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**DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
MESA VERDE**

*Hays County, Texas*

Declarant: Mesa Verde Texas LLC, a Texas limited liability company

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE 1 DEFINITIONS.....</b>	<b>1</b>
<b>ARTICLE 2 USE RESTRICTIONS.....</b>	<b>5</b>
2.1 General.....	5
2.2 Controlled Entry Gate.....	7
2.3 Window or Glass Door Treatments.....	7
2.4 Rubbish and Debris.....	7
2.5 Trash Containers; Trash Pick-Up Services.....	7
2.6 Air Conditioning Units.....	7
2.7 Outbuildings, Sheds, and Detached Storage Buildings.....	8
2.8 Garages.....	8
2.9 Lighting; Exterior Holiday Decorations.....	8
2.10 Flags.....	8
2.11 Signs.....	9
2.12 Display of Religious Items.....	10
2.13 Solar Energy Devices.....	11
2.14 Antennas.....	12
2.15 Clothes Hanging Devices.....	13
2.16 Swimming Pools; Swimming Pool Enclosures.....	13
2.17 Security Measures.....	13
2.18 Unsightly Articles; Boats, RVs, Vehicles.....	15
2.19 Noise.....	15
2.20 Outside Burning.....	15
2.21 Hazardous Activities; No Hunting.....	16
2.22 Animals – Household Pets.....	16
2.23 Maintenance.....	17
2.24 Liability of Owners for Damage to Other Lots and Common Area.....	18
2.25 Compliance with Setbacks.....	18
2.26 Dumping.....	18
2.27 Owner Conduct in Common Areas.....	18
2.28 Insurance Rates.....	19
2.29 Mining and Drilling; Tanks.....	19
2.30 Release.....	19
2.31 Compliance with Restrictions.....	19
2.32 No Warranty of Enforceability; Restrictions May Change.....	20
<b>ARTICLE 3 CONSTRUCTION RESTRICTIONS.....</b>	<b>20</b>
3.1 Construction of Improvements.....	20
3.2 Drainage; Driveways.....	21
3.3 Construction Activities.....	21
3.4 Septic Systems.....	21
3.5 Private Water Wells; Rainwater Collection.....	21
3.6 Dark Sky.....	23

3.7	Firewise Standards.....	23
3.8	Utility Lines.....	23
3.9	Subdividing.....	23
3.10	Removal of Nonconforming Improvements.....	24
3.11	Continuity of Construction.....	24
3.12	Builder Performance.....	24
<b>ARTICLE 4 MESA VERDE PROPERTY OWNERS ASSOCIATION, INC.....</b>		<b>24</b>
4.1	Organization.....	24
4.2	Membership.....	25
4.3	Governance.....	26
4.4	Voting Rights.....	26
4.5	Powers.....	26
4.6	Acceptance of Common Area.....	29
4.7	Indemnification.....	30
4.8	Insurance.....	31
4.9	Bulk Rate Contracts.....	31
4.10	Community Systems.....	31
4.11	Fence Maintenance.....	32
4.12	Private Streets.....	32
4.13	Declarant’s Right to Contribute to Revenues of the Association.....	32
4.14	Protection of Declarant’s Interests.....	32
4.15	Administration of Common Area.....	33
4.16	Notices and Disclaimers as to Security Systems.....	33
<b>ARTICLE 5 INSURANCE.....</b>		<b>34</b>
5.1	Insurance.....	34
5.2	Restoration.....	34
5.3	Mechanic’s and Materialmen’s Lien.....	35
<b>ARTICLE 6 COVENANT FOR ASSESSMENTS.....</b>		<b>35</b>
6.1	Assessments.....	35
6.2	Maintenance, Reserve and other Designated Accounts or Funds.....	35
6.3	Regular Assessments.....	35
6.4	Working Capital Assessment; Reserve Fund Assessment.....	36
6.5	Special Assessments.....	37
6.6	Individual Assessments.....	37
6.7	Amount of Assessment.....	37
6.8	Late Charges.....	37
6.9	Owner’s Personal Obligation; Interest.....	38
6.10	Assessment Lien and Foreclosure.....	38
6.11	Exempt Property.....	39
6.12	Fines and Damages Assessment.....	40
<b>ARTICLE 7 ARCHITECTURAL CONTROL COMMITTEE.....</b>		<b>40</b>
7.1	Construction of Improvements; Consolidation or Subdivision of a Lot.....	40

7.2	Architectural Control Committee.....	40
<b>ARTICLE 8 MORTGAGE PROVISIONS.....</b>		<b>43</b>
8.1	Notice of Action.....	43
8.2	Examination of Books.....	44
8.3	Taxes, Assessments and Charges.....	44
<b>ARTICLE 9 GENERAL PROVISIONS.....</b>		<b>44</b>
9.1	Term.....	44
9.2	Eminent Domain.....	44
9.3	Amendment.....	45
9.4	Conceptual Plans.....	45
9.5	Enforcement.....	45
9.6	Higher Authority.....	46
9.7	Severability.....	46
9.8	Conflicts.....	46
9.9	Gender.....	46
9.10	Acceptance by Grantees.....	46
9.11	Damage and Destruction.....	47
9.12	No Partition.....	47
9.13	Notices.....	47
9.14	View Impairment.....	48
9.15	Safety and Security.....	48
<b>ARTICLE 10 EASEMENTS.....</b>		<b>48</b>
10.1	Right of Ingress and Egress.....	48
10.2	Reserved Easements.....	49
10.3	Utility Easements.....	49
10.4	Roadway and Utility Easements.....	50
10.5	Private Street Access Easement.....	50
10.6	Fencing, Landscape, Monumentation and Signage Easement.....	50
<b>ARTICLE 11 DECLARANT AS ATTORNEY-IN-FACT.....</b>		<b>50</b>
11.1	Declarant as Attorney-in-fact.....	50
11.2	Re-platting or Modification of Plat.....	51
<b>ARTICLE 12 DEVELOPMENT RIGHTS.....</b>		<b>51</b>
12.1	Development by Declarant.....	51
12.2	Special Declarant Rights.....	52
12.3	Addition of Land.....	52
12.4	Withdrawal of Land.....	52
12.5	Assignment of Declarant's Rights.....	53
<b>ARTICLE 13 DISPUTE RESOLUTION.....</b>		<b>53</b>
13.1	Introduction and Definitions.....	53
13.2	Mandatory Procedures.....	54

13.3	Claim Affecting Community Systems and Common Area.....	54
13.4	Claim by Lot Owners – Improvements on Lots.....	55
13.5	Notice.....	56
13.6	Negotiation.....	56
13.7	Mediation .....	57
13.8	Termination of Mediation.....	57
13.9	Binding Arbitration-Claims .....	57
13.10	Allocation of Costs.....	59
13.11	General Provisions.....	59
13.12	Period of Limitation .....	59
13.13	Funding Arbitration and Litigation.....	59

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MESA VERDE**

This Declaration of Covenants, Conditions and Restrictions for Mesa Verde (the “Declaration”) is made by **Mesa Verde Texas LLC, a Texas limited liability company** (the “Declarant”), and is as follows:

A. This Declaration is filed with respect to that certain real property described in **Exhibit “A”**, in Hays County, Texas, (the “Property”). Declarant is the owner of the Property.

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property with Declarant to act as the “Declarant” for all purposes under this Declaration.

C. By the filing of this Declaration, Declarant serves notice that the Property will be subjected to the terms and provisions of this Declaration.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

**ARTICLE 1  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

“Applicable Law” means the statutes and public laws and ordinances in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision. Statutes and ordinances specifically referenced in the Restrictions are “Applicable Law” on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

“Architectural Control Committee” or “ACC” means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot, as provided in *Article 7*.

“Assessment” or “Assessments” means assessments imposed by the Association under this Declaration.

“Assessment Unit” has the meaning set forth in *Section 6.7(b)*.

“Association” means the Mesa Verde Property Owners Association, Inc., a Texas nonprofit corporation, which has been created by Declarant to exercise the authority and assume the powers specified in *Article 4* and elsewhere in this Declaration and Restrictions. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

“Board” means the Board of Directors of the Association.

“Bulk Rate Contract” or “Bulk Rate Contracts” means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, “broadband” services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property.

“Bylaws” means the Bylaws of the Association as adopted and as amended from time to time.

“Certificate” means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

“Common Area” means any property or facilities that the Association owns or in which it otherwise holds rights or obligations, including, but not limited to, any property or facilities held by the Declarant for the benefit of the Association or its Members. Declarant reserves the right, from time to time and at any time, to designate by a Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Property identified in the Recorded written instrument will be considered Common Area for the purpose of this Declaration. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association, including certain property conveyed to the Association or in which the Association is granted certain easements or other property interests from any governmental body, quasi-governmental body or authority. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public. Common Area may also include all land designated as Common Area on a Plat of the Property. Common Area may additionally include (but is not limited to) any central mail kiosk(s), private streets, walkways or trails, entry lighting, irrigation and monumentation, the Entry Gate, any perimeter fencing or walls, and water detention facilities and/or water quality ponds.

“Community Manual” means the community manual, which may be initially adopted and recorded by the Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Community Manual may include the Bylaws, Rules and Regulations and other policies governing the Association. The Rules and Regulations and other policies set forth in the Community Manual may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. Any amendment to the Bylaws, Rules and Regulations and other policies governing the Association prosecuted by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

“Community Systems” means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant pursuant to any grant of easement or authority by Declarant within the Property.

“Declarant” means Mesa Verde Texas LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights (either partially or in full) of Mesa Verde Texas LLC, a Texas limited liability company as Declarant, must be expressly set forth in writing and Recorded.

“Design Guidelines” means the standards for design, construction, landscaping, and exterior items that may be adopted, as the same may be amended or restated from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. Declarant may adopt the initial Design Guidelines. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines.

“Development Period” means the period of time beginning on the date when this Declaration has been Recorded, and ending twenty-five (25) years later, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property.

“Homebuilder” means an Owner (other than the Declarant) who acquires a Lot for the construction of a single-family residence for resale to a third party.

“Improvement” means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures,



water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, windmills and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities. The term “Improvements” shall specifically include clearing activities on a Lot and pre-construction activities where erosion control measures must be adhered to as determined by the ACC and/or Applicable Law.

“Lot” means any portion of the Property designated by Declarant or as shown as a subdivided Lot on a Plat, other than Common Area.

“Majority” means more than half.

“Management Company” has the meaning set forth in *Section 4.5(h)*.

“Members” means every person or entity that holds membership privileges in the Association.

“Mortgage” or “Mortgages” means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

“Mortgagee” or “Mortgagees” means the holder(s) of any Mortgage(s).

“Owner” means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

“Plat” means a Recorded subdivision plat of any portion of the Property and any amendments thereto. A copy of the Recorded Plat is included in **Exhibit “A”** attached hereto and incorporated by reference herein.

“Property” means that certain property in Hays County, Texas described in **Exhibit “A”** attached hereto and incorporated by reference herein, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 12.3* and *Section 12.4* of this Declaration.

“Record, Recording, Recordation and Recorded” means recorded or to be recorded in the Official Public Records of Hays County, Texas.

“Resident” means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

“Restrictions” means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Community Manual, Rules or policies promulgated by the Declarant or Board, and as may be amended from time to time.

“Rules” means any instrument, however denominated, which is adopted by the Declarant or Board for the regulation and management of the Property, including any amendments to those instruments.

## ARTICLE 2 USE RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

### 2.1 General.

(a) Conditions and Restrictions; Impervious Cover Limitations. All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Restrictions. In addition to the terms of the Restrictions, the Property may also be subject to any additional covenants, conditions, restrictions, and easements filed of Record in the Official Public Records of Hays County, Texas.

(b) Ordinances. Ordinances and requirements imposed by local governmental authorities may be applicable to the Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each ordinance or regulation which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, building height restrictions, impervious cover limitations, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Board or Management Company for approval. Furthermore, approval by the Board, ACC or Management Company should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations or encumbrances which may affect the Owner’s Lot.

(c) Single-Family Residential Use. The Lots may be used solely for private single-family residential purposes and there will not be constructed or maintained thereon more than one detached single-family residence and one accessory dwelling unit (i.e., small guest house or casita type dwelling), provided any such accessory dwelling unit is approved in advance by the ACC and conforms to any requirements imposed by the ACC on such accessory dwelling units including but not limited to square footage, location and building material requirements. No professional, business, or commercial activity to which the general public is invited may be conducted on any Lot, except an Owner or Resident may conduct business activities within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence (remote work and working from home in a personal home office is permitted); (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of Residents within the Property; (iv) the business does not, in the Board’s judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property

and does not constitute a nuisance, or a hazardous or offensive use, does not require a federal firearms dealer license, does not threaten the security or safety of other Residents of the Property, all as may be determined in the absolute sole discretion of the Board. The terms “business” and “trade,” as used in this provision, will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. Compliance with this Section is determined in the absolute sole discretion of the Declarant during the Development Period and by the Board thereafter. Leasing of a residence in accordance with the subsection (d) below is not considered a business or trade within the meaning of this subsection. This subsection will not apply to any activity conducted by the Declarant or an Owner engaged in the business of constructing homes for resale (a Homebuilder) who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

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

(i) Declarant and/or its licensees may construct and maintain upon portions of the Common Area and any Lot owned by the Declarant such facilities and may conduct such activities which, in Declarant’s sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single-family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees have an easement over and across the Common Area for access and use of such facilities at no charge; and

(ii) Declarant and/or its licensees shall have an access easement over and across the Common Area for the purpose of making, constructing and installing improvements to the Common Area.

