



~~Records of Cherokee County, Texas, on October 9, 2013, and imposed certain covenants and restrictions on the real property subject to the Original Declaration;~~

~~WHEREAS, that certain Eagle's Bluff Community Association, Inc. Open Records and Records Retention Policy dated September 5, 2013, was recorded as Document Number 00629645 in Volume 2192, Page 23 of the Real Property Records of Cherokee County, Texas, on October 9, 2013, and imposed certain covenants and restrictions on the real property subject to the Original Declaration;~~

WHEREAS, the Original Declaration was amended by that certain First Amended Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff Community Association, Inc., dated August 7, 2014, was recorded as Document Number 00637130 in Volume 2233, Page 147 of the Real Property Records of Cherokee County, Texas on August 11, 2014 (the "First Amended Declaration"), and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, together with additional real property subject to the First Amended Declaration in accordance with Article IX of the First Amended Declaration;

WHEREAS, that certain Warranty Deed, dated August 8, 2014, was recorded as Document Number 00637129 in Volume 2233, Page 134 of the Real Property Records of Cherokee County, Texas, on August 11, 2014, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration and included additional real property subject to the First Amended Declaration;

WHEREAS, that certain Affidavit of Correction to the 2014 First Amended Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff, dated March 17, 2015, was recorded as Document Number 00642458 in Volume 2263, Page 651 of the Real Property Records of Cherokee County, Texas on March 25, 2015, and amended and corrected the First Amended Declaration;

WHEREAS, that certain ~~Withdrawal of Property from the First Amended Declaration of Covenants, Conditions, and Restrictions (CCR'S) for Eagles' Bluff~~ dated January 29, 2016, was recorded as Document Number 00649818 in Volume 2307, Page 670 of the Real Property Records of Cherokee County, Texas, on January 29, 2016, and removed certain real property from the coverage of the First Amended Declaration;

WHEREAS, that certain Warranty Deed with Vendor's Lien, dated January 29, 2016, was recorded as Document Number 00649912 in Volume 2308, Page 342 of the Real Property Records of Cherokee County, Texas, and included additional real property subject to the First Amended Declaration;

WHEREAS, that certain Assignment of Declarant's Rights of Eagle's Bluff Subdivision, dated February 22, 2016, was recorded as Document Number 00650415 in Volume 2311, Page 131 of the Real Property Records of Cherokee County, Texas, on February 25, 2016, and assigned and designated Eagles Bluff Club, LLC, a Texas limited liability company, as "Declarant" of Eagle's Bluff Subdivision;

WHEREAS, that certain Eagle's Amendment of Previously Filed Withdrawal of Property from the First Amended Declaration of Covenants, Conditions, and Restrictions for Eagles' Bluff

~~Community Association, Inc. Voting and Election Policy(CCR'S)~~ dated June ~~2324~~, 2016, was recorded as Document Number ~~0065351100653372~~ in Volume ~~23292328~~, Page ~~159400~~ of the Real Property Records of Cherokee County, Texas, on June ~~3024~~, 2016, and ~~imposed~~~~removed~~ certain ~~covenants and restrictions on the~~ real property ~~described in or by~~~~from the coverage of~~ the First Amended Declaration;

WHEREAS, that certain Second Amended Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff Community Association, Inc., dated June 30, 2016, was recorded as Document Number 00653510 in Volume 2329, Page 148 of the Real Property Records of Cherokee County, Texas on June 30, 2016, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;

~~WHEREAS, that certain Eagle's Bluff Community Association, Inc. Violation Fine Policy dated September 20, 2017, was recorded as Document Number 00665599 in Volume 2400, Page 719 of the Real Property Records of Cherokee County, Texas, on September 27, 2017, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;~~

WHEREAS, that certain Third Amended Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff Community Association, Inc., dated September 27, 2017, was recorded as Document Number 00665601 in Volume 2400, Page 729 of the Real Property Records of Cherokee County, Texas on September 27, 2017, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;

WHEREAS, that certain Third Supplement to Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff dated November 15, 2017, was recorded as Document Number 00666889 in Volume 2408, Page 193 of the Real Property Records of Cherokee County, Texas, on November 17, 2017, and included additional annexed real property subject to the First Amended Declaration, as amended;

WHEREAS, that certain Fourth Supplement to Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff dated November 15, 2017, was recorded as Document Number 00666890 in Volume 2408, Page 204 of the Real Property Records of Cherokee County, Texas, on November 17, 2017, and included additional annexed real property subject to the First Amended Declaration, as amended;

WHEREAS, that certain Fourth Amended Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff Community Association, Inc., dated September 28, 2018, was recorded as Document Number 20180100040207 of the Public Records of Smith County, Texas, on September 28, 2018, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;

WHEREAS, that certain Fifth Supplement to Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff dated January 15, 2019, was recorded as Document Number 00677556 in Volume 2471, Page 705 of the Real Property Records of Cherokee County, Texas, on

January 15, 2019, and included additional annexed real property subject to the First Amended Declaration, as amended;

WHEREAS, that certain Finding that Exhibit “A” of the Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Eagle’s Bluff is Hereby Amended dated December 11, 2019, was recorded as Document Number 00686049 in ~~Volume 2524~~ Volume 2524, Page 140 of the Real Property Records of Cherokee County, Texas, on December 11, 2019, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;

WHEREAS, that certain Rules Related to Exhibit “C” Use Restrictions 3.(h) of the Declaration of Covenants, Conditions, and Restrictions of Eagle’s Bluff dated February 3, 2021, was recorded as Document Number 00697073 in Volume 2597, Page 608 of the Real Property Records of Cherokee County, Texas on February 4, 2021, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;

WHEREAS, that certain Agreement and Plan of Merger dated December 20, 2022, was recorded as Document Number 00719800 in Volume 2740, Page 234 of the Real Property Records of Cherokee County, Texas, on January 3, 2023 (see also Resolution of Annexation dated December 20, 2022, recorded as Document Number 00719801 in Volume 2740, Page 239 of the Real Property Records of Cherokee County, Texas on January 3, 2023), and included additional annexed real property subject to the First Amended Declaration, as amended;

WHEREAS, that certain Addendum to Fifth Supplement to Declaration of Covenants, Conditions, and Restrictions for Eagle’s Bluff (Addendum Related to The Cottages) dated December 20, 2022, was recorded as Document Number 00719799 in Volume 2740, Page 218 of the Real Property Records of Cherokee County, Texas, on January 3, 2023, and included additional annexed real property subject to the First Amended Declaration, as amended, and imposed certain covenants and restrictions on the real property described therein;

~~WHEREAS, the Section 18.2~~ WHEREAS, that certain Finding that Exhibit “A” of the Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Eagle’s Bluff is Hereby Amended dated October 4, 2023, was recorded as Document Number 00727639 in Volume 2789, Page 247 of the Real Property Records of Cherokee County, Texas, on November 1, 2023, and imposed certain covenants and restrictions on the real property described in or by the First Amended Declaration, as amended;

WHEREAS, Section 18.2(a) of the First Amended Declaration, as amended, provides that an affirmative vote or written consent, or any combination thereof, of Owners representing ~~not less than 67%~~ a majority of the total permissible votes ~~in attendance~~ of the Association with such vote tabulation being at a properly noticed meeting called for the purpose of amendment, may amend the First Amended Declaration, as amended; and

WHEREAS, the requisite number of Owners desire to amend and restate the First Amended Declaration, as amended, in full and have approved this Declaration and voted to amend and restate the covenants, conditions, and restrictions thereunder as herein provided.

NOW, THEREFORE, in consideration of the premises and in order to carry out a uniform plan for the improvement, development, maintenance, sale and use of the properties within the Subdivision as herein defined, the Owners, acting by and through the Association, hereby adopt, affirm, and ratify the following amended and restated covenants, conditions, and restrictions for the Subdivision, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said properties, and declare that the Subdivision shall be developed, improved, held, used, sold, and conveyed in accordance with and subject to the following easements, restrictions, reservations, dedications, covenants, conditions, and stipulations, all of which are hereby adopted for and placed upon the Subdivision, and which shall run with the ~~Lots~~real property in the Subdivision including, but not limited to, each Unit, Lot, and Common Area, and be binding on all parties, now and at any time hereafter, having or claiming any right, title, or interest in the Subdivision or any part thereof, their heirs, executors, administrators, successors, and assigns, regardless of the source of or the manner in which any such right, title, or interest is or may be acquired, and all of which shall inure to the benefit of each Owner of any part of the Subdivision.

## ARTICLE I

### DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. “Area of Common Responsibility”: The Common ~~Area~~Areas, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. “Articles of Incorporation” or “Articles”: The Articles of Incorporation of Eagle’s Bluff Community Association, Inc., or applicable Certificate of Formation, as filed with the Secretary of State of the State of Texas and as may be amended from time to time.

1.3. “Assessment” or “Assessments”: Any assessments or other charges as may be levied by the Association under the terms and provisions of this Declaration, together with interest thereon as provided in this Declaration, costs of collection, and reasonable attorney’s fees, which shall be a charge on the Unit or Lot of an Owner or other Person as provided in this Declaration, as applicable, and shall be secured by a continuing lien upon the Unit or Lot against which such assessments or charges are made.

1.3.1.4. “Association”: Eagle’s Bluff Community Association, Inc., a Texas non-profit corporation, its successors or assigns.

~~1.4.1.5.~~ “Base Assessment”: ~~Assessments~~Assessment levied on all Units subject to Assessment under Article X to fund Common Expenses and ~~Common~~applicable Reserve ~~Funds~~ for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.3.

1.45.(a) “Limited Base Assessment”: Certain Unit Types may be required to supplement the Base Assessment to also fund their applicable Limited Common Expense and ~~Limited~~applicable Reserve ~~Funds~~.

1.45.(b) “Boathouse Base Assessment”: The Base Assessment common to all Units does not apply to Boathouse Units, whose levied ~~assessments~~Assessments will consist of ~~an~~the ~~Boathouse~~ Administrative Fee and ~~their~~ ~~Limited~~any applicable Reserve ~~Fund~~ specific to the Boathouse Units.

~~1.4.(c) “Administrative Fee”~~: ~~A special sub-category of Common Expense assessed to the Boathouse Units, covering their portion of Association expenses for general administration, including but not limited to property management, accounting, Board and Association insurance, and property taxes. This fee is assessed to each Boathouse Unit based on budgeted administrative costs and the total number of assessed Units.~~

~~1.54.(c) “Cottage Base Assessment”~~: ~~The Base Assessment common to all Units shall apply to Cottage Units. In addition, the Cottage Units shall also be subject to levied Assessments consisting of the Cottage Administrative Fee and any applicable Reserve Fund specific to the Cottage Units.~~

~~1.5.1.6.~~ “Board of Directors” or “Board”: The Board of Directors of the Association as duly appointed or elected in accordance with the Bylaws.

~~1.6.1.7.~~ “Builder”: Any Person which purchases one (1) or more Units for the purpose of constructing improvements for later sale to consumers or purchases one (1) or more parcels of land within or part of the Properties for further subdivision, development, or resale in the ordinary course of such Builder’s business.

~~1.7.~~ “Bylaws”: The Bylaws of the Association.

1.8. “Class “B” Control Period”: ~~The period of as may be amended from~~ time ~~during which the Class “B” Member is entitled to appoint a majority of the members of the Board of Directors as provided in the Bylaw~~time.

1.9. “Common Area” or “Common Areas”: All real and personal property which the Association owns by deed conveyance or easement, which the Association leases, or is made

available to the Association and its members in accordance with Article V, 5.1.(ef), for the use and enjoyment of Owners.

1.9.(a) “Limited Common Area”: Those portions of the Common Area designated for the benefit of, and for which the maintenance and repair of such portion of the Common Area is the sole responsibility of the Owners of lots that compromise that particular Unit type.

1.10. “Common Expenses”: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to ~~this Declaration, the Bylaws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class “B” Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing a majority of the total Class “A” vote of the Association.~~ the Governing Documents.

~~1.10.(a)~~ 1.10.(a) “Boathouse Administrative Fee”: A special sub-category of Common Expense assessed to the Boathouse Units, covering their portion of Association expenses for general administration, including but not limited to property management; accounting; Board and Association insurance; and property taxes. This fee is assessed to each Boathouse Unit based on budgeted administrative costs and the total number of assessed Boathouse Units.

1.10.(b) “Cottage Administrative Fee”: A special sub-category of Common Expense assessed to the Cottage Units covering expenses incurred by the Association specific to the Cottage Units including but not limited to, property management, property maintenance, utilities, services, property taxes, insurance premiums and deductible, and other expenses incurred by the Association specifically applicable to the Cottage Units. This fee is assessed to each Cottage Unit based on actual and budgeted administrative costs specific to the Cottage Units and the total number of assessed Cottage Units.

1.10.(b) “Limited Common Expense”: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of Owners associated with a Limited Common Area.

1.11. “Community--Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined ~~bywith~~ the approval of the Board of Directors, ~~the New Construction Committee, and Modifications Committee.~~

1.12. “Country Club”: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, made-up of the golf course, clubhouse, and other such facilities constituting

the Eagle's Bluff Country Club, which is located on the land described on Exhibit "B" attached hereto.

1.13. "Declarant": Eagles Bluff Club, LLC, a Texas limited liability company, and its successors and assigns if such successors or ~~any successor, successor in title, or assign who takes title to any portion~~ assigns (i) acquire all of the ~~property described on Exhibit "A"~~ Properties owned by the immediately preceding Declarant and remaining in the Subdivision for ~~the purpose~~ purposes of development and/or sale of such Properties, and ~~who~~ (ii) is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant provided, however, there shall be not more than one Declarant at any time.

