

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
PALO ALTO GROVES**

State of Texas       §  
                                  §  
County of Cameron   §

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is entered into this 23 day of August, 2021 by **ESPERANZA HOMES BROWNSVILLE, LLC**, a Texas limited liability company ("Declarant").

**RECITALS**

WHEREAS, Declarant is the owner of one hundred six (106) lots in **BUTTERFLY GROVE SUBDIVISION**, an addition to the City of Brownsville, Cameron County, Texas, as per map or plat thereof recorded under Cabinet 1, Page 3756 through 3759, Map Records, Cameron County, Texas, listed on Exhibit "A" attached hereto (the "Esperanza Lots");

WHEREAS, **COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE**, a Texas non-profit corporation ("CDCB"), is the owner of twenty-three (23) lots in **BUTTERFLY GROVE SUBDIVISION**, an addition to the City of Brownsville, Cameron County, Texas, as per map or plat thereof recorded under Cabinet 1, Page 3756 through 3759, Map Records, Cameron County, Texas, listed on Exhibit "B" attached hereto (the "CDCB Lots");

WHEREAS, the Esperanza Lots and the CDCB Lots (collectively, the "Lots" and each individually, a "Lot") will be conveyed subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth, pursuant to an established general plan for the improvement and development of property:

NOW, THEREFORE, it is hereby declared that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose and shall be binding on all parties having any right, title, or interest in or to the Lots or any part thereof, and their heirs, successors, and assigns, and which easements, restrictions, covenants, and conditions shall insure to the benefit of each owner thereof.

**ARTICLE ONE  
DEFINITIONS**

1.01 "ARC" shall mean the architectural review committee established by the Association to review plans and applications for the modification of improvements within the Subdivision and to administer and enforce architectural controls.

1.02 "Association" shall mean the homeowners' association for the Subdivision and incorporated as the Palo Alto Groves Owner's Association, Inc., a Texas nonprofit corporation,

its successors and assigns. All rules, conditions, covenants and declarations of the Board shall be binding on all of the Lots.

1.03 "Board" shall mean the Board of Directors of the Association.

1.04 "Builder" shall mean any party designated as such in writing by Declarant, and who has contracted with Declarant for the purchase of Lots for the purpose of constructing residences on such Lots for sale to others.

1.05 "Bylaws" shall mean the bylaws of the Association, as such bylaws may be amended from time to time.

1.06 "Certificate" shall mean the Certificate of Formation of the Association.

1.07 "Common Properties" shall mean those portions of the Subdivision which are intended to be used by the Owners in common, which areas include but are not limited to any clubhouses, pools, pavilions, parks, ponds, streets, drives, street lights, street signs, traffic control devices, parkway areas, landscaped medians, landscaping improvements, plantings, screening walls, fencing, sprinkler systems, and easements, among other amenities, which are now or hereafter designated by Declarant or the Board as Common Properties intended for or devoted to the common use and enjoyment of the Owners, together with any and all improvements that are now or may hereafter be constructed thereon.

1.08 "Declarant" shall include ESPERANZA HOMES BROWNSVILLE, LLC, a Texas limited liability company, its duly authorized representatives or their successors or assigns

1.09 "Declarant Control Period" shall mean the Development Period, during which time Declarant shall have the right to appoint all or a majority of the members of the Board as described in Section 7.01.

1.10 "Development Period" shall mean any time during which Declarant is the Owner of any Lot.

1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

1.12 "Subdivision" shall mean any subdivision or plat thereof recorded in the Official Records, Cameron County, Texas of which the Lots are a part.

**ARTICLE TWO  
ARCHITECTURAL REVIEW COMMITTEE AND ASSOCIATION**

**ARCHITECTURAL REVIEW COMMITTEE**

2.01 During the Development Period, the ARC shall be composed of three (3) or more individuals selected and appointed by Declarant. Upon the expiration of the Development Period, (i) the ARC shall be composed of such individuals selected by a vote of the Board, and (ii) the

Board shall have the authority to remove any member(s) of the ARC as it deems appropriate, in its sole and absolute discretion. The ARC shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Subdivision.

2.02 A majority of the ARC may designate a representative to act for it. In the event of the death or resignation of any member of the ARC, Declarant (or the Board after the Development Period) shall have full authority to designate and appoint a successor. No member of the ARC shall be entitled to any compensation for services performed hereunder nor be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed, actions taken, or inactions in connection with any undertaking, responsibility, or activity hereunder or request for action hereunder. At any time, Declarant may delegate and assign to the Board, all of Declarant's power and right to change the membership of the ARC, to withdraw or add powers and duties from or to the ARC, or to restore the powers and duties of the ARC. Such action by Declarant shall be effective upon recordation of a written instrument properly reflecting same in the Office of the County Clerk of Cameron County, Texas.

### ASSOCIATION

2.03 Every Owner of a Lot shall automatically be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

2.04(a) Subject to the provisions of Paragraph (c) of this Section, any action taken at a meeting of the Owners shall require the presence of a quorum and the assent of the majority of all eligible votes of those who are voting in person or by proxy at a meeting duly called, written notice of which shall be given to all Owners not less than ten (10) days nor more than sixty (60) days in advance.

2.04(b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

2.04(c) The presence, in person or by proxy, of Owners entitled to cast, or of proxies entitled to cast, at least ten percent (10%) of the votes of all Owners shall constitute a quorum for any action except as otherwise provided in the Certificate, the Bylaws or this Declaration, or as provided by the laws of the State of Texas.

2.04(d) In the event a quorum is not present at such meeting, the Owners present may adjourn such meeting, and reconvene a new meeting, in which event a quorum shall consist of Owners entitled to cast, or of proxies entitled to cast, at least five percent (5%) of the votes of all Owners.

2.04(e) Except as otherwise specifically set forth in this Declaration, notice, voting and quorum requirements for all actions to be taken by the Association shall be consistent with its Certificate and Bylaws, as same may be amended from time to time.

2.05 Notwithstanding anything to the contrary contained herein, during the Declarant

Control Period Declarant shall have the sole and absolute power to appoint and remove officers and members of the Board; provided, however, that not less than one-third (1/3) of the Board members must be elected by Owners other than Declarant beginning on the date that is one hundred twenty (120) days after Declarant has conveyed seventy-five percent (75.0%) of the Lots to Owners other than Declarant.

### **ARTICLE THREE DESIGN STANDARDS**

3.01 The ARC shall have the right to establish design standards and rules and requirements relating to the construction or alteration of any improvements on a Lot (the "Design Standards"). All construction on any Lot shall comply with the terms and conditions of the most recent copy of the Design Standards. The most recently approved Design Standards are made a part of this document by reference.

