

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CYPRUS VILLAS**

STATE OF TEXAS
COUNTY OF COLLIN

KNOW ALL PERSONS BY THESE PRESENTS:

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CYPRUS VILLAS (this "Amendment") is made and entered by Cyprus Villas Homeowner's Association, Inc., a Texas nonprofit corporation (the "Association") as of the ____ day of _____, 2025.

WITNESSETH:

WHEREAS, the Declarant, Megatel Cypress Villas, LLC, a Texas limited liability company executed that certain Declaration of Covenants, Conditions and Restrictions for Cyprus Villas dated April 17, 2017, and recorded on July 18, 2017, as Document No. 20170718000939200 in the Official Public Records of Collin County, Texas (the "Declaration"); and that certain First Amendment to Declaration recorded on March 1, 2018, as Document No. 20180301000255390; and

Declarant, as the owner of the real property described in Exhibit A, intended by recording this Declaration in the Official Public Records of Collin County, Texas, to create a general plan of development for a single-family home planned community known as Cyprus Villas. This Declaration provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Property (as hereinafter defined). An integral part of the development plan being the creation of Cyprus Villas Homeowner's Association, Inc., a Texas nonprofit corporation (the "Association") whose members shall be all owners of real property subject to this Declaration, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration.

WHEREAS, the Declarant Control Period and Class B Period being expired, the Association declares that the property described in Exhibit A, and any additional property which is subjected to this Declaration in the future in accordance with ARTICLE XIV of this Declaration, shall be owned, conveyed, used, occupied and otherwise encumbered subject to this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors-in-title, and assigns.

NOW THEREFORE, in accordance with the terms of the Declaration, including, without limitation Section 7.1 thereof, on the ____ day of _____, 2024, the Cyprus Villas Homeowners Association, Inc. held an open meeting of the members for the purpose of approving by at least a sixty-seven percent (67%) vote in the Association voting, in person or by proxy, this Second Amendment to the Covenants, Conditions and Restrictions of the Association. As required under Section 7.1 of the Declaration balloting and voting was performed and it is hereby affirmed that at least a sixty-seven percent (67%) vote according to the requirements for amendment were obtained being recorded in the minutes of the meeting of the Association.

Commented [CK1]: This section simply provides the basis for the right to amend, a chronological list of any prior amendments, & acknowledging the Declarant Period is over.

1. Defined Terms. Unless otherwise defined in this Amendment or the context otherwise requires, each term used in this Amendment with its initial letter capitalized which has been specifically defined in the Declaration shall have the same meaning herein as given to such term in the Declaration.

2. Amending Terms. Sections of the Declaration are hereby modified and amended as follows:

Section 2.2.1 is amended in its entirety as follows:

2.2.1 Leasing. At the sole discretion of the Board of Directors, a resolution establishing amendment, supplements, or rescission of certain leasing rules and restrictions ~~within the subdivision may be adopted and thereafter, amended, or rescinded by the Board of Directors. Whether or not it is so stated in a lease, every lease is subject to the Documents and all Governmental Requirements.~~ An Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Documents, federal or state law, or local ordinance or other Governmental Requirements is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. ~~The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents and/or any Governmental Requirements against his tenant including but not limited to costs and fees associated with self-help actions, trip charges, and other.~~ The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

Commented [CK2]: Sections referring to the Declarant were removed. Currently, no leasing maximum or other restrictions have been added.

Commented [CK3R2]: Leasing Restrictions Added

Section 2.2.1.1 Leasing and Occupancy Restrictions. In order to preserve the quality of life of Owners and to promote the Leasing of a Lot by responsible individuals, a Lot may only be Leased in accordance with the following restrictions:

- (a) Residential Purposes. Each Lot shall be used and occupied for single-family, private residential purposes only and no trade or business may be conducted in or from any Lot, except as permitted by this Section 2.2.1.1. For purposes of this Declaration, the phrases "single-family private residential use" and "residential purposes" are intended to prohibit rentals for any term less than twelve (12) months. Single-family private residential use shall not include either of the following: (i) operating any form of rooming or boarding house within a Lot, for any period of time; (ii) Leasing by the Owner of less than the entire Lot to others as a separate house-keeping unit, for any period of time. Upon acquiring an ownership interest in a Lot, the Owner may not Lease the Lot until the expiration of two (2) years from the date of recording the deed to the Lot. After the expiration of the two (2) year period, the Owner may lease the Residence subject to the other terms contained in Section 2.2.1 and Section 2.2.1.1. From the date of the adoption of this Second Amendment, no more than TWO PERCENT (2%) of the total Residences located in the community may be leased at any point in time, except in cases of hardship as approved by the Board.