1.14. "Governing Documents": All documents and applicable provisions thereof regarding the use, maintenance, repair, replacement, modification or appearance of any Properties within the Subdivision, including each Unit and Lot, or any rights, responsibilities or obligations of any Owners pertaining thereto, or to the Declarant, the Association, the Board, any Association or Board committees, including without limitation this Declaration, any Supplemental Declaration, the Bylaws, the Articles of Incorporation, and all rules, policies, and procedures concerning or regulating the maintenance, operation, use, or occupancy of the Subdivision, including the Units and Lots and the Properties, as from time to time adopted by Declarant or the Board of Directors in accordance with this Declaration or the Bylaws, including all written decisions and resolutions and all lawful amendments to any of the foregoing.

1.15. "Lot" or "Lots": Any of the numbered or identified lots shown on the Master Plat including, but not limited to, any Unit; subject, however, to any addition, removal, consolidation, or subdivision of Lots as provided in this Declaration.

~~1.14.1.16.~~ "Master Plat": The plat plan for the development of the Eagle's Bluff community, as it may be amended hereafter from time to time, which plat includes the property described ~~on~~ in Exhibit "A" attached hereto and incorporated herein, and in that certain Finding that Exhibit "A" of the Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Eagle's Bluff is Hereby Amended dated October 4, 2023, recorded as Document Number 00727639 in Volume 14402789, Page 44247 of the Real Property Records of Cherokee County Land Records, Texas, on November 1, 2023.

~~1.15.1.17.~~ "Member": A Person entitled to membership in the Association.

~~1.16.1.18.~~ "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

~~1.17.1.19.~~ "Mortgagee": A beneficiary or holder of a Mortgage.

~~1.18.1.20.~~ "Mortgagor": Any Person who gives a Mortgage.

~~1.19. [Reserved]~~

~~1.20.1.21.~~ “Owner”: One or more Persons who hold the record title to any Lot or Unit but excluding in all cases any Person holding an interest merely as security for the performance of an obligation. If a Lot or Unit is sold under a contract of sale, and the contract specifically provides, the purchaser (rather than the fee owner) will be considered the Owner.

~~1.21.1.22.~~ “Person”: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

~~1.22.1.23.~~ “Properties”: The real property described on ~~Exhibit “A”~~the Master Plat together with such additional property as is subjected to this Declaration ~~in accordance with Article IX~~as herein provided from time to time.

~~1.24.~~ “Public Records”: The Public Real Estate Records of Cherokee County, Texas, or other applicable county where any Property subject to this Declaration is situated.

~~1.25.~~ “Reserve Fund”: Funds received by the Association and set aside in an account or accounts for the purpose of funding deferred expenditures including, but not limited to, future construction, maintenance, repair, or replacement projects.

~~1.26.~~ “Road Fee”: A Specific Assessment that may be levied by the Association against a Lot or Unit for purposes of constructing, maintaining, repairing, and replacing existing or future Subdivision access, drives, roads, streets, and other thoroughfares or infrastructure. Such funds are to be set aside in a Reserve Fund and as part of such Reserve Fund may be used for other infrastructure purposes at the discretion of the Board of Directors.

~~1.23.1.27.~~ “Rules and Regulations”: All rules, policies, and procedures concerning or regulating the maintenance, operation, use, or occupancy of the Subdivision, including the Lots or Units and Community Areas, as from time to time adopted by Declarant or the Board of Directors, as applicable in accordance with this Declaration, the Bylaws, or the laws of the State of Texas regardless of nomenclature or manner of designation, and include without limitation the Design Guidelines.

~~1.24.1.28.~~ “Special Assessment”: Assessments levied in accordance with Section 10.6.

~~1.25.1.29.~~ “Specific Assessment”: Assessments levied in accordance with Section 10.7.

~~1.30.~~ “Subdivision”: The residential community consisting of the Properties as more particularly described on the Master Plat, and any other real property subjected to this Declaration as herein provided from time to time.

~~1.26.1.31.~~ “Supplemental Declaration”: An instrument filed in the public records pursuant to Article IX which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

~~1.27.1.32.~~ “Unit”: A portion of the Properties or a Lot, whether improved or unimproved, which may be independently owned and conveyed, subject, however, to any addition, removal, consolidation, or subdivision of Units as provided in this Declaration. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon, but shall not include Common Areas, or property dedicated to the public. In the case of a parcel of vacant land or land on which improvements are “under construction”, the parcel shall be deemed to contain the number of Units designated for use for such parcel on the Master Plat or the site plan approved by Declarant and the Board, whichever is more recent, until such time as a revised subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph. Herein, unless a defined Unit Type is referenced individually, the term “Unit(s)” shall refer to all defined Unit Types. All Unit Types shall be single family units only unless otherwise approved by the Board. Additional Unit Types may be added and defined from time to time, but such new Unit Types shall require approval by the Board and the Declarant in a Supplemental Declaration and will be identified in accordance with Section ~~1.2732.~~(a) below, without need to vote as an ~~amended~~amendment to this Declaration. Each new Unit Type, when defined, shall address its ~~assessment~~Assessment methodology; voting rights; any committee representation; and any specific use and architectural restrictions if different than those adopted by the general Association. Any approval of Declarant set forth herein with respect to any Unit shall be required until such time as the Declarant shall cease to own any Properties subject to the Declaration, or such earlier time as Declarant may elect release, terminate, or, with the written consent of the Association, transfer such approval rights by a written instrument to the Association.

~~1.2732.~~(a) “Unit Types”:

~~1.2732.~~(a)(i) “Residential Unit”: A Unit which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, single-family detached houses on separately platted ~~lots~~Lots, as well as vacant land intended for development as such, but shall not include Common Areas, or property dedicated to the public. Any Owner that acquires multiple ~~lots~~Lots shall be entitled to one (1) Class “A” Member vote per ~~lot~~Lot acquired, along with one (1) ~~assessment~~Assessment per ~~lot~~Lot acquired, regardless of any subsequent re-platting.

~~1.2732.~~(a)(ii) “Boathouse Unit”: A Unit which is only intended for development and recreational use as a boathouse at the shoreline of Lake Palestine. Any owner that acquires multiple ~~lots~~Lots to be Boathouse Units or acquires multiple Boathouse Units shall be entitled to one (1) Class BH Member vote per ~~lot~~Lot acquired, along with one (1) ~~assessment~~Assessment per ~~lot~~Lot acquired, regardless of any subsequent re-platting. All Lots within Eagles Bluff Section 4,

~~Lots 1-10, 11A, 11B, 12A, 13A, 13B of Cabinet B, Slide 176 as referenced in Exhibit "A" are designated as Lots whose sole purpose is to be used as a Boathouse Unit. The remaining Lots in Section 4, all of which are unusable for single family dwelling purposes, are reserved to be replatted into smaller parcels to be used and conveyed solely as Boathouse Units. The requirement and criteria for re-platting and acceptance as a Boathouse Unit Lot shall be defined jointly by the Board and, as long as the Declarant and owns any Properties, the Board Declarant.~~

The Boathouse Units, ~~as a collection of properties in Section 4 of Exhibit "A",~~ shall be represented by a three (3) person committee of Boathouse Unit owners, which will interface with the Board of Directors and ~~the Property Management agency any applicable Managing Agent (as defined in Section 18.5 below)~~ regarding matters of creating the Boathouse Unit annual budget ~~and assessment, Assessments,~~ and general community affairs specific to the Boathouse Units.

~~Assessment Assessments~~ for Boathouse Units are ~~discussed addressed~~ within Article X. The ~~dedicated Reserve Fund for Boathouse Limited Unit Reserve fund Units~~ shall be used to maintain the Community-Wide Standard ~~in Section 4 for all Boathouse Units~~ along the shoreline, including, but not limited to, ~~mowing, tree trimming, and~~ repairing the bulkheads and the cart path. This Reserve Fund may also be used to pay un-budgeted expenses such as lien filings and legal fees pertaining to Boathouse Units. Voting rights are as a Class "BH" Member and are exercised on issues specific only to Boathouse Units. ~~Use Restrictions (Exhibit "C"), Architectural Design Guidelines, and the Violation Fine Policy govern community behavior; however, note that additional Use Restriction specific to Boathouse Units can also appear in the Architectural Design Guidelines.~~

~~1.27.(a)(iii) "Undefined Unit": A platted lot~~ 1.32.(a)(iii) "Cottage Unit": A Unit which is intended for development, use, and occupancy for a residence as a single-family detached home as part of a 55+ Community where at least one person residing at each home is age 55 years or older, and the remaining residents are over the age of 40 years. Any Owner that acquires multiple Lots to be Cottage Units shall be entitled to one (1) Class "C" Member vote per Lot acquired, along with one (1) assessment per Lot acquired, regardless of any subsequent re-platting.

~~The Cottage Units shall be represented by a three (3) person committee of Cottage Unit owners, which will interface with the Board of Directors and any applicable Managing Agent (as defined in Section 18.5 below) regarding matters of creating the Cottage Unit annual budget, Assessments, and general community affairs specific to the Cottage Units.~~

~~Assessments for Cottage Units are addressed within Article X. The dedicated Reserve Fund for Cottage Units shall be used to maintain the Community-Wide Standard for all Cottage Units. Voting rights are as a Class "C" Member and are exercised on issues specific only to Cottage Units.~~

1.32(a)(iv) "Undefined Unit": A platted Lot within the Properties which cannot be developed with a residence or for recreational use with a boathouse. A Lot is assigned this status by the Association when it can no longer be used for its original intended purpose. Re-platting of

the ~~lot~~Lot is permissible only if approved by ~~both the Declarant and~~ the Board. The Owner of an Undefined Unit is a Class “O” Member and does not pay any Assessments for an Undefined Unit.

## ARTICLE II

### PROPERTY RIGHTS

2.1. Common AreaAreas. Every Owner shall have a right and non-exclusive easement of use, access, and enjoyment in and to the Common AreaAreas, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common AreaAreas, including rules limiting the number of guests who may use ~~thea~~ Common Area;
- (d) The right of the Board, to the extent not prohibited by applicable law, to suspend the right of an Owner to use future recreational facilities within ~~thea~~ Common Area (i) for any period during which any charge against such Owner’s Unit remains delinquent and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the ~~Declaration, any Governing Documents after~~ applicable Supplemental Declaration, the Bylaws, or rules of the Association after notice pursuant ~~to the Bylawsthereto~~. In the event any recreational facilities are included as a Common Area of Responsibility in the future, said rights listed in this ~~article~~Article shall extend to those facilities without necessity of amendment;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of ~~thea~~ Common Area pursuant to Section 4.7 of this Declaration;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any Common Area, including any recreational facility situated upon ~~thea~~ Common Area;
- (g) The right of the Board to permit use of any Common Area and any recreational facilities, including but not limited to future facilities, situated on ~~thea~~ Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board; and
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend their right of use and enjoyment of a Common Area to the members of their family, lessees, and social invitees, as applicable, subject to the Governing Documents and

reasonable regulation by the Board. ~~An Owner who leases their Unit shall be deemed to have assigned all such rights to the lessee of such Unit.~~

2.2. Country Club Membership. All Owners are hereby advised that they are required to pay the initiation fee and monthly dues necessary for ~~social~~ membership in the ~~Eagle's Bluff~~ Country Club, and may, at each Owner's discretion, pay any additional sums required to upgrade their membership to a golf membership or other membership offered by the Country Club. By its purchase of a Unit, each Owner acknowledges (i) that non-Owners may also become ~~social or golf~~ members of the Country Club at the discretion of the governing body of the Country Club and (ii) that ~~an Owner's~~ failure to pay any amount owed to the Country Club may, at the election of Declarant or Country Club, (A) constitute a lien against the non-paying Owner's Unit and be subject to the lien priority and collection remedies set forth in Section 10.8 herein of this Declaration, and (B) result in a loss of the non-paying Owner's privileges to access and use of the Country Club amenities and facilities, ~~even though; provided, however,~~ such Owner shall remain and continue to be obligated to pay all ~~subsequent assessments~~ applicable Assessments to the ~~association~~ Association.

Access to and use of the Country Club is strictly subject to the rules and procedures of the ~~owner of the~~ Country Club, and no Person gains any right to enter or to use ~~those any~~ Country Club amenities or facilities by virtue of membership in the Association or ownership or occupancy of a Unit without paying the required initiation fee and monthly dues for the Country Club and remaining in compliance with the County Club bylaws, rules, and regulations.

~~All Persons, including all Owners, are hereby advised that no~~ Neither the Declarant nor the Association makes any representations or warranties, either written or oral, ~~have been or are made by the Declarant or any other Person~~ with regard to the nature or size of improvements to, or the continuing ownership or operation of the Country Club. No purported representation or warranty, written or oral, made by the Declarant, the Association, or any Member thereof, in regard to the Country Club shall be effective unless set forth in an amendment to this Declaration executed by the Declarant ~~and the owner of the Country Club.~~ ~~After notice of the offer for sale, the Association shall have a first right to match any sales price offered to Declarant for the Country Club. The Association shall have thirty (30) days from the notice date of the written offer for the sale of Country Club to match the offer in price and payment terms. If Association fails to provide written notice of a matching offer within thirty (30) days' notice, it shall be deemed a denial of offer to purchase the Country Club. If the Association matches the offer, the Association shall have forty-five (45) days from the date of acceptance to present the Declarant with written proof that the Association is a viable purchaser and can maintain the Country Club to similar business standards. Following presentation of the Association's financial viability, the Association shall have twenty (20) days in order to close the purchase of the Country Club., the Association, and the owner of the Country Club.~~

The ~~Owner~~ owner or operator of the Country Club may at any time cease operating such facilities or change ownership or operation by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of the Country Club or an entity

owned or controlled thereby become the owner(s) and/or operator(s) of the Country Club, or (c) the conveyance of a Country Club to one (1) or more affiliates, shareholders, employees, or independent contractors of the Declarant.