(d) Leasing. The leasing of a Lot is subject to the following conditions: (i) no Lot may be rented for transient purposes, as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, “VRBO”, “AirBNB” or any similar purpose, or for a period less than six (6) months; any rental term less than six (6) months is a short term rental for purposes of these Restrictions; any Owner that advertises a lease or rental of the Owner’s property for a term of less than six (6) months is in violation of these Restrictions; (ii) not less than an entire Lot may be leased; (iii) all leases must be in writing and must be made subject to the Restrictions and Applicable Law; (iv) an Owner is responsible for providing their tenant with copies of the Restrictions and notifying their tenant of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Restrictions and Applicable Law. Notwithstanding the foregoing provision, any additional leasing restrictions or Rules regarding leasing of a Lot enacted by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. If an Owner leases the Owner’s Lot, the Association may request certain information regarding the tenants and the lease as set forth in this Section. The Association may not: (i) require a lease or rental applicant or a tenant to be submitted to and approved

for tenancy by the Association; or (ii) require the following information to be submitted to the Association regarding a lease or rental applicant or current tenant: (A) a consumer or credit report; or (B) a lease or rental application submitted by the applicant, tenant, or that person's agent to the Owner or Owner's agent when applying for tenancy. The Association may request the following information be submitted to the Association regarding a lease or rental applicant. An Owner shall submit the following information to the Association (if requested by the Association) prior to the commencement date of the lease: (i) contact information, including the name, mailing address, phone number, and email address of each person who will reside on a Lot under a lease; and (ii) the commencement date and term of the lease.

**2.2 Controlled Entry Gate.** The Declarant will cause to be constructed an electronic controlled entry gate and related access facilities (the "Entry Gate") for access by Owners and Residents to and from the Property. The specifications, materials, location, and design of the Entry Gate will be determined by the Declarant in its sole and absolute discretion. The Entry Gate, upon completion, will be maintained by the Association with all maintenance, repair and replacement costs discharged through Assessments levied by the Association. The Board may adopt rules and regulations associated with use and operation of the Entry Gate, and may implement an access system consisting of cards, codes, and/or other access technology.

**2.3 Window or Glass Door Treatments.** No aluminum foil, reflective film or other reflective treatment, window tinting, window decals, stickers or similar treatments shall be placed on any windows or glass doors on any on a residence or other structure on the Lot. The use of bed sheets, tablecloths, towels or other obviously non-drapery fabrics are expressly prohibited, even on a temporary basis. All window or glass door treatments which are visible from public view must be maintained in good condition, and must be removed or replaced if they become stained, torn, damaged, or otherwise unsightly in the opinion of the Board.

**2.4 Rubbish and Debris.** As determined by the Board, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors shall be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view.

**2.5 Trash Containers; Trash Pick-Up Services.** Trash containers and recycling bins must be stored in one of the following locations: (i) inside the garage of the residence; or (ii) behind or on the side of a residence in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent residence, e.g. behind a masonry screen or other appropriate screening as approved by the ACC. The Board shall have the right to specify additional locations in which trash containers or recycling bins must be stored. The Board may enter into a Bulk Rate Contract for trash and/or recycling services to service the Lots whereby each Lot owner shall be required to utilize the Bulk Rate Contract provider for trash and/or recycling services. The Board shall contract with a single trash and/or recycling provider for servicing the Lots to minimize wear and tear on the private roads in the Subdivision. Owners are required to utilize the trash and/or recycling provider chosen by the Board to service the Subdivision.

**2.6 Air Conditioning Units.** Air conditioning units must be installed on the ground behind the rear of the residence, on the ground on the side of the residence, or such other location as may be approved by the ACC. Such air conditioning apparatuses must be reasonably screened in accordance with the ACC standards. No air conditioning apparatus or evaporative cooler may be installed on the front of any residence or attached to any roof, wall or window of a residence.

**2.7 Outbuildings, Sheds, Detached Storage Buildings.** Except as may be permitted by the ACC, no detached accessory buildings, including but not limited to, detached storage buildings and sheds shall be erected, placed or constructed on a Lot.

**2.8 Garages.** The residence on a Lot must accommodate a minimum of three (3) automobiles, unless otherwise approved by the ACC or required by Applicable Law. All garages must comply with the ACC standards. Garages will be maintained for the storage of automobiles. No garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot unless otherwise approved by the ACC.

**2.9 Lighting; Exterior Holiday Decorations.** Lighting and decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a residence that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within thirty (30) days after the holiday ended; provided, with respect to any Christmas lights or similar lights installed during that time of year, the same shall be installed no earlier than November 15<sup>th</sup> and removed on or before January 15<sup>th</sup>.

**2.10 Flags.** Owners are permitted to display certain flags on the Owner's Lot, as further set forth below.

(a) **Approval Requirements.** An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("Permitted Flag") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("Permitted Flagpole"). Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("Freestanding Flagpole"). Freestanding flagpoles are not allowed in the front yard of any Lot. To obtain ACC approval of any Freestanding Flagpole, the Owner shall provide the ACC with the following information: (a) the location of the Freestanding Flagpole to be installed on the Lot; (b) the type of Freestanding Flagpole to be installed; (c) the dimensions of the Freestanding Flagpole; and (d) the proposed materials of the Freestanding Flagpole (the "Flagpole Application"). A Flagpole Application may only be submitted by an Owner.

(b) Flags - Installation and Display. Unless otherwise approved in advance and in writing by the Board, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, shall comply with the following:

(i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

(ii) Any Permitted Flagpole shall be no longer than five feet (5') in length and any Freestanding Flagpole shall be no more than twenty feet (20') in height;

(iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3' x 5');

(iv) With the exception of flags displayed on Common Area and any Lot which is being used for marketing purposes by Declarant or a Homebuilder, the flag of the United States of America shall be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas shall be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) The display of a flag, or the location and construction of the flagpole shall comply with Applicable Law, easements and setbacks of Record;

(vi) Any Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the residence;

(vii) A Permitted Flag, Permitted Flagpole or Freestanding Flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe Permitted Flag, Permitted Flagpole or Freestanding Flagpole shall be repaired, replaced or removed;

(viii) Any Permitted Flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity, as determined by the ACC in its discretion, which shall not be aimed towards or directly affect any neighboring Lot; and

(ix) Any external halyard of a Permitted Flagpole or Freestanding Flagpole shall be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

**2.11 Signs.** Unless otherwise prohibited by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC, except for:

(a) Declarant Signs. Signs erected by the Declarant or erected with the advance written consent of the Declarant;

(b) Security Signs. One small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five feet (5') from the front elevation of the principal residence constructed upon the Lot;

(c) Permits. Permits as may be required by Applicable Law;

(d) Religious Items. Religious items as may be permitted subject to the restrictions set forth in Section 2.12 of the Declaration;

(e) Sale or Rental Signs. Each Owner is allowed to erect one (1) temporary "For Sale" or "For Lease" sign on an Owner's Lot, provided that the sign shall be limited to: (i) a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post; (ii) an overall height of the sign from finished grade at the spot where the sign is located may not exceed four feet (4'); and (iii) the sign shall be removed within two (2) business days following the sale or lease of the Lot; signage is not allowed at the front gate or outside the front gate to the subdivision unless approved by the Declarant during the Development Period or the Board thereafter;

(f) Political Signs. Political signs may be erected provided the sign: (i) is erected no earlier than the ninetieth (90<sup>th</sup>) day before the date of the election to which the sign relates; (ii) is removed no later than the tenth (10<sup>th</sup>) day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one (1) sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited;

(g) No Soliciting Signs. A "No Soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign may not exceed twenty-five (25) square inches; and

(h) Homebuilders. Homebuilders may install reasonable directional and sales/sold signs on Lots owned by the Homebuilder. The Board may restrict the time frame signs may be displayed after sale of a Lot or the number or size of signs of a Homebuilder in its sole discretion.

Except for signs which are erected by the Declarant or erected with the advance written consent of the Declarant, no sign may be displayed in the window of any Improvement located on a Lot.

**2.12 Display of Religious Items.** Owners and Residents are generally permitted to display or affix one or more religious items on the Owner's or Resident's Lot or dwelling, the display of which is motivated by the Owner's or Resident's sincere religious belief. Displays of religious items are subject to review as set forth below if such display is (i) either affixed to Improvement structures or freestanding in the yard or other exterior areas of the Lot; or (ii) located in the interior of the Improvements and visible to other Lots and/or Common Areas through a window. Any displays located within the interior of Improvements and that are not visible to other Lots and/or Common Areas are not subject to review and are hereby permitted. The display or affixing of a religious item on the Owner's or Resident's property or dwelling is prohibited under the following circumstances: (i) the item threatens the public health or safety; (ii) the item violates a law other than a law prohibiting the display of religious speech; (iii) the item contains language, graphics or any display that is patently offensive to a passerby for reasons other than its religious content; (iv) the item violates any building line, right-of-way, setback or easement that applies to the religious item pursuant to Applicable Law or the Restrictions; or (v) the item is attached to a traffic control device, street lamp, or utility sign, pole or fixture. No religious item may be displayed or affixed by an Owner or Resident on property owned or maintained by the Association or on any Common Area. Any installation not in compliance with these provisions will be considered a violation of the Restrictions and is subject to removal by the Board.

**2.13 Solar Energy Devices.** Solar Energy Devices may be installed with the advance written approval of the Declarant, or after expiration or termination of the Development Period the ACC, in accordance with the procedures and requirements set forth below. For purposes of this Declaration, "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

(a) Application. To obtain approval of a Solar Energy Device, the Owner shall provide the Declarant or ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "Solar Application"). A Solar Application may only be submitted by an Owner.

(b) Approval Process. The Declarant or ACC shall review the Solar Application in accordance with the terms and provisions of the Declaration, Restrictions and Applicable Law. The Declarant or ACC shall approve a Solar Energy Device if the Solar Application complies with Subsection (c) below UNLESS the Declarant or ACC makes a written determination that placement of the Solar Energy Device, despite compliance with Subsection (c) below, shall create a condition that substantially interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Declarant or ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or Common Area in the Subdivision must be approved



in advance and in writing by the Declarant during the Development Period and by the Board thereafter, and the Board need not adhere to this Section when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Declarant or ACC, each Solar Application and each Solar Energy Device to be installed in accordance therewith shall comply with the following:

(i) The Solar Energy Device shall be located on the roof of the residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device shall be located on the roof of the residence, the Declarant or ACC may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the Declarant or ACC. If the Owner desires to contest the alternate location proposed by the Declarant or ACC, the Owner should submit information to the Declarant or ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device shall be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located on the Owner's Lot, then (a) the Solar Energy Device may not extend higher than or beyond the roofline; (b) the Solar Energy Device shall conform to the slope of the roof and the top edge of the Solar Device shall be parallel to the roofline; and (c) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device shall be silver, bronze or black.

**2.14 Antennas.** The installation of only certain antennas/radio transmitters/satellite dishes shall be permitted on a Lot, as further set forth below.

(a) **Prohibited Antennas; Permitted Antennas.** Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc may be erected, maintained or placed on a Lot without the prior written approval of the ACC; provided, however, that:

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

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals; (collectively, (i) through (iii) above are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be required by the ACC or set forth in Rules adopted by the Declarant during the Development Period or by the Board thereafter, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from Ordinary Public View. For purposes of these Restrictions, “**Ordinary Public View**” means anything which can be seen in the sight line of normal visual range of a person on a public or private street, thoroughfare or sidewalk, Common Area. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

(b) **Location of Permitted Antennas.** A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, or any other portion of the Development Area. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from Ordinary Public View, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible from Ordinary Public View by the ACC are as follows:

(i) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street. The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas in order to allow an Owner to receive adequate or desired internet speeds or as otherwise approved by the ACC in its sole discretion.

**2.15 Clothes Hanging Devices.** No clotheslines or clothes hanging devices may be installed on a Lot unless otherwise approved by the ACC.

**2.16 Swimming Pools; Swimming Pool Enclosures.** Only in-ground swimming pools are allowed unless otherwise approved by the ACC. Owners and Residents are permitted to install a Swimming Pool Enclosure that conforms to applicable state and local safety requirements on the Owner's or Resident's Lot. For purposes of these Restrictions, a “Swimming Pool Enclosure” means a fence that: Surrounds a water feature, including a swimming pool or spa; consists of transparent mesh or clear panels set in metal frames; is not more than six feet (6') in height; and is designed to not be climbable. Before a Swimming Pool Enclosure is installed on an Owner's or Resident's Lot, an application must be submitted to the ACC and be approved in writing in accordance with the Restrictions. The application must include details concerning the type and description of the Swimming Pool Enclosure to be installed. The design of the Swimming Pool Enclosure shall be in accordance with the Restrictions and the Design Guidelines. Notwithstanding the foregoing, the Restrictions may not prohibit a Swimming Pool Enclosure that is black in color and consists of transparent mesh set in metal frames, in accordance with the provisions of Section 202.022(b)(2)

of the Texas Property Code. Any installation not in compliance with this policy will be considered a violation of the Restrictions.

