

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
HORIZONTE RESIDENTIAL**

**Basic Information**

**Date:** September 15, 2022  
**Declarant:** HORIZONTE RESIDENTIAL DEVELOPERS, LLC  
**Declarant's Address:** 6301 Northern Pass Ste 7 El Paso, TX 79912  
**Property Owners Association:** Horizonte Residential Homeowners Association, Inc.,  
a Texas nonprofit corporation  
**Property Owners Association's Address:** 6301 Northern Pass Ste 7 El Paso, TX 79912

**Property:** **Tract 1:** A portion of Tract 5A, Block 8, Upper Valley Surveys, City of El Paso, El Paso County, Texas, according to the map or plat recorded in Volume 65, Page 14, Plat Records of El Paso County, Texas and being more particularly described by Metes and Bounds in Exhibit "A" attached hereto.

**Tract 2:** A 2.29 acre tract of land out of Tract 5A Block 8, UPPER SURVEYS VALLEY, in the City of El Paso, El Paso County, Texas according to the Resurvey done by El Paso County, Texas for taxes purposes and said portion being a portion of that certain 9.09 acre tract of land in Warranty Deed recorded under Clerk's Document No. 20140025489, Official Records of El Paso County, Texas, said 2.29 acre tract being more particularly described by Metes and Bounds in Exhibit "B" attached hereto. (the Plat)

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by HORIZONTE RESIDENTIAL DEVELOPERS LLC, a Texas limited liability Company (the "Declarant"), and is as follows:

**RECITALS:**

- A. This Declaration is filed with respect to the Property. Declarant is the owner of the Property.
- B. Declarant desires to create and carry out a uniform plan for the development, improvement, preservation of values, and sale of the Property.
- C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Common Facilities; and administering and enforcing the covenants and restrictions and collecting and disbursing the Assessments and changes hereinafter created in these Declarations.
- D. By the filing of this Declaration, the Declarant serves notice that the Property will be subjected to the terms and provisions of this Declaration.

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

## **ARTICLE 1 DEFINITIONS**

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

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

"Architectural Control Committee" or "ACC" means the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot. As provided in Article 9 below, the Declarant acts as the ACC and the ACC is not a committee of the Association until the Declarant has assigned its right to appoint and remove all ACC members to the Association in a Recorded and written instrument.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Assessment Unit" has the meaning set forth in Section 6.07(b).

"Association and/or "Property Owners Association " means Horizonte Residential Homeowners Association, Inc., a Texas non-profit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in Article 3 and elsewhere in this Declaration.

"Board" means the Board of Directors of the Association.

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

"Bylaws" means the Bylaws of the Association as adopted and as amended from time to time

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

"Common Area" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of the Association or its Members. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument any property or facilities being held by the Declarant for the benefit of the Association. Upon the filing of such designation, the property or facilities identified therein will be considered Common Area for the purpose of this Declaration. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

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

"Declarant" means HORIZONTE RESIDENTIAL DEVELOPERS, LLC, a Texas, a Texas limited liability company, its successors or assigns: provided that any assignment(s) of the rights of HORIZONTE RESIDENTIAL DEVELOPERS, LLC, a Texas, a Texas limited liability company, as Declarant, must be expressly set forth in writing and Recorded.

Declarant enjoys special privileges to help protect its investment in the Property. These special rights are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has sold and settled all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items placed on any Lot adopted pursuant to Section 7.02(c), as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. Declarant may adopt the initial Design Guidelines. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines.

"Development Period" means the period beginning on the date when this Declaration has been Recorded and ending at such time as Declarant no longer owns the Property, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

"Disregarded Resident" means any Resident who is either: (i) an employee of the Association, provided that such Person performs substantial duties related to the management of the Association or maintenance of any Common Area; or (ii) necessary to provide reasonable accommodation to disabled Residents.

"Dwelling" means any building on a Lot designed and intended for use and occupancy as a single-family residence. Only one (1) Dwelling per Lot shall be permitted.

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

"Improvement" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

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

"Majority" means more than half.

"Manager" has the meaning set forth in Section 6.05(h).

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

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

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

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

interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

"Person" shall mean any individual or entity having the legal right to hold title to real property.