~~Other than as set forth above in Section 2.2., rights to use the Country Club may be limited or restricted and will be granted only to such persons, and on such terms and conditions, as may be determined by the owners and operators of the Country Club. Such owners and operators shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Country Club and to terminate use rights altogether, provided that Owners who have complied with their obligations hereunder shall not be adversely affected by such actions.~~

2.3 Association First Right of Refusal. If, at any time during the term of this Declaration, the owner of the Country Club shall, in response to a bona fide offer to purchase all or part of its interest in the Country Club from a third-party, desire to sell or otherwise dispose of such interest, the owner of the Country Club shall notify the Association in writing of the party to whom it desires to sell such interest and the price at which and the terms upon which it desires to sell the same, and the Association shall have sixty (60) days from receipt of notice of the bona fide offer to notify the owner of the Country Club in writing of the Association's intent to match the offer in price and payment terms. If Association fails to provide written notice of a matching offer within the 60-day period, it shall be deemed a denial of offer to purchase the Country Club and the owner of the Country Club shall be free to convey, assign, or otherwise transfer such interest to the third-party at a price not less than stated in the notice or on terms more favorable than those stated in the notice provided to the Association. If the Association matches the offer, the Association shall have sixty (60) days from the date of acceptance to present the owner of the Country Club with written proof that the Association is a financially viable purchaser (the Association shall be deemed to have fulfilled such written proof requirement with a proof or statement of funds letter issued by a bank or other financial institution confirming the Association has sufficient funds to complete the transaction). Following presentation of the Association's financial viability to the owner of the Country Club, the Association shall have sixty (60) days in order to close its purchase of the Country Club. If the owner of the Country Club shall not have so disposed of such interest to said third-party within ninety (90) days after receipt of notice that the Association elects not to exercise its right of first refusal, the provisions of this Section shall again apply to the disposition by the owner of the Country Club of any such interest in the Country Club. Upon any conveyance, assignment, or other transfer of any such interest in the Country Club to any third-party, the Association shall be entitled to the rights of first refusal as set forth in this Section for each offer to purchase all or part of any such interest in the Country Club, and such rights shall continue thereafter and not terminate. Any conveyance by the owner of the Country Club to a third-party shall be subject to the terms of this Declaration, including without limitation the Association's continuing right of first refusal as set forth in this Section.

2.4 Right of Owner to Lease Unit. An Owner of a Unit is entitled to lease the Unit only for single family residential purposes. No Owner is permitted to lease the Owner's Unit for hotel or transient purposes. For purposes of this Section, a lease term that is less than twelve (12) months

is deemed to be a lease for hotel or transient purposes. Posting a listing of a Unit or Residential Unit on any temporary rental listing site such as, by way of example only, HomeAway, AirBNB, or VRBO, is a violation of this restriction. Every lease must be in writing and provide that the lessee is bound by and subject to all of the obligations under this Declaration and other Governing Documents and a failure to do so shall be a default under the lease. The Owner must make available to the lessee copies of this Declaration and other Governing Documents. While an Owner who leases their Unit shall be deemed to have assigned their right of use and enjoyment of the Common Areas to the lessee of such Unit, the Owner who leases the Owner's Unit is not relieved from any obligation to comply with the provisions of this Declaration or any other Governing Document by virtue of the lease. An Owner is not permitted to lease a room in a Residential Unit or other structure on the Owner's Unit or any portion less than the entirety of the Unit and the Residential Unit and other improvements on the Unit. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner of the Unit to be leased not less than ten (10) days prior to the effective date of the lease. As used herein, "leasing" or "lease" shall mean the regular, exclusive occupancy of a Unit by any person, other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. The Board may adopt such other reasonable rules regulating leasing and subleasing in a manner consistent with Section 12.4(f) of the Declaration.

2.5 Acknowledgement of Development. Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Owner's Unit is located in and part of a development which will likely extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties, or (b) changes in any conceptual or the land use plan for the Properties; provided, however, such changes or revisions are or would be lawful, including, but not limited to, lawful by special use permit, variance or the like, and is not inconsistent with what is permitted by this Declaration, as same may be amended from time to time. Each Owner acknowledges that no representations, warranties, or guarantees are made or relied upon as to: (a) the design, construction, completion, development, use, benefits, or value of the Properties; or (b) the number, types, sizes, prices, or designs of any structures to be built on any part of the Properties.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles, and the laws of the State of Texas.

3.2. Membership. Every Owner shall be a member of the Association. There shall be only one (1) member per Unit. If a Unit is owned by more than one (1) Person ~~there shall be only one (1) vote per Unit provided, however,~~ all co-Owners shall share the privilege of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have four (4) classes of Membership, Class "A" ~~and Class "B"~~, Class "BH" ~~, Class "C"~~, and Class "O". Additional classes of Membership may be added ~~by with the approval of the Declarant and the Board via Supplemental Declaration(s), but such additional shall require Board approval.~~.)

(a) Class "A". Class "A" Members shall be Owners of a Unit designated for improvement with a single-family residence. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under the Section 3.2 provided there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from ~~assessment~~ Assessment under Section 10.12.

~~(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the Bylaws, are specified elsewhere in this Declaration and the Bylaws. Any right of the Declarant to approve or disapprove of actions by the Association shall be applicable solely to any units owned by Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the Bylaws.~~

~~The Class "B" membership shall terminate and becomes converted to Class "A" membership upon the earlier of:~~

- ~~(i) three (3) years after expiration of the Class "B" Control Period if the Class "B" Control Period terminates prior to when 100% of the maximum number of Units permitted by the Master Plat for the property described in Exhibit "A" have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;~~
- ~~(ii) when 100% of the maximum number of Units permitted by the Master Plat for the property described on Exhibit "A" have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders; or~~
- ~~(iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.~~

(e) \_\_\_\_\_

(b) Class “BH”. Class “BH” Members shall be Owners of Boathouse Unit(s). Class “BH” Members shall have one (1) equal vote for each Boathouse Unit in which they hold the interest required for membership under Section 3.2 provided there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from ~~assessment~~Assessment under Section 10.12. Class “BH” Members shall vote only on matters that are specific to the Boathouse Units and may not vote on any other matters. Only Class “BH” Members shall be permitted to vote on matters that are specific to the Boathouse Units.

(c) Class “C”. Class “C” Members shall be all Owners of Cottage Units designated for improvement as a single-family residence. Class “C” Members shall have one (1) equal vote for each Cottage Unit in which they hold the interest required for membership under Section 3.2 provided there shall only be one (1) vote per Unit and no vote shall be exercised for any property which is exempt from Assessment under Section 10.12. Class “C” Members shall count as Class “A” Members in voting on Association issues or ballots that affect all Units. Only Class “C” Members shall be permitted to vote on matters that are specific to the Cottage Units.

(d) Class “O”. Class “O” Members are Owners of Units not assigned to any other Member Class. Class “O” Members are not ~~assessed~~subject to Assessments and do not have voting privileges.

Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Unit owned by a Member shall be exercised by the Owner of such Unit. If a proposed amendment, or item on a ballot affects only a subset or class of Members, then only those affected Members will constitute the total vote and be allowed to exercise their individual vote per affected Unit.

In any situation where a Member is entitled personally to exercise the vote for their Unit and there is more than one (1) Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit’s vote shall be suspended if more than one (1) Person seeks to exercise it in a contradictory or unclear manner.

## ARTICLE IV

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, through action of its Board and subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common ~~Area~~Areas and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep ~~it~~the Common Areas in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant or its designees may convey to the Association improved or unimproved real estate ~~located within the properties described in Exhibit “A”;~~ personal property and leasehold

and other property interests, subject to approval of the Board. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to (1) any restrictions set forth in the deed, (2) the ~~governing documents of the Association~~Governing Documents, or (3) other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose ~~fin~~es or other sanctions for violations of this Declaration, ~~the Bylaws,~~ or ~~rules~~any other Governing Document in accordance with procedures set forth in this Declaration or the Bylaws, including reasonable monetary fines and use of any recreational facilities, including any facilities constructed ~~and/or~~ acquired in the future, within ~~the~~any Common Area. In addition, the Association, through the Board, in accordance with this Declaration and the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any ~~assessment~~Assessment or other charge due to the Association. All remedies set forth in this Declaration or any other Governing Document, or rules in accordance with procedures set forth in this Declaration or the Bylaws, shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or ~~Association~~any other Governing Document, or rules in accordance with procedures set forth in this Declaration or the Bylaws, if the Association prevails it shall be entitled to recover all costs and expenses, including without limitation attorney's fees and court costs, reasonably incurred in ~~such~~relation to action from the violating Owner.

The Association, by contract or other agreement, may ~~enforce~~enforce county and city ordinances, if applicable, and permit the appropriate governmental entity to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights, Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, or by applicable law, all rights and powers of the Association may be exercised by the Board without a vote of the ~~membership~~Members.

4.5. Governmental Interests. The Association, through its Board of Directors, may designate sites within the Properties for fire, police, water, other utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever actions ~~is~~are required with respect to such site to permit such use, including conveyance of the site.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member of the Association against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he/she may be a party by reason of being or having been an officer, director, or committee member of the Association.

The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful

misfeasance, malfeasance, misconduct, or bad faith. The officers ~~and~~, directors, and committee members shall have no personal liability as an officer, director, or committee member with respect to any contract or other commitment made or action taken in good faith on behalf of the Association ~~except to the extent that such officers or directors may also be Members of the Association.~~ The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action taken in good faith on behalf of the Association. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member of the Association may be entitled. The Association shall, as a Common Expense, maintain adequate general liability ~~and officers' officers~~ and directors liability insurance to fund this indemnity obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Cherokee County, Texas, or to any other local, state, or federal government entity.

4.8. Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring or other security services within the Properties ~~or any Common Areas~~. Neither the Association, ~~the original Declarant~~, nor ~~any successor~~ the Declarant shall in any way be considered insurers or guarantors of safety within the Properties or any Common Areas, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring or security services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, or other monitoring system or measure cannot be compromised or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, ~~its~~ the Board ~~of Directors and~~, Association committees, ~~Declarant~~, and ~~any successor~~ the Declarant are not insurers of safety and that each Person using the Properties or Common Areas assumes all risks of personal injury, death, and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Relations with Adjacent Properties. Adjacent to or in the vicinity of the Properties are independent commercial and/or residential areas ~~and, including~~ the Country Club, each of which may or will share with the Association and its Members the use of Common Areas, real property, and facilities, including, but not limited to, roads utilized by the golf course associated ~~golf course with the Country Club~~. The Association may enter into agreements, contracts, or covenants to share costs with all or any of the owners of such adjacent or nearby property which allocate access, maintenance responsibilities, expenses, and other matters between the Association and such property owners.

## ARTICLE V

### MAINTENANCE

5.1. Association's Responsibility. The Association in accordance with Section 3.1 shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

~~(a)~~ (a) The Common Areas, subject to Section 4.1 and as otherwise set forth in this Declaration;

(b) All landscaping and other flora, parks, the fountain, the pond structures, and improvements, including any private streets, bike pathways ~~/or~~ trails, situated upon or within the Common Areas;

~~(bc)~~ Landscaping within public rights-of-way within or abutting the Properties;

~~(ed)~~ Such portions of any additional property, including, without limitation, the trail system serving as an amenity to the Properties and any property subsequently deeded, transferred, assigned, or gifted to the Association, included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

~~(de)~~ All ponds, streams, ~~and/or wetlands~~ areas prone to saturation located upon or within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads, or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, conduits, and similar equipment installed therein or used in connection therewith; and

~~(e) Any~~ (f) Except as otherwise specifically provided herein, any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members with such property and facilities to be identified by written notice from the Declarant to the Association, and accepted and approved by the Board ~~of Directors~~, and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association or the Association terminates such use by written notice to the Declarant.

Except as otherwise specifically provided ~~above~~herein, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the ~~Declarant Board and~~, as long as the Declarant owns any property described on Exhibit "A" of this Declaration Properties, the Declarant.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board ~~of Directors~~ determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense or Limited Common Expense to be allocated among the Units as part of their applicable Base Assessment as outlined in Article X without prejudice to the right of the Association to seek reimbursement from the ~~owner~~Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibility. Each Owner shall maintain their Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or other Person pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails ~~properly~~ to perform their maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3-5.3 Declarant's Responsibility. Declarant shall maintain and keep in good repair any improved or unimproved real estate located within the Properties owned or controlled by Declarant, which shall include, but need not be limited to:

(a) the installation, maintenance, replacement, and repair of pumps on or in the lakes, ponds, streams, and areas prone to saturation thereon, as applicable, in order to provide water to the Association and for the irrigation of any of the Area of Common Responsibility;

(b) the construction, maintenance, replacement, and repair of any bulkhead, wall, dam, or other structure retaining water thereon; and

(c) the removal of trash and other debris therefrom and fulfill all other maintenance responsibilities as provided in this Declaration.

The Declarant's rights and easements provided in this Section 5.3 shall be transferred to the Association at such time as the Declarant shall cease to own any such property subject to the Declaration, or such earlier time as Declarant may elect, with the written consent of the Association, to transfer such rights by a written instrument to the Association.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. ~~The~~Neither the Association and/or, the Board, nor any Owner shall ~~not~~ be liable for any damage or injury occurring on or arising out of the condition of any property which it does not own except to the extent that it has been negligent in the performance of its own maintenance responsibilities for such property.