**2.17 Security Measures.** Owners and Residents are generally permitted to install security measures, including but not limited to a security camera, motion detector, or perimeter fence, on an Owner's or Resident's Lot. Before any security measure contemplated by Section 202.023 of the Texas Property Code is constructed or otherwise erected on a Lot, an application must be submitted to the ACC and approved in writing in accordance with the Restrictions and Design Guidelines. The following information must be included with the application: (i) type of security measure; (ii) location of proposed security measure; (iii) general purpose of the proposed security measure; and (iv) the proposed construction plans and/or site plan. The Texas Property Code authorizes the Association to regulate the type of security measure fencing that an Owner may install on a Lot. The ACC shall have the discretion to determine types of prohibited security measure fencing and types of approved security measure fencing that may be installed by an Owner. If the proposed security measure fencing is located on one or more shared Lot lines with adjacent Lot(s) ("Affected Lots"), all Owners of record of the Affected Lots must sign the application evidencing their consent to the security measure fencing before the requesting Owner ("Requesting Owner") submits the application to the ACC. In the event that the Affected Lot Owner(s) refuse to sign the application as required by this Section, the Affected Lot Owner(s) and Requesting Owner hereby acknowledge and agree that the Association shall have no obligation to participate in the resolution of any resulting dispute in accordance with this policy. A security measure may be installed only on an Owner's Lot, and may not be located on, nor encroach on, another Lot, street right-of-way, Common Area, or any other property owned or maintained by the Association. No fence shall be installed in any manner that would prevent someone from accessing property that they have a right to use and/or access. Security measures, including but not limited to, security cameras and security lights shall not be permitted to be installed in a manner that the security measure is aimed and/or directed at an adjacent property which would result in an invasion of privacy, or cause a nuisance to a neighboring Owner or Resident. In the event of a dispute between Owners or Residents regarding security measure fencing, or a dispute between Owners or Residents regarding the aim or direction of a security camera or security light, the Association shall have no obligation to participate in the resolution of the dispute. The dispute shall be resolved solely by and between the Owners or Residents. EACH OWNER AND RESIDENT OF A LOT WITHIN THE PROPERTY ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT AND/OR THE ASSOCIATION, INCLUDING EACH PARTY'S DIRECTORS, OFFICERS, MANAGERS, AGENTS, AND EMPLOYEES, AND THE ACC, ARE NOT INSURERS AND THAT EACH OWNER AND RESIDENT OF ANY DWELLING AND/OR LOT THAT HAS A SECURITY MEASURE THAT HAS BEEN OR WILL BE INSTALLED PURSUANT TO THIS POLICY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND IMPROVEMENTS AND TO THE CONTENTS OF DWELLINGS AND IMPROVEMENTS, AND FURTHER ACKNOWLEDGES THAT THE DECLARANT AND/OR THE ASSOCIATION, INCLUDING EACH PARTY'S DIRECTORS, OFFICERS, MANAGERS, AGENTS, AND EMPLOYEES, AND THE ACC, HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR RESIDENT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO

ANY SECURITY MEASURE THAT MAY BE APPROVED BY THE ACC PURSUANT TO THIS POLICY. OWNERS OF LOTS WITHIN THE PROPERTY HEREBY AGREE TO INDEMNIFY, PROTECT, HOLD HARMLESS, AND DEFEND (ON DEMAND) THE DECLARANT AND/OR THE ASSOCIATION, INCLUDING EACH PARTY'S DIRECTORS, OFFICERS, MANAGERS, AGENTS, AND EMPLOYEES, AND COMMITTEE MEMBERS COMPRISING THE ACC (COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS (INCLUDING WITHOUT LIMITATION CLAIMS BROUGHT BY AN OWNER OR RESIDENT) IF SUCH CLAIMS ARISE OUT OF OR RELATE TO A SECURITY MEASURE GOVERNED BY THIS POLICY. THIS COVENANT TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INCLUDES (WITHOUT LIMITATION) CLAIMS CAUSED, OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE INDEMNIFIED PARTIES' OWN NEGLIGENCE, REGARDLESS OF WHETHER SUCH NEGLIGENCE IS THE SOLE, JOINT, COMPARATIVE OR CONTRIBUTORY CAUSE OF ANY CLAIM. Any installation not in compliance with the Restrictions or Design Guidelines will be considered a violation of the Restrictions.

**2.18 Unightly Articles; Boats, RVs, Vehicles.** No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Trucks with payload tonnage in excess of one (1.0) ton and any commercial vehicle with painted advertisements shall not be permitted to park overnight on the Property except those used by Declarant or a Homebuilder during the construction of Improvements. Without limiting the generality of the foregoing, no trailers, boats, jet skis or similar watercraft items, RVs, mobile homes, tractors, campers, wagons, buses, motorcycles, motor scooters, or all-terrain vehicles may be kept on a Lot unless adequately screened or placed in an enclosure where such item is not visible from the road or unless otherwise approved by the Declarant during the Development Period or the Board thereafter. No repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. No vehicle of any size which transports flammable or explosive cargo may be kept on the Property at any time. Service areas, storage areas, horse manure piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash, or horse manure piles shall be kept, stored, or allowed to accumulate on any portion of a Lot except within enclosed structures or appropriately screened from the main road or adjacent neighbors or as otherwise required by the ACC. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property. Motorcycles shall be operated in a quiet manner.

**2.19 Noise.** No horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes and speakers and audio systems installed as part of approved outdoor decks and patios) shall be located, used, or placed on any portion of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement

on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

**2.20 Outside Burning.** An Owner may burn brush and trees from clearing activities on the Owner's Lot provided the Owner complies with Hay County burn requirements, permitting rules, and Applicable Law. No exterior materials may be burned and all burning must comply with local ordinances. No Owner shall permit any condition upon a Lot which creates a fire hazard or violates Applicable Law.

**2.21 Hazardous Activities; No Hunting.** No activities may be conducted on or within the Property and no Improvements may be constructed on or within any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. No firearms may be unlawfully discharged upon any portion of the Property. Fireworks may not be discharged on the Property unless discharged in conjunction with an event approved in advance by the Board. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies. No hunting is allowed in the Mesa Verde subdivision.

**2.22 Animals - Household Pets.** Except horses and chickens as provided below, no animals, including pigs, hogs, swine, poultry, other fowl, wild animals, cattle, sheep, goats, or any other type of animal not considered to be a "domestic household pet" within the ordinary meaning and sole interpretation of such words by the ACC may be kept, maintained, or cared for on or within the Property. No Owner or Resident may keep on such Owner's Lot more than three (3) cats and dogs, in the aggregate, unless otherwise approved by the ACC. No Owner may keep a dangerous or exotic animal or any other animal deemed by the ACC to be a potential threat to the well-being of people or other animals. No animal may be kept, bred, or maintained for any commercial purpose or for food. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no animals will be allowed within the Property other than on the Lot of its Owner unless confined to a leash or otherwise restrained or contained. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration within the Property, and no kennels or breeding operation will be allowed. All animals will be kept within fenced or enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. All fencing, enclosed areas and/or shelters constructed hereunder must be: (i) constructed in accordance with materials, plans and specifications in conformance with the terms and provisions of the Restrictions and the Design Guidelines and any additional conditions imposed by the ACC; (ii) of reasonable design and construction to adequately fence, enclose and/or shelter such animals in accordance with the provisions hereof; and (iii) approved in advance and in writing by the ACC.

(A) **Chickens.** Up to six (6) chickens or hens may be kept in a secure chicken coop or other similar structure on a Lot. Coops must be (i) located in rear yards only; (ii) be at least one hundred (100) feet from the Lot's boundary line and at a location which is not visible from any street or Common Area. No roosters are allowed on any Lot. The coop or other similar structure in which the chickens are kept must be: (i) constructed in a workmanship like manner and (ii) maintained at all times in a good, sound and clean condition as determined by the ACC; and (iii)

the Owner agrees to comply with any rules and obligations established by the ACC applicable to chickens.

(B) Horses. Horses may be kept on a Lot for recreation and personal use; provided, that: (i) only two horses shall be permitted on each Lot – regardless of age; (ii) the Owner requests such approval in writing to the ACC, which request shall include all information required by the ACC from time to time; (iii) the ACC approves such request; and (iv) the Owner agrees to comply with any rules and obligations established by the ACC applicable to horses. Adequate fencing and shelters shall be constructed as are reasonably necessary for keeping and caring for any horses permitted hereunder. Horses must be kept in the rear of the Lot behind the main residence and not on the front of the Lot near the main road unless otherwise approved by the ACC.

No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. No animal may be stabled, maintained, cared for, kept or boarded for hire or remuneration on any Lot. No kennels or breeding operation shall be allowed. No animals shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed areas shall be constructed in accordance with plans approved by the ACC, shall be reasonably designed and constructed to adequately contain such animals in accordance with these Restrictions, and shall be screened so as not to be visible from the main road or from adjacent Owners or as otherwise may be approved by the ACC.

No loafing sheds or independent horse shelters are allowed. Owners must keep horses in a horse barn that matches the main residence on the Lot or as otherwise approved by the ACC.

Because a Lot will not sustain horses without supplemental feeding, horses shall be primarily kept in small paddocks or pastures (usually 30 by 60 feet), in accordance with plans approved by the ACC. Even with supplemental feeding, a horse may strip off all ground vegetation through foraging and/or hoof impact. Trees may be killed by horses cribbing or chewing a girde of bark around the trunk or by erosion coupled with hoof impact causing damage to the root system. This will eventually destroy all vegetation and cause irreparable erosion to the thin topsoil. Horses should not be turned out after rainfall as their hoof impact will destroy the softened or muddy turf. During droughts or winter months, horses should be let out to pasture only until they have eaten all available grass and should be removed when they start the damage the sod by overgrazing or hoof impact. During winter months a winter grass can be planted to extend grazing periods. Tree protection may include chicken wire to protect bark from cribbing horses and/or fencing to protect radial roots from hooves, provided any such improvements are approved by the ACC. Pasture grazing then rotation to a fallow period stimulates grass growth, coupled with the horses/ natural fertilization of the sod and the aeration of the soil through moderate hoof impact. Improper turf management shall be deemed to be a violation of these Restrictions subject to enforcement by the Declarant and Board. Declarant or the Board in its sole discretion, may grant variances to these Restrictions.

**2.23 Maintenance.** The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon

in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this Section has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Board, in its sole discretion:

- (a) Prompt removal of all litter, trash, refuse, and wastes.
- (b) Lawn mowing and edging.
- (c) Tree and shrub pruning in accordance with the Oak Wilt Policy. Oak tree pruning is prohibited from February 1<sup>st</sup> to June 30<sup>th</sup> as this is the period in which trees are most at risk of infection. Pruning of trees shall be performed when possible from July 1<sup>st</sup> to January 1<sup>st</sup>. Owners should refer the Oak Wilt Policy (included as Attachment 10 in the Community Manual) for more information on oak wilt.
- (d) Watering (as permitted by Applicable Law).
- (e) Keeping exterior lighting and mechanical facilities in working order.
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (g) Keeping planting beds free of turf grass.
- (h) Keeping driveways in good repair.
- (i) Complying with Applicable Law.
- (j) Repainting of Improvements.
- (k) Repair of exterior damage and wear and tear to Improvements.
- (l) Maintaining decks, patios, and balconies in good condition and repair.
- (m) Maintaining all Solar Energy Devices, if any, in good condition and repair.

**2.24 Liability of Owners for Damage to Other Lots and Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Areas without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to the Common Areas and any Improvements constructed thereon; or any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, and for which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any Resident of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Assessment against such Owner's Lot secured by a lien against such Owner's Lot and collectable on the same manner as Assessments.

**2.25 Compliance with Setbacks.** No residence may be constructed on any Lot nearer to a street than the minimum building setback lines shown on the Plat containing such Lot and no building shall be located on any utility easements.

**2.26 Dumping.** No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept in areas of the Property designated for this purpose by Declarant (in connection with its construction) or by the Board, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Owners shall place these containers for

collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.

**2.27 Owner Conduct in Common Areas.** Owners and their guests, invitees, Residents and family shall at all times exhibit good behavior while present in the Commons Areas. The Board may adopt additional rules governing the use of the Common Areas. At a minimum, the following standards shall apply to all Owners and their guests, invitees, Residents and family while present in the Common Areas and such standards shall be in addition to the standards otherwise set forth in this Declaration:

- (a) noise including, without limitation, playing of music, shall be kept at reasonable levels at all times;
- (b) rude, obnoxious or lewd behavior while in Common Areas shall be strictly prohibited;
- (c) pets shall remain on a leash at all times and all pet waste shall be immediately removed from the Common Areas; and
- (d) there shall be no obstruction of the Common Areas, nor shall anything be kept on, stored on or removed from any part of the Common Area without prior written consent of the Board thereafter, except as specifically provided herein.

**2.28 Insurance Rates.** Nothing shall be done or kept on the Property that would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, or the Improvements located thereon, without the prior written approval of the Board.

**2.29 Mining and Drilling; Tanks.** No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. No tank for the storage of oil or other fluids may be maintained on any Lot above the surface of the ground unless otherwise approved by the ACC. Nothing in this Section restricts or prohibits (i) developing or producing the oil, gas or other minerals in and under the Property by pooling the Property with other land, or (ii) extracting oil, gas or other minerals by directional drilling mining and production operations initiated from surface locations on other lands. This Section will not be interpreted to prevent the drilling of water wells approved in advance by the ACC which are installed to provide water to all or any portion of the Property. All water wells must also be approved in advance by the ACC and any applicable regulatory authority.

**2.30 Release.** EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, DECLARANT, THE ACC, THE BOARD AND THEIR AFFILIATES, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM



ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF SUCH OWNER'S USE OF ANY COMMON AREA. Neither the Association nor Declarant shall assume any responsibility or liability for any personal injury or property damage which is occasioned by use of any Common Area, and in no circumstance shall words or actions by the Association or Declarant constitute an implied or express representation or warranty regarding the fitness or condition of any Common Area.

**2.31 Compliance with Restrictions.** Each Owner and Residents of a Lot, and the Owner's tenants, guests, invitees, and licensees shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation thereof and may result in a fine against the Owner in accordance with this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the Board, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration and may be collected by any means provided in the Restrictions for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH SUCH OWNER SHALL RELEASE AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

**2.32 NO WARRANTY OF ENFORCEABILITY; RESTRICTIONS MAY CHANGE.** DECLARANT MAKES NO WARRANTY OR REPRESENTATION AS TO THE PRESENT OR FUTURE VALIDITY OR ENFORCEABILITY OF THE RESTRICTIONS. ANY OWNER ACQUIRING A LOT IN RELIANCE ON ONE OR MORE OF THE RESTRICTIONS SHALL ASSUME ALL RISKS OF THE VALIDITY AND ENFORCEABILITY THEREOF AND, BY ACQUIRING THE LOT, AGREES TO HOLD DECLARANT HARMLESS THEREFROM. EACH OWNER UNDERSTANDS THAT THE RESTRICTIONS MAY CHANGE FROM TIME TO TIME IN ACCORDANCE WITH THE DECLARANT'S RIGHTS

DURING THE DEVELOPMENT PERIOD AND AS OTHERWISE PROVIDED IN THIS DECLARATION.

### ARTICLE 3 CONSTRUCTION RESTRICTIONS

**3.1 Construction of Improvements.** Unless constructed by or at the direction of Declarant, no Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any portion of the Property unless approved in advance and in writing by the ACC, Declarant or Board in accordance with the Restrictions. The Declarant or Board may adopt Design Guidelines applicable to the Property. If adopted, all Improvements shall strictly comply with the requirements of the Design Guidelines unless a variance is obtained pursuant to the Restrictions. The Design Guidelines may be supplemented, modified, amended, or restated by the Board as authorized by the Restrictions.

