

Hidalgo County  
Arturo Guajardo Jr.  
County Clerk  
Edinburg, Texas 78540

---

Document No: 3453197

Billable Pages: 26

Recorded On: June 05, 2023 09:29 AM

Number of Pages: 27

---

DECLARATION

---

\*\*\*\*\*Examined and Charged as Follows\*\*\*\*\*

Total Recording: \$ 136.00

---

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

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 No: 3453197  
Receipt No: 20230605000064  
Recorded On: June 05, 2023 09:29 AM  
Deputy Clerk: Olga Garcia  
Station: CH-1-CC-K21

**Record and Return To:**

Corporation Service Company  
919 North 1000 West  
Logan UT 84321



STATE OF TEXAS  
COUNTY OF HIDALGO

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 Hidalgo County, Texas.

Arturo Guajardo Jr.  
County Clerk  
Hidalgo County, Texas

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TEXAS HEIGHTS SUBDIVISION**

The State of Texas   §  
                                  §  
County of Hidalgo   §

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is entered into this 31st day of May, 2023 by **Esperanza Homes Mid-Valley, LLC, a Texas limited liability company**, located at 200 S. 10 Street, Suite 1700, McAllen, Texas 78501 (hereinafter called "Declarant").

**RECITALS**

WHEREAS, Declarant is the owner of all the real property located in Hidalgo County, Texas described as Lots 1 through 81, Texas Heights Subdivision Phase I, an addition to the City of Weslaco, Hidalgo County, Texas, according to the map or plat thereof recorded in Document No. 3416989, Official Records, Hidalgo County, Texas (collectively, the "Lots" and individually, a "Lot") and desires to create thereon a residential subdivision with residential lots, open spaces, landscaping, sprinkler systems, streets, common lighting, fencing, drives, screening walls, and other common improvements for the benefit of the community; and

WHEREAS, the Declarant will convey the Lots, 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:

WHEREAS, Declarant has created a homeowners' association to maintain common areas and amenities within the Subdivision and to perform other duties and functions set forth herein.

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 Texas Heights Owner's Association, Inc., a Texas 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 Riverside Development Services, 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 "Lot" shall mean and refer to the lots in the Subdivision, on which there is or will be built a single-family dwelling. The term "Lot" shall not include any reserves shown on the said map or plat of the Subdivision.

1.13 "Subdivision" shall mean Texas Heights Subdivision Phase I, an addition to the City of Weslaco, Hidalgo County, Texas, according to the map or plat thereof recorded in Document No. 3416989, Official Records, Hidalgo County, Texas.

## **ARTICLE II ARCHITECTURAL REVIEW COMMITTEE AND ASSOCIATION**

2.01 Architectural Review Committee. 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 ARC Action. 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 Hidalgo County, Texas.

2.03 Association Membership. 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 Meetings of Owners.

(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.

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

(i) The presence, in person or by proxy, of Owners entitled to cast, or of proxies entitled to cast, at least twenty-five percent (25%) 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.

(ii) 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 twenty percent (20%) of the votes of all Owners.

(c) 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 Selection of Board Members. 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 III  
USE OF LOTS; PROTECTIVE COVENANTS**

Each Lot shall be constructed, developed, reconstructed, repaired, occupied and used as follows:

3.01 Lots. No Lot shall be resubdivided; provided, however, that Declarant shall have and reserves the right, at any time, or from time to time, upon the joinder and consent of the appropriate county and/or municipal authorities, and with the joinder and consent of the directly affected Owners, to file a replat of the Plat to effect a resubdivision or reconfiguration of any Lots then owned by Declarant, so long as such replat results in each resubdivided Lot containing not less than the minimum lot size prescribed by the zoning ordinances of the City of Weslaco, Texas. Owners shall not unreasonably withhold or delay their joinder in or consent to the replat or amendments to the Plat. The privilege to replat Lots owned by Declarant reserved in this Section 3.01 shall be exercisable only by Declarant solely, without the requirement of joinder of Owners or others.

3.02 Minimum Floor Space. All floor areas referenced below are for air-conditioned living areas, exclusive of screened porches, garages, or breezeways attached to the main dwelling. Each dwelling constructed on any Lot in the Subdivision shall contain a minimum of One Thousand Two Hundred (1,000) square feet for any single-story residence and any two-story residence constructed on the Lots must not have less than seven hundred eighty (600) square feet of ground floor living area, exclusive of screened porches, garages, or breezeways attached to the main dwelling.