5.4.5 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves ~~and/or~~ separates any two adjoining Units (or any adjoining Unit and Common Area or Association owned property) shall constitute a party structure. To the extent not inconsistent with the provisions of this Section 5.5, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners (or by the Owners and, with the approval of the Board, the Association as applicable) who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damages is not covered by insurance and repaired out of the proceeds of insurance, any Owner (or the Association as applicable) who is served by the structure may restore it. If other Owners thereafter are served by the structure, they shall contribute to the restoration cost in equal proportions. However, such contributions will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

(d) Right to Contribute Runs With Land. The right of any Owner (or the Association as applicable) to contribution from any other Owner under this Section 5.5 shall be appurtenant to the land and shall pass to such Owner's successors-in-title. Notwithstanding the foregoing, the Association shall not be obligated or required to contribute to any costs incurred by any Owner under this Section 5.5.

(e) Disputes. Any dispute arising/concerning a party structure shall be handled in accordance with the provisions of Article XVII.

## ~~ARTICLE~~ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

#### 6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available.

(i) Blanket property insurance covering "risk of direct physical loss" on a "special form" basis, or comparable coverage by whatever name denominated, for all insurable improvements on the Common ~~Area~~Areas, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair ~~and~~/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements unless the Board determines in the best interest of the Association that any such policy limits are sufficient if coverage is less than full replacement cost;

(ii) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or and of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable costs, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(iv) Directors and officers liability coverage; ~~provided;~~ however, the Association shall not be required to purchase such coverage if the directors and officers are otherwise covered by or through policies procured by the Declarant or others;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment ~~but not less than an amount equal to one-sixth(1/6) of the annual Base Assessments on all Units plus reserves on hand.~~ Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and ordinance coverage.

Premiums for all insurance ~~on the for any~~ Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. The Association shall have no insurance responsibility for any portion of the Country Club.

(b) Policy Requirements. ~~After expiration of the Class "B" Control Period, the~~ The Association shall arrange for an annual review of the sufficiency of insurance coverage by one ~~or~~ more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Cherokee County, Texas area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy -in determining whether the policy limits satisfy the requirements of Section 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is a result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against the Owner(s) and their Units pursuant to Section 10.7. Notwithstanding any provision herein to the contrary other than Section 6.1(c) below which shall remain applicable, the Board may determine to waive or forgo filing a claim with respect to any loss as it may deem reasonably necessary or appropriate in the best interest of the Association to carry out or maintain Association functions.

All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of Texas ~~which the satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies~~ and having a policyholders rating of not

less than A and a financial rating of not less than VIII in the latest edition of Best's insurance guide or comparable rating in any successor guide as the Board deems appropriate;

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Declarant, the Association, and its Members;

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) ~~Contain~~Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement, if reasonably available, if the policy contains a co-insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which ~~list the Owners as additional insureds and provides~~provide:

(i) A waiver of subrogation as to any claims against the Declarant, the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) ~~A~~An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) An endorsement ~~excluding Owner's individual policies from consideration under any "other insurance" clause;~~

~~(v) An endorsement~~ requiring at least thirty (30) days prior written notice to the Declarant, the Association and their lenders, if any, of any cancellation, substantial modification, or non-renewal; and

~~(vi) A cross liability provision; and~~

~~(vii)~~ A provision vesting in the Board exclusive authority to ~~adjust~~negotiate losses; provided<sup>2</sup>; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, at the discretion of the Board the Board or its duly authorized agent ~~shall~~may file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair and reconstruction. "Repair and reconstruction", as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Owners representing at least a majority of the total Class “A” votes in the Association, ~~and the Class “B” Member, if any,~~ decide within ninety (90) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 90-day period, then the period shall be extended until such funds or information are available. However, any such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be ~~required~~repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, including, but not limited to, payment to any Mortgagee of the Common Area, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.(a).

6.2. Association’s Right to Self-Insure. Notwithstanding any other provision herein to the contrary, the Board on behalf of the Association may “self-insure” by way of deductible, self-insured retention, or otherwise, all or part of the insurance coverage the Association is required to maintain hereunder provided the Association is able to comply with and fulfil any replacement obligations set forth in this Article VI.

6.3. Owner’s Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on their Unit, less a reasonable deductible, and liability insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising their Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

## ARTICLE VII

## NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of ~~the any~~ Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article VII shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## ARTICLE VIII

### CONDEMNATION

If any part of the Common ~~Area~~Areas shall be taken, or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least a majority of the total Class "A" votes in the Association ~~and of the Declarant, as long as the Declarant owns any property described on Exhibit "A",~~ by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of ~~the a~~ Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent adequate land is available and the Board determines such restoration or replacement is reasonably possible, unless within sixty (60) days after such taking the ~~Declarant, so long as the Declarant owns any property described in Exhibit "A" if this Declaration, and~~ Owners representing at least a majority of the total Class "A" vote of the Association shall otherwise agree not to restore or replace such improvements. Any such construction shall be in accordance with plans approved by the Board. The provision of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine, including utilization for ~~reserve fund~~Reserve Fund, to defray other ~~common expenses~~Common Expenses, management or professional fees, or payment of governmental dues, penalties, and payments.

## ARTICLE IX

### ANNEXATION AND WITHDRAWAL OF PROPERTY

9.1. Annexation ~~Without Approval of Membership by Declarant.~~ Until December 31, 2028, the Declarant may from time to time ~~unilaterally~~, subject to the provisions of this Declaration and with the prior approval of the Board, annex any real property immediately adjacent to and contiguous with the Properties, so long as the real property is not subject to any unknown or undisclosed encumbrance, including easements, covenants, restrictions, ~~and/or~~ collateralized interests, nor subject to any environmental action. Declarant may not transfer or assign this right to annex

~~property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.~~

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the Public Records. Such Supplemental Declaration shall not require the consent of Owners, but shall require the consent of the owner of such ~~property~~property to be annexed, if other than the Declarant, ~~and the prior approval of the Board~~. Any such annexation shall be effective upon compliance with the terms of this Section 9.1 and the filing of record ~~of~~ such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any additional property. The rights of Declarant under this Section 9.1 shall expire and shall have no further effect after December 31, 2028.

9.2. Annexation With Approval of Membership by the Association. The Association may annex real property located adjacent to and contiguous with the Properties ~~after December 31, 2028~~, with the consent of the owner of such property, and the affirmative vote of Owners representing at least a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, ~~and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.~~

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing compliance with the terms of this Section 9.2 and the filing of record such Supplemental Declaration unless otherwise provided therein.

9.3. Withdrawal of Property. So long as it has a right to annex additional property pursuant to this Article IX, the Declarant reserves the right to request an amendment to this Declaration for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. ~~Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association's reasonable written consent shall be required prior to such withdrawal, and such withdrawal is approved by the Board and the owner of the Property to be withdrawn. The Association shall have the right to remove any portion of the Properties from coverage of this Declaration by amendment to this Declaration provided such withdrawal is also approved by the Board, the Owner of the Property to be withdrawn, and, so long as it has a right to annex additional property pursuant to this Article IX, the Declarant.~~

9.4. Additional Covenants and Easements. ~~The Declarant may unilaterally~~Any property annexed hereunder shall be subject any portion to the terms and conditions of ~~the property submitted to this Declaration~~ initially or by Supplemental Declaration to and any additional covenants and easements that may be approved and enforced in accordance with this Declaration, including covenants obligating the Association to maintain and insure such property on behalf of the Owners

and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in an amendment to this Declaration or a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, ~~if other than the Declarant.~~ Any annexed property serving any residential purpose shall be subject to the entire set of ~~governing documents~~ Governing Documents for the Association ~~on file with the real property records of the county where the property exists,~~ on file in the Public Records. Any annexed property not of a residential purpose shall also be subject to the ~~governing documents~~ Governing Documents referenced in the foregoing, subject to any exception, variance, or modification of the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

~~9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A".~~

## ARTICLE X

### ASSESSMENTS

10.1.- Creation of Assessments. There are hereby created ~~assessments~~ Assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of ~~assessments~~ Assessments: (a) Base Assessments to be determined by type of Unit to fund their Common Expenses, Limited Common Expenses, Boathouse, Cottage, and applicable ~~Reserves~~ Reserve Funds for the general benefit of each within that Unit type; ~~(including the Cottage Base Assessment, the Cottage Administrative Fee, the Boathouse Base Assessment, and the Boathouse Administrative Fee),~~ (b) Special Assessments as described in Section 10.6.,~~2~~ and ~~(9c)~~ Specific Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these ~~assessments~~ Assessments as applicable.

All ~~assessments~~ Assessments, together with interest, at a rate not to exceed the highest rate allowed by applicable law, computed from the date the delinquency first occurs, and any late charges, costs, expenses, and reasonable attorney's ~~costs, and~~ fees incurred by the Association in relation to the charge, enforcement, or collection of any Assessment, shall be a charge and continuing lien upon each Unit against which the ~~assessment~~ Assessment is made until paid, as more particularly provided in Section 10.8. Each such ~~assessment~~ Assessment, together with interest, late charges, costs, expenses, and reasonable attorney's fees incurred by the Association in relation to the charge, enforcement, or collection of any Assessment, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the ~~assessment~~ Assessment arose. Upon a transfer of title to a Unit, other than a transfer by Mortgage to a Mortgagee, the grantee shall be jointly and severally liable for any ~~assessments~~ Assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit pursuant to the power of sale or foreclosure rights contained in its Mortgage shall be liable for unpaid ~~assessments~~ Assessments which accrued prior to such acquisition of title.

The Board shall, upon request, furnish to any contract purchaser of a Unit or any Owner liable for any type of ~~assessment~~Assessment a certificate in writing signed by an authorized agent of the Association, including but not limited to an officer or management agent, setting forth whether such ~~assessment~~Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, ~~assessments~~Assessments may be paid in two (2) or more installments. Unless the Board otherwise provides and except as otherwise expressly set forth in this Declaration, the Base Assessment shall be due and payable in advance on the first (1<sup>st</sup>) day of each fiscal year (subject to any applicable grace period approved by the Board). If any Owner is delinquent in paying any ~~assessments~~Assessments or other charges levied on their Unit, the Board may require any unpaid installments of all outstanding ~~assessments~~Assessments to be paid in full immediately. In the event any payment to the Association is returned or refused for non-sufficient funds or any other reason, an additional fee of \$25.00 shall be charged to the Owner or applicable payor.

~~\_\_\_\_\_ The Board, on its own or through a management company and/or agent, shall prepare and record a Payment Plan Policy in compliance with state, county, and municipal statute with same being filed in the real property records office of any county where a portion of the Association exists.~~

~~10.2. Declarant's Obligation for Assessment. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units, notwithstanding the commencement date for assessments set forth in Section 10.9., or to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. To the extent that Declarant contributes payments beyond that which would be required if Declarant elected to pay regular assessments, such amounts shall be treated as a loan to the Association. The terms of such loan shall include interest at the rate of the Wall Street Journal Prime Rate per annum, and payment in full shall be due upon demand at any time after one year following the termination of the Class "B" Control Period. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner, unless otherwise stated in Section 10.3, Section 10.6, and Section 10.7.~~

~~\_\_\_\_\_~~  
10.2 Declarant's Obligation for Assessment. The Declarant shall not pay any Assessments on its unsold Units, unless expressly provided otherwise herein.

10.3 Computation of Base Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a separate budget for the coming year for each Unit type covering their estimated Common Expenses and applicable Limited Common Expenses, including a ~~Distribution~~distribution(s) to establish a ~~reserve fund~~Reserve Fund(s) per Unit type in accordance

with a budget separately prepared as provided in Section 10.5. The Board shall work with any designated committee, recognized by the Association to represent a particular Unit Type, to prepare their budget. Separate bank accounts shall be created for Common Expenses and ~~Common Reserves~~applicable Reserve Funds. Also, where applicable, separate accounts unique to a Unit Type shall be created for their Limited Common Expense and ~~Limited~~applicable Reserve Funds. At no time will the Association borrow or exchange funds across Unit Types except when disbursing funds at the time of ~~assessment~~Assessment collection.

The Base Assessment shall be levied equally against all Units designated for improvement with a single-family dwelling, ~~except for the Boathouse Units and as otherwise provided herein~~. Where that Base Assessment is to be supplemented by a Limited Base Assessment for a certain Unit Type, the supplemental amount will be levied equally against all units of that Unit Type.

~~For those Units owned by the Declarant. Commencing January 1, 2016, and ending December 31, 2017, the Declarant will pay no Base Assessment on their unsold residential lots. Beginning January 1, 2018, the Base Assessment levied against residential units on the Master Plat in Exhibit "A" owned by the Declarant in a given year shall be determined by the deficit, if any, of the number of those lots sold during the prior year and eight (8) lots. If no deficit exists, then no Declarant assessments are due. The first assessment to be paid will begin January 1, 2018, however this initial assessment will be based on lots sold in 2016 and 2017. The assessment due on January 1, 2019, if still applicable, will be based on lots sold during the entire year of 2018. Each subsequent year will follow this latter pattern of deficit assessments until the Declarant has cumulatively sold 25 residential lots since January 1, 2016, at which time forward the Declarant will be exempt from paying Base Assessments on its remaining residential lots on the Master Plat in Exhibit "A".~~

~~Whereas the Declarant is not obligated to make regular assessment payments for all Units owned; after 1/1/2018, for any new Unit Type annexed~~ With respect to any new Unit Type annexed by the Declarant to be residences, the Declarant is obligated to "Deficit Fund" these Lots by agreeing to provide sufficient capital to keep the new Unit Type solvent until such time as the Association is able to support itself through regular ~~assessment~~Assessment to Owners of the new Unit Type. Specifically, the Declarant will pay the difference, if any, between the Operating Expenses incurred and the Assessment amounts assessed against the contributing Lots of the new Unit Type ~~{(the "Deficit")}~~. The Deficit will be estimated at the end of each prior calendar year and will be payable by January 31 of the next year into the bank account for that Unit Type. If at any time during the year a deficit is predicted, then additional deposits by the Declarant are required to remain liquid. At year end, the decision will be made to whether to continue the Declarant's obligation to fund the Deficit. Until such time, this obligation to fund the Deficit, together with ~~Interest~~interest thereon and costs of collection, are hereby declared to be a charge and continuing lien upon each Lot of the new Unit Type owned by the Declarant.

