote via absentee ballot you will forego the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your vote(s) will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.

Any solicitation of votes to be cast by Absentee Ballot shall include instructions for delivery of the completed ballot, including the delivery location. If the Absentee Ballot is posted on an Internet website, a notice of posting shall be sent to each Member entitled to vote on the matter with instructions for obtaining access to the website and casting such ballot.

**(d) *Tabulation of Votes.*** A ballot cast at a meeting shall revoke and supersede any ballot casting the same vote submitted by other means. A ballot cast prior to a meeting: (i) may be counted as a Member present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted if the Member entitled to cast the ballot attends the meeting to vote in person; and (iii) may not be counted if the motion was amended at the meeting so as to deviate from the exact language on the ballot previously cast.

The person who tabulates votes on any matter shall not disclose to any other person how any particular Member's votes were cast. No person who is a candidate for election or is the subject of any other Association vote, nor any person related to such person within the third degree of consanguinity or affinity, as determined under Texas Government Code Chapter 573, may tabulate ballots cast in any election or vote hereunder. No person other than a person designated to tabulate the votes shall be given access to the ballots cast other than as part of a recount process authorized by law.

Within 15 days after the date of any election or Member vote, any Member may demand a recount of the votes in accordance with Texas Property Code Section 209.0057.

## **2.9. Proxies**

A Member may cast the vote for such Member's Unit in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease (a) if the Member attends the meeting and votes in person, (b) upon conveyance of any Unit for which it was given, (c) upon the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (d) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

## **2.10. Quorum**

Except as these By-Laws or the Declaration otherwise provide(s), the presence of Members or their proxies entitled to cast at least 20% of the total votes in the Association shall constitute a quorum at any membership meeting, and the casting of ballots representing at least 20% of the total votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not established at any meeting when initially called or for any membership vote when initially conducted, then the quorum for any subsequent attempt to convene such meeting or conduct such membership vote shall be reduced to 10%. A ballot cast by mail or electronically may be counted for purposes of establishing a quorum only as to those action items appearing on the ballot.

## **2.11. Conduct of Meetings**

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

## **2.12. Action Without a Meeting**

In accordance with the Certificate of Formation, any action that is required or that may be taken at a meeting of the Members may be taken without a meeting if:

- (a) the Association mails or delivers to every Member entitled to vote on the action:
  - (i) an Absentee Ballot meeting the requirements of Section 2.8(c), or
  - (ii) notice of the posting of such a ballot on an Internet website, with instructions for obtaining access to such website and casting the ballot; and
- (b) the number of votes cast equals or exceeds the quorum required for a meeting to consider such action; and
- (c) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action if the vote were conducted at a meeting.

Voting instructions or solicitations for any vote conducted in a manner other than at a meeting must be delivered at least 20 days before the deadline for casting ballots and must indicate the deadline for casting the ballot in order to be counted. The period for submitting Absentee Ballots to the Association shall not be more than 60 days. Each Absentee Ballot cast must be signed and dated by the Member; provided, electronic votes cast pursuant to Section 2.8(c) shall constitute written and signed ballots, and written and signed ballots shall not be required for candidates in contested elections. A signed Absentee Ballot may not be revoked once submitted to the Association, except as provided in Section 2.8(c). The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

## **Article III**

### **Board of Directors: Selection, Meetings, Powers**

#### **A. Composition and Selection**

##### **3.1. Governing Body; Qualifications**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Declarant Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "**resident**" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Community.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors that the Declarant Member appoints.

##### **3.2. Number of Directors**

The Board shall consist of three to five directors, as provided in Section 3.3.

##### **3.3. Selection of Directors; Term of Office.**

(a) **Initial Board.** The initial Board shall consist of the three directors identified in the Certificate of Formation, who shall serve until their successors are appointed or elected as provided in this section.



**(b) Directors During Declarant Control Period.** Except as otherwise provided in this subsection (b) and in Section 3.5, the Declarant Member may appoint, remove, and replace Board members until termination of the Declarant Control Period. During such period, the Members other than Declarant shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Members are referred to as "**Owner Directors**"):

(i) At the next annual meeting following the date that Owners other than Declarant, Declarant Affiliates, or Builders own 50% of the maximum number of Units permitted by applicable zoning for the property specifically described in Exhibits "A" and "B" to the Declaration or whenever Declarant earlier determines, the President shall call for an election by which the Members other than the Declarant Member shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Declarant Member. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such Owner Director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) At the next annual meeting following the date that Owners other than Declarant, Declarant Affiliates, or Builders own 75% of the maximum number of Units permitted by applicable zoning for the property specifically described on Exhibits "A" and "B" to the Declaration or whenever Declarant earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Members other than the Declarant Member shall be entitled to elect two of the five directors. The Declarant Member shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Owner Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

Notwithstanding the above or the percentage of Units that may have been conveyed, Members other than the Declarant Member shall be entitled to elect at least one-third of the members of the Board no later than 10 years after the date of recording of the Declaration.

**(c) Directors After the Declarant Control Period.** At the next annual meeting following termination of the Declarant Control Period, the President shall call for an election by which the Members (including Declarant in its capacity as the Member for Units it owns) shall be entitled to elect all five directors. Three directors shall be elected to serve until the second annual meeting following their election and two directors shall be elected to serve until the first annual meeting following their election, as such directors determine among themselves.

Thereafter, upon expiration of the term of office of each director elected pursuant to this subsection (c), the Members shall be entitled to elect a successor to serve a term of two years. Directors shall hold office until their respective successors have been elected and may serve any number of consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Declarant Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS			
Initial Board	50% of Total Units Conveyed	75% of Total Units Conveyed	Termination of Declarant Control Period
Declarant	Owner	Owner	Owner
Declarant	Declarant	Owner	Owner
Declarant	Declarant	Declarant	Owner
		Declarant	Owner
		Declarant	Owner

### **3.4. Nomination and Election Procedures.**

**(a) *Nomination of Candidates.*** At least 30 days prior to any election of directors by the Members, the Board may appoint a Nominating Committee consisting of a chairperson, who shall be a Board member, and three or more Owners or representatives of Owners, who shall serve until the close of the election for which they were appointed. If a Nominating Committee is appointed: (i) the names of the Nominating Committee members shall be announced in the notice of the election; and (ii) the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but at least the number of positions to be filled at such election. In making its nominations, any Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

In addition to or in lieu of appointing a Nominating Committee, the Board may (and if there are more than 100 Units in the Community, it shall) give notice to the Members soliciting candidates interested in running for any position on the Board to be filled by such election. Such notice shall be given at least 10 days prior to disseminating any ballots for purposes of voting in an election of directors and must contain instructions for an eligible candidate to notify the Association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request, which deadline may not be earlier than the 10th day after the date of such notice. The notice shall either be: (i) mailed to each Member; or (ii) provided by email to each Member who has registered an email address with the Association and posted (A) in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or other property within the Community, with the permission of the owner of such property, or (B) on an Internet website maintained by the Association or on other Internet media. The Association shall include on the ballot for such election the name of each eligible candidate from whom the Association received a request to be placed on the ballot in accordance with this section.