3.03 No Combining Lots. No person owning two or more adjoining Lots may consolidate such Lots into a single building location.

3.04 Setback Requirements and Building Location. All front, side and rear setbacks must be approved by the ARC and must meet the requirements of the City of Weslaco and the setback or permissible building area requirements set forth on the Plat. The location of the main residence on each Lot and the facing of the main elevation with respect to the street shall be subject to the written approval of the ARC. No building or structure of any type shall be erected on any Lot nearer to the property lines indicated by the minimum building setback line on the Plat or outside of the permissible building area as indicated on the Plat.

3.05 Driveways. Each Lot must be accessible to the adjoining street by a driveway or alley suitable for such purposes and approved in writing as to design, materials and location by the ARC before the residential structure located on such Lot may be occupied or used. Driveways, entryways and sidewalks must be constructed of only concrete. Stamped, coated or stained covering or painting of a driveway, entryway or sidewalk is not allowed. 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.

3.06 Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or otherwise approved in writing by the ARC.

3.07 Drainage. Neither Declarant nor its successors or assigns shall be liable for any

loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the residence to be constructed on a Lot has been substantially completed, the Lot will be graded so that surface water will generally flow to streets, alleys, drainage easements, or Common Properties, and in conformity with the general drainage plans for the Subdivision. The Owner or Owners of each Lot shall be responsible for maintaining the drainage on such Owner's Lot in accordance with this Section and any rules or regulations established by the Association.

3.08 No Private Water/Sewer Systems. No individual water or sewer system shall be permitted on any Lot.

3.10 Natural Gas. Each residence constructed on a Lot shall be connected to the natural gas system unless prior written approval is obtained from the ARC.

3.11 Construction Requirements.

(a) All improvements to be located on a Lot shall be approved by the ARC prior to the commencement of any construction on a Lot.

(b) The Plot Plan showing the exact location and orientation of all improvements to be constructed on a Lot must be approved in writing by the ARC prior to the commencement of any construction on a Lot.

(c) Only new construction materials shall be utilized in constructing any structures situated on a Lot, unless the ARC shall expressly approve in writing the use of used construction materials.

(d) The front entry area of each residence constructed on a Lot shall have a sense of arrival as determined by the ARC and shall be designed so as to be clear to persons arriving that it is the entrance of the residence. The entry shall keep scale with pedestrian traffic and be in balance with the entire elevation. Brick details and other masonry details shall be done in a manner that creates depth. Brick or masonry shadow lines and projections shall balance with the design of the residence. The front plane of the house shall have movement front to back and multiple plate heights across the front. The use of accent materials and features must not conflict with the architectural style of the dwelling or the Subdivision harmony. The ARC reserves the right to reject elevations which, at the sole judgment of the ARC, do not conform to Subdivision harmony and conform to the design criteria of this section.

(e) All exterior field colors shall be approved by the ARC prior to construction. The colors of the trim, doors and windows shall be complementary to the selected field colors. Wood sashes, doors and trim shall be painted or stained. ARC approval is to be based on harmony and compatibility with surrounding dwellings in the Subdivision.

(f) Roof material must be 30-year Owens Corning "True Definition - Oak Ridge Driftwood" shingles with an architectural dimensional effect. Lightweight shingles or "three-tab" shingles are not allowed. All additions will use the same color, style and weight shingle as the main structure. All dwellings and additions in the neighborhood shall have a shingle color matching ARC approved samples. Total height of dwelling, including chimney, shall not exceed a maximum of thirty-five feet (35') above the finish floor slab. Only low-profile roof ventilators may be used. Vents and other penetrations must be as unobtrusive as possible and located away

from the main roof in which the dwelling is to be constructed. Chimneys shall be clad in masonry with colors complementary to the color of the main unit. Pitched roofs shall have a minimum slope of 4:12. Flat roofs are discouraged but may be used in conjunction with an adequate parapet wall and allowed only on such architectural styling as deemed appropriate by the ARC.

(g) The side walls of any residence shall consist of 100% stone, stucco, brick or other approved masonry veneer material (James Hardie vertical fiber cement board). All block construction must have a stucco finish. No previously used materials shall be permitted on the exterior of the residential structures located within the Lots, without the prior written approval of the ARC.