**3.2 Drainage; Driveways; Foundations.** There shall be no interference with or modification to the established drainage patterns over any of the Property, including but not limited to the Lots and wet or dry creeks, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in advance by the ACC. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Lots. All driveways must be constructed in accordance with any plat requirements and Applicable Law. All foundations must be engineered.

**3.3 Construction Activities.** The Restrictions will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant or a Homebuilder) upon or within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of the Restrictions by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole and reasonable judgment, the ACC will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith.

**3.4 Septic Systems.** There is no central wastewater system for the Property. Each Lot shall be connected to a private on-site sewage facility (“OSSF”) constructed and located on an Owner’s Lot at the sole expense of the Owner thereof prior to occupancy of any premises on the Lot. The OSSF system shall be in conformity with the restrictions outlined on the recorded Plat and conform to all Applicable Law, including, without limitation, the Texas Commission on Environmental Quality rules and regulations or any successor agency and, if required by Applicable Law, be inspected by any applicable governmental or quasi-governmental entity. Written certification by the inspecting authority that the OSSF system complies with applicable

requirements shall be presented to the Board by the Owner of a Lot prior to occupancy of any premises on the Lot if requested by the Board.

**3.5 Private Water Wells; Rainwater Collection.** There is no central water system for the Property. Each Lot may be connected to a private water well drilled on an Owner's Lot at the sole expense of the Owner. The water well shall be in conformity with any restrictions on the recorded Plat and conform to Applicable Law. An Owner may further install a rainwater harvesting or collection system (a "Rainwater Harvesting System") in lieu of or in addition to drilling a private water well. Owners must request and receive approval for all wells and Rainwater Harvesting Systems in advance by the ACC.

Rainwater Harvesting Systems may be installed with the advance written approval of the ACC as provided below.

(a) Application. To obtain Declarant or ACC approval of a Rainwater Harvesting System, the Owner shall provide the Declarant or ACC with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "Rain System Application"). A Rain System Application may only be submitted by an Owner.

(b) Approval Process. The decision of the Declarant or ACC shall be made in accordance with the Restrictions. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Declarant or ACC, and the Declarant or ACC need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Declarant or ACC, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith shall comply with the following:

(i) The Rainwater Harvesting System shall be consistent with the color scheme of the residence constructed on the Owner's Lot, as reasonably determined by the Declarant or ACC.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the Declarant or ACC.

(d) **Guidelines.** If the Rainwater Harvesting System is installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner's Lot, the Declarant or ACC may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, such application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Area, or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that shall be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner's Lot, any additional requirements imposed by the Declarant or ACC to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Declarant or ACC.

**3.6 Dark Sky.** The outside lighting plan for each Lot shall be approved by the ACC and shall utilize Internal Dark Sky Community Guidelines to the maximum extent practicable. Full guidelines are accessible at <https://www.darksky.org/wp-content/uploads/2018/12/IDSC-Guidelines-2018.pdf>, as may be amended from time to time. Exterior light fixtures must be fully shielded and directed downward. Light fixtures must not produce an intense glare or direct illumination across Lot lines. The intent of this outside light provision is to maintain the visibility of the natural skylight for all Owners and to minimize outside light pollution and lighting that could affect adjacent Lots. The Board has the sole discretion to determine compliance and to allow variances to the Internal Dark Sky Community Guidelines. The ACC may adopt Rules specific to lighting and dark sky compliance provided any such Rules are approved by the Declarant during the Development Period.

**3.7 Firewise Standards.** All structures and improvements, including walls, fences and appurtenances, and landscaping should be kept in a good state of repair and condition at all times and maintained to minimize the risk of wild fires. Owners are encouraged to take appropriate measures to become more resistant to wildfire structural damage ("**Firewise Standards**"). Each Owner shall be responsible to maintain and clean its Lot and all structures and improvements thereon so as to avoid the creation of hazards to health or safety. If, in the sole opinion of the Declarant, or ACC after expiration of the Development Period, a violation exists to this policy, the Declarant, or ACC after expiration of the Development Period, may give thirty (30) days written notice to the Owner of the offending Lot. If appropriate remedial action is not begun before the expiration of the notice period, the Declarant may authorize such repairs, clean-up or maintenance as it sees fit and charge a Special Assessment against the offending Lot and Owner. Declarant or the Association may provide Owners with Firewise brochures at the annual Member's meeting or other appropriate times to encourage Owners to comply with Firewise Standards and to provide information on safety guidelines promulgated by Firewise Communities, the National Fire Protection Association or other relevant authority. THE FOREGOING INFORMATION REGARDING FIREWISE STANDARDS IS PROVIDED TO ALERT AND EDUCATE OWNERS. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE LIABLE TO ANY OWNER IN CONNECTION WITH ANY FAILURE OF AN OWNER TO COMPLY WITH OR FAILURE OF DECLARANT OR THE ASSOCIATION TO ENFORCE FIREWISE STANDARDS.

**3.8 Utility Lines.** Unless otherwise approved by the Board, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground, concealed in or under buildings or other structures.

**3.9 Subdividing.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Board. Each Owner is advised to review the Plat and Applicable Law to determine rules with respect to the subdivision of any Lot. Subdividing of a Lot may be prohibited by the Plat or Applicable Law.

**3.10 Removal of Nonconforming Improvements.** The Association, upon request of the Board and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of the Restrictions. The Owner of the Improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within thirty (30) days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of one and one half percent (1½%) per month, from the date the expense was incurred by the Association through the date of reimbursement in full, and all such sums and interest will be an Individual Assessment enforceable as provided in this Declaration.

**3.11 Continuity of Construction.** All Improvements commenced on the Property, other than Improvements constructed by the Declarant, will be prosecuted diligently to completion and will be completed within twenty-four (24) months after commencement, unless an exception is granted in writing by the Board. If an Improvement on any Lot is commenced and construction is then abandoned for more than one hundred twenty days (120) days, or if construction is not completed within the required twenty-four (24) month period, then such delay will constitute a violation of this Declaration and the Owner of such Lot will be subject to fines in accordance with the Design Guidelines. Any fine and/or charge for damage levied in accordance with this Section will be considered an Individual Assessment pursuant to this Declaration. There is no minimum time period in which an Owner must commence construction of a residence on a Lot.

**3.12 Approved Builders and Contractors; Builder Performance.** Each Owner (other than Declarant) must submit a list of the Owner's desired builders and contractors to the ACC for approval prior to clearing, tree removal and constructing Improvements on the Owner's Lot. In no event will the Association, the Board, the ACC, Declarant or affiliates of Declarant be responsible for, or guarantors of, performance by any builder or contractor of all or any of its obligations to any Owner pursuant to any contracts for the sale or construction of Improvements or otherwise.

Neither the Association, the Board, the ACC, Declarant nor any affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any builder or contractor under any contract or otherwise.

**ARTICLE 4**  
**MESA VERDE PROPERTY OWNERS ASSOCIATION, INC.**

**4.1 Organization.** The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas nonprofit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**4.2 Membership.**

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

(b) Easement of Enjoyment - Common Area. Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

(i) The right of the Declarant to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) The right of the Association to suspend an Owner's right to vote for any period during which any Assessment against such Member's Lot remains past due in accordance with the Assessment Collection Policy and for any period during which such Member is in violation of any provision of this Declaration; provided however, a Member may continue to vote should a vote be held for an election of board members or if the vote is on any matter concerning the rights or responsibilities of the Owners (despite a delinquency on Assessments or violation of the Restrictions) in accordance with Section 209.0059 of the Texas Property Code.

(iii) The right of the Association and Declarant (during the Development Period) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose (including dedicating any roads to a public or governmental entity);

(iv) The right of the Association and Declarant (during the Development Period) to grant easements or licenses over and across the Common Area;

(v) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, to mortgage the Common Area;

(vi) The right of the Declarant, during the Development Period, and the Board thereafter, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

**4.3 Governance.** The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board and all officers of the Association until the tenth (10<sup>th</sup>) anniversary of the date this Declaration is Recorded.** No later than the tenth (10<sup>th</sup>) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board will hold a meeting of Members of the Association for the purpose of electing one-third of the Board (the “Initial Member Election Meeting”), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

**4.4 Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 4.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) **Owner Votes.** The Owner of each Lot will have one (1) vote for each Lot so owned.

(b) **Declarant Votes.** In addition to the votes to which Declarant is entitled by reason of *Section 4.4(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) **Co-Owner Votes.** When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 4.4*.

**4.5 Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this

Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules, Bylaws and Community Manual. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, Bylaws and Community Manual not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof) or the Association. Any Rules, and any modifications to existing Rules, or the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments, as provided in *Article 6* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE



ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 4.5(e)* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

(i) Parks, parkways or other recreational facilities or structures;

(ii) Roads, private streets, sidewalks, signs, street lights, walks, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 4.5(g)* must be approved in advance and in writing by the Declarant.

(h) Management Company. To retain and pay for the services of a person or firm (the "Management Company"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Management Company. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Management

Company. In addition, the Board or the Management Company may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGEMENT COMPANY OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Property, Common Area, private or public recreational facilities, easements, streets, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes, each as may be applicable.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area or other property, or to provide any service, including but not limited to, natural gas service, trash and recycling pick up services, cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

(n) Rules. To establish, terminate, enact, amend and restate Rules governing and limiting the use of the Common Area and any Improvements thereon.

**4.6 Acceptance of Common Area.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate by written Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the filing of such designation, the portion of the Property identified therein will be considered Common Area for the purpose of this Declaration. Declarant and its assignees may transfer or

convey to the Association interests in real or personal property within or for the benefit of the Property or the Property and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property, easements for the benefit of Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Declaration. Such property will be accepted by the Association and thereafter will be maintained as Common Area by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association free of monetary consideration to the extent conveyed in error or needed to make minor adjustments in property lines, as determined in the sole and absolute discretion of the Declarant. Declarant and/or its assignees may construct and maintain upon portions of the Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area for ingress and egress and shall have the right to use such facilities and to conduct such activities.

**4.7 Indemnification.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW BUT WITHOUT DUPLICATION (AND SUBJECT TO) ANY RIGHTS OR BENEFITS ARISING UNDER THE CERTIFICATE OR BYLAWS OF THE ASSOCIATION, THE ASSOCIATION WILL INDEMNIFY ANY PERSON WHO WAS, OR IS, A PARTY, OR IS THREATENED TO BE MADE A PARTY TO ANY THREATENED PENDING OR COMPLETED ACTION, SUIT OR PROCEEDING, WHETHER CIVIL, CRIMINAL, ADMINISTRATIVE OR INVESTIGATIVE BY REASON OF THE FACT THAT HE IS, OR WAS, A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION AGAINST EXPENSES, INCLUDING ATTORNEYS' FEES, REASONABLY INCURRED BY HIM IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING IF IT IS FOUND AND DETERMINED BY THE BOARD OR A COURT OF COMPETENT JURISDICTION THAT HE OR SHE: (I) ACTED IN GOOD FAITH AND IN A MANNER HE OR SHE REASONABLY BELIEVED TO BE IN, OR NOT OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION; OR (II) WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD NO REASONABLE CAUSE TO BELIEVE HIS OR HER CONDUCT WAS UNLAWFUL. THE TERMINATION OF ANY ACTION, SUIT OR PROCEEDING BY SETTLEMENT, OR UPON A PLEA OF *NOLO CONTENDERE* OR ITS EQUIVALENT, WILL NOT OF ITSELF CREATE A PRESUMPTION THAT THE PERSON DID NOT ACT IN GOOD FAITH OR IN A MANNER WHICH WAS REASONABLY BELIEVED TO BE IN, OR NOT OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION OR, WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE THAT HIS OR HER CONDUCT WAS UNLAWFUL. THE ASSOCIATION AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY DECLARANT, DECLARANT'S LENDER(S), AND DECLARANT'S RESPECTIVE AFFILIATES (DIRECT AND INDIRECT), PARENTS, JOINT VENTURERS, PARTNERS, MEMBERS, MANAGERS, AGENTS, CONTRACTORS, REPRESENTATIVES,

OFFICERS, DIRECTORS, EMPLOYEES, AND STAFF (COLLECTIVELY, THE “RELEASED PARTIES”), FROM ANY CLAIMS, CAUSES OF ACTION, DEMANDS, LOSSES, DAMAGES, EXPENSES, COSTS, AND CLAIMS FOR PERSONAL INJURY, ILLNESS OR PROPERTY DAMAGE, INCLUDING DEATH (THE “CLAIMS”), ARISING OUT OF OR RELATING IN ANY WAY TO ANY ASSOCIATION ACTIVITIES, FUNCTIONS, COMPLETED PRODUCTS OR OPERATIONS, INCLUDING, BUT NOT LIMITED TO, THE OPERATION, MAINTENANCE OR REPAIR OF ANY COMMON AREA OR ANY OTHER PORTION OF THE PROPERTY WHICH THE ASSOCIATION OWNS OR IS OTHERWISE HELD BY OR FOR THE BENEFIT OF THE ASSOCIATION, INCLUDING WITHOUT LIMITATION PORTIONS HELD UNDER ANY LEASE, LICENSE OR EASEMENT IN FAVOR OF THE ASSOCIATION, OR THE EXERCISE OF ANY RIGHTS CONFERRED UPON THE ASSOCIATION IN THE RESTRICTIONS.

**4.8 Insurance.** The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the Association would have the power to indemnify such person against such liability or otherwise.

**4.9 Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 4.5* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board determines with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner’s Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner’s Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days’ prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner’s Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title “termination notice” or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident

of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**4.10 Community Systems.** The Association is specifically authorized to provide, or to enter into contracts with other persons or entities to provide, Community Systems. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control. In addition, until expiration or termination of the Development Period, any contracts entered pursuant to this *Section 4.10* must be approved in advance and in writing by the Declarant.

**4.11 Fence Maintenance.** The Association is authorized to repair and maintain any perimeter fencing on the Property, gates installed by the Declarant or at the entrance to the subdivision. The Board shall determine, in its sole discretion, whether to repair versus replace components of any perimeter fencing for the Property. Owners should refer to the Design Guidelines for fencing requirements and types of approved fencing allowed on an Owner's Lot. Fences crossing public utility easements (if permitted) must include gates or access for emergency and maintenance vehicles at all times. The Board will have the right to approve or dictate the access location along fences on the Property, including fences on an Owner's Lot, if any easement or public access is fenced.