A Boathouse Assessment shall be levied equally against all Boathouse Units, and will consist of two parts—~~an: the Boathouse~~ Administrative Fee ~~as defined in 1.10.(b)~~ and a capital contribution to their ~~Limited~~applicable Reserve Fund. Any non-budgeted administrative expenses associated with the Boathouse Units will be financed by their applicable Reserve Fund.

A Cottage Assessment shall be levied equally against all Cottage Units and will consist of three parts: the Cottage Base Assessment, the Cottage Administrative Fee, and a capital contribution to their applicable Reserve Fund. Any non-budgeted administrative expenses associated with the Cottage Units including repair and replacement of any improvements, equipment, signage, and property owned by the Association within the Cottage Units will be financed by their applicable Reserve Fund.

The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including ~~reserves~~applicable Reserve Funds. In determining the level of ~~assessments~~Assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to ~~assessment~~Assessment under Section 10.9. on the first (1<sup>st</sup>) day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to ~~assessment~~Assessment during the fiscal year.

So long as the Declarant has the right ~~unilaterally~~ to annex property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, in addition to any amounts paid by Declarant under Section 10.2., may be either a contribution, an advance against future ~~assessments~~Assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner prior to the beginning of the fiscal year for which it is to be effective. The Board may not, unless done in an open meeting for which prior notice was given to Owners under Texas Property Code Section 209.0051(e), consider or vote on the approval of an annual budget or the approval of an amendment of an annual budget. The proposed budget and Base Assessment applicable to each assessed Unit (except Boathouse Units) shall become effective unless disapproved by Owners representing at least a majority of the total allowed votes for Units affected. For each Unit ~~Type~~Type with Limited Common Expenses and ~~Limited Reserves~~applicable Reserve Funds, their proposed budget and their associated Limited Base Assessment shall become effective unless disapproved by Owners representing at least a majority of the total allowed votes of affected units of that Unit Type. ~~The proposed reserve budget and reserve assessment for each assessed Boathouse Unit shall become effective unless disapproved by Owners representing at least a majority of the total allowed votes for affected Boathouse Units; however, the proposed Administrative Fee assessment must be accepted unless disapproved by Owners representing at least a majority of the total votes of all Units assessed the Base Assessment.~~\_\_\_\_\_

~~There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.~~

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

~~10.4-~~ Intentionally Deleted.

~~10.5-~~ Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets per Unit type for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board, in conjunction with the appropriate committees representing Unit Types, shall set the required capital contribution for the Common Reserve and any Limited Reserves in an amount sufficient to permit meeting the projected needs of the Association for each Unit type, as shown on the budget with respect to amount and timing by annual Base Assessments over the budget period. At no time will the Association borrow or exchange Reserve ~~funds~~Funds between the accounts of different Unit types.

~~10.6-~~ Special Assessments. In addition to authorized ~~assessments~~Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment shall be levied against the entire membership of the affected Unit type(s), including any Declarant owned Units, and upon all such type Units shown on the recorded agreed plat of the Association. ~~However, as long as the Declarant owns more than eight (8) lots eligible for assessment, the levied amount of the Special Assessment against each affected Unit owned by the Declarant will be 25% of the levied amount against each affected non-Declarant Unit.~~ Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least 51% or a majority of the total votes allocated to Units which will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board.

~~10.7-~~ Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit, (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, or (c) that are expressly permitted by the terms of the Declaration. The Association may also levy a Specific Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, other covenants, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Unit Owner and, to the extent required by Governing Documents or applicable law, an opportunity for a hearing. For unsold ~~lots~~Lots owned by the Declarant to be affected by a Specific Assessment, the ~~EBCA~~Association and Declarant shall negotiate the ~~assessment~~Assessment rate.

10.8- Lien for Assessments. The Declarant and/or Association ~~doeseach~~ hereby establish, reserve, create, and subject each Unit to a perfected contractual lien in favor of the Association to secure payment of delinquent ~~assessments~~Assessments, as well as interest, late charges, subject to the limitations of ~~Texas~~applicable law, and costs of collection, including administrative costs, attorney fees, and other related legal costs. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, ~~assessments~~Assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record, meaning any recorded Mortgage with first priority over other Mortgages, made in good faith and for value. Declarant hereby assigns such lien to secure payment of delinquent ~~assessments~~Assessments to the Association without recourse, and reserves for the Declarant the right to pursue all statutory and contractual liens solely for non-payment of Club Membership fees; provided, however, any such liens for non-payment of Club Membership fees shall be secondary and not superior to a perfected contractual lien in favor of the Association as described herein. The lien shall be self-operative, and shall continue in inchoate form without being reserved or referenced in any deed or other documents and without any other action required. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure in accordance with ~~Texas law. Subject to approval by the Class "B" Member,~~the applicable law. The Association may assign such lien rights to any or all Units to a lender as security for any loan made to the Association.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association as the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law, in like manner of any deed of trust on real property.

Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law.

At any foreclosure proceeding, any Person, including but not limited to Declarant, the Association, any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no ~~assessment~~Assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual ~~assessment~~Assessment, its equal pro rata share of the ~~assessment~~Assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses, Reserve Expenses, other costs and expenses incurred by the Association, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the ~~assessment~~Assessment lien or relieve such Unit from the lien for any subsequent ~~assessments~~Assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such ~~assessments~~Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for ~~assessments~~Assessments on such Unit due prior to such acquisition of title. Such unpaid ~~assessments~~Assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to ~~assessment~~Assessment under Section 10.9~~-.2~~, including such acquirer, its successors and assigns.

~~10.9-~~ Date of Commencement of Assessments. The obligation to pay ~~assessments~~Assessments shall commence as to each Unit owned by Persons other than ~~Builders~~Declarant on the first ~~(1<sup>st</sup>) day of ownership subject to a daily prorated share of the applicable Assessments and otherwise, to the extent applicable, on the first (1<sup>st</sup>)~~ day of the month following: (a) the month in which the Unit is made subject to this Declaration or (b) the month in which the Board first determines a budget and levies ~~assessments~~Assessments pursuant to this Article X, whichever is later. The obligation of a Builder to pay ~~assessments~~Assessments as to each Unit it owns shall commence on the first (1<sup>st</sup>) day of ~~the seventh (7<sup>th</sup>) month ownership of such Unit by Builder~~ following ~~the~~ conveyance ~~of such Unit by~~ from the Declarant to the Builder subject to a daily prorated share of the applicable Assessments. The first annual Base Assessment levied in each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time ~~assessments~~Assessments commence on the Unit.

~~10.10-~~ Failure to Assess. Failure of the Board to fix ~~assessment~~Assessment amounts or rates or to deliver or mail each Owner an ~~assessment~~Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay ~~assessments~~any Assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an ~~assessment~~Assessment was made, if any, until a new ~~assessment~~Assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

~~10.11-~~ Capitalization of Association. ~~Upon acquisition of record of title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. The amount shall be paid at closing and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.~~

~~10.12-~~ Exempt Property. The following property, unless expressly provided otherwise herein, shall be exempt from payment of Base Assessments and Special Assessments:

- ~~—~~ (a) All Common ~~Area; and~~Areas;

~~\_\_\_\_\_ (b) Any property owned by the Declarant for purposes of development and sale in accordance with the term “Declarant” as defined in this Declaration (this exemption shall apply only to Base Assessments against Declarant owned property and not to Special Assessments).~~

~~(c) Any property owned by the Country Club (excluding any Lots owned by the Country Club); and~~

~~\_\_\_\_\_ (d) Any property dedicated to and accepted by any governmental authority or public utility.~~

## ARTICLE XI

### ARCHITECTURAL STANDARDS

~~11.1- General. No structure, including, but not limited to, buildings, signs, walls, and mailboxes, shall be placed, erected, or installed upon any Unit, and no improvements, including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials, shall take place except in compliance with this Article XI, and approval of the appropriate committee under Section 11.2. Notwithstanding this, the Board of Directors may exempt certain activities from the application and approval requirements of this Article XI, provided such activities are undertaken in strict compliance with the requirements of such resolution. Further, the Declarant, in its discretion, may exempt certain designees, including but not limited to, Builders, from any or all of the requirements of this Article solely for original construction upon property acquired by purchase from Declarant as described in Exhibit “A”, provided such designees are contractually obligated to comply with design review restrictions imposed by Declarant, by the Board.~~

Any Owner may remodel, paint, or redecorate the interior of structure(s) of a Unit without approval under this Article XI provided such improvements are not visible from outside such structure(s). Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval under this Article XI. No approval under this Article XI shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

~~The~~This Article XI shall not apply to ~~the activities of the Declarant, nor to~~ improvements to the Common Area made by or on behalf of the Association.

~~\_\_\_\_\_ The Article may not be amended without the Declarant’s written consent so long as the Declarant owns any land subject to this Declaration.~~

~~\_\_\_\_\_~~  
11.2- Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all submitted applications for construction and modifications under this Article XI shall be handled by the committees as described in subsections (a) and (b) below.

The members of committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ~~Declarant or the~~ Board. The Board ~~of Directors, New Construction Committee, or Modifications Committee acting with authority to approve and enforce the Design Guidelines, may~~ may require a builder deposit or establish and charge ~~another~~ reasonable ~~feefees~~ for review of applications hereunder and may require such deposit or fees to be paid in full prior to review. All submittals for new home construction will be evaluated by the New Construction Committee. All submittals for new home construction shall be accompanied with a Road Fee payable to the Association for deposit into the appropriate Reserve Fund. All submittals for existing home modification will be evaluated by the ~~MCC to~~ Modifications Committee. The Modifications Committee, with prior approval of the Board, shall determine if a Road Fee applies, and if so, ~~it will a~~ Road Fee shall be payable to the Association for deposit into the appropriate Reserve Fund before home modification can begin.

(a) New Construction Committee. The Board may establish a New Construction Committee (“NCC”) which shall consist of at least three (3), but not more than ~~five~~ (seven (7)), persons and shall have ~~exclusive~~ jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right ~~to, in its sole discretion, to serve as a member of the NCC.~~ The Board shall appoint all other members of the NCC, ~~who and may remove such other members of the NCC at the discretion of the Board.~~ The NCC shall be responsible to the Board of Directors and the Declarant and shall serve as the Association’s agents at the discretion of the Board of Directors and the Declarant. There shall be no surrender or assignment of the right of the Declarant to appoint the members of the NCC prior to that time except in a written instrument in. Upon the expiration of the Declarant’s right to serve as provided herein or the surrender by the Declarant (in writing and recordable form executed by the Declarant. ~~Upon the expiration)~~ of such right, the Declarant’s right to serve as a member of the NCC shall ~~become the province of the Association terminate~~ and ~~the Board may, at its option, appoint the members of the NCC, who shall thereafter serve and the Declarant may be removed in~~ serve as a member of the NCC upon appointment by the Board’s discretion. Board and subject to removal at the discretion of the Board. To the limited extent applicable, the Declarant may utilize the NCC to administer design review restrictions imposed by Declarant upon those Persons who have been previously designated by it as being exempt from the requirements of this Article XI; provided, however, this provision does not give Declarant any right to exempt any Person from the requirements of this Article XI.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (“MC”) ~~to~~ which may consist of at least three (3) ~~and no~~, but not more than ~~five~~ (seven (7)) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The members of the MC may be removed at the discretion of the Board. The MC, if established, shall have ~~exclusive~~ jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space.

### 11.3- Guidelines and Procedures.

~~\_\_\_\_\_ (a) The Board of Directors, NCC, and MC shall accept the initial~~ (a) The design development guidelines and application and review procedures (the “Design Guidelines”) ~~which~~ shall apply to all construction activities within the Properties. The Design Guidelines shall be approved by the Board. The Board ~~of Directors~~, NCC, and MC shall be responsible for reviewing plans in accordance with and enforcing the Design Guidelines. The Board ~~of Directors~~ shall be the deciding authority for resolving any questions the NCC or MC may have as to the interpretation or application of the Design Guidelines.

Each Owner acknowledges that the Design Guidelines may be amended ~~and that, for so long as it has~~ from time to time with the ~~right to appoint the members~~ approval of the Board. The NCC, ~~the Declarant and MC~~ shall each have ~~sole and full the~~ authority to ~~amend the recommend for approval amendments to the~~ Design Guidelines ~~in its discretion. Thereafter, the Board of Directors, NCC, or MC shall have amendment authority for the Design Guidelines including the right and~~ to develop modification guidelines for existing structure exterior improvements to be approved by the Board. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. With regard to modifications, the Board, NCC, or MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines.