All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

**(b) *Election Procedures.*** At each election, voting shall be by ballot, which may be cast in any manner authorized by the Board consistent with Section 2.8. Each Member entitled to vote in such election under Section 3.3 may cast the vote assigned to such Member's Unit for each position to be filled by such election. Cumulative voting shall not be permitted. Notwithstanding this, if the number of candidates equals the number of positions to be filled and there are no nominations from the floor, any Member may move to accept the slate of candidates nominated by the Nominating Committee, and, if approved, no balloting shall be required. Otherwise, the candidate(s) receiving the most votes shall be elected.

### **3.5. Removal of Directors and Vacancies**

Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Members, the Members shall elect a successor for the remainder of the term of such director.

If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a director was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the Board is presented with such evidence, the director shall be automatically considered removed from the Board and ineligible for future service on the Board.

In the event of a vacancy in any directorship eligible for election by the Members due to the death, disability, resignation, or removal of an elected director or for any other reason, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

Declarant shall have no unilateral right to remove or replace Owner Directors, and neither the Members nor the Board shall have any right to remove or replace directors that Declarant appoints. Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by Declarant.

## **B. Meetings**

### **3.6. Organizational Meetings**

The Board shall hold an organizational meeting within 10 days following each annual meeting of the membership, at such time and place (subject to Section 3.10) as the Board shall fix.

### **3.7. Regular Meetings.**

The Board shall hold regular meetings at such time and place (subject to Section 3.10) as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

### **3.8. Special Meetings**

The President, Vice President, or any two directors may call a special meeting of the Board.

### **3.9. Notice; Waiver of Notice**

(a) Notices of Board meetings shall specify the date and time of the meeting and, unless the meeting is being held solely by use of a conference telephone or other remote communication system in accordance with Section 3.10, the location of the meeting. Notice of any meeting which is conducted or which may be attended by conference telephone or other remote communications system in accordance with Section 3.10 shall specify the form of communications system to be used for the meeting and the means of accessing the communications system.

(b) The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the day of the meeting. Notices sent by personal delivery, telephone, or electronic communication shall be delivered at least 72 hours before the time set for the meeting. No notice shall be required for regular meetings conducted in accordance with a published schedule, provided notice of the schedule was delivered to each director in accordance with this subsection (b).

(c) Except as provided in Sections 3.13, 3.14 and 3.15, Members shall be given notice of all Board meetings, setting forth the date, hour, place, and general subject of the meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(i) mailed to each Member, not later than the 10th day or earlier than the 60th day before the meeting date; or

(ii) provided at least 144 hours before the start of a regular meeting and at least 72 hours before the start of a special meeting by:

(A) email to each Member who has registered an email address with the Association;  
and

(B) posting either: (1) in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or on other property within the Community, with the permission of the owner of such property; or (2) on any Internet website available to the Members that is maintained by the Association or by a management company on behalf of the Association.

Each Member is responsible for registering their mail and email address with the Association for purposes of receiving notices under this subsection and notifying the Association in writing of any change in such address. If the Board recesses a Board meeting until the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the requirements of this Article III, Part B. If a Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed by subsection (c)(ii)(A) or (B) above within two hours after adjournment of the meeting being continued.

(d) Section 3.9(c) shall not apply to a Board meeting during the Declarant Control Period unless the meeting is conducted for the purpose of:

- (i) adopting or amending the Governing Documents;
- (ii) increasing the amount of the Annual Assessment or adopting or increasing a Special Assessment;
- (iii) electing Owner Directors or establishing or modifying the process for their election; or
- (iv) changing the voting rights of Members.

Nothing in this subsection (d) shall authorize the Board to take action on any matter listed in clauses (i) through (iv) in contravention of the approval that would otherwise be required under the Governing Documents or Texas law.

(e) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### **3.10. Place of Meetings; Participation in Meetings by Telephonic or Electronic Means**

(a) All Board meetings shall be held within El Paso County, except for meetings held by telephonic or other communication system pursuant to this Section 3.10.

(b) A meeting of the Board, or of any committee the Board appoints, may be held using a conference telephone or similar communications equipment, or other suitable electronic communications system, including videoconferencing technology or the Internet, or any combination of such systems, provided that:

- (i) all Board or committee members, as applicable, entitled to participate in the meeting consent to the meeting being held by means of that system;
- (ii) the electronic or telephonic system used allows each director or committee member, as applicable, to communicate concurrently with every other director or committee member;

(iii) except for any portion of the meeting conducted in executive session as described in Section 3.13, all Members in attendance may hear all directors or committee members;

(iv) Members are allowed to listen using any electronic or telephone communication method used or expected to be used by any director or committee member; and

(v) notice of the meeting includes instructions for accessing the meeting using any such communication method.

Participation in a meeting pursuant to this section constitutes presence at such meeting, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the ground that the meeting has not been lawfully called or convened.

### **3.11. Quorum of Board; Voting**

(a) At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken.

(b) Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14.

### **3.12. Conduct of Meetings**

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that written minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

### **3.13. Open Meetings; Executive Session**

(a) Subject to the provisions of Sections 3.13(b), 3.14 and 3.15, all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting.

(b) Notwithstanding the above, any Board meeting may be adjourned and reconvened in executive session, and attendance at such meeting restricted to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting to discuss proposed, pending or threatened litigation, personnel matters, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board, or other matters which the Texas Property Code Section 209.0051(h) or other provisions of Texas law specifically authorize to be discussed in executive session. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of any Owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

### **3.14. Action Without a Formal Meeting**

(a) Except as provided in subsection (b), the Board may take action outside of a Board meeting by written consent to such action in the manner authorized in the Certificate of Formation, or by voting by electronic or telephonic means, without prior notice to the Members, if each director is given a reasonable opportunity to express his or her opinion to all other directors and to vote or execute a consent to such action. Except as provided in Section 3.15, any Board action taken without notice to the Members under Section 3.9 must be summarized orally at, and documented in the minutes of, the next Board meeting, including an explanation of any known actual or estimated expenditures approved at the meeting.