3.02 All housing shall have structure for a minimum of an enclosed one-car garage as per the Design Standards requirements.

3.03 Any violation of the provisions of this Declaration, or beginning construction without approval of the ARC, failing to obtain a building permit, failing to comply with applicable law, failing to comply with approved plans, failing to maintain such Lot as required herein, or otherwise failing to comply with the terms of this Declaration can result in the Association imposing a substantial fine, and if applicable, remedying the noncompliance and placing a lien upon the Lot and improvements until it is reimbursed for its expenses. In applicable instances, the Association shall have the right, but not the obligation, after ten (10) days written notice to the Owner to enter the Lot and remedy such noncompliance to its satisfaction and may charge the Owner for the cost of such work. The Owner agrees by the purchase of such Lot to pay such amount immediately upon receipt of an invoice therefore. The amount of such charge, together with interest thereon at fifteen percent (15%) per annum and reasonable cost of collection shall constitute a continuing lien upon such Lot, as well as a personal obligation of the Owner of such Lot.

### **ARTICLE FOUR USE RESTRICTIONS**

#### **RESIDENTIAL USE**

4.01(a) Except as hereinafter provided, no Owner or other occupant shall use or occupy such Owner's Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family detached residence for the Owner or such Owner's tenant and their respective families and domestic servants employed on the premises. As used herein the term "private single family detached residence" shall be deemed to prohibit specifically, but without limitation, (i) the use of any Lot for a duplex apartment, garage apartment, or other apartment use, and (ii) the use of any Lot for short-term residential rentals by the Owner, any other occupant, or through any third-party service (i.e. Airbnb or VBRO). Notwithstanding anything contained herein to the contrary, Owners or tenants of dwellings that actually occupy such dwelling may use such dwelling for limited business purposes consistent with rules and regulations promulgated by Declarant or the Board. In no event shall such limited

business use unreasonably interfere with the quiet enjoyment of the other Owners of the residences constructed on their Lots or involve the sale of goods or merchandise to the public, where members of the public visit the residence on a daily or frequent basis. In addition, consultation with clients or customers at a residence constructed on a Lot shall be permitted between 9:00 a.m. and 5:00 p.m. on regular working days, or as otherwise permitted in the rules and regulations promulgated by Declarant or the Board. The use of a dwelling constructed on a Lot for the maintenance of a personal or professional library; for the keeping of personal, business or professional records of accounts; or for the handling of personal or professional telephone calls or correspondence shall not be deemed to be a violation of these restrictions. In addition, so long as Declarant or a Builder owns any Lot which is for sale, Declarant and such Builder and their employees, representatives and agents may maintain business, leasing and/or sales offices, sale models and other sales facilities within the Subdivision as Declarant shall deem appropriate.

**4.01(b)** Any single story residence constructed on a Lot must have a ground floor area of not less than 1,000 square feet, exclusive of open or screened porches, terraces, patios, driveways and garages and MUST be of new construction. A residence other than a single story residence must have not less 780 square feet of ground floor living area. Only newly constructed homes, slab on grade will be permitted within the Subdivision. The exterior walls of any residence shall consist of not less than 100% masonry or masonry veneer construction. Block construction must have a stucco finish. No evaporative cooler or air conditioner shall be placed, installed, or maintained on the roof or wall of any building structure. All coolers and air conditioning units shall be concealed. Each residence must have a masonry mailbox.

#### SETBACK

**4.02** All buildings, structures, fences, hedges, outbuildings, and appurtenance are subject to the setback restrictions noted in the plat of the Subdivision. If two (2) or more Lots or fractions thereof are consolidated into a building site in conformity with the provisions of Paragraph 4.03, these setback provisions shall be applied to such resultant building site as if it were one (1) original platted Lot

#### RESUBDIVISION OR CONSOLIDATION

**4.03** None of the Lots shall be re-subdivided in any fashion except that any person owning two (2) or more adjoining Lots may subdivide or consolidate such Lots into a single building site, with the privilege of constructing improvements as permitted in Paragraph 4.02 hereof on the resulting building site, provided that such subdivision or consolidation does not result in any building site having a front line of less than the smallest of the original Lots.

#### EASEMENTS

**4.04** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of the Subdivision. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, successors, agents, employees, or servants, to

shrubbery, trees, or flowers or to other property of the Owners situated within any such easements; but shall be liable for any damages done by them outside such easements.

#### NOXIOUS OR OFFENSIVE ACTIVITIES PROHIBITED

4.05 No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon that may be or may become an annoyance or nuisance to the neighborhood.

#### OCCUPANCY

4.06 No private dwelling house erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, as herein required. Nor shall any residence, when completed, be in any way occupied until made to comply with plans approved by the ARC, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth. No temporary structure shall be placed or erected upon any Lot either permanently or temporarily. Rental of any servant's quarters is prohibited; the occupancy thereof being limited to either guests or servants. Should any structure be destroyed or partially destroyed, the Owner of such Lot shall immediately remove or rebuild said structure.

#### SIGNS

4.07 No signs shall be displayed to the public view on any Lot without the prior written approval of the ARC, with the following exceptions: (i) Declarant and home builders may erect and maintain one or more signs for the construction, development, operation, promotion and sale of the Lots; (ii) the patriotic display of flags not exceeding 4' x 6' in size shall be permitted on customary holidays; and (iii) signs of customary dimensions (3' x 4' maximum) advertising said property or portions thereof for sale; and (iv) one sign celebrating an event or an accomplishment provided the sign is tasteful, modest in size (12 square feet maximum) and is removed with seven (7) days after its erection. Political signs, not to exceed six (6) square feet in size, may be erected upon a Lot by the Owner of the Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue, or proposal, provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election. No sign of any kind or character, including (a) any signs in the nature of a "protest" or complaint against Declarant or any home builder, (b) or that describe, malign, or refer to the reputation, character, or building practices of Declarant or any home builder, or (c) discourage or otherwise impact or attempt to impact anyone's decision to acquire a lot or residence in the Subdivision shall be displayed to the public view on any Lot or from any home on any Lot. Declarant, any home builder, or their agents shall have the right, without notice, to remove any sign, billboard, or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. The failure to comply with this restriction will also subject any Owner to a fine of \$50.00 per day that such Owner fails to comply with this restriction. The Association will issue one ten (10) day notice of non-compliance of this Section to the Owner of a Lot. After such notice, if the Owner does not take corrective action the Association may impose the fine. The amount of such charge, together with interest thereon

**at fifteen percent (15%) per annum and reasonable cost of collection shall constitute a Special Individual Assessment as defined herein and shall be a continuing lien upon such Lot, as well as a personal obligation of the Owner of such Lot.** Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the City of Brownsville, Texas, as such standards may be applicable to the Lots.