(h) Construction of sidewalks are governed by the Plat, and each individual Lot's Plot Plan and design and construction of the sidewalk on each lot must be approved by the ARC. Sidewalks are to be constructed of concrete material only and must be of the width approved by the ARC on such Lot's Plot Plan.

(i) Each residence constructed on a Lot must contain cabling sufficient to allow such residence to be served by internet, phone, cable, and security services with a capacity determined adequate by the ARC, in the ARC's sole and absolute discretion. Initially, such cabling shall consist of Category 6 Ethernet cabling or better, subject to change by the ARC. All plans for construction submitted to the ARC for review shall also include the specifications of any such cabling for the ARC's approval.

(j) No projections of any type shall be placed or permitted to remain above the roof of any residential building with the exception of one or more chimneys and one or more vent stacks without the written permission of the ARC.

(k) All exterior construction of the primary residential structure, garage, porches and any other appurtenances or appendages of every kind and character and all interior construction shall conform to all municipal codes and issuance of a certificate of occupancy by the City of Weslaco shall be completed not later than one (1) year following the earlier of (a) the date of issuance of a building permit by City of Weslaco or (b) thirty (30) days following the date the ARC gives final approval to the construction plans. In the event the construction is not completed within such twelve (12) month period and provided the Association has provided no less than thirty (30) days' written notice of such failure to the Owner of such Lot, then the Owner of such Lot shall be subject to the Violation policy and fine schedule adopted by the board.

3.12 Garages. Each residence erected on any Lot shall provide garage space for a minimum of an enclosed one-car garage. All garage doors shall be overhung metal and equipped with an automatic and remote-controlled door opener and shall be closed at all times when not in use. Detached garages and storage rooms must be approved in writing by the ARC. No carport shall be built, placed, constructed or reconstructed on any Lot. As used herein, the term "carport" shall not be deemed to include a porte-cochere. Porte-cocheres must be approved in writing by the ARC and may not be attached to the entry of the garage. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles, unless a new garage is constructed to meet the requirements of this Section.

3.13 Sheds, Storage Buildings, and Detached Structures. 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. Roof materials that are allowed for the shed are either shingles that match the residence or a raised seam metal roof. Any other detached structure, pavilion, gazebo, playhouse, cabana, or storage room shall also 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.

3.14 Landscaping. Each Lot shall maintain a minimum of (i) two (2) non-palm trees in the front yard having a 2" caliper width with one of the trees having been designated as a "native tree" by the City and (ii) eleven (11) shrubs. In addition, the entire front yard of each Lot shall be landscaped and the flower beds covered with mulch. The front yards must be turfed and irrigated with an automatic underground irrigation system. Landscaping of each Lot shall be completed within sixty (60) days, subject to extension for delays caused by inclement weather, after the home construction is completed and shall include grassed front yards. 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. 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.

3.15 Fences. The ARC shall approve the front setback of each fence as per the individual Lot Plot Plat. All dwellings are to have either a 6-foot Pre-Finished Cedar-Tone Gold Dog-Ear Fence Picket or such other fencing material and/or color as approved by the ARC in writing, attached to galvanized metal posts along the side property lines of the Lot in order to screen the side and rear yards from the view of the neighboring Lots (the "Side Fences" and, collectively with the Front Fences, the "Fences"). The Fences must be installed at time of substantial completion of the dwelling. Each Front Fence shall have a gate approved by the ARC no greater than four feet (4') in width. If the adjoining Lot is vacant, the Front Fence will terminate at the property line and the Side Fences shall be constructed on the side property lines. If the adjoining Lot already has Fences, then such Owner shall construct only a Side Fence to match up with and tie into the existing Fence of the adjoining Lot. Each Owner shall maintain (i) the Front Fences located on such Owner's Lot, and (ii) the side of the Side Fences facing such Owner's Lot, whether constructed by such Owner or not.

The maintenance, repair, and replacement of Association owned fences situated on the Lots shall be the responsibilities of the Owner and/or Owners who own the Lot or Lots on which such fences are located, and in no event shall the Association be responsible for the maintenance, repair, and replacement of such fences. Repairs or alterations to any Association owned fence must be approved by the ARC in advance and shall use ARC approved materials and labor. Where Association owned fences fall on the property line, the Owner shall be responsible for maintaining its side of such fence only.