The Design Guidelines shall be made available to Owners and Builders who seek to engage in development or construction within the Properties and, subject to ~~Declarant’s right to exempt certain designees~~ any exemptions from the requirements ~~of approved by the Article Board,~~ all such Persons shall conduct their activities in accordance with such Design Guidelines. The Design Guidelines shall be recorded in the Public Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. The Design Guidelines may contain general provisions applicable to all the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

~~\_\_\_\_\_ With regard to modifications, the Board of Directors or MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines.~~

~~\_\_\_\_\_~~  
(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed modifications and improvements shall be submitted to the Board ~~of Directors and the NCC~~ or MC, as applicable, for review and approval, or disapproval. In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the Board ~~of Directors and the NCC~~ or the MC, as applicable, may consider the Design Guidelines, quality of

design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the Board ~~of Directors, the NCC, or the MC fails, as applicable, fail~~ to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved as submitted. ~~However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, However, no approved application~~ shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Board ~~of Directors and the NCC or the MC, as applicable,~~ pursuant to Section 11.5. Any approved ~~application for~~ new construction must be ~~completed~~commenced within one (1) year of the application approval date. ~~Any and completed within two (2) years of the application for approval date. Any approved~~ modification of an existing structure must be ~~completed~~commenced within six (6) months of the application approval date and completed within one (1) year of the application approval date.

11.4- No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, are site specific unless otherwise noted, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.5- Variance. The Board ~~of Directors or NCC~~ may authorize variances from compliance with any of the Design Guidelines and the NCC or MC, as applicable, may authorize variances from compliance with its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted ~~rules~~Rules and ~~regulations~~Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to this Declaration except as otherwise approved, or (c) ~~stop~~prohibit the Board, the NCC, or NCC the MC from denying a variance in other circumstances. For purposes of this Section 11.5, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.6- Limitation of Liability. Neither the Declarant, the Association, the Board of Directors, the NCC, the MC, nor ~~MC~~any member thereof acting in such capacity, shall be liable to anyone submitting plans for approval in accordance herewith or to any other Person for damages, whether direct, indirect, consequential, or otherwise, arising out of or in connection with: (a) the approval or disapproval or failure to approve or disapprove any such plans, (b) enforcement or failure to enforce any site maintenance or other requirements hereof, (c) the approval or disapproval of, or failure to approve or disapprove, any architectural, landscaping, development or other plans for improvements to any property adjacent to, or situated on or in the proximity of the Properties, (d) the development or construction of, or the failure to develop or construct, any improvements, including landscaping, on lands adjacent to or in the proximity of the Properties, or (e) defects, whether latent or otherwise, in such plans. Anyone, submitting plans for approval agrees not to seek any such damages against the Declarant, the Association, the Board of Directors, the NCC, the MC, or MC any member thereof acting in such capacity. In addition, each Owner shall release

and hold harmless the Declarant, ~~the Association, the~~ Board ~~of Directors, the~~ NCC, ~~or the~~ MC, and the members thereof acting in such capacity from any and all liability, including attorney's fees and court costs actually incurred, regardless of whether suit is brought or any appeal is taken therefrom, arising out of any approval given or denied by the Declarant, the Association, the Board of Directors, the NCC, or the MC, as applicable, under this Article XI.

Review and approval of any application pursuant to this Article XI is made on the basis of the Design Guidelines and ~~aesthetic considerations and~~ neither the Declarant, the Association, the Board of Directors, the NCC, the MC, nor ~~MC~~any member thereof acting in such capacity shall bear any responsibility for ensuring the value of a Unit, or the structural integrity, workmanship, quality or soundness of approved construction or modifications, nor for ensuring compliance with building codes, engineering and architectural standards, and other governmental requirements. Each Owner acknowledges that the approval of any application pursuant to this Article XI does not constitute an assurance or guarantee that the approved improvements are safe or fit for habitation. Neither the Declarant, the Association, the Board ~~of Directors, the~~ NCC, the MC, nor any committee, or member of any of the foregoing acting in such capacity shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

11.7- Enforcement. Any structure or improvement placed or made in violation of this Article XI shall be deemed to be nonconforming. Upon written request from the Board ~~or the Declarant,~~ Owners shall at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the ~~Declarant, Board of Directors, or its designees, with the consent of the Declarant for so long as Declarant owns any property described in Exhibit "A" for development as part of the Properties~~ Board, or its designees, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, which may include monetary fines imposed by the Board ~~of Directors, the~~ NCC, or the MC together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article XI and the Design Guidelines, in addition to the fees, costs, and fines provided in the preceding paragraph, may be excluded by the Board ~~of Directors~~ from the Properties. In such event, neither the Association, ~~its officer~~the Board, the NCC, the MC, nor ~~directors~~any committee, or member of any of the foregoing acting in such capacity shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Declarant ~~or the Association, with the consent of the Declarant for~~ so long as it owns any ~~property described in Exhibit "A",~~ Properties – or the Association, shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board ~~of Directors, the~~ NCC, or the MC.

## ARTICLE XII

## USE RESTRICTIONS AND RULES

12.1- Plan of Development Applicability: ~~Effect.~~ The Properties are subject to the land development, architectural, and design provisions set forth in Article XI, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules, and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land and Properties subject to this Declaration.

All provisions of this Declaration, the Bylaws, and any ~~Association rules~~ Rules and Regulations shall apply to all Owners, occupants, tenants, guests, and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be subject to and bound by the terms of this Declaration, the Bylaws, and ~~the rules of the Association~~ any Rules and Regulations.

12.2- Authority to Promulgate Use Restrictions and Rules. ~~Initial use~~ Use restrictions applicable to all ~~of the~~ Properties are attached ~~at Exhibit "C"~~ to this Declaration, as Exhibit "C" and incorporated herein by reference (the "Use Restrictions"). Subject to the terms of this Article, ~~such initial use restrictions~~ XII, the Use Restrictions may be modified in whole or in part, repealed, or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the ~~initial use restrictions set forth in Exhibit "C"~~ Use Restrictions. The Board shall send notice to all Owners concerning any such proposed action at least ten (10) and no more than sixty (60) ~~business~~ days prior to the Board meeting at which such action is to be considered. ~~Owners~~ Owners, subject to any applicable Board meeting rules, shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved by a vote of the Owners representing at least a majority of the total Class "A" votes of the Association ~~and by the Class "B" Member, if such exists~~.

(b) Alternatively, the Owners, at a meeting duly called for such purpose as provided in the Bylaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the ~~use restrictions and rules previously adopted~~ Use Restrictions by a vote of the Owners representing at least a majority of the total Class "A" votes ~~and the approval of the Class "B" Member, if any~~.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section 12.2, the Board shall send a copy of the Use Restrictions as amended and any amended or new rule adopted in accordance with this Section 12.2 to each Owner. The Association shall provide, without cost, a copy of the ~~use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules")~~ any related rules then in effect to any requesting Member or Mortgagee.

12.3- Owner's Acknowledgement. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules ~~related rules~~ as they may be amended,

expanded, and otherwise modified hereunder. Each Owner, ~~by acceptance of a deed,~~ acknowledges and agrees that the use and enjoyment and marketability of their Unit can be affected and that the Use and Restrictions and Rules related rules may change from time to time.

12.4- Rights of Owners. Except as may be specifically set forth in this Declaration (~~either initially or by amendment~~including any amendment hereto) or in ~~Exhibit "C"~~the Use Restrictions neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside or outside of structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except with respect to the Cottage Units (at least one person residing at each Cottage Unit is age 55 years or older, and the remaining residents are over the age of 40 years) and except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of size and the facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, such as utilizing the dwelling as a business, daycare, hospice center, ~~and/or~~ consignment shop, or other non-residential activities, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that will increase the existing rate of any insurance for the Association or cause a cancellation of any insurance policy held by the Association, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance, or that is a private ~~and/or~~ public nuisance as such terms are defined by ~~a Texas court~~applicable law.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over the Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of any Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay ~~assessments~~Assessments. This provision does not affect the right to increase the amount of ~~assessments~~Assessments as provided in Article X.

(f) Alienation. No rule shall ~~restrict or~~ prohibit leasing or transfer of any Unit, ~~or require consent in contravention of the Association this Declaration or Board for leasing or transfer of any Unit, provided the Association or the Board may require a minimum lease term of up to twelve (12) months; applicable law.~~ The Association may require that Owners use lease forms approved by the Association or the Board, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer the lease or transfer.

(g) Reasonable Rights to Develop. No rule or action by any Owner, the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

~~————(h) Intentionally Deleted.~~

The limitations in this Section 12.4. shall apply to rules only, they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

### ARTICLE XIII

#### EASEMENTS

~~13.1-~~ Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and the Country Club property due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon, in accordance with the terms of these restrictions, to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, ~~and an~~ Owner, occupant, or the Association.

~~13.2-~~ Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any ~~property described on Exhibit "A" of this Declaration~~ Properties, the Association, and the designees of each, which may include, without limitation, Cherokee County, Texas and any utility, access, and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar monitoring systems, roads, walkways, bicycle pathways, trails, lakes, ponds, ~~wetlands~~ areas prone to saturation, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded agreed plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an

emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

The Association and the Declarant each specifically grants to the local water supplier, sanitary sewer provider, electric company, and natural gas supplier ~~ingress and egress limited, non-exclusive~~ easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, storage tanks, pumps, meters, and boxes. However, the exercise a grantee of this any such easement shall not extend to permitting the removal, damage, or destruction ~~of~~ any improvements ~~not~~ located on or within such utilities easements, or entry into the dwelling on any Unit, ~~nor shall install or relocate~~ any utilities ~~be installed or relocated~~ on the Properties, except as approved by the Board ~~of Directors~~ or the Declarant.

~~13.3-~~ Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the non-exclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands areas prone to saturation located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the Association and for the irrigation of any of the Area of Common Responsibility, ~~(b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water,~~ and ~~(c)~~ remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, ~~in its sole discretion with the written consent of the Association,~~ to transfer such rights by a written instrument to the Association. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands areas prone to saturation to the extent reasonably necessary to exercise their rights under this Section, 13.3.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, non-exclusive right and easement access and encroachment over the Common Area Areas and Units, but not the dwellings thereon, adjacent to or within fifty (50) feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties, (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands areas prone to saturation within the Area of Common Responsibility, (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands areas prone to saturation, and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section 13.3. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed ~~to make Declarant to make the Declarant, the Association, the Board, the NCC, the MC, nor any committee, or member of any of the foregoing acting in such capacity,~~ or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Any lakes or ~~wetlands~~areas prone to saturation on the Properties are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in water elevations within the immediate area, the water level of lakes, creeks, and streams will rise and fall. ~~Neither the Association nor the~~ Declarant has ~~no~~ control over such elevations. Therefore, each Owner releases the Declarant, the Association, the Board, the NCC, the MC, including any committee or member of any of the foregoing acting in such capacity, and the local city and municipality, and their affiliates, successors and assigns from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including attorney's fees and costs and appellate fees and costs, related to or arising out of the storm drain system and water elevations, including the absence of any water in the lakes, creeks or streams. ~~Neither the Association nor any~~ No Owner or any other Person shall alter, modify, expand, or fill any lakes or ~~wetlands~~areas prone to saturation located on or in the vicinity of Properties, without the prior written approval of the Association, the Declarant, so long as Declarant owns any ~~property described in Exhibit "A" for development as part of the~~ Properties, and such local, state, and federal authorities as may have relevant jurisdiction over such matters.

~~13.4-~~ Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property annexed pursuant to Article IX, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property; provided, however, Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common ~~Area~~Areas as a result of its development uses. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share ~~h~~ethe cost of maintenance of any access roadway serving such Property.

#### 13.5 Easements for the Country Club.

(a) All ~~Unites~~Units and the Common Area are burdened with an easement in favor of Declarant and the owner(s) and operators of the Country Club, and their respective successors, assigns and designees, permitting the doing of every act reasonably necessary or convenient to the establishment, operation, maintenance and repair of a golf course lying near or adjacent to the Properties and such acts as are commonly associated with the playing of golf.

Such easement shall include, but not be limited to, allowing the flight of golf balls over and above the Properties, the use of necessary and usual equipment on the golf course, the usual and common noise level created by the playing of the game of golf, and permitting golf balls unintentionally to come upon such Common Area or Units and for golfers at reasonable times and in a reasonable manner to come upon the Common Area ~~p~~ro the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of

liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association or its Members, (including the Board and any appointed committees), in their capacity as such, the owner(s) of the Country Club or their successors, successors-in-title, or assigns; any successor Declarant; any Builder or contractor, in their capacities as such; any officer, director or partner of any of the foregoing, or any officer or director of any partner; or any organizer or sponsor of any tournament or special event.

(b) The owner(s) of the Country Club, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair, and replacement of the Country Club.

(c) The Properties immediately adjacent to the Country Club are hereby burdened with a non-exclusive easement in favor of the Country Club for overspray of water from the irrigation system serving the Country Club. Under no circumstances shall the Declarant, the Association or its Members (including the Board and any appointed committees), in their capacity as such, or the owner(s) of the Country Club be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner(s) of the Country Club, their respective agents, successors, and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common AreaAreas lying reasonably within range of golf balls hit from the golf course.

(e) The Declarant hereby reserves for itself, its agents, successors, and assigns, and the owner(s) of the Country Club, an easement to draw water from bodies of water within the Common AreaAreas for purposes of irrigation of the Country Club and for access to and the right to enter upon the Common AreaAreas for installation and maintenance of any irrigation systems.

(f) All Owners acknowledge that Units may be located adjacent to or near the golf course at the Country Club and that Country Club.

~~—(g) Related related~~ activities, including without limitation, golf tournaments, concerts, or other events may be held at the Country Club. None of these Country Club-related activities shall be deemed to be nuisances or noxious or offensive activities. Each Owner shall assume all risks associated with the location of their Unit, including, but not limited to, the risk of property damage, personal injury or death arising from errant golf balls and other actions incidental to the use and operation of the golf course and shall release, indemnify, defend and hold harmless the Declarant, its affiliates ~~and the Owner,~~ the Association or its Members (including the Board and any appointed committees), in their capacity as such, and the owner and operator of the Country Club from any liability, claims or expenses, including attorney's fees, arising from any property damage, personal injury or death suffered by the Owner or the Owner's family members, guests, or invitees as a result of any such activity.