#### PARKING

4.08 On-street parking is restricted to approved deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Board. Overnight on-street parking is not allowed. Parking in driveways is permitted; provided, however, no inoperable vehicles, no stored vehicles, or vehicles not utilized on a daily basis shall be permitted to be parked or stored in driveways or streets. No Owner shall allow any vehicle or other object to block the sidewalks located on such Owner's Lot in any manner that impedes at any time, temporarily or permanently, the free flow of pedestrian or bicycle traffic along such sidewalk

#### GARBAGE TANKS, EQUIPMENT, ETC

4.09 No Lot shall be used or maintained as dumping ground for rubbish or trash, and no garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. No elevated tanks of any kind shall be erected, placed or permitted on any part of a Lot. All clotheslines, garbage cans, equipment, coolers, wood piles, storage sheds or storage piles shall be walled or fenced in to conceal them from the view of neighboring Lots, roads or streets.

#### ANIMALS

4.10 4.09 No animals, livestock or poultry of any kind shall be raised, bred or retained on any Lot except that no more than a total of four (4) combined dogs and cats other household pets kept on any Lot, provided they are not kept, bred or maintained for any commercial purpose. All animals must be leashed or carried in arms if outside the dwelling or outside a secure fenced rear yard. Owners of animals must clean up feces in front yards, sidewalks and common areas. The Association may declare pets prohibited in selected Common Properties. Animals which create an offensive activity, either odors, noise or other activity, to the surrounding Lots or occupants or the Subdivision, or presents a health and safety concern for the Subdivision may be construed to be a prohibited activity at the sole judgment of the Board of the Association. Any violation of this Section will subject the Owner of the Lot to a fine of up to one hundred dollars (\$100.00) per day until the violation is corrected, as well as any and all other remedies that the Association may impose in accordance herein. Restrictions on locations of animals shall not apply to service animals.

#### FENCES, WALLS, HEDGES, YARD ART AND UTILITY METERS

4.11(a) The Association shall regulate the appearance of yards that are visible from the street and from neighboring homes. Some changes or additions to a yard may defy

easy categorization as an improvement, a sign or landscaping. By accepting ownership of any Lot, Owner acknowledges and agrees that all aspects of a yard visible from outside the Lot are within the purview of the ARC, including, without limitation, the shape of pruned shrubs; the number, shapes and uses of flower beds; and the integration of items such as boulders, driftwood, antique equipment, statues, monuments and other items that may be reasonably classified as "yard art."

4.11(b) No fence, wall, hedge or utility meter shall be placed or permitted to remain on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot (i.e. **NO FRONT FENCES**), except for any decorative subdivision entry fence for the Subdivision maintained by the Association.

4.11(c) All fencing shall be of wood material or masonry material. Wood fencing shall be stained. Fence finishes, visible to street, are limited to a sealer or tinted sealer with the tint being a natural or earth tone color. The ARC must approve all tint colors to be used on fencing and ensure the tint is compatible with surrounding fence finishes. No chain link fences are permitted. No painting of wood fencing is permitted. Masonry fencing shall be stucco finish on the exterior side and of an approved color by the ARC.

4.11(d) Corner Lots shall have a solid wood fence of 6 feet height constructed along the street side of the Lot from the rear street side property corner to, at a minimum, the rear corner of the dwelling. This fence shall be constructed at the time of new construction.

4.11(e) Perimeter Lots shall have a 6 feet high wood fence constructed along the rear property line at the time of new construction

4.11(f) Notwithstanding anything to the contrary contained herein, the Association shall have the right to maintain a chain-link or other type fencing deemed appropriate by the Board with respect to any fencing of Common Areas, including but not limited to any flood detention area within the Subdivision.

#### PROHIBITED ACTIVITIES

4.12(a) No professional, business, or commercial activity to which the general public is invited or allowed shall be conducted on any Lot.

4.12(b) Auto maintenance is not permitted on the street in front of any Lot or on the driveway or any portion of the Lot in such manner as to be visible from the street or neighboring Lots.

4.12(c) No truck, bus, trailer, R.V. commercial vehicle over 1 ton in capacity or equipment shall be left parked or placed except for construction and repair equipment while a residence or residences are being built or repaired on such Lot, and no truck, bus, boat, R.V. or trailer shall be parked on the driveway or any portion of the Lot in such a manner as to be visible from the street or neighboring Lots. Vehicles that are not in regular use shall not be permitted to remain in the street in front of any Lot or on the driveway or any portion of the Lot in such manner as to be visible from the street or neighboring Lots.



4.12(d) No vehicle, whether operable or inoperable, may be parked on any portion of the yard of a Lot.

4.12(e) No inoperable vehicles, no stored vehicles, or vehicles not utilized on a daily basis shall be permitted to be parked or stored in driveways or streets. No Owner shall allow any vehicle or other object to block the sidewalks located on such Owner's Lot in any manner that impedes at any time, temporarily or permanently, the free flow of pedestrian or bicycle traffic along such sidewalk.

4.12(f) No carport, whether temporary or permanent, shall be permitted on any Lot.

#### UTILITY LINES AND ANTENNAS

4.13 All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead.

#### DRIVEWAYS

4.14 Driveways must be constructed of concrete only. No stamped, stained, or painted driveways are permitted.

#### TECHNOLOGY REQUIREMENTS

4.15 The Association shall contract with a third-party provider to provide technology services (the "Technology Services") for all Lots in the Subdivision. The Technology Services shall include broadband internet service, smart-home service, security service, and similar services selected by the Association. The cost of providing the Technology Services to the Lots shall be assessed against the Lots by the Association as provided in Article 6, regardless of whether such Owner uses the Technology Services or not.

#### SHEDS, STORAGE BUILDINGS, AND DETACHED STRUCTURES

4.16 No shed, storage building or similar improvement shall be erected, placed or altered on any Lot without the prior written approval of the ARC. In addition, the ARC shall approve the color and materials of any such structure. The shingles on any such structure shall match the shingles on the roof of the residence located on such Lot. Any other detached structure, pavilion, gazebo, playhouse, cabana, or storage room shall require the prior written approval of the ARC. Such approval shall be subject to, among other things, merit of structure, compatibility with primary dwelling and adjoining Lots, and conformity and harmony with existing structures and landscaping within the Subdivision.