The Association may amend this leasing cap by resolution of the Board of Directors. The goal is to preserve the community as one of predominantly owner-occupied Residences. An Owner seeking to lease his or her Residence must notify the Board in writing of his or her desire to lease the Residence, and Owners may lease on a first come, first serve basis. Thirty days prior to the expiration of a lease term, the Owner of the Residence must again notify the Board of his or her desire to renew the lease on the Residence.

Existing leases will be given first priority to renew them ahead of new leases.

Additional Definitions:

(i) Dedictory Instruments - "Dedictory Instruments" means each governing instrument covering the establishment, maintenance, and operation of the Association. This term includes the Declaration, Bylaws, policies, and rules and regulations of the Association, and all amendments thereto.

(ii) Effective Date - "Effective Date" shall mean the date an instrument containing Section 2.2.1 and 2.2.1.1 is recorded in the Official Public Records of Collin County, Texas.

(iii) Landlord - "Landlord" means the Owner Leasing a Lot to a third-party, even if that Owner has a management company that is in charge of Leasing and/or managing the Lot.

(iv) Lease - "Lease" includes any written or oral agreement between a Landlord and a Tenant that establishes or modifies the terms, conditions or other provisions regarding the use and occupancy of the Lot and the Residence thereon.

(v) Leasing - "Leasing" is defined as the regular, exclusive occupancy of a Lot by any person other than the Owner for which the Owner, or any designee of the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. If the Lot is owned by a trust and the beneficiary of the trust is living in the residence, that Lot shall be considered Owner-occupied rather than Leased.

(vi) Lessee - "Lessee" shall be considered the same as Tenant for purposes of the Declaration.

(vii) Lease to Purchase Agreements & Contracts for Deeds - Shall be considered the same as Leasing for purposes of the Declaration.

(viii) Renting - "Renting" shall be considered the same as Leasing for purposes of the Declaration.

(ix) Tenant - "Tenant" means the person(s) authorized by the Lease to occupy the Lot, which would include the named Lessee(s). There may be more tenants than Lessees for a Lot unless the context indicates otherwise.

(b) Registration, Compliance, and Notice of Intent to Lease. Whenever the Owner of a Lot has received a bona fide offer to Lease the Lot and desires to accept such offer, the Owner shall give the current management company written notice of the desire to accept such offer and submit to the Board, at the Owner's sole cost and expense, a Tenant Information Form which will include, but is not limited to, the following information:

- (i) The commencement date and term of the Lease;
- (ii) The make, model, and license plate number of each vehicle to be kept on the Property;
- (iii) The name, telephone number, email address, and current address of the prospective Lessee(s) and each prospective adult occupant (over age 18);
- (iv) The number of persons that will occupy the Lot;

(v) A written statement certifying that: (1) a criminal background report has been obtained by the Owner on each prospective adult occupant of the Lot and (2) that each prospective adult occupant of the Lot has not violated paragraph (c)(ii) and (iii) below; and the Association may charge an application fee not to exceed \$50.00 per application reviewed concerning the above as established by the Board and the Board is authorized to establish other such policies and procedures to register Lease arrangements as the Board so

determines. The application fee is subject to increase upon written Resolution of the Board and notice mailed to all Owners by U.S. mail.

(c) Qualifications of Prospective Occupants and Lessees.