**4.12 Private Streets.** The Entry Gate, streets, and any sidewalks or trails within the Property are private and constitute a portion the Common Area that is subject to the jurisdiction and administration by the Association. Maintenance of the Common Area, including the streets and any related easements, are maintained by the Association and paid for by the Association from Assessments of its Members. The Board is authorized to adopt, implement and enforce rules, regulations, and procedures governing the use, maintenance, repair and replacement of the Entry Gate, any sidewalks, and streets.

**4.13 Declarant's Right to Contribute to Revenues of the Association.** Declarant shall have the right, *but not the obligation*, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

**4.14 Protection of Declarant's Interests.** Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

**4.15 Administration of Common Area.** The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

**4.16 Notices and Disclaimers as to Security Systems.** NEITHER THE DECLARANT, NOR A HOMEBUILDER, NOR THE ASSOCIATION, NOR THEIR SUCCESSORS NOR ASSIGNS, GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR RESIDENT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT NEITHER THE DECLARANT, NOR A HOMEBUILDER, NOR THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS NOR ASSIGNS ARE INSURERS OF THE OWNER OR RESIDENT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE LOT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the party of a security service provider to perform any of its obligations with respect to security services and, therefore, every Owner or Resident of property receiving security services through the Community Systems agrees that neither the Declarant, nor a Homebuilder, nor the Association, nor their successors nor assigns assumes liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of: (a) any failure of the Owner's security system; (b) any defective or damaged equipment, device, line or circuit; (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees; or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner and Resident obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members

that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, a Homebuilder, the Association, or their successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars (\$250.00), which limitation applies irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, a Homebuilder, or the Association, or their successors or assigns. Further, in no event will Declarant, a Homebuilder, the Association, or their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

## **ARTICLE 5 INSURANCE**

**5.1 Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**5.2 Restoration.** In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner and diligently pursued to completion using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to,

foreclosure of such liens against the Owner's Lot. EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

**5.3 Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

## **ARTICLE 6 COVENANT FOR ASSESSMENTS**

### **6.1 Assessments.**

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied against each Lot in amounts determined pursuant to *Section 6.7* below. The total amount of Assessments will be determined by the Board pursuant to *Sections 6.3, 6.4, 6.5* and/or *6.6*.

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this *Article 6*.

**6.2 Maintenance, Reserve and other Designated Accounts or Funds.** The Board may establish a reserve fund, maintenance fund, or other designated account into which will be deposited monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose authorized by the Restrictions and the Applicable Law.



**6.3 Regular Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association (the "Regular Assessments") which sets forth:

(a) an estimate of the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including but not limited to, the cost of all management, repair and maintenance of Common Areas, the cost of providing street and other lighting (if applicable), the cost of administering and enforcing the Restrictions, the improvement, maintenance and/or repaving of the private streets, costs to maintain landscaped areas and water and detention ponds, walkways and trails (if any), costs to fund taxes and insurance; and

(b) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve (if established by the Board), giving due consideration to any expected income and any surplus from the prior year's fund.

Regular Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Individual Assessment by any Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal quarterly installments, or in such other manner as the Board may designate in its sole and absolute discretion.

**6.4 Working Capital Assessment; Reserve Fund Assessment.** Each Owner (other than Declarant) of a residential Lot will pay a one-time working capital assessment ("Working Capital Assessment") and/or reserve fund assessment ("Reserve Fund Assessment") to the Association in such amount as may be determined by the Board from time to time in its sole and absolute discretion, which the Association may use to discharge operating expenses and/or build up a reserve account to maintain Common Areas, including the private streets in the subdivision. Such Working Capital Assessment and Reserve Fund Assessment need not be uniform among all Lots, and the Declarant during the Development Period and the Board thereafter is expressly authorized to levy Working Capital Assessments and Reserve Fund Assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy or to waive the Working Capital Assessment or Reserve Fund Assessment as to any particular Lot. The levy of any Working Capital Assessment or Reserve Fund Assessment will be effective only upon the Recordation of a written notice, signed by the Declarant during the Development Period or a duly authorized officer of the Association, setting forth the amount of the Working Capital Assessment or Reserve Fund Assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment or Reserve Fund Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-Owners or to the Owner's spouse, child, or parent. The Working Capital Assessment or Reserve Fund Assessment will be in addition to, not

in lieu of, any other assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such assessments. The Working Capital Assessment or Reserve Fund Assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to modify the amount and/or waive the payment of any Working Capital Assessment or Reserve Fund Assessment attributable to a Lot (or all Lots) by a written waiver notice, which waiver may be temporary or permanent.

**6.5 Special Assessments.** In addition to the Regular Assessments provided for above, the Board may levy special assessments (the “Special Assessments”) whenever in the Board’s opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area.

**6.6 Individual Assessments.** In addition to any other Assessments, the Board may levy an individual assessment (the “Individual Assessment”) against an Owner and the Owner’s Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner’s Lot into compliance with the Declaration; fines for violations of the Restrictions; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner’s guests, invitees or Residents of the Owner’s Lot; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and “pass through” expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to the benefit received.

**6.7 Amount of Assessment.**

(a) Assessments to be Levied. The Board shall levy Assessments against each “Assessment Unit” (as defined in *Section 6.7(b)* below).

(b) Assessment Unit. Each Lot shall constitute one “Assessment Unit” unless otherwise provided in the Restrictions.

(c) Assessment Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this *Article 6*; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property. Declarant or the Board

may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

**6.8 Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**6.9 Owner's Personal Obligation; Interest.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

**6.10 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 6* is, together with late charges as provided in *Section 6.8* and interest as provided in *Section 6.9* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.1(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens; (ii) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; and (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer, agent, or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment 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. Such notice may be signed by one of the officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding,

such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.10*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Resident of the Owner's Lot can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

**6.11 Exempt Property.** The following areas within the Property will be exempt from the Assessments provided for in this *Article 6*:

- (a) All area dedicated and accepted by a public authority or governmental or quasi-governmental entity;
- (b) The Common Area; and
- (c) Any portion of the Property owned by Declarant.

**6.12 Fines and Damages Assessment.**

(a) Board Assessment. The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Resident's guests, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.12* will be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities caused by the Owner, Resident, or their guests, agents, or invitees. The Management Company will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt, amend, and/or re-state a schedule of fines.

(b) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.9* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.1(b)* of this Declaration. Unless otherwise provided in this *Section 6.12*, the fine and/or damage charge will be considered an Assessment for the purpose of this *Article 6* and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

**ARTICLE 7  
ARCHITECTURAL CONTROL COMMITTEE**

Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 7.2(a)* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. **Notwithstanding any provision in this Declaration to the contrary, Declarant may act as the ACC, direct the Board to act as the ACC, or appoint a single person to exercise the rights of the ACC until the expiration or termination of the Development Period.**

**7.1 Construction of Improvements; Consolidation or Subdivision of a Lot.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant, without the prior written approval of the ACC, provided any such consolidation or subdivision of a Lot must be in accordance with Applicable Law.

## 7.2 Architectural Control Committee.

(a) Composition. The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. **Declarant will have the right to appoint and remove (with or without cause) all members of the ACC until the expiration or termination of the Development Period.** Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration or termination of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. **Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration or termination of the Development Period.** Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to consolidate Lots, a proposal for such consolidation will be submitted in accordance with the Design Guidelines or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC to the ACC at the offices of Declarant or at such other address as may hereafter be designated in writing from time to time, on the Mesa Verde Architectural Review Application form attached hereto as **Exhibit "B"**, as such form may be updated from time to time by the ACC. Each Owner is advised to contact the ACC to obtain the latest version of the Mesa Verde Architectural Review Application form. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications thereof have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any

Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

Notwithstanding any provision to the contrary in the Declaration, the ACC may issue an approval to Homebuilders for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval of Improvements set forth in this Declaration.

(c) Lot Clearing; Clearing of Cedar Trees. Owners shall not cedar mulch cedar trees as a way to clear the Owner's Lot. All lot clearing methods and activities must be approved in advance by the ACC.

(d) Builder Deposits; Construction Entrance. The ACC may require an Owner to deposit a builder performance deposit in an amount determined by the ACC and a road deposit in an amount determined by the ACC prior to commencing construction on the Owner's Lot. Each Owner will be required to construct a stabilized construction entrance (50' bull rock) prior to commence of construction on an Owner's Lot. The Association shall hold the deposits during the construction process. The Association shall return the deposits to the Owner upon completion of construction, less any amount applied to remedy non-compliance with the Restrictions, damages to the streets, Common Area or other Lots caused by an Owner or its contractors.

(e) Inspections. During the construction process, the ACC or its designee may conduct periodic inspections for compliance with approved construction plans and the Restrictions. If items identified as non-complying with the Restrictions or approved construction plans are not remedied in a timely manner (by close of the second business day after the notification of the violation has been delivered, fines may be levied in accordance with the Schedule of Fines below (as may be amended from time to time by the ACC) and deducted from the builder performance deposit or road deposit (as applicable).

SCHEDULE OF FINES

Premature clearing; unauthorized tree/lot clearing	\$2,500 plus tree replacement
Construction without ACC Approval	\$500
Inadequate Construction Entry	\$250 plus \$50/day
Inadequate/Removed Silt Fence	\$250 plus \$50/day
Inadequate/Removed Construction Fence	\$250 plus \$50/day
Excessive mud/debris on the street	\$250 plus \$50/day
No dumpster provided	\$150 plus \$50/day
No chemical toilet provided	\$150 plus \$550/day
Encroachment on adjacent properties	\$500 plus cost of repair
Damage to streets or infrastructure	\$500 minimum plus cost of repair
Parking in areas other than designated construction areas	\$50 per vehicle (amount to increase

Unclean jobsite	for repeated offenders)
Work performed outside allowable hours	\$150 plus \$50/day
<i>(Construction is allowed Monday – Friday 7:00am to 7:00pm; Saturdays 9:00am to 6:00pm; no construction on Sundays; Exceptions may be made by the ACC for concrete pours or other matters as determined by the ACC in its sole discretion)</i>	\$500-\$2,500
Miscellaneous violations of the Restrictions	Determined on a case by case basis

(f) Design Guidelines. Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. Upon expiration or termination of the Development Period, the Board, or any sub-committee, will have the power from time to time, to amend, modify, or supplement the Design Guidelines; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration, construction deposit to ensure compliance with the Restrictions, and/or similar fees in connection with an Owner’s request for approval of intended Improvements as may be established by the Declarant or ACC from time to time. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC and any required fees are paid. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(g) Actions of the ACC. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, including the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.

(h) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans



and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

(i) Variances. The ACC may grant variances from compliance with any of the provisions of the Design Guidelines or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified; however, all variances must be approved by the Declarant during the Development Period. All variances must be evidenced in writing and must be signed by the Declarant during the Development Period and by a Majority of the members of the ACC thereafter. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines.

(j) Duration of Approval. Unless otherwise directed by the ACC, the approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred eighty (180) day period and diligently prosecuted to completion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this Section and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(l) No Waiver of Future Approvals. The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

(m) Non-Liability of Committee Members. NEITHER DECLARANT, THE ACC, NOR ANY PARTNER, EMPLOYEE, DIRECTOR, OFFICER, COMMITTEE MEMBER, NOR AGENT WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ACC'S DUTIES UNDER THIS DECLARATION.

## ARTICLE 8 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this *Article 8* apply to the Declaration and the Bylaws of the Association.

**8.1 Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates) (thereby becoming an “Eligible Mortgage Holder”), will be entitled to timely written notice of:

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

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

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

**8.2 Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

**8.3 Taxes, Assessments and Charges.** All taxes, Assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portion of the Property.

## ARTICLE 9 GENERAL PROVISIONS

**9.1 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2071, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word “change” meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence

shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 9.1* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date that this Declaration was Recorded, descendants of Elizabeth II, Queen of England.

**9.2 Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Lot.

**9.3 Amendment.** This Declaration may be amended or terminated by the Recording of an instrument setting forth the amendment executed and acknowledged by (i) the Declarant, acting alone, during the Development Period; or (ii) by the president or secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, *and not by way of limitation*, Declarant may unilaterally amend this Declaration: (i) to bring any provision into compliance with Applicable Law; (ii) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (iv) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

**9.4 Conceptual Plans.** All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the “Conceptual Plans”) are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder nor other developer of any portion of the Property makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property will likely extend over many years, and agrees that the Association will not engage

in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

**9.5 Enforcement.** The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, the Restrictions. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE RESTRICTIONS.

**9.6 Higher Authority.** The terms and provisions of this Declaration are subordinate to Applicable Law, including any pre-existing Recorded restrictions or encumbrances affecting the Property. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

**9.7 Severability.** If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**9.8 Conflicts.** If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any Rules adopted pursuant to the terms of such documents, the provisions of this Declaration, the Certificate, the Bylaws, and the Rules, in such order, will govern.

**9.9 Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

**9.10 Acceptance by Grantees.** Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser,

accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

**9.11 Damage and Destruction.** The Association shall undertake the following actions subsequent to damage or destruction to all or any part of the Common Area covered by insurance:

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 9.11(a)*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 6*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on their Lots.

**9.12 No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property in question has been removed from the provisions of this Declaration. This *Section 9.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

**9.13 Notices.** Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

**9.14 VIEW IMPAIRMENT.** NEITHER DECLARANT NOR THE ASSOCIATION GUARANTEE OR REPRESENT THAT ANY VIEW OVER AND ACROSS THE LOTS, OR ANY OPEN SPACE OR COMMON AREA WITHIN THE PROPERTY WILL BE PRESERVED WITHOUT IMPAIRMENT. NEITHER THE DECLARANT, THE ACC, NOR THE ASSOCIATION SHALL HAVE ANY OBLIGATION TO PROTECT VIEWS OR TO RELOCATE, PRUNE, OR THIN TREES OR OTHER LANDSCAPING. THE ASSOCIATION (WITH RESPECT TO ANY COMMON AREA) WILL HAVE THE RIGHT TO ADD TREES AND OTHER LANDSCAPING FROM TIME TO TIME, SUBJECT TO APPLICABLE LAW. THERE SHALL BE NO EXPRESS OR IMPLIED EASEMENTS FOR VIEW PURPOSES OR FOR THE PASSAGE OF LIGHT AND AIR.