"Plat" means the Plat of the Property recorded in Volume 65, Page 14, of the real property records of El Paso County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Property" means the property described in the Basic Information section of this Declaration subject to such additions thereto and deletions therefrom as may be made pursuant to this Declaration.

"Record, Recording, Recordation and Recorded" means in the Official Public Records of El Paso County, Texas.

"Resident" means an occupant of a Lot, regardless of whether the person owns the Lot.

"Restrictions" means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Community Manual, Rules and Regulations, or in any rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. See Table 1 for a summary of the Restrictions.

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

"Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Structure" means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

## **ARTICLE 2 IMPOSITION OF COVENANTS**

- 2.1 Declarant imposes the Covenants on the Subdivision.** All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.
- 2.2** The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.
- 2.3** Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

## **ARTICLE 3 PLAT AND EASEMENTS**

**3.01** The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

**3.02** An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

**3.03** Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

**3.04** Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

#### **ARTICLE 4 USE RESTRICTIONS**

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

##### **4.01 General.**

**a) Conditions and Restrictions.** All Lots within the Property will be owned, held, encumbered, used, occupied and enjoyed subject to the Restrictions.

**b) Ordinances.** Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with such ordinances and regulations. Please be advised that the Restrictions do not purport to list or describe each restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations or encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

**c) Changes.** The Restrictions are subject to change from time to time. By owning or occupying a Lot, Owners agree to remain in compliance with the Restrictions, as they may change from time to time.

##### **4.02 Single-Family Residential Use.**

**Residence Buildings and Garages.** No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than a single-family residence, and no structure shall be occupied or used until the exterior construction thereof is completed. Each single-family residence situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2) or more than four (4) automobiles. No such detached garage shall have more than two (2) stories. No carport shall be built, placed, constructed or reconstructed on any Lot. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them. All buildings and other structures shall further comply with the Design Standards.

**Single Family Residential Use.** Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. As used herein the term "single family residential purposes" shall refer not only to the architectural design of the dwelling but also to the permitted number of inhabitants, which shall be limited to a single nuclear family, as defined below. No multifamily dwellings may be constructed on any portion of Lot, and no building, out building or portion thereof shall be constructed for income property, such that tenants would occupy less than the entire Lot and improvements thereon. For purposes of these restrictions, a "single nuclear family" shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one person who is not so related as a single household unit and one household employee of such household unit. It is not the intent of Declarant to exclude from a Lot any individual who is

authorized to remain by state or federal law. If it is found that this definition, or any other provision contained in these Declarations is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original Section as allowed by law.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of a Lot, except an Owner or Resident may conduct business activities within a Dwelling so long as: (i) such activity complies with all the applicable zoning ordinances (if any); (ii) participation in the business activity is limited to the Owner(s) or Resident(s) of a Dwelling; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business within the Property, sound, or smell from outside the Dwelling; (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of Dwellings in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Property as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the Dwelling nor Lot will be considered open to the public. 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: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence 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 Homebuilder.

Notwithstanding any provision in this Declaration to the contrary, until the earlier to occur of expiration or termination of the Development Period, or forty (40) years from the date this Declaration is Recorded:

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

b) Declarant and/or its licensees will have an access easement over and across the Common Area for the purpose of making, constructing and installing Improvements to the Common Area.

**4.03 Rentals.** Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided, that all rentals must be for terms of at least twelve (12) months. All leases shall be in writing. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of then (10) days after the effective date of the lease. Owners shall be responsible for tenants/occupants' actions or misconduct and adherence to the Restrictions and any Rules and Regulations of the Association.

**4.04 Subdividing.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the ACC.

**4.05 Hazardous Activities.** No activities may be conducted on or within the Property and no Improvements constructed on any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be

discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

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

**4.07 Mining and Drilling.** No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the ACC which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by any applicable regulatory authority.

**4.08 Noise.** No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

**4.09 Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep more than four (4) cats and dogs, in the aggregate, of which no more than two (2) can be dogs, unless otherwise approved by the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's Dwelling, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property. Owners shall not allow any pets, including, but not limited to, cats, to roam within the Association grounds.