3.16 Trash Receptacles and Collection. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the City of San Juan, Texas, and/or the Association, in connection with the storage and removal of garbage and/or recyclable trash. No cans, bags, containers, or receptacles for the storing or disposal of trash, garbage, waste, rubbish, or debris shall be stored, kept, placed or maintained on any Lot where visible



from any street or from any of the Common Properties, except solely on a day designated for removal of garbage and rubbish by the party responsible for such removal. No Lot shall be used or maintained as a dumping ground for garbage, rubbish, debris, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, or other containers approved by the City of San Juan, Texas, and which shall be maintained in a clean and sanitary condition. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. Trash and recycle containers must be picked up and stored so as not to be visible from the street the same day of collection.

3.17 Exterior Lighting. No exterior light, including landscape lighting, shall be installed or maintained on any Lot without the prior written approval of the ARC. Further, and notwithstanding such prior written approval, upon being given notice by the ARC that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable.

3.18 Window Coolers. No window air-conditioners, water coolers, or evaporative coolers shall be permitted to be used, erected, placed or maintained on or in any residence on any part of the Lots.

3.19 Temporary Structures and Vehicles. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, or barn shall be placed on any Lot, either temporarily or permanently, and no residence, house, garage, shed or other structure appurtenant thereto shall be moved upon any Lot from another location, except for a sale, pre-sale or construction trailer. Declarant and builders shall have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with the construction and sales operations on the Lots, but in no event shall a builder have such right for a period in excess of one (1) year after the date of substantial completion of his last residence on the Lots. No truck, bus, boat, boat trailer, trailer, recreational vehicle, camper or any vehicle other than conventional automobile or motorcycle shall be stored or parked on a Lot, other than on a short-term basis, meaning no more than 12 hours in any 24 hour period.

3.20 Parking. 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.

3.21 Signs. 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. 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 in accordance with the fine policy. The Association will issue a 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 according to the fine policy. Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the City of San Juan, Texas, as such standards may be applicable to the Lots.

3.22 Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon. Minimum finished floor elevations, if any, established on the Plat shall be maintained.

3.23 Drilling and Mining Operations. Except as hereinafter provided, no oil or gas drilling, water drilling, or oil or gas development operations, oil or gas refining, quarrying or mining operations of any kind shall be permitted upon the surface of in any Lot, nor shall oil or gas wells, water wells, tanks, tunnels, mineral excavations or shafts be permitted upon the surface of any Lot. No derrick or other structure designed for use in quarrying or boring for, or the extraction of, oil, natural gas or other minerals or water shall be erected, maintained or permitted upon the surface of any Lot. Nothing in this Section shall be construed to prohibit any Owner of a Lot from executing a lease with any third party for the exploration and/or production of oil or gas within the mineral estate of the Owner's Lot, provided that the lease requires horizontal drilling or exploration of the mineral estate exclusive of any other means or methods of exploration/production, and includes indemnification and hold harmless clauses to protect the Owner from liability and to provide the Owner a legal defense for any liability and damages that may result from sub-surface horizontal drilling, exploration and production within the Lot. Any equipment utilized in the process of sub-surface horizontal drilling, exploration and production of oil or gas pursuant to any such lease shall not be located, either in whole or in part, upon the Lots.

3.24 Prohibited Activities.

(a) No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the other Owners.

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

(c) Garage sales, moving sales, rummage sales or similar activities on any Lot may be permitted no more often than once per year and subject to such restrictions as may

be imposed by the Association from time to time.

(d) Capturing, trapping, or killing of wildlife within the Subdivision is prohibited, except in circumstances posing a threat to safety.

(e) Any activity which results in unreasonable levels of sound or light pollution is prohibited, provided, this restriction shall not restrict or prevent the Association from operating recreational facilities or other amenities in a manner consistent with their intended use.

3.25 Utility Lines and Antenna. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead unless such lines are a part of the initial development infrastructure as designed by the electric provider. No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of such premises that is visible from street. Any waiver of these restrictions in a particular case shall not constitute a waiver of such restrictions with respect to any other Lots, lines or antennas. Exterior television/radio antenna, weather station apparatuses and receivers of any sort shall not be placed, allowed or maintained upon any portion of the roof structure where visible from the street and must receive ARC approval before installation. 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 cave of the front facing portion of the structure.