(b) Except as provided in Section 3.15, the Board may not consider or vote on any of the following matters except in an open Board meeting for which prior notice was given to the Members pursuant to Section 3.9: fines; damage assessments; initiation of foreclosure actions; initiation of enforcement actions (other than temporary restraining orders or violations involving a threat to health or safety); increases in assessments; levying of special assessments; appeals from denial of applications for architectural approval; suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue; lending or borrowing money; the adoption or amendment of any of the Governing Documents which the Board is authorized to adopt or amend; the approval of an annual budget or the approval of an amendment of an annual budget; the sale or purchase of real property; the filling of a vacancy on the Board; the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or the election of an officer.

### **3.15. Board Action During Declarant Control Period**

The requirements and limitations set forth in Sections 3.9(c), 3.10(a), 3.13, and 3.14 shall not apply to Board meetings conducted during the Declarant Control Period unless conducted for the purpose of:

- (a) adopting or amending the Governing Documents;
- (b) increasing the amount of the Base Assessments or adopting or increasing a Special Assessment;
- (c) electing Owner Directors or establishing or modifying the process for their election; or
- (d) changing the voting rights of Members.

Nothing in this Section 3.15 shall be construed to authorize the Board to take action on any matter listed in clauses (i) through (iv) in contravention of the approval that would otherwise be required under the Governing Documents or Texas law.

## **C. Powers and Duties**

### **3.16. Powers**

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do, or cause to be done on the Association's behalf, all acts and things except those which the Governing Documents or Texas law require(s) to be done and exercised exclusively by all or particular Owners or by the membership generally.

### **3.17. Duties**

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Unit's share of the Common Expense and any Service Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents; provided, if the Association proposes to contract for services that will cost more than \$50,000, it shall solicit bids or proposals for such services using a bid process established by the Board pursuant to Texas Property Code Section 209.0052(c);
- (h) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Association;
- (k) keeping a detailed accounting of the Association's receipts and expenditures;
- (l) preparing, filing, and amending a management certificate as required by Section 8.3(b);
- (m) making available current copies of the Governing Documents on an Internet website maintained by or on behalf of the Association which is accessible to the Members as required by Texas Property Code Section 207.006, and making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 10.4(c); and
- (n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Texas law, the Certificate of Formation, or these By-Laws.

## **Article IV Officers**

### **4.1. Officers**

The Association's officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The

Board may appoint such other officers, including one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

#### **4.2. Election and Term of Office**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the membership, to serve until their successors are elected.

#### **4.3. Removal and Vacancies**

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

#### **4.4. Powers and Duties**

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets as provided for in the Declaration, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### **4.5. Resignation**

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

### **Article V Committees**

#### **5.1. General**

In addition to such committees as Declarant or Board may appoint pursuant to the Declaration, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

#### **5.2. Covenants Committee**

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article IX of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.



### **5.3. Service Area Committees**

The Owners within any Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services which the Association provides to all Units in the Community. A Service Area Committee, if elected, shall consist of three Owners of Units in the Service Area; however, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Elections of Service Area Committees may be held by written ballot sent to all Owners of Units within the Service Area, or at a meeting of the Owners of Units within the Service Area, as the Board determines. The Board or any Owner of a Unit in the Service Area may nominate candidates for election to the Service Area Committee. The number of candidates equal to the number of positions to be filled receiving the most votes shall be elected. Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, he shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

### **5.4. Lifestyle Committees**

In addition to such other committees as the Board may establish pursuant to this Article, the Board may appoint or allow the Members to elect one or more lifestyle committees to make recommendations to the Board regarding services or facilities provided by the Association or activities sponsored by the Association. For example, separate committees might be organized to address the pool, tennis courts, trails, etc.

## **Article VI Standards of Conduct; Liability, and Indemnification**

### **6.1. Standards for Directors and Officers**

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Texas law.

### **6.2. Liability**

In performing their duties, directors and officers shall be insulated from liability as provided for directors of corporations under Texas law and as otherwise provided by the Governing Documents. The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

### 6.3. Indemnification

Subject to the limitations of Texas law, the Association shall indemnify every present and former officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Texas law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

### 6.4. Advancement of Expenses

In accordance with the procedures and subject to the conditions and limitations set forth in Texas law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

### 6.5. Conflicts of Interest

(a) A director shall promptly disclose to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. Notwithstanding this, the fact that a director appointed by Declarant may be employed by or otherwise transact business with Declarant or a Declarant Affiliate, and that Declarant may transact business with the Association or its contractors, shall not require disclosure as a potential conflict of interest hereunder.

(b) The Association shall not enter into a contract with a current director, a person related to a current director within the third degree of consanguinity or affinity, as determined under Chapter 573, Texas Government Code (a "**Director Relative**"), a company in which a current director has a financial interest in at least 51% of the profits, or a company in which a Director Relative has a financial interest in at least 51% of the profits, unless all of the following conditions are satisfied:

(i) the director, Director Relative, or company bids on the proposed contract and the Association has received at least two other bids for the contract from Persons not associated with the director, Director Relative, or company, if reasonably available in the area;

(ii) the director is not given access to other bids, does not participate in any Board discussion regarding the contract, and does not vote on the award of the contract;

(iii) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the Board and the Board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of a majority of the directors who do not have an interest governed by this Section 6.5; and

(iv) the Board certifies that the requirements of this Section 6.5 have been satisfied by a resolution approved by an affirmative vote of a majority of the directors who do not have an interest governed by this Section 7.5.

(c) Except as provided in subsections (b) and (d), no director may transact business with the Association or any Association contractor within two years after the director's term expires.

(d) This Section 6.5 does not apply to any contract entered into by the Association during the Declarant Control Period with Declarant or any Declarant Affiliate.

## **6.6. Board and Officer Training**

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Texas corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected director and officer shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video, or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for Association directors, officers and managers in operation and management of Associations.

# **Article VII Community Development and Active Living**

## **7.1. Recreational Licenses**

The Board may, in its sole discretion, offer recreational licenses pursuant to a license agreement to any person who does not own a Unit in the Community for the purpose of permitting such person to access and use some or all of the Common Area recreational facilities and amenities. If offered, the Board shall have the full authority to determine the criteria for recreational licenses, the fees for such licenses, and the terms, conditions, and privileges of such licenses. By way of example and not limitation, the Board may offer licenses on an annual, seasonal, or monthly basis; may establish different levels of licenses such as individual, dual, family, or senior; and may offer varying rights or use privileges, such as all access, pool only, tennis only, etc.