#### SATELLITE DISHES

4.17 Satellite dishes are permitted with the following constraints: (a) dish diameter shall not exceed eighteen inches (18"), and (b) dishes shall be confined within the rear or side yards. No dish shall extend above the ridge line of the roof nor shall any dish be attached to the front roof or eave of the front facing portion of the structure.

### LANDSCAPING APPROVAL

4.18 Each Lot shall maintain a minimum of two (2) non-palm trees in the front yard having a 2.5" caliper width with at least one of the trees having been designated as a "native" tree by the City of Brownsville. Any and all plans for the landscaping of front yards and of side yards not enclosed by solid fencing, including alterations, changes or additions thereto, shall be subject to the written approval of the ARC. No landscaping shall be allowed to be installed on any Lot unless written approval of such has been received from the ARC. Each Lot Owner shall be responsible for maintaining his own lawn and landscaping in a healthy and attractive condition. In no event shall any portion of a Lot be used as a vegetable garden except within fenced-in portions of the rear yard.

### ARTICLE FIVE PROPERTY RIGHTS IN THE COMMON PROPERTIES

5.01 Subject to the provisions of Section 5.03 of this Article, every Owner and every tenant of every Owner, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have a non-exclusive right and easement of use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Lot. This easement shall not give such person the right to make alterations, additions or improvements to the Common Properties

5.02 Declarant shall dedicate and convey the fee simple title to the Common Properties to the Association at such point in time deemed reasonable and appropriate by Declarant. Prior to the date the Common Properties are conveyed to the Association, Declarant shall retain the right to sell portions of the Common Properties if Declarant, in its sole discretion, deems such sale to be for the best interest of the Subdivision.

5.03 The rights and easements of use and enjoyment created hereby shall be subject to and limited by the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties;

(b) Liens of mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by Declarant to develop and improve the Common Properties or by the Association to improve or maintain all or any portion of the Common Properties;

(c) The right of Declarant and/or the Association to enter into and execute contracts with parties (including Declarant or an affiliate of Declarant) for the purpose of providing maintenance for all or a portion of the Common Properties or providing materials or services consistent with the purposes of the Association;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Association to suspend the right of any individual to use any of the Common Properties for any period during which any Assessment against a Lot owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

(f) The right of Declarant or the Board to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility company for such purposes and upon such conditions as may be determined reasonable by Declarant or the Board, in such party's sole and absolute discretion.

(g) The right of Declarant or the Association, at any time, to make such reasonable amendments to any subdivision plat of a Residential Subdivision, as allowed by law. All Owners are advised that a portion of the Common Properties may be located within the platted and dedicated public rights-of-way and in connection therewith the public shall have rights of use and enjoyment of Common Properties located within the public rights-of-way; and

(h) With respect to any and all portions of the Common Properties, Declarant, until the expiration of the Development Period, shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City or any other governmental agency having appropriate jurisdiction over the Common Properties) to: (i) alter, improve, landscape and/or maintain the Common Properties; (ii) rechannel, realign, dam, bridge, bulwark, culvert and otherwise employ or utilize construction and/or engineering measures and activities of any kind or nature whatsoever upon or within the Common Properties; (iii) zone, rezone, or seek and obtain variances or permits of any kind or nature whatsoever upon or within the Common Properties; (iv) replat or redesign the shape or configuration of the Common Properties; and (v) seek and obtain any and all permits, licenses or exemptions from any and all governmental agencies exercising jurisdiction over the Common Properties and/or the uses or activities thereon.

## **ARTICLE SIX COVENANTS FOR ASSESSMENTS**

### **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS**

6.01 Declarant, for each Lot owned by it, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed or other conveyance document creating in such purchaser the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): Annual Maintenance Assessments (defined in Section 6.03), Special Capital Assessments (defined in Section 6.04), Technology Assessments (defined in Section 6.05), and Special Individual Assessments (defined in Section 6.06). **THE ANNUAL MAINTENANCE ASSESSMENT, THE SPECIAL CAPITAL ASSESSMENT, THE TECHNOLOGY ASSESSMENT, and the SPECIAL INDIVIDUAL**

**ASSESSMENT (collectively the "Assessments" or individually, an "Assessment") TOGETHER WITH INTEREST THEREON, ATTORNEYS' FEES, COURT COSTS AND OTHER COSTS OF COLLECTION THEREOF, AS HEREIN PROVIDED, SHALL BE A CHARGE ON THE LAND AND SHALL BE A CONTINUING LIEN UPON EACH LOT AGAINST WHICH ANY SUCH ASSESSMENT IS MADE. EACH SUCH ASSESSMENT, TOGETHER WITH INTEREST THEREON, ATTORNEYS' FEES, COURT COSTS, AND OTHER COSTS OF COLLECTION THEREOF SHALL ALSO BE THE CONTINUING PERSONAL OBLIGATION OF THE OWNER OF SUCH LOT AT THE TIME WHEN THE ASSESSMENT FELL DUE.** Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

#### **PURPOSE OF ASSESSMENTS**

6.02 The Assessments levied by the Association shall be used exclusively for (i) the purpose of promoting the recreation, comfort, health, and welfare of the Owners and/or the residents of the Subdivision; (ii) managing the Common Properties; (iii) enhancing the quality of life in the Subdivision and the value of the Lots; (iv) improving and maintaining the Common Properties, the properties, services, improvements and facilities devoted to or directly related to the use and enjoyment of the Common Properties, including, but not limited to, the payment of taxes on the Common Properties and insurance in connection therewith and the repair, replacement and additions thereto; (v) paying the costs of the Technology Services; (vi) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (vii) carrying out the powers and duties of the Board as set forth in this Declaration and the Bylaws; (viii) carrying out the purposes of the Association as stated in its Certificate; (ix) enforcing the provisions of this Declaration and any other restrictive covenants imposed upon a Lot, including legal or other fees associated with such enforcement; and (x) carrying out the powers and duties relating to the ARC, after Declarant has delegated or assigned such powers and duties to the Association.

#### **ANNUAL MAINTENANCE ASSESSMENTS**

6.03 The Board shall determine the amount of the assessment for annual maintenance for each year for the entire Subdivision (the "Annual Maintenance Assessment"), which may include a reserve fund for working capital and for maintenance, repairs and replacements of the Common Properties.