**4.10 Rubbish and Debris.** No rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must always be kept in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

**4.11 Trash Containers.** Trash containers and recycling bins must be stored in one of the following locations:

- a) inside the garage of the Dwelling constructed on the Lot; or
- b) behind the Dwelling or fence constructed on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot.

The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

**4.12 Maintenance.** The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this Section 4.12 has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Board, in its sole discretion:

- a) Prompt removal of all litter, trash, refuse, and wastes.
  - b) Lawn mowing of the rear yard.
  - c) Tree and shrub pruning of the rear yard.
  - d) Watering of the rear yard.
  - e) Keeping exterior lighting and mechanical facilities in working order.
  - f) Keeping front, side and rear yard lawn and garden areas alive, free of weeds, and attractive.
  - g) Keeping sidewalks and driveways in good repair.
  - h) Complying with all government, health and police requirements.
  - i) Repainting of Improvements.
  - j) Repair of exterior damage, and wear and tear to Improvements.

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

- a) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- b) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- c) an antenna that is designed to receive television or radio broadcast signals.

(collectively, (a) through (c) are referred to herein as the "Permitted Antennas") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

**4.14 Location of Permitted Antennas.** A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna shall be



installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

- a) Attached to the back of the Dwelling constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- b) Attached to the side of the Dwelling constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirecTV or Dish satellite dishes, are permitted, HOWEVER, Owners are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the ACC from time to time. Please contact the ACC for the current rules regarding installation and placement,

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

- a) signs which are permitted pursuant to the Design Guidelines or rules adopted by the ACC.
- b) signs which are part of Declarant's overall marketing, sale, or construction plans or activities for the Property.
- c) one (1) temporary "For Sale" or "For Lease" sign placed on the Lot. The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot.
- d) political signs may be erected provided the sign: (i) is erected no earlier than the 60th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited.
- e) a religious item on the entry door or door frame of a Dwelling (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the Dwelling, does not exceed twenty-five (25) square inches; and
- f) a "no soliciting" and "security warning" sign near or on the front door to their Dwelling, provided, that the sign may not exceed twenty-five (25) square inches.
- g) no flags other than flags of the State of Texas and/or the United States of America can be displayed on any Lot.

**4.16 Temporary and other Structures.** No structure of a temporary character, trailer, mobile, modular or pre-fabricated home, tent, shack, barn, or any other structure or building, other than the residence to be built thereon and such storage facilities as are permitted under applicable city ordinances, shall be placed on any Lot, either temporarily or permanently and no residence house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location; except however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain, such facilities in and upon the Properties as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements in the Properties. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office.

Declarant and builders shall also have the temporary right to use a residence situated in a Lot as temporary office or model home during the period of and in connection with the construction and sales operations in the Properties, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his, her, or its residence in the Properties.

**4.17 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. No compost piles, facilities for hanging, drying or airing clothing or household fabrics, lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash may be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Property. Motorcycles shall be operated in a quiet manner.

Parking of commercial vehicles or equipment, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than: (i) in enclosed garages; and (ii) behind a fence so as to not be visible from any other portion of the Property is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling.

Notwithstanding the foregoing, sales trailers or other temporary structures expressly approved by the ACC shall be permitted.

**4.18 On Street Parking.** Unless otherwise approved by the Declarant or the Board, no vehicle may be parked on any road or street within the Property unless in the event of an emergency. "Emergency" for purposes of the foregoing sentence shall mean an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended by a licensed operator for more than thirty (30) consecutive minutes. No vehicle may be parked in any Common Area at any time. Under no circumstances or conditions shall any automobile or other vehicle, motorcycle, boat, recreational vehicle, be parked on a non-paved portion of any Lot.

**4.19 Compliance with Restrictions.** Each Owner, his or her family, Residents of a Lot, tenants and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the ACC, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one half percent (1.5%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

**4.20 Liability of Owners for Damage to Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in Section 6.10 of this Declaration.

**4.21 No Warranty of Enforceability.** Declarant makes no warranty or representation as to the present or future validity or enforceability of the Restrictions. Any Owner acquiring a Lot in reliance on one or more of the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

**4.22 Playscapes and Sports Courts.** Playscapes and Sport Courts are permissible at the sole discretion of the ACC. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties, which such siting and screening must be approved in advance and in writing by the ACC. Sport Courts may not be lighted or enclosed with netting. Tennis courts are not permitted.