If established, a recreational license does not represent any ownership or proprietary interest, beneficial interest, or other vested interest in the Association or any of the assets of the Association. Although any such license may be referred to generally as a "membership," it shall not be deemed a membership in the Association as such term is used in the Governing Documents, the Texas Residential Property Owners Protection Act (Texas Property Code Section 209.001, *et seq.*), or corporate law or confer any voting rights in the Association. References to "membership" and "Members" in the Governing Documents shall not be deemed to include licensees. Notwithstanding this, licensees may be permitted to attend Association meetings for

informational purposes (but not for voting or quorum purposes), serve on committees in an advisory capacity, and serve similar informal functions with respect to the Association.

## **7.2. Lifestyle Activities**

**(a) General.** In order to enhance the lifestyle within and contribute to the betterment of The Overlook at Mission Ridge and the surrounding community, the Association is authorized to facilitate, through organization, funding, and/or administration, such activities, services, and programs as the Board determines necessary, desirable, and appropriate to advance community and lifestyle in The Overlook at Mission Ridge, which may include, but need not be limited to, the following:

- Primary education, day camps, daycare, and adult special interest programs;
- Charter clubs, social clubs, and other volunteer organizations and activities;
- Social programs, including parties, festivals, celebrations, and similar events;
- Cultural, musical, and artistic programs;
- Athletic events, tournaments, and activities;
- Opportunities for travel and daytrip outings;
- Learning centers and computer centers; and
- Other services, activities, and programs for the benefit of the residents of The Overlook at Mission Ridge and the surrounding community.

Although the Association may fund overhead costs for organizing and sponsoring these programs and activities through Common Expenses, most of the costs should be funded through fees charged to the participants in such programs or activities or from sources other than Common Expenses charged to all Units. The Association may seek to qualify for local, state, or federal grants and solicit sponsorships and other donations.

**(b) Lifelong Learning Opportunities.** The Association may provide for or facilitate continuing education opportunities for persons of all ages based on level of interest, availability of instructors, and cost. Community education opportunities should reflect the diverse interests of the community, such as art, music, culture, food and cooking, finance, conservation, exercise, health and wellness, recreation, gardening, literature, and languages, among others.

**(c) Volunteerism.** In recognition of the fact that volunteerism benefits both The Overlook at Mission Ridge and the larger community, the Association may encourage and facilitate the organization of volunteer groups and activities within the Community. To accomplish this, the Board may grant incentives for volunteering, such as exemptions from specific program and activity fees and public recognition of distinguished volunteers and their achievements. The Board may also cooperate with and support outside organizations, such as recreational leagues or cultural organizations, by providing access to Common Area facilities or sponsoring or helping to promote the organization's events. Additionally, the Association may compile and maintain a data bank of volunteer opportunities and needs and people interested in volunteering, to help match volunteers with activities in which their interests and skills will be of assistance.

**(d) Charter Clubs.** The Board may establish or support the establishment of "charter clubs" to encourage or facilitate the gathering of people to pursue common interests or hobbies. A charter club shall confer privileges and impose responsibilities on the club and its members. For example, the Board may grant privileges such as financial, administrative, or technical support, material support, and liability insurance

coverage. The Board may grant charters to any group of individuals who share a particular field of interest. The Association may provide initial or ongoing funding to a charter club and/or require that charter members pay dues, use or consumption fees, or otherwise obtain funding for club expenses. However, the Association shall not sponsor or provide funding for promotion of specific events or activities of a charter club unless the Board, in its discretion, determines that such events or organizations provide a general benefit to the entire Community.

**(e) Trails Management.** The Board may work with local governmental agencies, owners of property adjoining The Overlook at Mission Ridge, community leaders, conservation groups, and others outside of the Community in developing a trails management plan for the management, operation, and maintenance of regional trails and recreation areas within or outside The Overlook at Mission Ridge, and to contribute to the management, maintenance, and operation of such regional trails and recreation areas.

**(f) Civic Groups.** The Association, in the Board's discretion, may invite local civil and professional groups to engage in activities in The Overlook at Mission Ridge, such as Girl/Boy Scouts of America, 4-H, recreational youth sports leagues, Boys/Girls Clubs, Big Brothers and Big Sisters, Rotary Club, AARP, Garden Club, Junior Women's League, NAACP, Veterans Club, and school and community service groups.

### **7.3. Active Living Director**

At any time that the Board determines that there are a sufficient number of residents in the Community and that a sufficient level of funding exists, the Board may create and fund the position of "**Active Living Director**" to provide leadership for the overall planning, development, implementation, and continuing evaluation of programs, activities, and services to carry out the activities described in this Article VII. The Active Living Director may be an employee or an independent contractor of the Association and may be retained on a full-time or part-time basis, as the Board determines appropriate.

## **Article VIII Management and Accounting**

### **8.1. Compensation of Directors and Officers**

The Association shall not compensate directors and officers for acting as such unless Members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

### **8.2. Right of Declarant Member to Disapprove Actions**

So long as there is a Declarant Membership, the Declarant Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Declarant Member's sole judgment, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of the Community, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this section have been met.

**(a) Notice.** The Association shall give the Declarant Member written notice of all meetings of the membership, the Board, and committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, ex-

cept in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

**(b) *Opportunity to be Heard.*** At any such meeting, the Association shall give the Declarant Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Declarant Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Declarant Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Declarant Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### **8.3. Managing Agent**

(a) The Board may employ for the Association professional management 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 policy-making authority or ultimate responsibility for those duties set forth in Section 3.17. The Board may employ Declarant or its affiliate as managing agent or manager. The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

(b) The Association shall record a management certificate as required by Texas Property Code Section 209.004 and amend the same within 90 days of any change in the information required to be set forth therein. In addition, within seven days after recording an initial or amended management certificate, the Association shall file a copy of the same with the Texas Real Estate Commission.

### **8.4. Accounts and Reports**

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

- (i) accounting and controls should conform to generally accepted accounting principles; and
- (ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expense activity for the preceding period;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

(d) The Board shall report in writing to the Members any indemnification of or advancement of legal expenses to any officer, director, or committee member in accordance with Texas Business Organizations Code Section 8.152, as it may be amended.

#### **8.5. Borrowing**

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

#### **8.6. Right to Contract**

The Association shall have the right to contract with any Person for the performance of various duties and functions, subject to the provisions of Section 6.5, if applicable. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with condominium, cooperative, or other owners or residents associations, within and outside the Community.