(i) Commencing with the year beginning January 1, 2021, and each year thereafter, each Owner shall pay to the Association an Annual Maintenance Assessment in such amount as set by the Board annually.

(ii) The rate of the Annual Maintenance Assessments may be increased by the Board. The Board may, after consideration of current maintenance, operational

and other costs and the future needs of the Association, fix the Annual Maintenance Assessment for any year at a lesser amount than that of the previous year.

(iii) When the Annual Maintenance Assessment is computed for all Lots, all or a portion of such Annual Maintenance Assessment shall be payable to the Association by the Owner according to the status of the Lot owned by such Owner as follows:

- (A) As to a Lot owned by an Owner other than Declarant or a Builder, the full Annual Maintenance Assessment shall be payable.
- (B) As to a Lot owned by Declarant or a Builder, no Annual Maintenance Assessment shall be payable.

For so long as Declarant is the Owner of any Lot, Declarant shall subsidize the Association to the extent necessary to cover all net operating losses incurred by the Association in the operation or maintenance of the Common Properties, but Declarant shall not be required to subsidize the Association in an amount in excess of the Assessments which Declarant would otherwise have been required to pay hereunder. If Declarant subsidizes the Association and the Association thereafter accumulates a surplus or positive account balance, the Association shall reimburse Declarant for the amount of such subsidies to the extent of the surplus or positive account balance. If after the date that is one (1) year after the date of this Declaration Declarant subsidizes the Association in an amount in excess of the Assessments which Declarant would otherwise have been required to pay pursuant to this Declaration, all of such excess amounts shall constitute loans from Declarant to the Association which shall be payable by the Association to Declarant on demand.

(iv) The Board may provide that Annual Maintenance Assessments shall be paid monthly, quarter-annually, semi-annually or annually on a calendar year basis. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall (i) estimate the total common expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the Annual Maintenance Assessments to be paid by each Owner, and (iii) establish the date of commencement of the Annual Maintenance Assessments. Written notice of the Annual Maintenance Assessments to be paid by each Owner and the date of commencement thereof shall be sent to every Owner, but only to one (1) joint Owner. Each Owner shall thereafter pay to the Association his Annual Maintenance Assessment in such manner as determined by the Board.

(v) The Annual Maintenance Assessments may include reasonable amounts, as determined by the Owners or by the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Properties and/or for fulfillment of future obligations of the Association. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of regular Annual Maintenance Assessments.

### **SPECIAL CAPITAL ASSESSMENTS**

**6.04** In addition to the Annual Maintenance Assessments authorized in Section 6.03(a) hereof, the Board may levy in any assessment year a special capital assessment (each a "Special Capital Assessment") for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, (ii) maintaining portions of the Common Properties and improvements thereon, or (iii) carrying out other purposes of the Association. Any Special Capital Assessment levied by the Association shall be paid by the Owners directly to the Association on such date or dates as determined by the Board. All such amounts collected by the Association may only be used for the purposes set forth in this Section 6.04.

### **TECHNOLOGY ASSESSMENTS**

**6.05** Each Lot shall be subject to a monthly assessment used to fund the cost of providing the Technology Services to such Lot (the "Technology Assessment"). The first Technology Assessment against a Lot shall be charged beginning in the month in which technology service is first made available to such Lot and shall be prorated for the number of days remaining in such month. All subsequent Technology Assessments for a Lot are due and payable monthly thereafter on such date designated by the Board. Failure to pay the Technology Assessment on or before the due date as provided herein will result in a termination of the Technology Services to such Lot and the Association shall have all of the rights set forth herein to collect such delinquent Assessment.

### **SPECIAL INDIVIDUAL ASSESSMENTS**

**6.06** The Board may also levy special individual assessments (each a "Special Individual Assessment") against one or more Owners for (i) reimbursement to the Association of the costs for repairs to the Common Properties and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association, or any rules or regulations promulgated hereunder. Any Special Individual Assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as Special Individual Assessments under this Section 6.06 shall belong to and remain with the Association until lawfully utilized by the Association.

### **UNIFORM RATES**

**6.07** Both Annual Maintenance Assessments and Special Capital Assessments must be fixed at a uniform rate for all Lots, and be payable as set forth herein.

### **DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATE; NO OFFSETS**

**6.08** The Annual Maintenance Assessments provided for herein shall commence on the date fixed by the Board to be the date of commencement and, except as hereinafter provided,

shall be payable quarter-annually, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board shall direct. The first Annual Maintenance Assessment shall be made for the balance of the calendar year in which it is levied. The amount of the Annual Maintenance Assessment which may be levied for the balance remaining in the first year of the Assessment shall be an amount which bears the same relationship to the Annual Maintenance Assessment as the remaining number of months in that year bears to twelve. The due date or dates, if to be paid in installments, of any Special Capital Assessment under Sections 6.04 hereof shall be fixed in the respective resolution authorizing such Assessment. The Technology Assessment shall begin when the Technology Services are provided to the Lot. Assessments may be established, collected and enforced by Declarant at any time prior to the incorporation of the Association. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason.

#### DUTIES OF THE BOARD WITH RESPECT TO ASSESSMENTS

6.09(a) The Board shall fix the date of commencement and the amount of the Annual Maintenance Assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner, at such Owner's sole cost and expense.

6.09(b) Written notice of all Assessments shall be delivered or mailed to every Owner at the address of the Lot owned by such Owner unless an alternate address is provided to the Association in writing specifically directing the Association where such notices are to be delivered. Each Owner is also required to provide the Association with the name of any tenant residing in the residence situated on the Lot owned by such Owner.

6.09(c) The omission of the Board to fix the Assessments within the time period set forth above for any year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

#### NON-PAYMENT OF ASSESSMENT

6.10(a) Any Assessment, or installment thereof, which is not paid in full when due shall be delinquent on the day following the due date (herein, "Delinquency Date") as specified in the notice of such Assessment. Subject to any legal requirement that the Association offer an alternative payment plan to an Owner, the Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the Delinquency Date, the unpaid amount of such Assessment shall bear interest from and after the Delinquency Date until paid at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate. In addition to the foregoing, if any Assessment remains unpaid at the expiration of fifteen (15) days after the due date established by the Board, a late charge in the amount of \$15.00 may be assessed against the non-paying Owner for each month that any portion of any Assessment remains unpaid. A service charge in the amount of \$25.00, plus any applicable bank charges or fees,

shall be charged for each check that is returned because of insufficient funds. The amounts of late charges and services charges may be adjusted, from time to time, by the Board consistent with any changes in the amounts of the Assessments. The Association shall further have the right to suspend the right of any individual to use any of the Common Properties for any period during which any Assessment against a Lot owned by such individual remains unpaid, as provided in the Bylaws.