**4.23 Decorations and Lighting.** Unless otherwise permitted by another section herein, no decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the Dwelling or on the front yard or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Customary seasonal decorations for holidays are permitted without approval by the ACC but shall be removed within thirty (30) days of the applicable holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding Dwellings or yards. No mercury vapor, sodium or halogen light shall be installed on any Lot which is visible from any street unless otherwise approved by the ACC.

**4.24 Drones.** No drones are allowed to be flown into other properties.

**4.25 Garage Sales.** Garage sales are limited to two (2) per year per Lot.

**4.26 Speed limit.** The speed limit inside the subdivision is 10 mph.

**4.27 Swings.** No swings, swing sets, sandboxes, trampolines or exercise equipment is allowed in the front or side yard of any Lot.

## **ARTICLE 5 CONSTRUCTION RESTRICTIONS**

**5.01 Approval for Construction.** Unless prosecuted by the Declarant, no Improvements shall be constructed upon any Lot without the prior written approval of the ACC.

**5.02 Masonry Requirements.** Each Dwelling must comply with masonry requirements, if any, established by Applicable Law.

**5.03 Minimum Square Footage.** The ground floor of the main structure, exclusive of one-story open porches and garages shall not be less than 2200 square feet for a one-story dwelling, and the combined living area of a one and one-half or two-story dwelling shall not be less than 2,200 square feet for both upstairs and downstairs, provided that that in no event shall the ground floor on a one and one-half or two-story dwelling on these lots shall be less than 1800 square feet. The Architectural Control Committee shall be empowered to grant individual waivers not to exceed 10% of the above minimum area requirements, provided the proposed dwelling shall in general reflect credit to the neighborhood.

**5.04 Garages.** Each Dwelling constructed upon a Lot shall have a private garage for not less than two (2) automobiles. The location, orientation and opening of each garage to be located on a Lot shall be approved in advance of construction by the ACC. All garages shall be maintained for the parking of automobiles or

motorcycles, if any, may not be used for storage or other purposes which preclude its use for the parking of automobiles, and no garage may be permanently enclosed or otherwise used for habitation.

**5.05 Fences; Sidewalks.** All fences and walls shall comply with all Applicable Law. Unless otherwise approved by the ACC, no fence, wall or hedge will be erected or maintained on any Lot nearer to the street than the front elevation of the Dwelling constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices. The ACC will have the sole discretion to determine the front elevation of the Dwelling for the purpose of this Section. Fences constructed on corner lots may be installed one (1) foot from the sidewalk and/or curb along the side yard adjacent to the street provided that such fencing complies with applicable governmental ordinances. All perimeter fences must be approved in advance by the ACC. All such perimeter fences will be four (4) feet in height unless otherwise approved by the ACC. No chain-link, metal cloth or agricultural fences may be installed or maintained on the Lot. If required by the Plat, the Owner of each Lot shall construct, at such Owner's sole cost and expense and prior to occupying any Improvement, a sidewalk on such Owner's Lot, located and designed in conformance with the Plat.

**5.06 Building Restrictions.** All building materials must be approved in advance by the ACC, and only new building materials shall be used for constructing any Improvements. All projections from a Dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the ACC, match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements. No lot shall be used except for residential purposes. No structure shall be erected, altered, or placed or be permitted to remain on any of said Lots, or any part thereof, other than one detached single-family dwelling not to exceed two stories in height, together with a private garage or carport and other customary appurtenances to private dwellings. No more than one residential structure shall be erected on any Lot or site shown on the Plat of the Property.

**5.07 Alteration or Removal of Improvements.** Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the ACC.

**5.08 Drainage.** There shall be no interference with the established drainage patterns over any of the Property, including the Lots, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in advance by the ACC. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Lots.