#### **8.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

### **Article IX Enforcement Procedures**

#### **9.1. Authority and Applicability**

The Association shall have the power, subject to the limitations set forth in Articles 16 and 17 of the Declaration, as applicable, to file suit to enforce the Governing Documents and/or to impose sanctions for any violation of the Governing Documents. However, unless the subject of the proposed action or sanction is a violation for which the Owner has been given notice complying with this Article and the opportunity to exer-

cise any rights to which the Owner was entitled under this Article in the preceding six months, the Board shall comply with the procedures set forth in this Article IX prior to taking any of the following actions:

(a) filing a lawsuit against an Owner, other than a suit: (i) to collect Base Assessments, Special Assessments, Service Area Assessments, or Specific Assessments under Section 11.4(a), (d) or (e) of the Declaration; or (ii) to foreclose the Association's lien under Article 11 of the Declaration; or (iii) to obtain a temporary restraining order or temporary injunctive relief;

(b) suspending an Owner's right to use Common Area, other than a temporary suspension due to a violation that occurred in a Common Area and involved a significant and immediate risk of harm to others, in which case the temporary suspension shall be effective until the Board makes a final determination on the suspension action after following the procedures prescribed by this Article;

(c) levying a monetary fine;

(d) reporting an Owner's delinquency to a credit reporting agency; or

(e) any other sanction for which Section 8.2(a) of the Declaration specifically requires compliance with this Article.

## **9.2. Notice and Response**

Prior to taking any action for which Section 9.1 requires compliance with the procedures set forth in this Article, the Board or its delegate shall serve the alleged violator and/or the responsible Owner, if the alleged violator is not an Owner, with written notice, by certified mail, return receipt requested, to the Owner's last known address as shown on the Association's records:

(a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable;

(b) describing the proposed sanction to be imposed; and

(c) informing the alleged violator and/or Owner that:

(i) they have 30 days after receipt of the notice to present a written request for a hearing before the Board;

(ii) they may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. Section 501, *et seq.*), if serving on active military duty;

(iii) the Association may recover from the Owner reasonable attorneys' fees and other reasonable costs incurred by the Association in enforcing the Governing Documents after the date of the hearing pursuant to subsection (c)(i), or if no hearing is requested, after the deadline for requesting a hearing, including such fees and costs incurred in collecting amounts, including damages, due to the Association if not paid by a date specified in such notice, or in the case of a violation of a curable nature, the violation continues after a date specified in such notice; and

(iv) if the alleged violation is of a curable nature and does not pose a threat to public health or safety, they may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice, except that the Association shall have no obligation to provide a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. A violation is considered a threat to public health or safety if it could materially affect the physical health or safety of an ordinary resident. A violation is considered not to be of a "curable nature" if it has already occurred and is not a continuous action (for example, holding a garage sale or other event prohibited by the Declaration or Rules which cannot be



undone) or is not capable of being remedied by affirmative action or is otherwise considered "uncurable" as described in Texas Property Code Section 209.006.

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator intends to request a hearing or challenge the imposition of the proposed sanction. If the alleged violator is entitled to an opportunity to cure the violation under subsection (c)(iv) above and cures the alleged violation within the reasonable period stated in the notice, the Board may not assess a fine or suspend the Owner's right to use the Common Area for such violation. However, it shall not affect the Board's right to sanction future violations of the same or other provisions and rules by any Person.

Except as provided herein, if a timely request for a hearing is not made, the sanction stated in the notice may be imposed.

A copy of any notice provided pursuant to this Section 9.2, together with a statement of the date and manner of delivery, signed by the officer, director, or agent who gave such notice, shall be placed in the minutes of the Board.

### **9.3. Hearing**

If the alleged violator is entitled to a hearing and submits a written request for a hearing within the allotted 30-day period, the hearing shall be held before the Board in executive session within 30 days after receipt of the alleged violator's request, unless postponed as authorized herein. Either the Board or the alleged violator may request a postponement of up to 10 days, and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator.

The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing and provide the Owner with a packet containing all documents, photographs, and communications relating to the matter the Association intends to introduce at the hearing. If the Association does not provide such packet at least 10 days prior to the hearing, the Owner is entitled to an automatic 15-day postponement of the hearing. At the hearing, a director or the Association's designated representative shall first present the Association's case against the Owner. The Owner or the Owner's designated representative is then entitled to present the Owner's information and issues relevant to the appeal or dispute. The alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. If the alleged violator fails to appear, the hearing may be held in his or her absence.

The Board may adopt rules for the conduct of such hearings that may include, without limitation, rules governing the presentation of evidence and witnesses and the ability of an alleged violator to question adverse witnesses. The minutes of the meetings of the Board shall contain a written statement of the results of the hearing (*i.e.*, the Board's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three business days after the hearing.

### **9.4. Appeal**

If the hearing is held before the Covenants Committee, the alleged violator shall have the right to appeal the Covenants Committee's decision to the Board. To exercise this right, the alleged violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

## **Article X Miscellaneous**

### **10.1. Fiscal Year**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

### **10.2. Parliamentary Rules**

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law or the Governing Documents.

### **10.3. Conflicts**

If there are conflicts among the provisions of Texas law, the Certificate of Formation, the Declaration, and these By-Laws, the provisions of Texas law, the Declaration, the Certificate of Formation, and these By-Laws (in that order) shall prevail.

### **10.4. Books and Records**

**(a) Document Retention.** The Board shall be responsible for compliance with the following document retention policy relating to the Association's books and records:

(i) the Certificate of Formation, the By-Laws, the Declaration, and all amendments to such documents shall be retained permanently;

(ii) financial books and records shall be retained for seven years;

(iii) account records of current Owners shall be retained for five years;

(iv) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(v) minutes of meetings of the Members and the Board shall be retained for seven years; and

(vi) tax returns and audit records shall be retained for seven years.

**(b) Turnover of Books and Records.** Within 60 days after termination of the Declarant Control Period, Declarant shall deliver to the Association all property, books and records of the Association in the Declarant's possession.

**(c) Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, the minutes of meetings of the Members, the Board, and committees, and other records of the Association, as and to the extent required by Texas Property Code Section 209.005 or other provisions of Texas law. The Board shall provide for such inspection to take place at the Association's office or at such other place within El Paso County as the Board shall designate. The Association shall not be required to release or make available for inspection or copying:

(i) any document that constitutes attorney work product or that is privileged as an attorney-client communication; or

(ii) unless directed to do so by court order or unless with Association is provided with the express written approval of the Owner whose records are the subject of the request, any records that identify:

(A) a particular Member's violation history, personal financial information, history of payments or delinquencies in paying amounts due to the Association, or contact information other than address; or

(B) information related to an Association employee, including personnel files.

**(d) Rules for Inspection.** A Member or the Member's authorized representative must submit to the Association a written request for access to inspect or copies of books and records under subsection (c), identifying the specific books and records or information desired. Such request shall be mailed by certified mail to the Association's mailing address or that of its authorized representative as reflected on the most current management certificate filed under Texas Property Code Section 209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records. The Association may produce books and records requested under this Section 10.4 in hard copy, electronic, or other format reasonably available to the Association.