**9.15 Safety and Security.** Each Owner and Resident of a Lot and their respective guests and invitees shall be responsible for their own personal safety and the security of their property. The Association or the Declarant may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, in no event shall the Association, the Declarant or their board members, directors, officers, committee members, employees, or agents be considered insurers or guarantors of safety or security within the Property nor shall the Association, the Declarant or their board members, directors, officers, committee members, employees, or agents be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems, any gate, mechanism or system for limiting access to the Property or any portion thereof, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any occupants of such Owner's Lot that the Association, the Declarant or their board members, directors, officers, committee members, employees, or agents are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and

loss or damage to property, including any residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

## **ARTICLE 10 EASEMENTS**

**10.1 Right of Ingress and Egress.** Declarant, its agents, employees and designees will have a right of ingress and egress over and the right of access to the Property (Common Area and Lots) to the extent necessary to use and/or encumber the Property with easements and the right to such other temporary uses of the Property as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property. The Property shall be subject to a perpetual non-exclusive easement for the construction of the roads, installation and maintenance of, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or paid directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any person or entity. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other person or entity may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

**10.2 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third party prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property. Declarant hereby reserves the right to encumber a Lot (after conveyance to an Owner) without the joinder of such Owner, with necessary or required easements in connection with the approval of the construction plans from Hays County for the subdivision.

**10.3 Utility Easements.** Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of roadways, gates, walkways, pathways and trails, drainage systems, street lights, signage, and other Improvements to serve the Property and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iii) of this *Section 10.3*. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

**10.4 Roadway and Utility Easements.** Declarant reserves the right to create, locate, relocate, construct, erect, and maintain or cause to be created, located, relocated, constructed, erected, and maintained in and on any portion of the Property then owned by Declarant or the streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area, roadways, access points for emergency access gates and all weather access roads, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of access, repair and maintenance.

**10.5 Private Street Access Easement.** Declarant hereby reserves unto itself, the Owners, the Association and Declarant's successors and assigns a perpetual non-exclusive easement over and across Property for a private street access easement (the "Private Street Access Easement") for the installation, operation and maintenance of common road(s) to serve the Lots. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon; however, easements for drainage or other required easements may be required to be placed on a Lot in connection with approval of construction plans for the subdivision, which may occur after conveyance of such Lot to an Owner. The Private Street Access Easement is hereby designated as Common Area to be maintained by the Association. During the Development Period, Declarant may establish or modify the location of the Private Street Access Easement or easements required for construction plans for the subdivision in a Recorded instrument as needed for development of the subdivision.

**10.6 Fencing, Landscape, Monumentation and Signage Easement.** Declarant hereby reserves an easement over and across the Property and the Common Area for the installation, operation, maintenance, repair, relocation, removal and/or modification of subdivision entry facilities, utilities, walls, streets, sidewalks, perimeter fencing, signs, monument signs and/or landscaping which serve the Property and the Common Area, and any other property owned by the Declarant or the Association. No improvements or structures shall be constructed on the easement areas unless otherwise approved by the Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the easement area for subdivision entry



facilities, utilities, walls, streets, perimeter fencing, signs, sidewalks, monument signs and/or landscaping to which the easement reserved hereunder applies. Declarant may designate all or any portion of the easement area for subdivision entry facilities, utilities, walls, streets, perimeter fencing, signs, sidewalks, monument signs and/or landscaping as Common Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

## **ARTICLE 11 DECLARANT AS ATTORNEY-IN-FACT**

**11.1 Declarant as Attorney-in-fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration and to amend, modify, or terminate any easements, agreements or restrictive covenants benefitting an Owner(s) or the Property. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, until the expiration or termination of the Development Period. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the Common Area, any such agreements, documents, amendments or supplements to the Restrictions which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

**11.2 Re-platting or Modification of Plat.** During the Development Period, Declarant, at its sole discretion and without a vote or the consent of any other party, reserves the right to replat the Property or to amend or modify the Plat(s) in order to assure a harmonious and orderly development of the Property. Each Owner, by holding title to a Lot, constitutes and irrevocably appoints the Declarant as its duly authorized attorney-in-fact with full power of substitution, to provide any necessary approval to exercise the powers set forth in this Section; however, any such re-platting or amendment of the Plat shall be with the purpose of efficiently developing the Property for the purposes herein provided or for compliance with any governmental regulation. Declarant's rights under this Section shall expire upon the expiration of the Development Period.

## ARTICLE 12 DEVELOPMENT RIGHTS

**12.1 Development by Declarant.** It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate Lots and Common Areas and to subdivide with respect to any of the Property pursuant to the terms of this *Section 12.1*, subject to any limitations imposed on portions of the Property by any applicable Plat. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the “Development Rights,” and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions set out in *Section 4.3*. These rights may be exercised with respect to any portions of the Property and the Common Area. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

**12.2 Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property and the Common Area. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 12.2* until two (2) years after expiration or termination of the Development Period.

**12.3 Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property. Upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Declaration, and such added lands will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration, unless additional or different restrictions are included by Declarant with respect to such added lands. To add lands to the Property, Declarant will be required only to Record a notice of addition of land containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number of the Official Public Records of Hays County wherein this Declaration is Recorded;

(b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land (unless otherwise provided in such notice of additional land); and

(c) A legal description of the added land.

**12.4 Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the document number or volume and initial page number of the Official Public Records of Hays County wherein this Declaration is recorded;

(b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

**12.5 Assignment of Declarant's Rights.** Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

## **ARTICLE 13 DISPUTE RESOLUTION**

**13.1 Introduction and Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this *Article 13* (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this *Article 13* applies to all Claims as hereafter defined. This *Article 13* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding one hundred percent (100%) of the votes in the Association. As used in this *Article 13* only, the following words, when capitalized, have the following specified meanings:

(a) "Claim" means:

(i) Claims relating to the rights and/or duties of Declarant, the Association, or the ACC, under the Restrictions.

(ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Association, and any claim asserted against the ACC.

(iii) Claims relating to the design or construction of the Community Systems, Common Area or any Improvements located on the Property.

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

(c) "Respondent" means any Party against which a Claim has been asserted by a Claimant.

**13.2 Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this *Article 13*. As provided in *Section 13.9* below, a Claim will be resolved by binding arbitration.

**13.3 Claim Affecting Community Systems and Common Area.** The Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 13.1* above, relating to the design or construction of Improvements on a Lot (whether one or more). In the event the Association or a Lot Owner asserts a Claim related to the Community Systems or Common Area, as a precondition to providing the Notice defined in *Section 13.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim related to the Community Systems or Common Area, the Association or a Lot Owner, as applicable, must:

(a) Independent Report on the Condition of the Community Systems or Common Area. Obtain an independent third-party report (the "Community Systems or Common Area Report") from a licensed professional engineer which: (i) identifies the Community Systems or Common Area subject to the Claim including the present physical condition of the Community Systems or Common Area; (ii) describes any modification, maintenance, or repairs to the Community Systems or Common Area performed by the Lot Owner(s) and/or the Association; and (iii) provides specific and detailed recommendations regarding remediation and/or repair of the Community Systems or Common Area subject to the Claim. For the purposes of this *Section 13.3*, an independent third-party report is a report obtained directly by the Association or a Lot Owner and paid for by the Association or a Lot Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or a Lot Owner in the Claim. As a precondition to providing the Notice described in *Section 13.5*, the Association or Lot Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject

to a Claim which notice shall identify the independent third-party engaged to prepare the Community Systems or Common Area Report, the specific Community Systems or Common Area to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Community Systems or Common Area Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 13.5*, the Association or the Lot Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Community Systems or Common Area Report.

(b) Claim by the Association - Owner Meeting and Approval. If the Claim is prosecuted by the Association, the Association must first obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to: (i) provide the Notice described in *Section 13.5*; (ii) initiate the mandatory dispute resolution procedures set forth in this *Article 13*; or (iii) take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (a) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (b) a copy of the Community Systems or Common Area Report; (c) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the “Engagement Letter”); (d) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not proceed with the Claim; (e) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (f) an estimate of the impact on the value of each Lot if the Claim is prosecuted and an estimate of the impact on the value of each Lot after resolution of the Claim; (g) an estimate of the impact on the marketability of each Lot if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot during and after resolution of the Claim; (h) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (i) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association or Lot Owner, as applicable, in the Claim. In the event Members approve providing the Notice described in *Section 13.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

**13.4 Claim by Lot Owners – Improvements on Lots.** Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to a Lot Owner by the Declarant or a Homebuilder relating to the design or construction of any Improvements located on a Lot, then this *Article 13* will only apply to the extent that this *Article 13* is more restrictive than

such Lot Owner's warranty, as determined in the Declarant's sole discretion. If a warranty has not been provided to a Lot Owner relating to the design or construction of any Improvements located on a Lot, then this *Article 13* will apply. If a Lot Owner brings a Claim, as defined in *Section 13.1*, relating to the design or construction of any Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in *Section 13.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim, the Lot Owner must obtain an independent third-party report (the "Owner Improvement Report") from a licensed professional engineer which: (i) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (ii) describes any modification, maintenance, or repairs to the Improvements performed by the Lot Owner(s) and/or the Association; and (iii) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For the purposes of this *Section 13.4*, an independent third-party report is a report obtained directly by the Lot Owner and paid for by the Lot Owner, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Lot Owner in the Claim. As a precondition to providing the Notice described in *Section 13.5*, the Lot Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Improvement Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Owner Improvement Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 13.5*, the Lot Owner shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Owner Improvement Report.

**13.5 Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 13.5*. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 13.6* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 13.6*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 13.6* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred twenty (120) day period for mediation set forth in *Section 13.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 13.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Community Systems or Common Area Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association

related to the Community Systems or Common Area which forms the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 13.3(b)* above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Community Systems or Common Area, the Notice will also include a true and correct copy of the Community Systems or Common Area Report. If the Claimant is not the Association and pertains to Improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

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

**13.7 Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent may submit the Claim to mediation in accordance with this *Section 13.7*.

**13.8 Termination of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this *Article 13*.

**13.9 Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 13.9*.

(a) **Governing Rules.** If a Claim has not been resolved after mediation as required by *Section 13.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 13.9* and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Hays County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction

Industry Dispute Resolution Procedures” and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 13.9*, this *Section 13.9* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal except as provided in *Section 13.9(d)*, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(b) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 13.9* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 13.9*.

(d) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 13.9* and subject to *Section 13.10* below (attorney’s fees and costs may not be awarded by the arbitrator); provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no



event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential or punitive damages for any Claim.

(e) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Hays County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

**13.10 Allocation of Costs.** Notwithstanding any provision in this Declaration to the contrary, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Binding Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

**13.11 General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

**13.12 Period of Limitation.**

(a) For Actions by an Owner. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; or (iii) for all Claims, the applicable statute of limitations under Texas law. In no event shall this *Section 13.12(a)* be interpreted to extend any period of limitations under Texas law.

(b) For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of any Common Area or Improvement, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of a Common Area or Improvement, four (4) years and one (1) day from the date that the Association discovered or reasonably should have discovered evidence of the Claim; or (iii) for all Claims, the applicable statute of limitations under Texas law. In no event shall this *Section 13.12(b)* be interpreted to extend any period of limitations under Texas law.

**13.13 Funding Arbitration and Litigation.** The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 13* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

*[Signature page follows.]*

[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE]

EXECUTED to be effective on the date this Declaration is Recorded.

DECLARANT:

Mesa Verde Texas LLC,  
a Texas ~~limited liability~~ company

By:   
Jeff Kent, Member

THE STATE OF TEXAS

COUNTY OF TRAVIS

§  
§  
§

This instrument was acknowledged before me this 30 day of March, 2023, by Jeff Kent, as the Member of Mesa Verde Texas LLC, a Texas limited liability company, on behalf of said company.