6.10(b) The unpaid amount of any Assessment not paid by the Delinquency Date is and shall be, together with the interest thereon as provided in Section 6.08(a) hereof and the cost of collection thereof, including reasonable attorneys' fees, a continuing debt, secured by, and there is hereby impressed upon and created against each Lot, a lien and charge on the Lot of the non-paying Owner, which shall bind such Lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to all other liens and charges against the Lot, except only for tax liens and the lien of any bona fide first mortgage or first deed of trust now or hereafter placed upon such Lot. A subsequent sale or assignment of the Lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As hereinbefore stated, the personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his Lot. To evidence any lien, the Association may engage an attorney to prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the County Clerk of Cameron County, Texas.

6.10(c) The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner upon recordation of this Declaration with the priority set forth in this Section. The Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment:

- (i) the interest provided in this Section,
- (ii) the costs of preparing and filing the complaint in such action,
- (iii) the reasonable attorneys' fees incurred in connection with such action, and



- (iv) any other costs of collection;

and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

**EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT, HEREBY EXPRESSLY VESTS IN THE ASSOCIATION OR ITS AGENTS OR TRUSTEES THE RIGHT AND POWER TO BRING ALL ACTIONS AGAINST SUCH OWNER PERSONALLY FOR THE COLLECTION OF SUCH CHARGES AS A DEBT, AND TO ENFORCE THE AFORESAID LIENS BY ALL METHODS AVAILABLE FOR THE ENFORCEMENT OF SUCH LIENS, INCLUDING NON-JUDICIAL FORECLOSURE PURSUANT TO SECTION 51.002 OF THE TEXAS PROPERTY CODE, AND SUCH OWNER HEREBY EXPRESSLY GRANTS TO THE ASSOCIATION THE PRIVATE POWER OF SALE IN CONNECTION WITH SAID LIENS.**

#### NOTICE TO OWNERS

6.11 Notwithstanding anything to the contrary contained in this Declaration, before the Association may suspend an Owner's right to use the Common Properties, file a suit against an Owner (other than a suit to collect the Annual Maintenance Assessments or foreclosure under a lien granted to the Association), charge an Owner for property damage or levy a fine for a violation of the Restrictions or Bylaws or rules of the Association, the Association or its agent shall give written notice to the Owner in accordance with Section 209.006 of the Texas Residential Property Owners Protection Act.

#### SUBORDINATION

6.12 The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any bona fide first lien mortgage or deed of trust now or hereafter recorded against any Lot; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale, whether public or private, of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

#### EXEMPT PROPERTY

6.13 The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Properties.

#### ESTOPPEL INFORMATION FROM BOARD WITH RESPECT TO ASSESSMENTS

6.14 The Board shall upon demand at any time furnish to any Owner liable for an

Assessment, such Owner's agent, a title company or such title company's agent, a resale certificate signed by an officer or agent of the Association, setting forth whether said Assessment has been paid and any and all other information requested and to which such parties are entitled under Section 207 of the Texas Property Code. The Association or its agent may charge a reasonable fee to assemble, copy, and deliver the information required by Section 207 of the Texas Property Code and may charge a reasonable fee to prepare and deliver an update of any resale certificate.

#### **NEW MEMBER FEES**

6.15 Every time a Lot is conveyed or transferred by an Owner, other than a Builder, a fee of \$500.00, or such other amount as may be determined by the Board from time to time (the "New Member Fee"), shall be paid by the purchaser of such Lot to the Association to be held in a separate fund (the "New Member Fee Fund"). The New Member Fee is not refundable, shall be in addition to, not in lieu of, the Assessments levied on the Lot, and shall not be considered an advance payment of any portion thereof. The Board shall have the power to use the New Member Fee Fund for such purposes as may be determined by the Board in its sole and absolute discretion. Such purposes may include, but shall not be limited to, the general purposes of promoting the recreation, health, welfare, common benefit, and enjoyment of the Owners and occupants of the Subdivision, and operating, maintaining, repairing, or improving, the Common Properties, all as determined appropriate in the sole and absolute discretion of the Board.

#### **ARTICLE SEVEN GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION**

7.01 The affairs of the Association shall be conducted by its Board. As described in Section 2.05, prior to the expiration of the Declarant Control Period Declarant shall have the sole and absolute power to appoint and remove officers and members of the Board; provided, however, that not less than one-third (1/3) of the members of the Board must be elected by Owners other than Declarant beginning on the date that is one hundred twenty (120) days after Declarant has conveyed seventy-five percent (75.0%) of the Lots to Owners other than Declarant. After the expiration of the Declarant Control Period, the Board shall be selected in accordance with the Certificate and Bylaws of the Association. The Board, for the benefit of the Subdivision, the Common Properties, and the Owners, shall provide and pay for, out of the funds collected by the Association pursuant to Article Six above, the following:

(a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties.

(b) Care and maintenance of the fencing, irrigation, landscaping, screening walls and entry features which may be constructed on and constitute a part of the Common Properties. Maintenance includes all repair, rebuilding or cleaning deemed necessary by the Board.

(c) Should the Board so elect, maintenance of exterior grounds, drives, parkways, private streets and access areas, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board

shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on the Common Properties, and/or the Lots, except for landscaping and other like improvements which are located within rear yards or side yards enclosed by a solid fence, which shall be maintained by the individual Lot Owner. Maintenance services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.

(d) The services of a person or firm to manage and/or provide consultation to the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(e) Legal and accounting services.

(f) A policy or policies of insurance ensuring the Association, its officers and directors against any liability to the public or to the Owners (and/or their invitees or tenants) incident to the operation of the Association, including, without limitation, officers' and directors' liability insurance.

(g) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

(h) Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

(i) Any other materials, supplies, insurance or property owned by the Association, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(j) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Properties.

(k) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on one or more Lots with respect to: (i) taxes on the Common Properties and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned in this Declaration.

(l) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(m) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Properties, expressly including the power to enter into management and maintenance contracts.

(n) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.

(o) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time.

(p) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration, as amended and supplemented, and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

#### LIABILITY LIMITATIONS

7.02 No member, officer, or agent of the Association, or member or agent of the Board shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another member, whether such other member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same.