3.26 Animals. No animals, livestock or poultry of any kind shall be raised, bred or retained on any Lot except that no combination of more than four (4) household pets (including dogs, cats or other household pets) shall be 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 areas of the Subdivision. Animals which create an offensive activity, either odors, noise or other activity or present a health and safety concern to the surrounding Lots or occupants of the Subdivision, may be construed to be a prohibited activity at the sole judgment of the Board. 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.

3.27 Occupancy. 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 approved plans, 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. Should any structure be destroyed or partially destroyed, Owner shall immediately remove or rebuild said structure.

3.28 Burglar Bars. No burglar bars shall be installed on the residence constructed on any Lot.

3.29 Solar Panels. No solar panels shall be permitted on the roof of any structure constructed on any Lot unless approved in writing by the ARC, and in no event shall such be visible from the front street abutting such Lot. Solar panel installations shall conform to the roof

slope and be installed parallel to the ridgeline of the roof. If placed in a rear yard, no portion of a solar panel installation may extend vertically above the elevation of any portion of the rear yard fence.

3.30 Technology Requirements. 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 herein, regardless of whether such Owner uses the Technology Services or not.

#### ARTICLE IV CONSTRUCTION / MAINTENANCE

4.01 Construction Requirements. All construction shall be undertaken in a good and workmanlike manner and in accordance with all applicable laws. The Owner shall obtain all required building permits. In connection with any such construction, no damage shall be done to any adjacent Lots, streets, common areas or public or private utilities. Construction material, trash and construction worker trash must be contained during construction in a dumpster or other acceptable enclosed container on the Lot and/or confined to the building itself. The Owner is, and shall require Owner's agents to be, responsible for any cleanup cost associated with retrieval of debris or trash scattered or blown off lot and deposited on other property, whether Lots or common areas. The Association will issue one ten (10) day notice of non-compliance of this Section to the Owner of a Lot, whether under construction or if the condition exists after occupancy. After such notice, if the Owner does not take corrective action to clean the debris or trash or if the condition continues, the Association may have the debris or trashed cleaned and assess the Owner the cost of such corrective action.

#### 4.02 Duty of Maintenance.

(a) Owners and occupants (including lessees) of any Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds or drainage easements or other rights-of-way incident thereto, and vacant land, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (i) Prompt removal of all litter, trash, refuse and waste;
- (ii) Lawn mowing and edging of all curbs and edgeways on a regular basis;
- (iii) Tree and shrub pruning;
- (iv) Watering landscaped areas in a regular manner so as to maintain harmony with the overall standards of the Subdivision;
- (v) Keeping exterior lighting and maintenance facilities in working order;
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive;

- (vii) Keeping parking areas, driveways and curbs in good repair;
- (viii) Complying with all government health and police requirements;
- (ix) Repair of exterior damages to improvements;
- (x) Cleaning of landscaped areas lying between street curbs and Lot lines, unless such streets or landscaped areas are expressly designated to be Common Properties maintained by applicable governmental authorities or the Association;
- (xi) Repainting of improvements; and
- (xii) Removing all holiday decorations and lighting no later than fourteen (14) days after such holiday.

(b) If, in the opinion of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person.

(c) Notwithstanding the provisions of Section 4.02(b) above, if, at any time, an Owner shall fail to control weeds, grass and/or other unsightly growth, the Association shall, after ten (10) days' written notice, have the authority and right to go onto the Lot of such Owner for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum up to two (2) times the cost incurred by the Association for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. If, at any time, weeds or other unsightly growth on the Lot exceed six inches (6") in height, the Association shall have the right and authority to mow and clean the Lot, as aforesaid.

(d) The Owners and occupants (including lessees) of any Lot on which work is performed pursuant to Sections 4.02(b) and (c) above shall, jointly and severally, be liable for the cost of such work, such costs constituting a Special Individual Assessment, and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all said persons, jointly and severally, and shall constitute a lien against the Lot on which said work was performed. Such debt constitutes a Special Individual Assessment, which grants the Association a lien against such Lot and the right of foreclosure.

## ARTICLE V VIOLATIONS

5.01 Violations. 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. **The amount of such charge, together with interest 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 VI EASEMENTS

6.01 Ingress and Egress by the Association. The Association shall, at all times, have full rights of ingress and egress over and upon each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused by the Association's entry, other than damages caused by the Owner, shall be repaired by the Association at the expense of the Association.