13.6- Right of Entry. The Association and its agents shall have the right, but not the obligation, to enter upon any Unit for emergency and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the Association, member of an appointed Association committee, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association and its agents to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.7- ~~Public~~ Access Trail System. In connection with the development of the Properties, ~~Declarant~~the Association, or the Declarant with the prior approval of the Board, may construct a trail system on the Properties or the Declarant may construct a trail system on adjacent property owned by the Declarant or the Country Club property. ~~The~~Upon approval by the Board, the Association shall be responsible for maintaining the trail system whether located on the Properties or on adjacent property owned by the Declarant or the Country Club. There shall be reciprocal appurtenant easements for use and enjoyment of the trail system between the Association, the Owners, the Country Club owner and its guests and members. The use and enjoyment of the trail system shall be subject to such reasonable ~~rules~~Rules and ~~regulations~~Regulations governing use which may be imposed, with the approval of the Board, by the Declarant, the Association, or the owner(s) of the Country Club property. The public may be allowed use of the trail system subject to any such ~~rules~~Rules and ~~regulations~~Regulations and subject to the right of the owner of the property upon which the trail system is located to impose reasonable user fees.

#### ARTICLE XIV

#### MORTGAGE PROVISIONS

14.1. Notices of Action. ~~An institutional holder, Upon written request of any Mortgagee, the insurer, or guarantor of a first Mortgage who provides written request to, the Association, may provide to such request to state the name and address of such holder mortgagee, insurer, or guarantor and, a statement of any unpaid Assessments or other amounts payable to the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder", will be entitled to timely written notice of:~~

~~(a) Any Association, any~~ condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a ~~first Mortgage held, insured, or guaranteed by such Eligible Holder.~~ Mortgage, and any violations of the Governing Documents then known to the Association.

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

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

14.2. No Priority. No provision of ~~this Declaration or the Bylaws~~Governing Documents gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common ~~Area~~Areas.

~~14.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.~~

14.3. Notice to Association. Upon written request of the Association an Owner must provide to the Association a written statement setting forth the name, mailing address, telephone number, and if known or reasonably ascertainable, the facsimile number and e-mail address of each Mortgagee for each Mortgage covering the Owner's Unit, and each insurer or guarantor thereof, and as to each such Mortgagee, insurer and guarantor, the nature of the loan or other encumbrance (such as purchase money loan, home equity loan or tax lien), and the account or similar identifying number or other designation applicable to the Mortgage. If an Owner is delinquent in payment of Assessments (regular, special or specific) to the Association, upon written request of the Association a Mortgagee, or the insurer or guarantor of a Mortgage, shall provide the Association with information setting forth the status of such Owner's debt secured by the Mortgagee's lien and other relevant information as set forth in the Association's request.

14.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the ~~Board~~Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

~~14.5. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Unit; annexation of additional property, dedication, conveyance or mortgaging of Common Area, or material amendment of this Declaration.~~Consent of Owner. EACH OWNER EXPRESSLY CONSENTS TO THE ASSOCIATION PROVIDING ANY INFORMATION WITH REGARD TO THIS ARTICLE XIV TO A MORTGAGEE, INSURER, OR GUARANTOR, AND CONSENTS TO A MORTGAGEE, INSURER, OR GUARANTOR PROVIDING ANY INFORMATION WITH REGARD TO THIS ARTICLE XIV TO THE ASSOCIATION.ARTICLE XV

ARTICLE XV

DECLARANT'S RIGHTS

Any or all rights and obligations of Declarant may be transferred to other Persons, but the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or ~~the Bylaws~~any other Governing Document and shall not be effective unless signed by Declarant and duly recorded in the Public Records. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the ~~property described in Exhibit "A"~~Properties in any manner whatsoever.

~~Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sales of Units by Declarant and Builders shall continue, it shall be expressly permissible for the Declarant and Builders authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, and sales offices. The Declarant and Builder(s) authorized by Declarant shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned or leased by the Declarant or a Builder or any clubhouse or community center which may be owned by the Declarant or the Association, as models and sales offices, respectively.~~

So long as Declarant continues to have rights under this Article XV, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties then owned by Declarant ~~as described in Exhibit "A"~~,<sup>2</sup> without Declarant's written consent. Any attempted recordation without compliance herewith shall result in such instrument being void unless consent of Declarant is subsequently recorded in the ~~public records~~Public Records. In the event ~~these declarations are~~this Declaration is amended without the Declarant's consent ~~to the extent required hereunder~~, such ~~declarations will~~amendment shall not be applicable ~~on said properties~~to or against any Properties owned by Declarant until ~~they~~such Properties are transferred, sold, assigned, or ~~designated~~conveyed to a third party not designated as the Declarant.

~~Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Eagle's Bluff is a development which will likely extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties or (b) changes in any conceptual or the land use plan for the Properties provided; however, such revision is or would be lawful, including, but not limited to, lawful by special use permit, variance or the like, and is not inconsistent with what is permitted by the Declaration, as amended from time to time. Each Owner acknowledges that no representations, warranties or guarantees are made or relied upon as to: (a) the design, construction, completion, development,~~

~~use, benefits, or value of the Properties or (b) the number, types, sizes, prices or designs of any structures to be built on any part of the Properties. Notwithstanding anything to the contrary in this Article, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.~~

## ARTICLE XVI

### LIMITATIONS ON LIABILITY

16.1. Constituent Partners. Notwithstanding anything to the contrary in this Declaration, no present or future “Constituent Partner” in or agent of Declarant, nor any shareholder, officer, director, employee, trustee, beneficiary, or agent of any corporation or trust that is or becomes a Constituent Partner in Declarant, shall be personally liable, directly or indirectly, under or in connection with this Declaration, or any instrument or certificate otherwise executed in connection with this Declaration, or any amendments or modifications to any of the foregoing made at any time or times, hereto or hereafter, and each of the Owners and their respective successors and assignees waives, and does hereby waive, any such personal liability of such Constituent Partner.

~~Neither the negative capital account on any Constituent Partner in Declarant, nor any obligation of any Constituent Partner in Declarant to restore a negative capital account, or to contribute capital to Declarant, or to any other Constituent Partner in Declarant, shall at any time be deemed to be the property or an asset of Declarant, or any such other Constituent Partner, and none of the Owners not any of their respective successors or assignees shall have any right to collect, enforce or proceed against or with respect to any such negative capital account or partner’s obligation to restore or contribute.~~

~~Furthermore, each of the Owners and their respective successors and assignees releases the Declarant from, and does hereby waive, any obligations, debts, liabilities, claims, costs, expenses, damages, and losses, to the extent covered or reimbursed by insurance.~~

~~As used in this Article, a “Constituent Partner” in~~ \_\_

As used in this Article XVI, a “Constituent Partner” in or of Declarant shall mean any direct partner in or of Declarant and any ~~person or entity~~Person that is a partner in any partnership that, directly, or indirectly through one or more other partnerships, is a partner in Declarant.

16.2. Builder Performance. Neither Declarant, nor any “Affiliate” of Declarant, as hereinafter defined, are a co-venturer, partner, employer, stockholder, or affiliate of any kind of or with any Builder, nor is any Builder an agent of Declarant or an Affiliate of Declarant. Therefore, Declarant and Affiliates of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Unit or the construction of a structure on a Unit or otherwise. Neither Declarant nor any Affiliates of

Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Each Owner acknowledges and agrees that neither Declarant nor any Affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of Declarant ~~or~~ any Affiliate of Declarant or salesperson. "Affiliate", for purposes of this Article, means a partner, director, subsidiary, shareholder, officer, employee, agent, co-venturer, executor, personal representative, trustee, attorney, or a person or entity which (either directly or indirectly through one or more intermediaries), controls, is in common control with or is controlled by, another person or entity, and any person or entity that is a director, trustee, officer, employee, agent, partner, shareholder, subsidiary or attorney of any of the foregoing. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of (10%) or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

The Association, the Board, and any appointed committee, including any member thereof acting in such capacity, shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Unit or the construction of a structure on a Unit or otherwise. Neither the Association, the Board, nor any appointed committee, including any member thereof acting in such capacity, has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise. Each Owner acknowledges and agrees that neither the Association, the Board, nor any appointed committee, including any member thereof acting in such capacity, share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of the Association, the Board, or any appointed committee, including any member thereof acting in such capacity.

16.3. Excavation. All Owners are hereby placed on notice that the Association, the Declarant, any Affiliate of the Association or the Declarant, ~~and/or its~~including any agents, contractors, subcontractors, licensees and other designees, successors or assignees thereof, may be, from time to time, conducting excavation, construction and other activities on, within, or in proximity to the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, easement or other interest, and by using any portion of the Properties, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon or allow their children or other persons under their control or direction to enter upon, regardless of whether such entry is trespass or otherwise, any property within or in proximity to any portion of the Properties where such activities are being conducted, even if not

being actively conducted at the time of entry, such as at night or otherwise during non-working hours, (c) to hold the Association, the Declarant, any Affiliate of the Association or the Declarant and all of their, including any agents, contractors, subcontractors, licensees and other designees, successors and assignees, ~~shall thereof, harmless and not be liable but rather, shall be held harmless,~~ for any and all losses, damages, compensatory, consequential, punitive or otherwise, injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing.

16.4. Health, Safety, and Welfare. No provision of ~~the~~this Declaration, ~~the~~ Bylaws, or ~~the~~ Articles of Incorporation any other Governing Documents shall be interpreted as a representation or duty of the Declarant or the Association to provide for, protect or further the health, safety, and welfare of the Owners or any invitees, licensees, social guests, or trespassers of Owners.

## ARTICLE XVII

### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article XVII, collectively, “Bound Parties”, agree to encourage the amicable resolution of disputes involving the Properties or this Declaration, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims grievances, or disputes between such Bound Party and any other Bound Party involving, arising out of or relating to (a) the use, sale, purchase, construction, improvement, maintenance, operation or marketing of the Properties, (b) the interpretation, application, or enforcement of this Declaration, ~~the Bylaws, the Association rules, or the Articles~~ any other Governing Documents, (c) the administration, operation, management, use or maintenance of the Association and its assets, or (d) the alleged negligent design, maintenance, development, improvement, construction ~~or operation by, or operation by the~~ Association, the Board, the NCC, the MC, including any member thereof acting in such capacity, or by the Declarant of any portion of the Properties (collectively, “Claims”), except for those Exempt Claims described in Section 17.2~~;~~2, shall be resolved using the procedures set forth in Section 17.3~~;~~ in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

17.2. Exempt Claims. The following Claims (“Exempt Claims”) shall be exempt from the provisions of Section 17.3~~;~~:

(a) Any suit by the Association against the Bound Party to enforce the provisions of Article X (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order, or equivalent emergency equitable relief, and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of

Article XI (Architectural Standards) and Article XII (Use Restrictions); this Declaration or the provisions of any other Governing Documents;

(c) Any suit between Owners that does not include Declarant as a party thereto, if such suit asserts a Claim which would constitute a cause of action under the laws of the State of Texas or the United States but does not or would not include or involve any claim, right, privilege, membership, or defense based on or arising from ~~the~~this Declaration, ~~Bylaws, Articles~~ or ~~rules of the Association~~any other Governing Document;

(d) Any suit in which all indispensable parties are not Bound ~~parties~~Parties;

(e) Any suit which all the parties thereto agree to consider any Claim as an Exempt Claim;

(f) A construction defects ~~claim~~Claim which involves damages in excess of \$50,000.00 per Unit; and

(g) The submission to a court of any settlement as a settlement affecting a class if such a class settlement is reasonably necessary to resolve a dispute which would otherwise not be an Exempt Claim.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3~~2~~2, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 17.3 shall require the approval of the Association.

17.3. Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the “Notice”), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim;

2. The basis of the Claim (i.e., the laws, regulations, contract, provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

3. What Claimant wants Respondent to do or not do to resolve the Claim, and

4. That Claimant will meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the “Parties”) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice, or within such other period as may be agreed upon by the Parties (“Termination of Negotiations”), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent dispute resolution center, or such other independent agency providing similar services upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, however, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within fifteen (15) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand (“Settlement Demand”) to the Respondent. The Respondent shall make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

(d) Final Binding and Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within thirty (30) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit “D” or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from

any liability to Persons not a Party to the foregoing proceedings. Each party shall bear its own costs incurred prior to and during the proceedings.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the “Award”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas or other applicable jurisdiction where such judgment may be filed.

#### 17.4. Allocation of Costs Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 17.3-~~(a)~~, (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 17.3-~~(c)~~.

(b) Each Party shall bear its own costs, including the fees of its attorney or other representative, incurred after the Termination of Mediation under Section 17.3-~~(c)~~ and shall share equally in the costs of conducting the arbitration proceeding (collectively, “Post Mediation Costs”) except as otherwise provided in subsection 17.4-~~(c)~~.

(c) Claimant shall prepay to the arbitration panel the sum of \$1,000.00 to be applied toward payment of any Post Mediation Costs of the Parties, and, in addition, shall advance all arbitration costs until an Award is made. If a Respondent brings a Claim (i.e., a counterclaim) against a Claimant, the arbitration panel may, upon request, order such Respondent to advance a portion of the arbitration costs. If an Award is equal to or more favorable to a Claimant than such Claimant’s Settlement Demand, the arbitration panel may, in its discretion, add all or a portion of such Claimant's Post Mediation Costs to the Award, and allocate such Costs to the Respondents in such proportions as the arbitration panel deems appropriate. If an Award against a Respondent is equal to or less favorable to Claimant than such Respondent’s Settlement Offer to that Claimant, the arbitration panel may, in its discretion, also award to such Respondent its Post Mediation Costs, and allocate such Post Mediation Costs to the Claimants in such proportions as the arbitration panel deems appropriate.