**5.09 Building Location.** No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines required for these lots as set in the City of El Paso Zoning Ordinance. In any event, no building shall be located on any lot nearer than 25 feet from the front lot line, however, in no event shall the garage be located closer than 25 feet from the property line. No building shall be nearer than 10 feet from the side streets lines; nor nearer than 8 feet to interior lot lines except, however, of setback waivers granted by the City of El Paso for this subdivision and/or that a garage located at least 65 feet from the property line may be placed not nearer than 3 feet from the lot line of interior lots. For the purposes of this covenant, boxed and bay windows, eaves, steps, and open porches or stoops, and projections of fireplaces and windows shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

**5.10 Lot Area and Width.** No dwelling shall be erected or placed on any lot having an average width of less than 45 feet, nor shall any dwelling be erected or placed on any lot having an area of less than four thousand five hundred (4,500) square feet.

**5.11 On-Site Requirements.** All lots within subdivision, must all times comply with the following:

No lot owner or its successors and assigns may fill or change the grading of a lot or permit a lot to be filled or changed to an elevation greater than established by permanent elevation markers for the lot. Any grading of a lot related to a new expansion or renovation of a residential structure must be reviewed and approved by the Building

Services Department of the City of El Paso for compliance with Section 19.16060 of the City Code.

The City of El Paso and the El Paso Water Utilities-PSB are hereby granted a perpetual easement for ingress and egress on and across each lot for the purposes of inspecting and measuring the lot elevation and the permanent elevation markers.

**ARTICLE 6  
HORIZONTE RESIDENTIAL HOMEOWNERS ASSOCIATION, INC.**

**6.01 Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The purpose of the Association in general shall be to provide for and promote the health, safety, and welfare of the Members, the integrity of the neighborhood, to collect the Assessments permitted in these Declarations, and to administer the funds so collected, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Facilities in the Subdivision and such other purposes as are stated in the Certificate of Formation consistent with the provisions of these Declarations and all Supplemental Declarations.

**6.02 Membership.**

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

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

- 1) The right of the Declarant to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion.
- 2) The right of the Association to suspend the right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;
- 3) The right of the Association and Declarant (during the Development Period) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose.
- 4) The right of the Association and Declarant (during the Development Period) to grant easements or licenses over and across the Common Area.
- 5) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area.
- 6) The right of the Declarant, during the Development Period, and the Board thereafter, to promulgate Rules and Regulations regarding the use of the Common Area and any Improvements thereon; and
- 7) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

**6.03 Governance.** The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. Notwithstanding the foregoing provision or any

provision in this Declaration to the contrary, until one hundred and twenty (120) days after the 2<sup>nd</sup> anniversary of the date this Declaration is Recorded, Declarant will have the sole right to appoint and remove all members of the Board. Within one hundred and twenty (120) days after the 2<sup>nd</sup> anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

**6.04 Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by Section 6.03) and on all other matters to be voted on by the Members will be calculated as set forth below.

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

b) In addition to the votes to which Declarant is entitled, for everyone (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

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

**6.05 Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

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

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

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

d) Assessments. To levy and collect assessments.

e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in Article 8 hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction

or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 6.05(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

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

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

- (i) Parks, parkways or other recreational facilities or structures.
- (ii) Roads, streets, sidewalks, signs, streetlights, walks, driveways, trails and paths.
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes.
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines;  
and/or
- (v) Any similar Improvements or facilities.

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

h) Manager. To retain and pay for the services of a person or firm (the "Manager"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon one hundred eighty (180) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.

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

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

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

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

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

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

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

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

## **ARTICLES 7 INSURANCE**

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



controlled by Declarant.

**7.02 Restoration.** In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1.5%) per month will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

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

## **ARTICLE 8 COVENANT FOR ASSESSMENTS**

### **8.01 Assessments.**

a) Established by Board. Assessments established by the Board pursuant to the provisions of this Article will be levied against each Lot in amounts determined pursuant to this Article. The total amount of Assessments will be determined by the Board pursuant to this Article.

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

**8.02 Regular Annual Assessments.** Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers

under this Declaration, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such regular Assessments will be due and payable to the Association annually on or before the first day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.

**8.03 Special Assessments.** In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units.

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

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

**8.06 Owner's Personal Obligation; Interest.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1-½ % per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

**8.07 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in Section 8.05 and interest as provided in Section 8.06 hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to Section 8.01(b) above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens; (ii) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question and (iii) home equity loans or home equity lines of credit which are secured by a

second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the officers of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

#### **8.08 Fines and Damages Assessment.**

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

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

of assessments.