  
\_\_\_\_\_  
Notary Public - State of Texas

(SEAL)

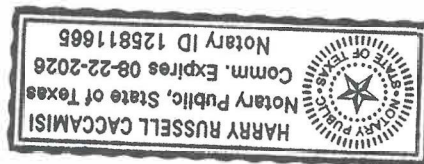


Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

**Exhibit "A"**

**Legal Description and Recorded Plat of the Property**

*[See the following seven (7) pages.]*

Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

Being a 271.62 acre tract of land situated in the N. McArthur Survey No. 3, Abstract No. 314 and Pleasant D. Alexander Survey, Abstract No. 22, Hays County, Texas, being all of a called 15.000 acre tract of land recorded in Instrument No 18014238, Official Public Records, Hays County, Texas and the remaining part of a called 348.7 acre tract of land recorded in Volume 1238, Page 428, Official Public Records, Hays County, Texas, said 271.62 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at an iron rod found with a pink "RPLS 4863" plastic cap in the south right-of-way line of Fitzhugh Drive (County Road No. 101), the north line of the above referenced 348.7 acre tract, for the northeast corner of a called 26.922 acre tract of land recorded in Instrument No. 17028422, Official Public Records, Hays County, Texas and the northernmost northwest corner of the herein described tract;

THENCE with the south right-of-way line of Fitzhugh Road and north line of said 348.7 acre tract, North 88 degrees 52 minutes 39 seconds East, a distance of 276.47 feet to a found 3" cedar post;

THENCE continuing with the south right-of-way line of Fitzhugh Road and north line of said 348.7 acre tract, North 88 degrees 37 minutes 52 seconds East, at 414.85 feet a 1/2" iron rod found with a yellow "WCR" plastic cap for the northwest corner of the above referenced 15.000 acre tract and continuing with the south right-of-way line of Fitzhugh Road and north line of said 15.000 acre tract a total distance of 755.90 feet to a found 3" cedar post;

THENCE continuing with the south right-of-way line of Fitzhugh Road and north line of said 15.000 acre tract, North 88 degrees 43 minutes 47 seconds East, at 378.54 feet a 1/2" iron rod found with a yellow "WCR" plastic cap for the northeast corner of said 15.000 acre tract and continuing with the south right-of-way line of Fitzhugh Road and north line of said 348.7 acre tract a total distance of distance of 1242.72 feet to a found 3" cedar post;

THENCE continuing with the south right-of-way line of Fitzhugh Road and north line of said 348.7 acre tract, North 88 degrees 34 minutes 08 seconds East, a distance of 430.26 feet to a 1/2" iron rod found for the northwest corner of a called 348.7 acre tract of land recorded in Volume 527, Page 247, Deed Records, Hays County, Texas, the northeast corner of said 348.7 acre tract (Volume 1238, Page 428) and herein described tract;

THENCE with the west line of said 348.7 acre tract (Volume 527, Page 247) and the east line of said 348.7 acre tract (Volume 1238, Page 428), South 00 degrees 56 minutes 04 seconds East, a distance of 6370.94 feet to a 1/2" iron rod found in a north line of a called 650.29 acre tract of land recorded in Volume 2573, Page 474, Official Public Records, Hays County, Texas, for the southwest corner of said 348.7 acre tract (Volume 527, Page 247), the southeast corner of said 348.7 acre tract (Volume 1238, Page 428) and herein described tract;

THENCE with north lines of said 650.29 acre tract and south lines of said 348.7 acre tract (Volume 1238, Page 428) the following courses and distances:

South 89 degrees 22 minutes 59 seconds West, a distance of 260.53 feet to a 1/2" iron rod found;

South 87 degrees 52 minutes 46 seconds West, at 45.46 feet a 1/2" iron rod found and continuing a total distance of 282.08 feet to a 1/2" iron rod found;

THENCE with a north line of said 650.29 acre tract, a north line of a called 100.00 acre tract of land recorded in Volume 2778, Page 399, Official Public Records, Hays County, Texas and a south line of said 348.7 acre tract, South 88 degrees 54 minutes 59 seconds West, a distance of 255.13 feet to a 1" iron pipe found;

Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

THENCE with northerly lines of said 100.00 acre tract and southerly lines of said 348.7 acre tract the following courses and distances:

North 87 degrees 54 minutes 11 seconds West, a distance of 377.17 feet to a 60d nail found in a 22" cedar tree;

South 89 degrees 15 minutes 47 seconds West, a distance of 489.23 feet to an iron rod found with a red "CARSON & BUSH" plastic cap;

North 89 degrees 47 minutes 31 seconds West, a distance of 71.91 feet to a 60d nail found in a 8" cedar fence post;

North 82 degrees 54 minutes 44 seconds West, a distance of 56.61 feet to a 60d nail found in a 18" cedar tree;

North 74 degrees 23 minutes 11 seconds West, a distance of 104.88 feet to a 60d nail found in a 24" cedar tree;

North 58 degrees 39 minutes 25 seconds West, a distance of 117.00 feet to an iron rod found with a red "CARSON & BUSH" plastic cap;

North 09 degrees 20 minutes 26 seconds West, a distance of 142.44 feet to an iron rod found with a red "CARSON & BUSH" plastic cap;

North 26 degrees 18 minutes 57 seconds West, a distance of 83.83 feet to an iron rod set;

North 46 degrees 59 minutes 48 seconds West, a distance of 71.64 feet to a 60d nail found in a 10" live oak tree;

South 47 degrees 35 minutes 24 seconds West, a distance of 71.34 feet to an iron rod found with a red "CARSON & BUSH" plastic cap;

North 72 degrees 58 minutes 12 seconds West, a distance of 128.77 feet to an iron rod found with a red "CARSON & BUSH" plastic cap for an interior corner of said 100.00 acre tract, the southernmost southwest corner of said 348.7 acre tract and herein described tract;

THENCE with an east line of said 100.00 acre tract and a west line of said 348.7 acre tract, North 00 degrees 40 minutes 31 seconds West, a distance of 34.61 feet to an iron rod found with a red "CARSON & BUSH" plastic cap for the southeast corner of Lot 2, Zamora Estates recorded in Instrument No. 17002204, Plat Records, Hays County, Texas and northernmost northeast corner of said 100.00 acre tract;

THENCE with easterly lines of said Zamora Estates and westerly lines of said 348.7 acre tract the following courses and distances:

North 00 degrees 18 minutes 40 seconds West, a distance of 312.94 feet to an iron rod found with an orange "ZWA" plastic cap for the northeast corner of Lot 2 and southeast corner of Lot 3;

North 00 degrees 22 minutes 45 seconds West, a distance of 346.29 feet to a 1/2" iron rod found;

North 42 degrees 05 minutes 16 seconds West, a distance of 19.71 feet to a 1/2" iron rod found;

Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

and North 00 degrees 07 minutes 27 seconds East, a distance of 98.83 feet to an iron rod found with an orange "ZWA" plastic cap for the northeast corner of Lot 3 and southeast corner of Lot 4;

and North 00 degrees 02 minutes 22 seconds West, a distance of 473.09 feet to a 1/2" iron rod found in the south line of a called 58.248 acre tract of land recorded in Document No. 16016708, Official Public Records, Hays County, Texas, for the northeast corner of Lot 4, the southernmost northwest corner of said 348.7 acre tract and herein described tract;

THENCE with a south and east line of said 58.248 acre tract and a north and a west line of said 348.7 acre tract the following courses and distances:

North 88 degrees 03 minutes 52 seconds East, a distance of 1287.24 feet to a 1/2" iron rod found for the southeast corner of said 58.248 acre tract, an interior corner of said 348.7 acre tract and herein described tract;

and North 00 degrees 57 minutes 14 seconds West, a distance of 889.46 feet to a 1/2" iron rod found for the southeast corner of a called 72.09 acre tract of land recorded in Volume 1840, Page 170, Official Public Records, Hays County, Texas, the northeast corner of said 58.248 acre tract;

THENCE with the east line of said 72.09 acre tract and a west line of said 348.7 acre tract, North 01 degrees 00 minutes 28 seconds West, a distance of 999.41 feet to a 1/2" iron rod found for the southeast corner of a called 33.28 acre tract of land recorded in Instrument No. 17039513, Official Public Records, Hays County, Texas, the northeast corner of said 72.09 acre tract;

THENCE with the east and north lines of said 33.28 acre tract, a west and south lines of said 348.7 acre tract the following courses and distances:

North 00 degrees 56 minutes 13 seconds West, a distance of 487.93 feet to a 3/4" iron rod found for the northeast corner of said 33.28 acre tract, an interior corner of said 348.7 acre tract and herein described tract;

South 88 degrees 34 minutes 51 seconds West, a distance of 1012.64 feet to a 12" cedar tree/fence post;

and South 89 degrees 19 minutes 45 seconds West, a distance of 195.15 feet to an iron rod found with a yellow "Staudt Surveying" plastic cap for the southeast corner of a called 35.04 acre tract of land recorded in Volume 4714, page 675, Official Public Records, Hays County, Texas and a southwest corner of the herein described tract;

THENCE with the east and north line of said 35.04 acre tract the following courses and distances:

North 01 degrees 03 minutes 01 seconds West, a distance of 864.44 feet to an iron rod found with a yellow plastic cap for the northeast corner of said 35.04 acre tract and an interior corner of the herein described tract;

and South 88 degrees 48 minutes 43 seconds West, a distance of 504.73 feet to a found 3" metal fence post for the southeast corner of a called 15.00 acre tract of land recorded in Volume 4067, Page 650, Official Public Records, Hays County, Texas and the northernmost southwest corner of the herein described tract;

THENCE with the east line of said 15.00 acre tract, North 01 degrees 09 minutes 05 seconds West, a distance of 517.23 feet to an iron rod found with a plastic cap for the southeast corner of a called 26.922 acre tract of land recorded in Instrument No. 17028422, Official Public Records, Hays County, Texas and northeast corner of said 15.00 acre tract;

Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

THENCE with the east line of said 26.922 acre tract, North 01 degrees 05 minutes 14 seconds West, a distance of 924.67 feet to the POINT OF BEGINNING containing 271.62 acres of land.

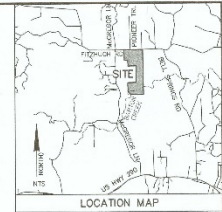
Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE



272 AC FITZHUGH

BEING A 271.62 ACRE TRACT OF LAND SITUATED IN THE N. MCARTHUR SURVEY NO. 3, ABSTRACT NO. 314 AND PLEASANT D. ALEXANDER SURVEY, ABSTRACT NO. 22, HAYS COUNTY, TEXAS AND BEING ALL OF THAT CERTAIN 271.62 ACRE TRACT OF LAND RECORDED IN DOCUMENT NO. 22023007, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS



ROADS

1) MESA VERDE ROAD - 60' PRIVATE RIGHT-OF-WAY - 1315 FT.
2) MESA VERDE ROAD - 60' PRIVATE RIGHT-OF-WAY - 610 FT.

GENERAL NOTES

- 1) EASE OF BEARING: TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83.
2) ADJACENT PROPERTY OWNERS SHALL BE NOTIFIED BY REGISTERED MAIL...
3) ALL UTILITIES SHALL BE DEEPENED AND REPAIRED TO A MINIMUM OF 24" DIAMETER...
4) ALL UTILITIES SHALL BE DEEPENED AND REPAIRED TO A MINIMUM OF 24" DIAMETER...
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18) ALL UTILITIES SHALL BE DEEPENED AND REPAIRED TO A MINIMUM OF 24" DIAMETER...
19) ALL UTILITIES SHALL BE DEEPENED AND REPAIRED TO A MINIMUM OF 24" DIAMETER...
20) ALL UTILITIES SHALL BE DEEPENED AND REPAIRED TO A MINIMUM OF 24" DIAMETER...

GENERAL NOTES

- 1) THIS INSTRUMENT IS A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS...
2) THE PROPERTY IS BEING OFFERED FOR SALE...
3) THE PROPERTY IS BEING OFFERED FOR SALE...
4) THE PROPERTY IS BEING OFFERED FOR SALE...
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18) THE PROPERTY IS BEING OFFERED FOR SALE...
19) THE PROPERTY IS BEING OFFERED FOR SALE...
20) THE PROPERTY IS BEING OFFERED FOR SALE...

LOT SIZE CATEGORIES

- 1) TOTAL UNIMPAVED FRONT YARD SETBACK SHALL BE 10 FEET...
2) TOTAL UNIMPAVED SIDE YARD SETBACK SHALL BE 5 FEET...
3) TOTAL UNIMPAVED REAR YARD SETBACK SHALL BE 10 FEET...
4) TOTAL UNIMPAVED CORNER SETBACK SHALL BE 10 FEET...
5) TOTAL UNIMPAVED FRONT YARD SETBACK SHALL BE 10 FEET...
6) TOTAL UNIMPAVED SIDE YARD SETBACK SHALL BE 5 FEET...
7) TOTAL UNIMPAVED REAR YARD SETBACK SHALL BE 10 FEET...
8) TOTAL UNIMPAVED CORNER SETBACK SHALL BE 10 FEET...

OWNER DEVELOPER

BOB WELLS TEXAS LLC
5513 FORBES LANE
AUSTIN, TEXAS 78756

LEGEND

- 1) FOUND 1/2" HON. HD. 6/4" YELLOW "HOT PLASTIC" CAP
2) FOUND 1/2" HON. HD. (UNLESS OTHERWISE NOTED)
3) FOUND 1" HON. HD.
4) FOUND 5/8" HON. HD. IN CEMENT PIPE
5) FOUND COTTON SPINDLE
6) FOUND POST (WATER, GAS AND DIMENSIONS NOTED ON PLAN)
7) FOUND FROM ROD BY A PINK "HIPS" 4063" PLASTIC CAP
8) FOUND FROM ROD BY A RED "HIPS" 4063" PLASTIC CAP
9) FOUND FROM ROD BY A BLUE "HIPS" 4063" PLASTIC CAP
10) FOUND FROM ROD BY A YELLOW "HIPS" 4063" PLASTIC CAP
11) FOUND FROM ROD BY A GREEN "HIPS" 4063" PLASTIC CAP
12) FOUND FROM ROD BY A PURPLE "HIPS" 4063" PLASTIC CAP
13) FOUND FROM ROD BY A BROWN "HIPS" 4063" PLASTIC CAP
14) FOUND FROM ROD BY A PINK "HIPS" 4063" PLASTIC CAP
15) FOUND FROM ROD BY A RED "HIPS" 4063" PLASTIC CAP
16) FOUND FROM ROD BY A BLUE "HIPS" 4063" PLASTIC CAP
17) FOUND FROM ROD BY A YELLOW "HIPS" 4063" PLASTIC CAP
18) FOUND FROM ROD BY A GREEN "HIPS" 4063" PLASTIC CAP
19) FOUND FROM ROD BY A PURPLE "HIPS" 4063" PLASTIC CAP
20) FOUND FROM ROD BY A BROWN "HIPS" 4063" PLASTIC CAP

CURVE TABLE

Table with columns: CURVE NO., ARC LENGTH, RADIUS, DELTA, BEARING, DISTANCE. Contains 20 curve entries.

EASEMENT LINE TABLE

Table with columns: LINE NO., DIRECTION, LENGTH. Contains two tables of easement line data.

DRIVEWAY PERMIT STATEMENT

I, ELAINE H. CARDEAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE CONDITIONS OF PUBLIC RECORDS, NO DRIVEWAY CONSTRUCTION OR LOT WITHIN THIS SUBDIVISION SHALL BE PERMITTED TO ACCESS INTO A PUBLICLY MAINTAINED ROADWAY UNLESS A DRIVEWAY PERMIT HAS BEEN ISSUED BY THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY AND (2) THE DRIVEWAY MEETS THE MINIMUM REQUIREMENTS AS SET FORTH IN CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS.