6.02 General. The rights and duties of the Owners with respect to sanitary sewer, water, electricity, natural gas, telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable television lines, or (iii) drainage facilities are installed within the Subdivision, which connections, lines or facilities or any portion thereof lie in or upon Lots owned by any party other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots within or upon which said connections, lines or facilities or any portion thereof lie to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary.

(b) Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable television lines, or (iii) drainage facilities are installed within the Subdivision, which connections, lines or facilities serve more than one Lot, the Owner of each Lot served by said connections, lines or facilities shall be entitled to the full use and enjoyment of such portions of said connections, lines or facilities which service such Owner's Lot.

(c) 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.

## ARTICLE VII PROPERTY RIGHTS IN THE COMMON PROPERTIES

7.01 Subject to the provisions of Section 7.03 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

7.02 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.

7.03 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 VIII COVENANTS FOR ASSESSMENTS

8.01 Creation Of the Lien and Personal Obligation Of Assessments. 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 8.03), Special Capital Assessments (defined in Section 8.04), Technology Assessments (defined in Section 8.05), and Special Individual Assessment (defined in Section 8.06). **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.

8.02 Purpose Of Assessments. 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.

8.03 Annual Maintenance Assessments. 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, 2022, 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, the full Annual Maintenance Assessment shall be payable.
- (B) As to a Lot owned by Declarant, 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.

8.04 Special Capital Assessments. In addition to the Annual Maintenance Assessments authorized in Section 8.03 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 8.04.

8.05 Technology Assessments. 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 by the due date set forth by the board. Failure to pay the Technology Assessment on or before the due date will result in a termination of the Technology Services to such Lot and the Association shall have all of the rights set forth in Section 8.10 to collect such delinquent Assessment.

8.06 Special Individual Assessments. 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 8.06 shall belong to and remain with the Association until lawfully utilized by the Association.

8.07 Uniform Rates. Except as to the Special Individual Assessments, all Assessments must be fixed at a uniform rate for all Lots and be payable as set forth herein.

8.08 Date Of Commencement of Assessments; Due Date; No Offsets. 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 quarterly, 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 8.04 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.

#### 8.09 Duties of The Board With Respect To Assessments.

(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.

(b) Written notice of all Assessments shall be delivered or mailed in any manner allowable by law, including email, 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.

(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.

#### 8.10 Non-Payment Of Assessment.

(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, the delinquency policy adopted by the board will be followed. A service charge 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.

(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 8.09(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 Hidalgo County, Texas.

(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.**

8.11 Notice To Owners 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.

8.12 Subordination. 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.

8.13 Exempt Property. 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.

8.14 Estoppel Information from Board With Respect To Assessments. 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.

8.15 New Member Fees. Every time a Lot is conveyed or transferred by an Owner, 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 IX  
GENERAL POWERS AND DUTIES  
OF BOARD OF DIRECTORS OF THE ASSOCIATION**

9.01 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 VIII 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.

9.02 Liability Limitations. 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 X  
GENERAL PROVISIONS**

10.01 Enforcement. 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.

10.02 Duration. 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 Hidalgo County, Texas.

10.03 Assignment of Declarant Rights. 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.

10.04 Amendment. 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 Hidalgo County, Texas.

10.05 Annexation of Additional Property. 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 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 10.05, 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 10.05 and all of the subsections hereof.

10.06 Temporary Turnarounds. Declarant will be responsible for the maintenance and removal of any temporary turnaround constructed in the Subdivision.

10.07 Waiver. 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.

10.08 Severability. 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.

10.09 Headings. 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.

10.10 Notices.

(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.

(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.

10.11 Disputes. 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 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.

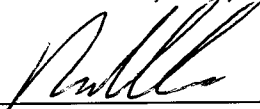
10.12 Termination of and Responsibility of Declarant. If Declarant shall convey all of its right, title and interest in and to the Lots and assign all its rights, benefits and obligations as Declarant hereunder to any partnership, individual or individuals, corporation or corporations, then and in such 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 pages follow.]**

EXECUTED by the said Declarant the 31st day of May 2023.


DECLARANT:

ESPERANZA HOMES MID-VALLEY, LLC, a Texas limited liability company

By:   
NICK RHODES, President

STATE OF TEXAS                    )  
  )  
COUNTY OF HIDALGO            )

I, the undersigned authority, on this 31 day of May, 2023, personally appeared Nick Rhodes, acting in his capacity as President of Esperanza Homes Mid-Valley, LLC, a Texas limited liability company.

  
Notary Public, State of Texas