**8.09 Declarant Assessments.** Notwithstanding anything in the Declaration of Covenants, Conditions and Restrictions for the Village at Westside Crossing, no Assessments will be levied upon Lots owned by Declarant.

## **ARTICLE 9 ARCHITECTURAL CONTROL COMMITTEE**

Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC.

**9.01 Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

### **9.02 Architectural Control Committee.**

a) Composition. The ACC will be composed of not more than three (3) persons (who need be Members or Owners with the exception of the Declarant or any person appointed by the Declarant) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration of twelve (12) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration of twelve (12) months after the expiration of the Development Period.

b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

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

c) Design Guidelines. Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. Upon expiration or termination of the Development Period, the ACC will have

the power from time to time, to amend, modify, or supplement the Design Guidelines; provided, however, that any amendment to the Design Guidelines during the Development Period must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

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

e) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

f) Variances. The ACC may grant variances from compliance with any of the provisions of the Design Guidelines or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC. Each variance must also be Recorded; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, including the Declarant or its designee, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines. The Declarant may grant a variance or waiver of a restriction or Rule during the Development Period.

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

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

i) Non-Liability of Committee Members. NETIHER DECLARANT, THE ACC, NOR ANY PARTNER,

EMPLOYEE, DIRECTOR, OFFICER, COMMITTEE MEMBER, OR AGENT WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ACC'S DUTIES UNDER THIS DECLARATION.

#### **ARTICLE 10 MORTGAGE PROVISIONS**

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

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

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

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

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

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

#### **ARTICLE 11 GENERAL PROVISIONS**

**11.01 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns in perpetuity.

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

**11.03 Enforcement.** The Association and the Declarant will have the right to enforce, by a proceeding at Law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

**11.04 Higher Authority.** The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

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

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

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

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

**11.09 No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part will be permitted, nor will any person acquiring any interest in the Property or any part seek any such judicial partition unless the Property in question has been removed from the provisions of this Declaration. This Section will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

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

**11.11 View Impairment.** Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the Declarant, the ACC, nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

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

**11.13 Amendments.** The Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. Notwithstanding anything contained in these Covenants to the contrary, , these Covenants may be amended and/or changed in part as follows:

- a) **By Declarant.** The Declarant shall have and reserves the complete and unfettered right and privilege at any time and from time to time, without the joinder or consent of any other party to amend these Declarations by any instrument in writing duly signed, acknowledged, and filed for record for any purpose prior to the Conversion Date.
- b) From and after conclusion of the Development Period these Covenants may be amended or changed upon the express written consent of the Board and at least fifty-one percent (51%) of the Owners of Lots within the Subdivision.

## **ARTICLE 12 EASEMENTS**

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

**12.02 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

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



**12.04 Subdivision Entry and Fencing Easement.** Declarant reserves for itself and the Association, an easement over and across the Property for the installation, maintenance, repair or replacement of certain subdivision entry facilities and fencing which serves the Property. Declarant will have the right, from time to time, to Record a written notice which identifies the subdivision entry facilities fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities and/or fencing as Common Area by Recorded written notice. The exercise of the easements reserved hereunder will not extend to permitting entry into any Dwelling, nor will it unreasonably interfere with the use of any Lot or Dwelling, or Improvement constructed thereon.

**12.05 Landscape and Monument Sign Easement.** Declarant hereby reserves for itself and the Association, an easement over and across the Property for the installation, maintenance, repair or replacement of a monument sign which serves the Property. Declarant will have the right, from time to time, to Record a written notice, which identifies those portions of the Property to which the easement reserved hereunder applies. Declarant designates the easement areas reserved hereunder as Common Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any Dwelling, nor will it unreasonably interfere with the use of any Lot or Dwelling, or Improvement constructed thereon.

**12.06 Declarant as Attorney in Fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development Period, whichever occurs first. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the Common Area, any such agreements, documents, amendments or supplements to the Restrictions which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

## **ARTICLE 13 DEVELOPMENT RIGHTS**

**13.01 Development by Declarant.** It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots and Common Areas and to subdivide with respect to any of the Property pursuant to the terms of this Section 13.01, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

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

13.02 until two (2) years after expiration or termination of the Development Period.