Except as otherwise provided in this Section, on or before the 10th business day after the date the Association receives the request:

(i) if an inspection is requested, then on or before the 10th business day after the date the Association receives the request, the Association shall send written notice to the Member of dates during normal business hours that the Member or its authorized representative may inspect the requested books and records, to the extent those books and records are in the possession, custody, or control of the Association, and the inspection shall take place at a mutually agreed upon time during normal business hours, at the Association's principal office or at such place within El Paso County as the Board may designate; or

(ii) if copies of identified books and records are requested, then the Association shall produce the requested books and records, to the extent required under subsection (c) and in the possession, custody, or control of the Association; provided, if the Association is unable to do so, it shall give the requestor written notice that it is unable to do so within such time period, stating a date within 15 business days after the date of such notice by which the information will be sent or made available for inspection.

**(e) Records Production and Copying Policy.** The Board shall establish a records production and copying policy that prescribes the charges to be paid by the Member for compilation, production, and reproduction of information requested by such Member or its authorized representative under this Section, which charges may include all reasonable costs of materials, labor, and overhead, but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3 ("**Authorized Charges**"). No charge shall be made pursuant to such policy until the policy has been recorded as required by Texas Property Code Sections 209.005 and 202.006. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the actual Authorized Charges vary from the estimate, the Association shall submit a final invoice to the Member on or before the 30th business day after the date the information is delivered reflecting the variance and any balance or refund due. Any balance due which is not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Member may be added to the Member's account as an assessment. Any amount paid in excess of Authorized Charges shall be refunded to the Member not later than the 30th business day after the date the invoice is sent to the Member.

**(f) Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

## 10.5. Notices

**(a) Form of Notice and Method of Delivery.** Except as otherwise provided in the Declaration or these By-Laws or by Texas law, all notices, demands, bills, statements, or other communications to be given under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has provided a telephone facsimile number or an email address for use by the Association, by facsimile or electronic mail with written confirmation of transmission. It is the responsibility of each Member to give notice to the Association of any change in the Member's address, facsimile number, or email address. Where the Governing Documents or applicable law require notice to an Owner or Member, notice given to any Member or co-Owner of a Unit shall be deemed notice to all Members or co-Owners of such Unit.

**(b) Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the mailing address, telephone facsimile number, or email address which the Member has designated by notice to the Secretary in accordance with this Section 10.5 or, if no such address or number has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the mailing address, facsimile number, or email address of the principal office of the Association or its managing agent, or at such other address as the Association has designated by notice to the Members in accordance with this Section 10.5; or

(iii) if to the Declarant, at the Declarant's principal address as it appears on the Secretary of State's records, or at such other address as the Declarant has designated by notice to the Association in accordance with this Section 10.5.

**(c) Effective Date.** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

## 10.6. Amendment

Until termination of the Declarant Control Period, the Board of Directors may amend these By-Laws for any purpose by a majority vote of the total number of directors. Thereafter, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members entitled to cast more than 50% of the total votes in the Association, and the consent of the Declarant Member, if such exists. Notwithstanding the above, no amendment to these By-Laws may conflict with the Declaration, and the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Association certifying that the requisite approval was obtained.

Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Declarant Member without the written consent of Declarant, the Declarant Member, or the assignee of such right or privilege.

## CERTIFICATION


I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of The Overlook at Mission Ridge Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of The Overlook at Mission Ridge Association, Inc. as duly adopted by resolution of the Board of Directors thereof on the 18 day of JULY, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 18 day of JULY, 2022.

[CORPORATE SEAL]

  
Secretary

## EXHIBIT "F"

### Initial Design Guidelines – Painted Sky at Mission Ridge Unit 3

All site work, landscaping, structures, improvements, modifications, and items placed on a Unit in a manner or location visible from outside of any existing structures on a Unit, including fences, sports, play and maintenance equipment, outdoor furniture and storage, and decorative items (collectively, "**Improvements**") are subject to the following Design Guidelines and the approval procedures set forth in Article 5 of the Declaration of Covenants, Conditions and Restrictions for The Overlook at Mission Ridge (as it may be amended or supplemented, the "**Declaration**"), except to the extent that Texas law or the Declaration may otherwise provide. The provisions of the Declaration are incorporated herein by reference. The entity or committee having jurisdiction over a particular case is referred to as the "**Reviewer**."

These Design Guidelines are subject to amendment as provided in the Declaration. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

**1. Building Types.** Permitted uses on a Unit include one detached, single family dwelling, together with a private garage and other customary appurtenances to private dwellings, including porches, patios, and small storage buildings that are reasonable and appropriate for the Community, as determined by the Reviewer. No more than one dwelling shall be erected on any Unit. The dwelling on each Unit shall have an enclosed, attached or detached garage for not less than two nor more than three vehicles.

**2. Minimum Dwelling Size.** The living area of a dwelling, exclusive of porches and garages, will not be less than 1,150 square feet for a one-story dwelling, and the combined living area of a dwelling with 1.5 or 2 stories shall not be less than 1,400 square feet. However, in no event shall the ground living area of a 1.5 or 2-story home be less than 1,000 square feet.

**3. Height Limitation.** No structure constructed or installed on any Unit shall have more than two (2) stories nor exceed 30 feet in height (measured from the highest top of curb elevation adjacent to the Unit to the top of the gable). The height of a structure will be measured from the highest top of the curb elevation adjacent to the Unit to the top of the gable.

**4. Garages and Driveways.** For three (3) car garages, one garage door must be offset at least three feet (3') from the face of the other garage doors. Three (3) car garage driveways shall be allowed when a minimum 2 ft. strip of gravel, cobble, or plants separates one drive lane from the other driveway lanes. Due to adverse effects from long term UV exposure, NO colored or stamped concrete driveway surfaces are allowed. No detached garage shall have more than one (1) story. No carport shall be built, placed, constructed, or reconstructed on a Unit. No garage shall be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles.

**5. Building Setbacks.** All Improvements shall comply with the plat setback requirements. Minor setback encroachments that comply with the requirements of Exhibit "F-1" attached hereto and incorporated herein, are allowed.

**6. Building Exterior Requirements.** Every residential structure shall comply with the following requirements:

6.1. All doors visible from the street in front of the Unit must be under an overhang, porch, or portal. No such door may be white, must be a color permitted under Section 6.10, and must complement the building color palette.

6.2. No structure (including flat roof style) is permitted to have HVAC units or duct work on the roof unless they are screened from view of adjacent streets and community open space. No pool heating hoses of any type may be placed on the roof of any structure.