**THE COMMON PROPERTIES MAY BE SUBJECT TO STORM WATER OVERFLOW, NATURAL BANK EROSION AND OTHER NATURAL OR MAN-MADE EVENTS OR OCCURRENCES TO EXTENTS WHICH CANNOT BE DEFINED OR CONTROLLED. UNDER NO CIRCUMSTANCES SHALL DECLARANT EVER BE HELD LIABLE FOR ANY DAMAGES OR INJURIES OF ANY KIND OR CHARACTER OR NATURE WHATSOEVER RESULTING FROM: (I) THE OCCURRENCE OF ANY NATURAL PHENOMENA; (II) THE FAILURE OR DEFECT OF ANY STRUCTURE OR STRUCTURES SITUATED ON OR WITHIN THE COMMON PROPERTIES; OR (III) ANY ACT, CONDUCT, OMISSION OR BEHAVIOR OF ANY INDIVIDUAL, GROUP OF INDIVIDUALS, ENTITY OR ENTERPRISE OCCURRING ON, WITHIN OR RELATED TO THE COMMON PROPERTIES.**

#### ARTICLE EIGHT GENERAL PROVISIONS

##### ENFORCEMENT

8.01 Declarant, the Association, or the ARC shall have the right but not the obligation to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by the provisions of this Declaration, in accordance with the Declaration and applicable law. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition, should Declarant, the Association, or the ARC prevail in any such litigation, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

The Board may also collect amount from an Owner or Owners for (i) reimbursement to the Association of the costs for repairs to the Common Properties and Improvements thereto

occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association, or any rules or regulations promulgated hereunder. Any amounts due to the Association for such reimbursement or fines shall be collected with and treated as Assessments against such Lot(s), to the extent allowable by law.

#### DURATION

8.02 The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and Declarant or the Owner of any Lot subject to this Declaration, and their respective legal representatives. This Declaration shall be effective for a term of fifty (50) years from the date this Declaration is recorded, after which automatically extended for successive periods of ten (10) years unless specifically agreed to the contrary by a written agreement executed by the Association and Owners owning not less than seventy-five percent (75%) of the Lots and recorded in the Official Records of Cameron County, Texas.

#### ASSIGNMENT OF DECLARANT RIGHTS

8.03 Declarant may, without the joinder, approval or consent of any person(s) or entity(ies), assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity, and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties under the Declaration. Such assignment must be expressly set forth in writing. The mere conveyance of a portion of the Property without written assignment of the rights of Declarant will not be sufficient to constitute an assignment of the rights of Declarant under this Declaration.

#### AMENDMENT

8.04 This Declaration may be amended, modified and/or changed as follows:

(a) during the Development Period, Declarant may amend or change this Declaration in any manner determined appropriate in Declarant's sole and absolute discretion.

(b) after the expiration of the Development Period, this Declaration may be amended or changed either upon the express written consent of Owners owning no less than fifty-one percent (51%) of the Lots or Owners entitled to cast at least fifty-one percent (51%) of the outstanding votes of the Association who are in attendance at a meeting called and held in accordance with the Bylaws of the Association.

Any and all amendments to this Declaration shall be recorded in the Office of the County Clerk of Cameron County, Texas.

#### ANNEXATION OF ADDITIONAL PROPERTY

8.05 Additional land(s) may become subject to this Declaration in any of the following manners:

(a) The Declarant may add or annex additional real property (whether owned

Declaration of Covenants, Conditions and Restrictions  
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by Declarant or others) to the scheme of this Declaration by filing of record a Supplemental Declaration of Restrictive Covenants ("Supplemental Declaration") which shall extend the scheme of the covenants of this Declaration to such property; provided, however, that such Supplemental Declaration may contain such additions and modifications of the covenants contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as may be approved by Declarant.

(b) Any additions made pursuant to paragraph (a) of this Section 8.05, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

(c) Notwithstanding the fact that the Declarant may not be an Owner by virtue of its sale, transfer or conveyance of all of its right, title, and interest in the Subdivision, the Declarant shall continue to be entitled to implement and exercise all its rights under and pursuant to this Section 8.05 and all of the subsections hereof.

#### WAIVER

8.06 A waiver or modification of any of the provisions, requirements, conditions or restrictions herein contained by Declarant, the Association, or the ARC, shall not be construed as a waiver of future enforcement of such provisions, requirements, conditions or restrictions.

#### SEVERABILITY

8.07 Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision of this Declaration which shall remain in full force and effect.

#### HEADINGS

8.08 The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

#### NOTICES

8.09(a) Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as an Owner on the records of the Association at the time of such mailing.

8.09(b) If a holder of a mortgage on a Lot shall notify the Association of its address and the identity of the Lot and Owner covered by and granting such mortgage, then such holder(s) shall be entitled to receive, written notification from the Association of any default by the respective Owner in the performance of such Owner's obligations as established by this Declaration.

#### DISPUTES

8.10 Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Bylaws of the Association shall be

Declaration of Covenants, Conditions and Restrictions  
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determined by the Board, whose determination shall be final and binding upon all Owners. In the event a dispute arises between the Association and one or more Owners, such parties shall submit the dispute to arbitration in accordance with the rules of the American Arbitration Association, and the result thereof shall be binding and conclusive to the parties. Upon the written request of either party to the dispute, each party to the dispute shall appoint one person as an arbitrator to hear and determine the dispute and if the two arbitrators so chosen shall be unable to agree, then they shall select a third arbitrator whose decision shall be final and conclusive upon the parties. Notwithstanding the forgoing, either party shall have the right to appeal the decision of the Arbitrator which appeal shall be within the jurisdiction of the Texas 13<sup>th</sup> Court of Appeals. The expenses of such arbitration shall be borne by the losing party, or in such proportions as the arbitrators shall decide. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

#### TERMINATION OF AND RESPONSIBILITY OF DECLARANT

8.11 If Declarant shall convey all of its right, title and interest in and to the Lots and assign all its rights, benefits and obligations as Declarant hereunder to any partnership, individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of Declarant.

**[Signature page follows.]**

EXECUTED by the said Declarant this the 23 day of August 2021.

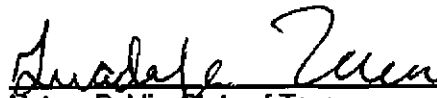
DECLARANT:

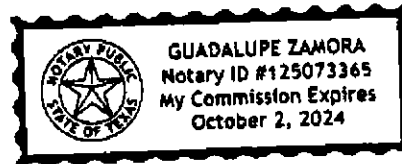
**ESPERANZA HOMES BROWNSVILLE, LLC, a Texas limited liability company**

By:   
**NICK RHODES, President**

STATE OF TEXAS )  
COUNTY OF Hidalgo )

This instrument was acknowledged before me on 23, 2021, by **NICK RHODES, President of ESPERANZA HOMES BROWNSVILLE, LLC, a Texas limited liability company**, on its behalf in said capacity.