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

a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of El Paso County wherein this Declaration is Recorded;

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

c) A legal description of the added land.

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

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

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

c) A legal description of the withdrawn land.

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

**13.06** Notwithstanding anything contained herein or in any conveyance instrument to the contrary, Declarant reserves for itself the exclusive right to negotiate, contract for, and execute agreements for the use and/or forbearance of all rights to water, of any kind and nature, arising out of any of the real property located in HORIZONTE RESIDENTIAL to which any owner of any lot (or any portion thereof) might be entitled (the "Irrigation Rights") and all water rights are retained by HORIZONTE RESIDENTIAL DEVELOPERS, LLC. The rights reserved in the preceding sentence by HORIZONTE RESIDENTIAL DEVELOPERS, LLC are collectively the "Executory Rights". HORIZONTE RESIDENTIAL DEVELOPERS, LLC shall be entitled to, and further reserves the right to all proceeds of any kind or character attributable to the Irrigation Rights or the use or forbearance of the Irrigation Rights ("the Revenues"). In the event the revenues are ever paid to anyone other than HORIZONTE RESIDENTIAL DEVELOPERS, LLC, that person shall hold such Revenues in the trust for the benefit of HORIZONTE RESIDENTIAL DEVELOPERS, LLC, and shall pay the same to HORIZONTE RESIDENTIAL DEVELOPERS, LLC, upon demand.

**DECLARANT:**

**HORIZONTE RESIDENTIAL DEVELOPERS, LLC,  
a Texas limited liability company**

By: \_\_\_\_\_  
Uriel Miramontes Garcia, its Manager

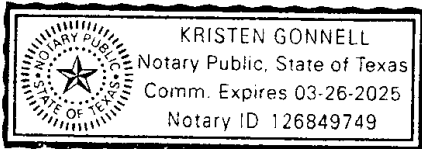
By: \_\_\_\_\_  
Jorge Adan Miramontes Garcia, its Manager

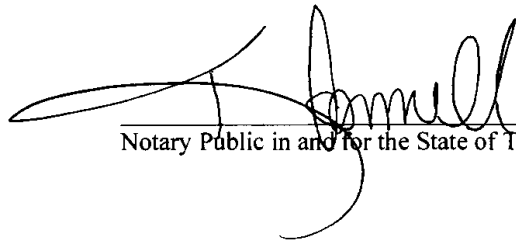
STATE OF TEXAS

§  
§  
§

COUNTY OF EL PASO

This instrument was acknowledged before me on this 16 day of September, 2022 by Uriel Miramontes Garcia and Jorge Adan Miramontes Garcia, as managers of HORIZONTE RESIDENTIAL DEVELOPERS, LLC, on behalf of said limited liability company.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

**Exhibit "A"**

DESCRIPTION OF A 6.804 (296,396 SQ. FT.) ACRE TRACT OF LAND, SITUATED IN EL PASO COUNTY, TEXAS, A PORTION OUT OF TRACT 5A, BLOCK 8, UPPER VALLEY SURVEYS, AS DESCRIBED IN A DEED TO STRINFIELD NATAN & JEANNIE, OF RECORD IN DOCUMENT NO. 20140025489, IN THE OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS, SAID 6.804 ACRE TRACT DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a brass disk in concrete found for a City Monument on the centerline intersection of Lee Shannon Road, a (40-foot right-of-way) and Cory Drive, a (60 foot right-of-way), said point having Texas State Plane Coordinate System (Central Zone, NAD83, (1993 Adjustment) U.S. Survey Feet, with a Combined Scale Factor of 1.00023100) of N=10,692,910.72, E=346,812.17; **THENCE, North 86°50'45" West**, with the centerline of said Lee Shannon Road, at 386.84 feet passing a brass disk AKA TBM#2 in concrete found for a City Monument on the centerline intersection of Lee Shannon Road and Lottie Lane, a (60 foot Right-Of-Way) for a total distance of **868.70 feet** to a point, **THENCE**, leaving the center line of said Lee Shannon road, North 3°09'15 West a distance of 20.00 for the point of beginning, and having coordinates of N=10695442.5986, E=346133.9942;