WATER/WASTEWATER NOTE

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL SEWER SYSTEM OR TO A PUBLICLY MAINTAINED SEWER SYSTEM. THE USE OF SEWER SYSTEMS SHALL BE SUBJECT TO THE APPROVAL OF THE HAYS COUNTY DEVELOPMENT DEPARTMENT. THE HAYS COUNTY DEVELOPMENT DEPARTMENT SHALL BE THE AUTHORITY FOR THE ISSUANCE OF SEWER CONNECTION PERMITS. THE HAYS COUNTY DEVELOPMENT DEPARTMENT SHALL BE THE AUTHORITY FOR THE ISSUANCE OF SEWER CONNECTION PERMITS.

ERIC VAN GELDEREN, RES. EPW HAYS COUNTY FLOODPLAIN ADMINISTRATION

MARCEY PROFFER, DIRECTOR OF DEVELOPMENT SERVICES HAYS COUNTY DEVELOPMENT SERVICES

I, ELAINE H. CARDEAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT ON THE 3rd DAY OF January, 2023, THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, PASSED AN ORDER AUTHORIZING THE SIGNATURE OF BOB WELLS, OWNER OF THIS PLAN, AND SAID ORDER HAS BEEN DULY ENTERED IN THE MINUTES OF THE SAID COURT INSTRUMENT NUMBER 20230007.

WITNESS MY HAND AND SEAL OF OFFICE THIS 3rd DAY OF March, 2023.

BOB WELLS, OWNER OF THIS PLAN

I, ELAINE H. CARDEAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THIS PLAN WAS FILED FOR RECORD IN MY OFFICE ON THE 3rd DAY OF March, 2023, 10:35 AM. IN THE PUBLIC RECORDS OF HAYS COUNTY, TEXAS INSTRUMENT NUMBER 20230007.

ELAINE H. CARDEAS by Julia Gilroy, Deputy

STATE OF TEXAS, COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS THAT MESA VERDE TEXAS LLC, WITH AN ADDRESS OF 5513 FORBES LANE, AUSTIN, TEXAS 78756, OWNER OF THE 271.62 ACRES DESCRIBED IN THE N. MCARTHUR SURVEY NO. 3, ABSTRACT NO. 314 AND PLEASANT D. ALEXANDER SURVEY, ABSTRACT NO. 22, HAYS COUNTY, TEXAS AS CONVEYED TO MESA VERDE TEXAS LLC BY DEED DATED APRIL 30, 2022 AND RECORDED IN DOCUMENT NO. 22023007, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, DO HEREBY SUBMIT THIS PLAN TO BE RECORDED IN THE PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

IN ACCORDANCE WITH THE PLAN APPROVED HEREIN, SUBJECT TO ALL COVENANTS AND RESTRICTIONS (HEREINAFTER DRANTS) AND DO HEREBY DEDICATE TO THE OWNERS OF THE PROPERTY THE USE OF THE STREETS AND EASEMENTS SHOWN HEREIN.

IN WITNESS WHEREOF, I, THE SAID APPROVED, THESE PRESENTS TO BE EXECUTED IN PUBLIC VIEW.

STATE OF TEXAS, COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS THAT I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HAVE CONDUCTED A SURVEY OF THE PROPERTY DESCRIBED IN THE INSTRUMENT AND HAVE FOUND THAT THE INSTRUMENT ACCURATELY REPRESENTS THE SURVEY OF THE PROPERTY MADE BY ME OR BY MY PREDECESSOR.

STATE OF TEXAS, COUNTY OF HAYS

STATE OF TEXAS, COUNTY OF HAYS

STATE OF TEXAS, COUNTY OF HAYS

STATE OF TEXAS, COUNTY OF HAYS

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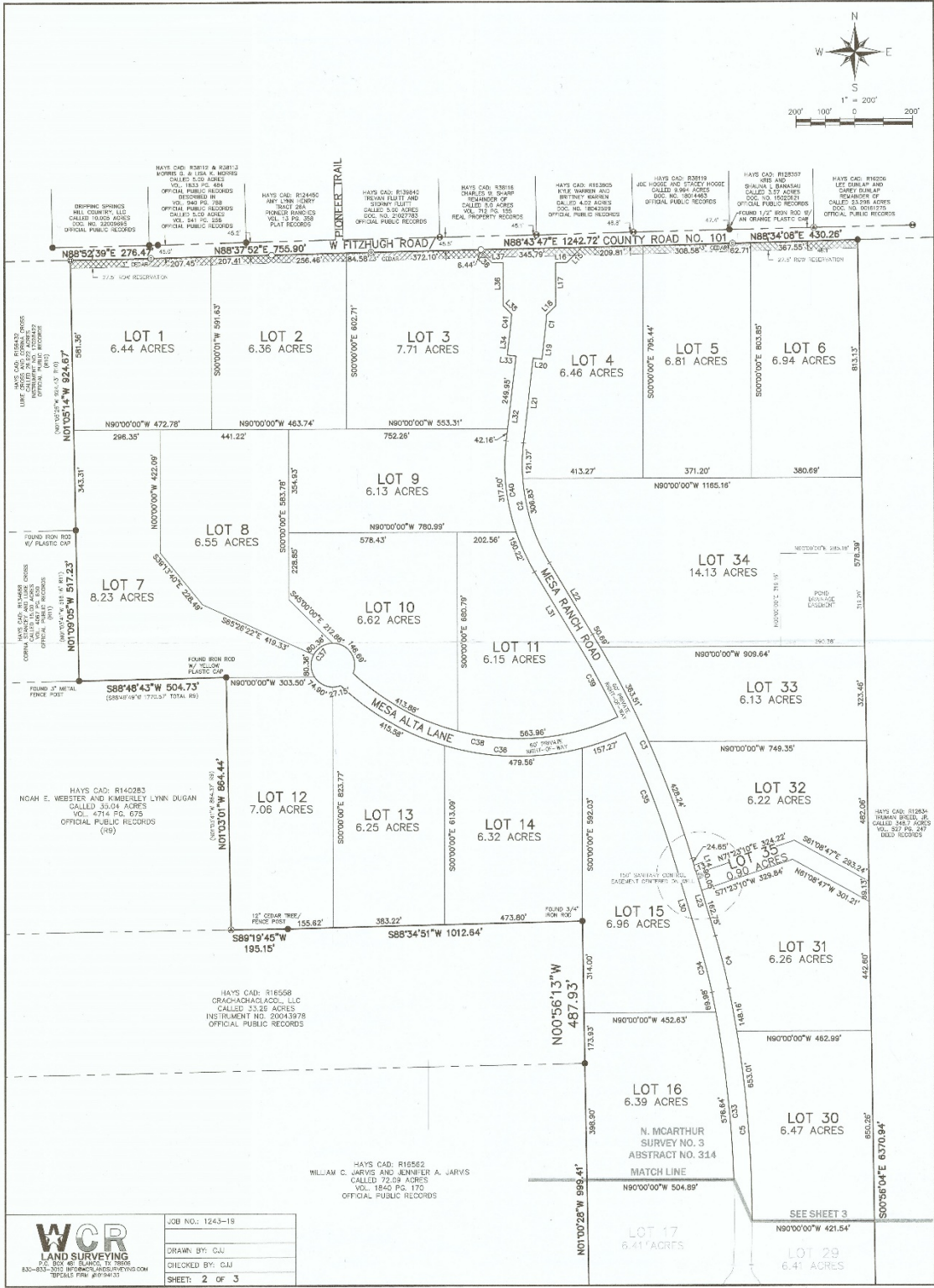
STATE OF TEXAS, COUNTY OF HAYS

Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

WCR LAND SURVEYING logo and contact information.

JOB NO. 1243-19
DRAWN BY: CAJ
CHECKED BY: CAJ
SHEET: 1 OF 3



**WCR**  
**LAND SURVEYING**  
 833-833-3333 800-868-8686  
 1000 S. W. 10th St., Suite 100, Ft. Lauderdale, FL 33304  
 SPECIALS PERM #19194133

JOB NO.:	1243-19
DRAWN BY:	CAJ
CHECKED BY:	CAJ
SHEET:	2 OF 3

Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE



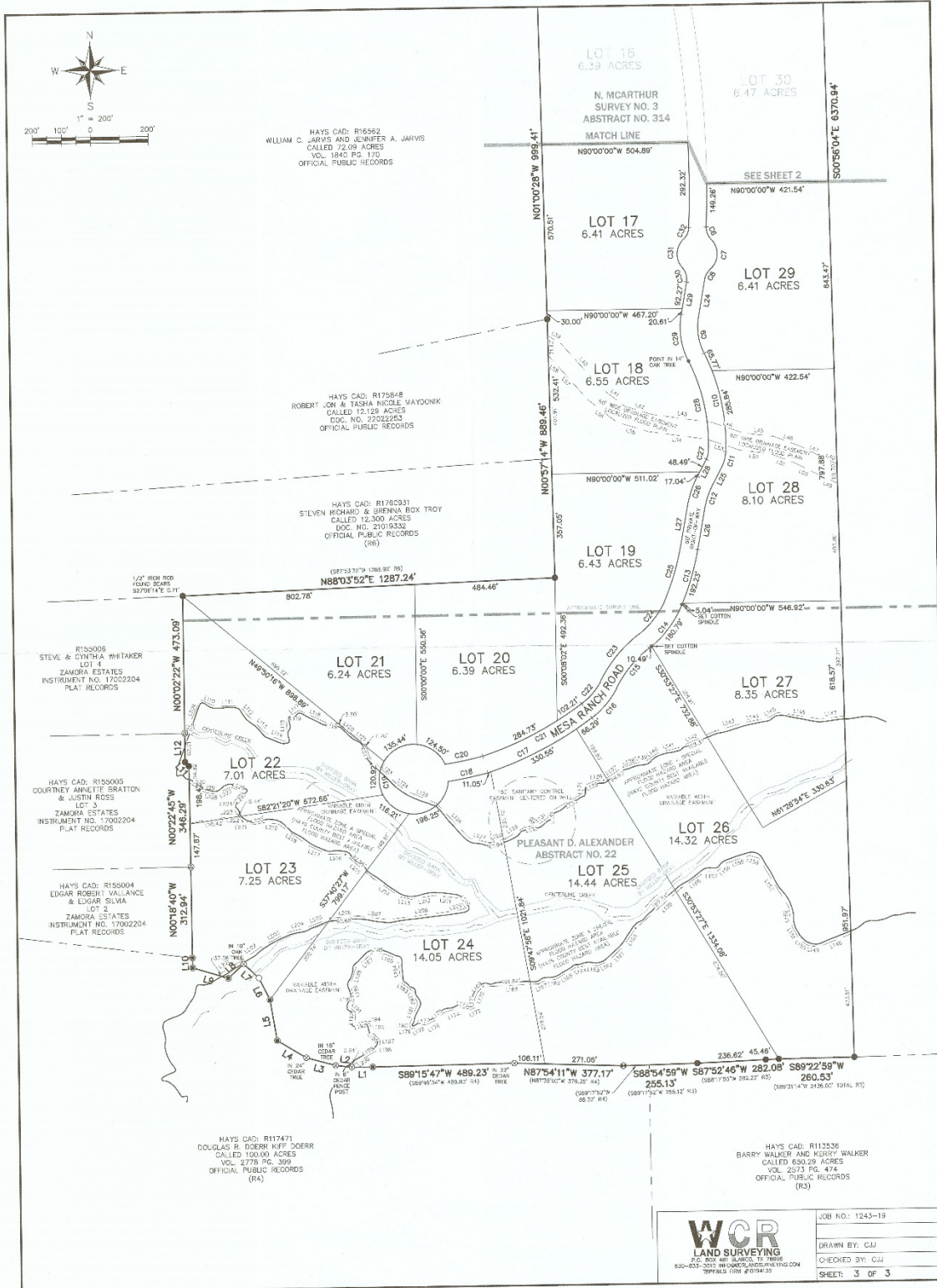


Exhibit A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VERDE

**Exhibit "B"**

Mesa Verde Architectural Review Application form

**MESA VERDE**  
**ARCHITECTURAL REVIEW APPLICATION**

Deliver four (4) copies to:

ACC c/o \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_, Texas \_\_\_\_\_ Fax: \_\_\_\_\_

Date: \_\_\_\_\_

Property Address: \_\_\_\_\_

Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Property Owner's Name: \_\_\_\_\_

Property Owner's Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Work No: \_\_\_\_\_

Architect: \_\_\_\_\_ Phone: \_\_\_\_\_

Landscape Architect: \_\_\_\_\_ Phone: \_\_\_\_\_

Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_

Architectural Style No: \_\_\_\_\_

Conditioned First Floor Square Footage: \_\_\_\_\_

Conditioned Second Floor Square Footage: \_\_\_\_\_

Total Conditioned Square Footage: \_\_\_\_\_

Garage Square Footage: \_\_\_\_\_

Covered Porch Square Footage: \_\_\_\_\_

Brick Manufacturer and Color: \_\_\_\_\_

Stone Type and Color: \_\_\_\_\_

Stucco Color: \_\_\_\_\_

Roof Pitch: \_\_\_\_\_ Roof Color: \_\_\_\_\_

Paint Color: \_\_\_\_\_

Trim Color: \_\_\_\_\_

Submittal Information:

- Site Plan (1" – 20') (to include tree and topo, proposed footprint, driveways, walkways)
- Elevations (1/4" or 1/8" – 1') (all sides of all structures, to include details and color samples)
- Floor Plans (precise layout including room labels and sq. ft. of all buildings)

Exhibit B

- Landscape Design (1" – 20') (detailed plant and tree identification and layout)
- Grading Plan
- Proposed List of Materials and Colors and Samples of Exterior Finishes as Requested
- Photos as Needed (optional)
- Other Notes (see application for additional information to be submitted)
- Review Fee - \$ \_\_\_\_\_
- Road Deposit - \$ \_\_\_\_\_
- Builder Performance Deposit \$ \_\_\_\_\_

**Note that the architect or building designer is encouraged to attend this meeting.**

Comments: \_\_\_\_\_

Builder Name: \_\_\_\_\_

By: \_\_\_\_\_

**APPROVED BY:**

ACC:

\_\_\_\_\_  
(signature)

Approval Date: \_\_\_\_\_

Review Fee Received: \_\_\_\_\_

Road Deposit Received: \_\_\_\_\_

Builder Performance Deposit Received: \_\_\_\_\_