17.5. Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration, in accordance with Section 17.3-~~2~~, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party, or if more than one non-complying Party, from all such Parties pro rata, all costs incurred in enforcing such agreement or Award, including, without limitation, attorney’s fees and court costs.

## ARTICLE XVIII

### GENERAL PROVISIONS

18.1. Duration.

(a) Unless terminated as provided in Section 18.1-~~(b)~~, this Declaration, as amended and restated, shall have perpetual duration. If Texas law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, the duration of this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of ~~Elizabeth II, Queen~~Charles III, King of England.

(b) Unless otherwise provided by Texas law, in which case such law shall control, this Declaration, as amended and restated, may not be terminated within ~~twenty (20)~~twenty-five (5) years of the date of recording without the consent of all Unit Owners and unanimous approval of the Board ~~of Directors~~. Thereafter, it may be terminated only by an instrument signed by the Owners of a majority of the total Units within the Properties and by the Board ~~of Directors~~, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

18.2. Amendment.

(a) Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing a majority of the total permissible votes of the Association, with such vote tabulation being at a properly noticed meeting called for the purpose of amendment. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Effective Date and Validity. To be effective, any amendment must be recorded in the Public Records.

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

18.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way effect other provisions or applications.

18.4. Litigation. No judicial, arbitration, or administrative proceeding shall be commenced or prosecuted by or on behalf of the Association unless approved by a majority of the Board ~~of Directors. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.~~

18.5. Intentionally Deleted.

18.5. Managing Agent. The Board has the authority, from time to time and at any time, to retain, hire, employ, or contract with any one or more Persons to provide management services to the Association, including discharge of such functions and duties of the Board, the NCC, the MC, or any Member thereof as the Board may specify (any such Person herein referred to as a "Managing Agent"). Any Managing Agent shall be retained, hired, employed, or contracted for on such terms and conditions as the Board in its sole good faith judgment may determine; provided, the Board shall retain the right in all cases as to any Managing Agent to remove the Managing Agent, with or without cause, upon not more than sixty (60) days written notice.

18.6. Use of the Words "Eagle's Bluff". No Person other than the Association shall use the words "Eagle's Bluff" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, the Declarant, the Country Club, Owners, or Builders may use the terms "Eagle's Bluff" in printed or promotional materials matter where such term is used solely to describe or specify that particular the location of facilities, property is located, or the Country Club within Eagle's Bluff. The Association also shall be entitled to use the words "Eagle's Bluff" in its name or as an assumed name for purposes of conducting the business of the Association. The Association's right to use the words "Eagle's Bluff" or any derivative as set forth herein is irrevocable and shall remain so long as the Association and its successors and assigns are responsible for the enforcement of this Declaration and such other rules regulating use of the Properties or the Common Areas as the Board may adopt; thereafter, the words "Eagle's Bluff" or any derivative may be used for the name of the community of Properties defined under this Declaration or any successor dedicatory instrument filed in the Public Records. Any use of the registered name "Eagle's Bluff" shall be in a manner in which the proprietary rights to such name are protected.

18.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, ~~the Bylaws, and the rules of the Association, and all other Governing Documents.~~ Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

18.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to their Unit shall give the Board at least seven (7) days prior written notice of the name and address of the potential purchaser or transferee, the date of such potential transfer or title, and such other information as the Board may reasonably require. The transferor shall continue to be ~~jointly and severally~~ responsible ~~with the transferee~~ for all obligations of the Owner of the Unit, including

~~assessment~~Assessment obligations, until ~~the date upon which such notice is received by the Board,~~  
~~notwithstanding the actual~~ transfer of title to the applicable Unit.

18.9 Prohibition Against Discrimination, Discrimination by race, color, religion, age, sex or national origin in the administration, interpretation, application, and enforcement of this ~~the Bylaws, the Association rules or the Articles~~Declaration or any other Governing Documents shall be prohibited.

\_\_\_\_\_

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18.10 Amended and Restated Declarations. This Declaration replaces, amends, modifies, and supersedes the First Amended Declaration, as amended, in its entirety, effective immediately upon the filing of this Declaration in the Public Records and all prior declarations of covenants, conditions, restrictions, and easements of the First Amended Declaration and any amendments thereto shall be deemed terminated and of no further force or effect.

18.11 Conflicts in Governing Documents. In the event of any conflict in the Governing Documents which cannot be reasonably reconciled after application of rules of interpretation as provided herein or by law, this Declaration shall control over any other Governing Documents, and all other Governing Documents shall control in the following order of priority: (i) Design Guidelines; (ii) Rules and Regulations; (iii) Articles of Incorporation; (iv) Bylaws; (v) Board and Member resolutions; and (vi) all others.

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DRAFT



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Notary Public, State of Texas

~~My Commission Expires:~~ \_\_\_\_\_

DRAFT

[Association Certification]

The undersigned President and Secretary of Eagle’s Bluff Community Association, Inc., a Texas non-profit corporation, hereby certify the foregoing Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Eagle’s Bluff was approved by the affirmative vote of current Owners of Units representing a majority of the total permissible votes of the Association, with such vote tabulation being at a properly noticed meeting called for the purpose of amendment, as attested to and evidenced by the signatures of the undersigned hereto, to become effective upon recording in the Official Public Records of Cherokee County, Texas.

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

\_\_\_\_\_  
Randy Hopmann, President

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

\_\_\_\_\_  
Rich Miles, Secretary

STATE OF TEXAS §  
\_\_\_\_\_  
§  
COUNTY OF CHEROKEE §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Randy Hopmann, President of Eagle’s Bluff Community Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
\_\_\_\_\_  
§  
COUNTY OF CHEROKEE §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, Secretary of Eagle’s Bluff Community Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

[Declarant Signature and Acknowledgement Page]

IN WITNESS WHEREOF, the undersigned, being the authorized representative of Eagles Bluff Club, LLC, a Texas limited liability company, which is the Declarant, as that term is defined in the foregoing Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Eagle’s Bluff, does hereby approve and consent to and join in said Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Eagle’s Bluff instrument.

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
DECLARANT:  
\_\_\_\_\_  
EAGLES BLUFF CLUB, LLC,  
\_\_\_\_\_  
a Texas limited liability company  
  
\_\_\_\_\_  
By:  
\_\_\_\_\_  
Name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_

STATE OF TEXAS §  
§  
COUNTY OF CHEROKEE §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, Secretary of Eagles Bluff Club, LLC, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

**Legal Description of Properties**

[To Be Inserted/Attached]

DRAFT

**EXHIBIT “B”**

**Legal Description of Country Club**

[To Be Inserted/Attached]

DRAFT

## **EXHIBIT "C"**

### **Use Restrictions**

—The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article XII of the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or sales office for any real estate broker retained by the Declarant to assist in the sale of property described in Exhibit "A", offices for any property manager retained by the Association or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages or the public parking lot(s) which are part of the Common Area (and for which a parking charge ~~will~~may be set and collected by the Association and paid by any Owner occupying such a space on such lot(s)); provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit of the Common Areas.

(b) Raising, breeding or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law.

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units.

(d) Any activity which violates local, state, or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit.

(f) Any noxious or offensive activity which is the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units.

(g) Outside burning of trash, leaves, debris, or other materials, ~~except during the normal course of constructing a dwelling on a Unit.~~

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes.

(i) Use and discharge of firecrackers and other fireworks, ~~except for special days or events designated by the Association (i.e., July 4<sup>th</sup>, New Year's Eve).~~

(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site.

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pickups, and then only in approved containers.

(l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(m) Subdivision of a Unit into two or more Units or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns.

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams or other bodies of water within the Properties, except that fishing from the shore shall be permitted with appropriate licenses and the owner of the Country Club, its successors and assigns shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas. Declarant may draw water from lakes, ponds and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to the Properties.

(o) Operation of a timesharing, fraction-sharing, or similar program with prior Board approval whereby the right is exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, ~~except that Declarant and its assigns may operate such a program with respect to Units which it owns.~~

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge.

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved by the New Construction Committee.

(r) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall 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: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

(s) The removal of any tree, except for diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons, with a caliper 3 inches or more, unless approved by the New Construction Committee or the Modification Committee, as applicable, pursuant to Article XI. The Board may require an Owner replace any tree removed without authorization within six (6) months of such unauthorized tree removal.

(t) Oil, gas or mineral exploration, drilling, boring, development, refining, quarrying, or mining operations and all construction and equipment incident thereto, including, but not limited to, oil or gas wells, related equipment or facilities, excavations for minerals, and mine shafts.

3. Prohibited Conditions and Activities. The following shall be prohibited within the Properties:

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

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

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands areas prone to saturation, canals, or other ground or surface waters within the Properties, except that Declarant, the owner of the Country Club, and the Association shall have the right to draw water from such sources.

(d) Capturing, trapping, or killing of wildlife within the Properties, except in circumstances posing an imminent threat regarding damage to property or the safety of persons using the Properties.

(e) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands areas prone to saturation, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution: (excluding any activities of or related to any construction within or general maintenance and upkeep of the Areas of Common Responsibility or Common Areas as authorized and deemed necessary by the Declarant or the Board).

(f) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee pursuant to Article XI.

(g) Operation of automotive or motorized vehicles on streets and public rights-of-way within the Properties or operation of automotive or motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes on the Country Club property and on streets and public rights-of-way within the Properties, provided same are operated in a safe and prudent manner: and, with respect to a golf cart, a person younger than sixteen (16) years of age may not operate a golf cart without adult supervision (at least one adult passenger in same golf cart).

(h) Satellite dishes and antennas for the reception or transmission of video and wireless signals which are larger than forty (40) inches in diameter require approval of the Modification Committee and installations of such equipment must meet basic safety requirements.

(i) All garbage or recycle containers shall be stored in a garage or screened area which visually screens the containers from the street, all neighbors, and the golf course. The screen design must be approved by the Modification Committee and be consistent with Article XI and the Design Guidelines.

(j) Swing sets, spa/swimming pools, docks, piers, or other such recreational equipment may not be erected or installed on any Unit without prior written approval of the New Construction Committee or the Modification Committee, as applicable. The approval and installation of such structures shall be consistent with Article XI and the Design Guidelines, including required setbacks from adjacent properties. The structure may not exceed (15) feet in height and not impair neighbor's overall view. Colors should be limited to earth tones or dark subdued colors that minimize visibility. Landscaping may be required depending on location's proximity to the golf course, neighbors, or streets. All such structures must be on the homeowner's property and maintained in good condition at all times. Residents are encouraged to remove the structures once their children reach an age where there is minimal use or no use.

(k) Artificial vegetation or other artificial landscaping conditions (e.g. statues or other lawn ornaments) and all fences require approval of the New Construction Committee or Modification Committee, as applicable. The approval and installation of such items shall be consistent with Article XI and the Design Guidelines.

(l) Above ground swimming pools, portable ~~por~~ permanently installed basketball hoops, trampolines, clotheslines, tents, tanks, trailers, temporary buildings, window or wall air conditioning units, walls, or animal pens are prohibited.

(m) Firewood may be stored on resident's property, behind the main structure in relation to the street fronting the residence. The storage site must comply with all setback requirements. The amounts of wood stored must be limited to an orderly stack not exceeding eight (8) feet long x four (4) feet wide x four (4) feet high. Any covering must be either brown or black. Bluff lot homes may store a larger stack of firewood in the wooded area of their property behind their home, if it does not affect a neighbor's view. When selecting a site for the storage of firewood, consideration should be given to neighboring properties.

~~4. Leasing of Units. "Leasing" as used in this provision shall mean the regular, exclusive occupancy of a Unit by any person, other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner of the Unit to be leased not less than ten (10) days prior to the effective date of the lease. The Owner must make available to the lessee copies of the Declaration, By Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing in a manner consistent with Section 12.4(f) of the Declaration.~~

## **EXHIBIT "D"**

### **Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all of the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all of the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one (1) neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.
3. If the arbitration panel is not selected under Rule 2 above within 45 days from the date of the Arbitration Notice, Claimant may notify the chapter of The American Arbitration Association whose offices are closest to the Properties, or such other independent body providing arbitration services, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator, and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.
5. The Appointed Neutral or Neutral, as the case may be (hereinafter, the "Arbitrator"), shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the appropriate amount of time which should pass in order to determine the Claimant's damages accurately.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.
7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine whether all indispensable parties are bound Parties.
8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.
10. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional

evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no post-hearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one Arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

16. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during the arbitration, the Arbitrator may retain the services of an independent licensed professional who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator. The following is a nonexclusive list of the types of professionals that the Arbitrator may consider retaining for specific purposes:

(a) an engineer or architect for issues concerning the design, improvement, development, placement, maintenance, operation, siting, construction, furnishing or equipping of the Properties;

(b) an attorney for issues concerning the legal effect or validity of any of the Claims (including without limitation, questions about the legal standards to be applied as to standing, privity of contract, statute of limitations or laches, indispensability of parties, failure to maintain, failure to mitigate damages, existence or non-existence of duty, foreseeability, comparative or contributory negligence, the effect of disclaimers or the interpretation of the Declaration as it applies to the Claims, and the reasonableness of attorney's fees); and

(c) a certified public accountant who is a member of the Community Associations Institute for issues concerning Association finances including, without limitation, the Declarant's payment of assessments, any deficit funding obligations, the handling of reserves and the keeping of accounting records.

The Parties hereby instruct the Arbitrator to render such temporary decisions or order such temporary relief as may be necessary to prevent material lapses in the progress of development of any part of the Properties.