6.3. HVAC units shall not be permitted on pitched roofs. On pitched-roof structures, HVAC units must be located on the ground along the rear of the home or toward the rear of the side yard.

6.4. Roofing materials on pitched-roofs must be barrel-shaped clay, barrel-shaped concrete, flat clay, or flat concrete tiles. Roof color and materials must complement the building color palette, and both the color and manufacturer specifications must be submitted to the Reviewer for approval.

6.5. On flat roofs, parapets must be continuous around the entire perimeter of the home. Parapets shall extend a minimum of 1.5 feet above any point in the adjoining truss system. The inner sides of parapets and the surface of flat roofs shall be coated with material in a color similar to the color of the house.

6.6. Pitched roofs may not have a pitch less than 4:12 unless a lower pitch is characteristic of the house style and approved by the Reviewer.

6.7. All visible flashing/sheet metal and vents must be painted to match the adjacent roof or the accent or primary color of structure.

6.8. No antennas or similar equipment may be visible from the street, except as required by law. Small (less than 2 feet in diameter) satellite dishes may be visible from the street, but must be placed on the farthest point from the street allowing proper exposure for reception. Solar panels may face the street, but they must have a "low profile mounting system" with seamless finished look, premium all black frames, and front trim panel to obscure wiring and mounting posts.

6.9. No structure may be painted with any color that has not been approved by the Reviewer. Unless approved by the Reviewer, no structure may be painted more than one color.

6.9.1. Notwithstanding the foregoing, pullouts can be up to two (2) shades darker or lighter than the main house.

6.9.2. Garage doors must be painted an approved color and MUST complement the main color of the home.

6.9.3. NO GARAGE DOOR SHALL BE WHITE. All garage doors must be an approved color listed in Section 6.10 and must complement the building color palette.

6.9.4. Use of gates, shutters, and windows for accent colors are encouraged.

6.10. The following colors are approved paint colors: Sherwin Williams or matched colors SW6094, 6095, 6096, 6119, 6122, 6123, 6124, 6141, 6142, 6143, 6144, 6145, 6162, 6163, 6164, 6169, 6170, 6171, 6172, 6176, 6177, 6178, 6179, 6190, 6191, 6192, 6211, 6212, 6213, 6333, 6334, 6335, 6380, 6381, 6436, 6437, 6613, 6614, 6681, 6682, 7004, 7005, 7020, 7036, 7037, 7038, 7039, 7064, 7065, 7066, 7067.

6.11. All wrought iron/ornamental iron fences must be painted black, dark brown or rust brown. All wrought iron/ornamental iron must consist of straight vertical bars (4" on center) with horizontal rails for support. Iron fences may not contain curves or curls.

7. **Dwelling Repetition.** The same house (plan and elevation) shall be separated by three (3) Units on the same side of the street and will not be permitted without at least two (2) Unit separations when



across the street. Different elevations of the same plan must be separated by at least two (2) Units on the same side of the street and will not be permitted without at least two (2) Unit separations when across the street.

**8. Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat depicting the Unit or as recorded by separate instrument.

**9. Fences and Garden Walls.**

9.1. Masonry rock walls shall be required along all rear, and side lot boundary lines, except as otherwise approved in writing by the Reviewer. No wall (other than a masonry rock garden wall or hedge, which is no more than 18 inches in height) is permitted on a Unit between the front building setback line and the street; provided, this provision shall not prohibit any necessary retaining walls. Except for garden walls permitted above and except as otherwise approved in writing by the Reviewer, all lot boundary walls must be constructed of masonry rock and be a minimum of four feet (4') feet in height (a minimum of six feet (6') in height when adjacent to a drainage pond) and a maximum of six feet (6') in height (measured from the ground elevation). If desired, the Unit Owner can increase the height of a four-foot (4') masonry rock wall to six feet (6') by either adding two feet (2') of matching masonry rock wall or by the addition two feet (2') of wrought iron with straight vertical bars (see Section 6.11). Chain link fences and gates are prohibited. Cedar fences and gates are not permitted on any Unit where such fences are visible from a public street, unless approved by the Reviewer. Pedestrian gates may not be installed at the rear of double frontage Units.

9.2. Any walls constructed along common boundary lines with adjoining Units shall be considered "Party Structures" and maintained in accordance with Section 6.3 of the Declaration; provided, Declarant shall not be responsible for maintaining or sharing in the maintenance of any Party Structures that it did not construct. Any wall which is not on or adjacent to a common boundary line must be placed inside the property line of the Unit, and the entire cost of the wall will be borne by Owner. Each Owner will construct the rock walls according to the Subdivision Improvement Plan specifications if those requirements vary from the requirements in this section.

**10. Completion of Construction.** Once construction of any Improvement is commenced, it shall be pursued diligently to completion as to building exterior and front yard landscaping (and side yard landscaping facing a public street) in accordance with the provisions of Declaration within 180 days from the date of commencement.

**11. Landscaping.** Each front yard, side yard, and any rear parkway of each Unit must be landscaped prior to the occupancy of any structure on the Unit. If the homebuilder sells a home on a Unit, the homebuilder shall install the landscaping no later than one (1) week following closing of the sale of the Unit to the buyer. The minimum landscaping requirements are:

11.1. Natural turf in front yards shall be limited to a maximum of 400 square feet.

11.2. High quality artificial turf in front yards will be permitted.

11.3. All areas of the front yard to the building corners and any side or rear parkway must be improved with colored gravel (with adequate underlayment), natural rocks or boulders, high quality artificial turf or live plant material. Colored gravel must complement the building color palette (black color rock, white color rock, and lava rock regardless of color are prohibited colors for gravel ground color).

11.4. A minimum of three (3) 5-gallon plants and two (2) 15-gallon plants (deciduous, shrubs, broadleaf, evergreens, coniferous evergreens, cacti or ornamental grass) are required per front yard.

11.5. Parkway between the curb and sidewalk should be planted to a minimum of 30% coverage.

11.6. All Units are required to have a minimum of two (2) 2½"-caliper (and a minimum height of ten (10) feet tall at installation) street trees planted in the parkway between the curb and sidewalk. The trees shall be planted prior to completion of the home. All trees are to be installed by homebuilder. Allowed trees are:

Texas Pistache  
Chinese Pistache  
Raywood Ash  
Texas Redbud  
Thornless Honey Mesquite

11.7. Any corner Unit is required to have two (2) 2½"-caliper (and a minimum height of ten (10) feet tall at installation) street trees planted on the side lot line adjacent to the side street (in the parkway between the curb and sidewalk). The trees shall be planted prior to completion of the home or within one (1) week of home closing. All trees are to be installed by the homebuilder.