  
Notary Public, State of Texas





EXECUTED by the said CDCB this the 20<sup>th</sup> day of August 2021.

CDCB:

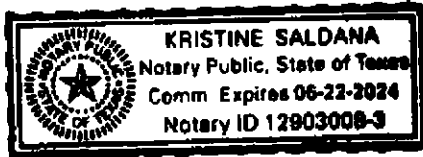
**COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, a Texas non-profit corporation**

By:   
**CHARLES N. MITCHELL, Executive Director**

STATE OF TEXAS  
COUNTY OF Amarion }

This instrument was acknowledged before me on August 20, 2021, by **CHARLES N. MITCHELL, Executive Director of COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, a Texas nonprofit corporation, on its behalf in said capacity.**

  
Notary Public, State of Texas



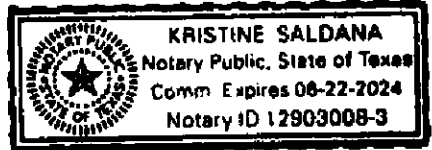
**LIENHOLDER CONSENT:**


**COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, a Texas non-profit corporation**

By:   
**CHARLES N. MITCHELL, Executive Director**

STATE OF TEXAS  
COUNTY OF Amaron )

This instrument was acknowledged before me on August 20, 2021, by **CHARLES N. MITCHELL, Executive Director of COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, a Texas nonprofit corporation, on its behalf in said capacity.**



  
Notary Public, State of Texas

**EXHIBIT "A"**  
**THE 106 LOTS CONSTITUTING THE ESPERANZA LOTS**

Block 1, Lot 1	Block 3, Lot 2	Block 7, Lot 25	Block 10, Lot 7
Block 1, Lot 2	Block 3, Lot 4	Block 7, Lot 26	Block 10, Lot 8
Block 1, Lot 3	Block 3, Lot 6	Block 7, Lot 27	Block 10, Lot 9
Block 1, Lot 4	Block 3, Lot 8	Block 7, Lot 28	Block 11, Lot 2
Block 1, Lot 5	Block 3, Lot 10	Block 7, Lot 30	Block 11, Lot 3
Block 1, Lot 6	Block 5, Lot 1	Block 7, Lot 31	Block 11, Lot 4
Block 1, Lot 7	Block 5, Lot 3	Block 8, Lot 1	Block 11, Lot 6
Block 1, Lot 8	Block 5, Lot 4	Block 8, Lot 2	Block 12, Lot 1
Block 1, Lot 9	Block 5, Lot 5	Block 8, Lot 3	Block 12, Lot 2
Block 1, Lot 10	Block 6, Lot 2	Block 8, Lot 4	Block 13, Lot 2
Block 1, Lot 11	Block 7, Lot 1	Block 8, Lot 5	Block 13, Lot 3
Block 1, Lot 14	Block 7, Lot 2	Block 8, Lot 6	Block 13, Lot 5
Block 1, Lot 15	Block 7, Lot 4	Block 8, Lot 7	Block 14, Lot 1
Block 1, Lot 16	Block 7, Lot 6	Block 8, Lot 9	Block 14, Lot 2
Block 1, Lot 17	Block 7, Lot 7	Block 9, Lot 1	Block 14, Lot 3
Block 1, Lot 19	Block 7, Lot 8	Block 9, Lot 2	Block 14, Lot 4
Block 1, Lot 20	Block 7, Lot 9	Block 9, Lot 3	Block 14, Lot 5
Block 2, Lot 1	Block 7, Lot 10	Block 9, Lot 4	Block 14, Lot 6
Block 2, Lot 2	Block 7, Lot 11	Block 9, Lot 5	Block 14, Lot 7
Block 2, Lot 3	Block 7, Lot 12	Block 9, Lot 6	
Block 2, Lot 4	Block 7, Lot 13	Block 9, Lot 8	
Block 2, Lot 5	Block 7, Lot 14	Block 9, Lot 9	
Block 2, Lot 6	Block 7, Lot 15	Block 9, Lot 10	
Block 2, Lot 8	Block 7, Lot 17	Block 9, Lot 11	
Block 2, Lot 9	Block 7, Lot 18	Block 10, Lot 1	
Block 2, Lot 10	Block 7, Lot 19	Block 10, Lot 2	
Block 2, Lot 11	Block 7, Lot 20	Block 10, Lot 3	
Block 2, Lot 12	Block 7, Lot 21	Block 10, Lot 5	
Block 3, Lot 1	Block 7, Lot 23	Block 10, Lot 6	

**EXHIBIT "B"**  
**THE 23 LOTS CONSTITUTING THE CDCB LOTS**

<b>Block 1, Lot 12</b>
<b>Block 1, Lot 13</b>
<b>Block 1, Lot 18</b>
<b>Block 2, Lot 7</b>
<b>Block 3, Lot 3</b>
<b>Block 3, Lot 5</b>
<b>Block 3, Lot 7</b>
<b>Block 3, Lot 9</b>
<b>Block 5, Lot 2</b>
<b>Block 6, Lot 1</b>
<b>Block 7, Lot 3</b>
<b>Block 7, Lot 5</b>
<b>Block 7, Lot 16</b>
<b>Block 7, Lot 22</b>
<b>Block 7, Lot 24</b>
<b>Block 7, Lot 29</b>
<b>Block 8, Lot 8</b>
<b>Block 9, Lot 7</b>
<b>Block 10, Lot 4</b>
<b>Block 11, Lot 1</b>
<b>Block 11, Lot 5</b>
<b>Block 13, Lot 1</b>
<b>Block 13, Lot 4</b>

**Cameron County  
Sylvia Garza-Perez  
Cameron County Clerk**

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**Instrument Number:** 2021-36520

eRecording - Real Property

Recorded On: August 23, 2021 10:54 AM

Number of Pages: 29

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**" Examined and Charged as Follows: "**

Total Recording: \$144.00

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

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

**File Information:**

Document Number: 36520  
Receipt Number: 20210823000051  
Recorded Date/Time: August 23, 2021 10:54 AM  
User: Amanda B  
Station: CCLERK19\_08

**Record and Return To:**

CSC Global



**STATE OF TEXAS  
COUNTY OF CAMERON**

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

Sylvia Garza-Perez  
Cameron County Clerk  
Cameron County, TX