1. **THENCE** with the southerly of the herein described tract, **North 86°50'45" West**, for a distance of **704.21 feet** to a 5/8 inch iron rod with cap stamped "TX5372" found for the southwest corner of the herein described tract;
2. **THENCE** leaving the Southerly Line of Lee Shannon Road of the herein described tract, **North 18°28'14" East**, for a distance of **66.04 feet** to a 5/8 inch iron rod with cap stamped "ZWA" set for an angle point of the herein described tract;
3. **THENCE** with the west line of the herein described tract, **North 07°45'33" East**, , for a distance of **91.15 feet** to a 5/8 inch iron rod found for an angle point of the herein described tract;
4. **THENCE** continuing with the west line of the herein described tract, **North 03°15'33" East**, for a distance of **279.96 feet** to a 5/8 inch iron rod found for the northwest corner of the herein described tract, being also the southwest corner of Tract 6E2, Block 8, as described to Barshop Steven M., of record in Volume 1900, Page 605, in the Official Public Records of El Paso County, Texas;
5. **THENCE** departing the west line of the herein described tract, and along the north line of the herein described tract, **South 86°49'06" East**, being also the south line of said Tract 6E2, and the south line of Carvel Acres, a subdivision of record in Volume 50, Page 25, in the Official Public Records of El Paso County, Texas, for a distance of **678.93 feet** to a 5/8 inch iron rod Set for the northeast corner of the herein described tract, being also the northwest corner of Tract 5E, as described to Moss Johnna, of record in Document No. 20140024603, in the Official Public Records of El Paso County, Texas;
6. **THENCE** departing the north line of the herein described tract, and along the east line of the herein described tract, **South 03°09'14" West**, for a total distance of **434.19 feet** to the **POINT OF**

**BEGINNING**, containing **6.804 acres** of land more or less.

**Exhibit "B"**

A 2.29 acre tract of land out of Tract 5A Block 8, UPPER VALLEY SURVEYS, in the City of El Paso, El Paso County, Texas, according to the Resurvey done by El Paso County, Texas for tax purposes and said portion being a portion of that certain 9.09 acre tract of land in Warranty Deed recorded under Clerk's Document No. 20140025489, Official Records of El Paso County, Texas, and said 2.29 acre tract being more particularly described by Metes and Bounds as follows:

**BEGINNING** at a 1/2 inch iron rod found on the north line of Lee Shannon Road, a 40 foot right of way, also being the southeast corner of said 9.09 acre tract, being also the southwest corner of that certain 0.625 acre tract of land conveyed to Richard and Jennifer Larsen of record Volume 3412, Page 878 of the Official Public Records, El Paso County, Texas and the POINT OF BEGINNING of the herein described tract;

**THENCE**, N 86°50'45" W, continuing along said north line of Lee Shannon Road and the south line of said 9.09 acre tract, for a distance of 229.66 feet to a calculated point for the southwest corner of the herein described tract;

**THENCE**, N 03°09'15" E, departing said north line of Lee Shannon Road, over and across said 9.09 acre tract, for a distance of 434.19 feet to a calculated point for the northwest corner of the herein described tract and being on the south line of Carvel Acres a subdivision of record in Volume 50, Page 25 of the Plat Records of El Paso County, Texas;

**THENCE**, S 86°49'07" E, along the north line of said 9.09 acre tract, being also the south line of Lot 8, of said Carvel Acres, for a distance of 229.79 feet to a 1/2 inch iron rod found at the northeast corner of said 9.09 acre tract, being also the northwest corner of a certain 0.675 acre tract of land conveyed to Johnna Moss of record in Document Number 20140024603, Official Public Records, El Paso County, Texas, being also the south line of said Carvel Acres and being the northeast corner of the herein described tract;

**THENCE**, S 03°10'15" W, along the east line of said 9.09 acre tract, being also the west line of said 0.675 acre tract and said 0.625 acre tract, for a distance of 434.08 feet to the POINT OF BEGINNING and containing 2.29 acres of land.

Doc # 20220087738  
#Pages 30 #NFPages 1  
09/19/2022 04:35 PM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$142.00

eRecorded

I hereby certify that this instrument was filed on the date and time stamped  
heron by me and was duly recorded by document number in the Official  
Public Records of real Property in El Paso County.



*Delia Briones*

EL PASO COUNTY, TEXAS