**12. Sight Distance at Intersections.** No fence, wall, hedge, or shrub planting that obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be placed or permitted to remain on any corner Unit within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Unit within 10 feet from the intersection of the street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight lines.

**13. Attached/Detached Structures.** Attached structures and detached accessory structures will at all times be maintained with a compatible scheme as to exterior treatment (architecture, material and color) as the main structure.

**14. Drainage.** All Units, whether vacant, with buildings under construction or with completed buildings (occupied or unoccupied) shall be designed and constructed to provide positive lot drainage as required by the pertinent governmental authorities at the time from the rear of the Unit to the street in front of the Unit and as shown on engineering plans for the subdivision. This positive lot drainage to the street in front of each Unit must be maintained at all times by the Owner. Driveways, patios, walks, landscaping (including without limitation, grass, bushes, trees, brick, rock or other materials), and all other portions of each Unit shall be constructed, installed, and maintained to drain away from the main building structure and swaled, sloped or slanted through the rear, side and front yards so as to drain to the street in front of the Unit. If necessary, roof drainage will be collected in gutters and diverted toward the front of the Unit. Walls or other structures should not be placed along the side of any dwelling in a manner that would block or impair drainage from the rear of the Unit to the street. Drainage of Units shall be maintained in accordance with approved subdivision drainage plans. It is unlawful to alter or in any way change the drainage of any Unit, without prior approval of all governmental authorities having jurisdiction over the Unit. FAILURE BY AN OWNER (INCLUDING BUILDERS) TO MAINTAIN THE PROPER DRAINAGE CAN RESULT IN DAMAGE TO THE IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) FROM SETTLING AND/OR EROSION ON THE SUBJECT UNIT AND ON SURROUNDING UNITS.

**15. Soils Testing.** Prior to construction of any Improvement, an Owner will obtain soil tests on its Unit and will design and construct the Improvements in accordance with prudent engineering practices and principles and applicable governmental regulations based upon the soil conditions of the Unit. Each Owner has the sole duty and responsibility to determine the soil conditions for its Unit. An Owner's failure to

test the soil conditions and to design the Improvements accordingly may result in loss or damage to the Improvements. IT IS EACH OWNER'S DUTY TO DETERMINE THE SOIL CONDITIONS FOR HIS OR HER UNIT.

**16. Trash Containers and Storage of Materials.** All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tight-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Unit shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of Improvements erected on any Unit may be placed upon such Unit at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the initial Improvements, after which time such materials shall either be removed from the Unit or stored in a suitable enclosure on the Unit. During any period of construction, the Unit Owner must deposit all construction debris and trash in a closed container and otherwise comply with the applicable requirements of any governmental authority having jurisdiction over the Unit regarding the disposal of trash.

**17. Sidewalks.** Each Unit Owner shall construct and maintain, at the Owner's expense, sidewalks along street rights of way across the front of the Owner's Unit, behind the rear wall on double-front Units, and on the side of each corner Unit. All parkways between required sidewalks and curb shall be landscaped and/or xeriscaped.

# EXHIBIT "F-1"



**COUNTY OF EL PASO**  
**PUBLIC WORKS DEPARTMENT**  
800 E. OVERLAND RM 407  
EL PASO, TEXAS 79901  
(915) 546-2015  
(FAX) (915) 546-8194

March 13, 2017

Justin Chapman, President  
Hunt Communities, GP, LLC  
4401 North Mesa  
El Paso, TX 79902

Re: Architectural features inside residential lot setbacks

Dear Justin,

This letter is in response to your request for the County Public Works Department's opinion on whether certain architectural features such as chimney backs, bay windows and eaves can be constructed in the "setback" area of residential lots in the Mission Ridge area. You've pointed out that other jurisdictions and regulating authorities allow these architectural features in the setback. Specifically:

1. The City of El Paso Ordinance (20.12.040-Yards) has an allowance for extensions of these architectural features in the front, rear, side and side street yard setbacks.
2. The State of Texas General Land Office has imposed Land Use Restrictions in the Mission Ridge area that also allow these features in the setback. Specifically, Section 3.06 (Setbacks) of the Land Use CCRs (e.g. Doc #20140043956 states that, for the purpose of this covenant, boxed and bay windows, eaves, steps, open porches or stoops and projections of fireplaces and windows will not be considered as a part of the building).
3. The Mission Ridge area is further regulated by the Paseo Del Este Master Design Guidelines which (Page 29, General Development Standard Note 1) allows: "Architectural features such as front and rear open porches (cannot be living spaces) may project into front and rear setback in all land uses."

4. The County of El Paso Subdivision Ordinance (Sections 2.6, Setbacks) is silent on these types of allowances.

In light of the fact that most home builders in the Mission Ridge area of the County also build in the City and in an attempt to provide some minor uniformity between City and County regulations for the builders in the Mission Ridge area, it is my opinion that the County Public Works department considers these as minor encroachments in the setbacks and as specified on the attached page, are allowable.

Sincerely,

A handwritten signature in blue ink, appearing to read "Norma Rivera Palacios", written over a horizontal line.

Norma Rivera Palacios  
Interim Public Works Director

**City of El Paso, Code of Ordinances**

**20.12.040 - Yards.**

**B. Front yard regulations may be modified as follows:**

4. On a dwelling site an unenclosed porch, carport or entrance way patio with a wall up to six feet high, each not more than one hundred fifty square feet in floor area may extend not more than ten feet into a required front yard. Chimney backs, bay windows, eaves and cornices may extend not more than thirty inches into the required front yard except that cornices and eaves of the main building may extend not more than four feet into the front yard;

**E. Side and rear yard regulations may be modified as follows:**

2. Sills, eaves, belt courses, wing-walls at heights above six feet, window air conditioning units, chimney backs, bay windows, cornices and ornamental features may project a distance not to exceed twenty-four inches into a required side yard, and thirty inches into a required rear yard;

4. Open, unenclosed porches that do not exceed one hundred eighty square feet in area may extend twelve feet into a required rear yard;

**F. Side street yard regulations may be modified as follows:**

2. Sills, eaves, belt courses, wing-walls at heights above six feet, window air conditioning units, chimney backs, bay windows, cornices and ornamental features may project a distance not to exceed twenty-four inches into a required side street yard;

Doc# 2022070606  
#Pages 110 #NPages 1  
7/28/2022 8:48:40 AM  
Filed & Recorded in  
Official Records of  
El Paso County  
Dalia Briones  
County clerk  
Fees \$462.00

SCANNED

I hereby certify that this instrument was filed on the date and time stamped  
hereon by me and was duly recorded by document number in the Recording  
Division of Real Property in El Paso County.



EL PASO COUNTY, TEXAS

*Dalia Briones*