- (i) Occupancy. The total number of occupants allowed to reside in or occupy a Lot shall not exceed the maximum number of occupants allowed in the Lot pursuant to any ordinance, code or regulation of the City or State of Texas.
- (ii) Certain Criminals Prohibited. Owner may not Lease to or allow any person to reside in or occupy a Lot who has been convicted of any felony crimes involving violence, crimes against persons; use of firearms; sex crimes; illegal drugs; robbery; aggravated robbery; murder; criminal gang activity; discharge of firearms; gambling; manufacture, sale or use of drugs; manufacture or sale of alcoholic beverages; prostitution; theft; burglary; or larceny; or any crime involving a minor.
- (ii) Sex Offenders Prohibited. Owners may not lease to or allow any person to reside in or occupy a residence who is a registered sex offender. For purposes of this Section 2.2.1.1, a "sex offender" is a person who is required to register as either a Level 3 (High) or Level 2 (Moderate) sex offender pursuant to Chapter 62 of the Texas Code of Criminal Procedure or pursuant to any other law of the State of Texas, or any municipal or county ordinance, or any other state or federal law or regulation.

THESE REQUIREMENTS DO NOT CONSTITUTE A GUARANTEE OR REPRESENTATION THAT LESSEES OR OCCUPANTS RESIDING WITHIN CYRUS VILLAS SUBDIVISION HAVE NOT BEEN CONVICTED OF A CRIME OR ARE NOT SUBJECT TO DEFERRED ADJUDICATION FOR A CRIME.

- (iii) Renter's Insurance. Tenants must carry renter's insurance throughout the lease term. Proof of insurance may be requested by the Association at any time.

(d) Rejection of Lease by Board of Directors. If the terms of the Lease and/or the Lessee(s) or occupants do not meet the standards and criteria described in this Section 2.2.1.1, then the Lease is rejected and the Board shall notify the Owner, within ten (10) business days after the decision is rendered, in writing of the rejection of the Lease. Owners shall not Lease to or allow anyone to reside in the residence who does not meet the standards and criteria set out above.

(e) Hardship. Notwithstanding any provision to the contrary, the Board shall be empowered to allow Leasing of one or more Lots, as determined solely by the Board, upon written application by an Owner to avoid undue hardship. By way of illustration and not by limitation, circumstances which would constitute undue hardship are those in which (i) an Owner must relocate and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot while offering it for sale at a reasonable price no greater than its current appraised market value; (ii) the Owner dies and the Lot is being administered by his or her estate; (iii) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot; (iv) the Lot is to be Leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents and spouses; (v) deployment or activity military duty status in any branch of the United States of America military; or (vi) the Owner sells the Lot and enters into a rent or leaseback agreement for a period not to exceed ninety (90) days from the date of sale. Those Owners who have demonstrated that the inability to Lease their Lot would result in undue hardship and have obtained the requisite approval of the Board may Lease their Lot for such duration as the Board reasonably determines is necessary to prevent undue hardship. Requests for hardship exemptions shall be reviewed by the Board on a case-by-case basis.

(f) Contents of Lease. Each Owner acknowledges and agrees that any Lease of his or her Lot shall be deemed to contain the following language and that if such language is not expressly contained in the Lease, then such language shall be incorporated into the Lease by existence of this Section. In addition, each Owner shall provide a copy of the lease executed to the management company and the terms and requirements contained herein automatically become a part of any Lease and/or an addendum to the Lease. ~~These provisions shall also be attached to any Lease as an addendum~~ and again, are a part of the Lease regardless of whether or not physically attached to the Lease. Any Lessee, by occupancy of a Lot, agrees to the applicability of this Section and incorporation of the following language into the Lease:

The Lessee shall comply with all provisions of the Dedicatory Instruments and shall control the conduct of all other occupants and guests of the Leased Lot in order to ensure their compliance. Any violation of the Dedicatory Instruments by the Lessee, any occupant, or any person living with the Lessee, is deemed to be a default under the terms of the Lease and authorizes the Owner to terminate the Lease without liability and to evict the Lessee in accordance with Texas law. The Owner hereby expressly delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the Lessee for breaches resulting from the violation of the Dedicatory Instruments, including the authority to pursue eviction proceedings on behalf of the Owner.

(g) Compliance with Dedicatory Instruments. Each Owner shall cause all occupants of his or her Lot to comply with the Dedicatory Instruments and shall be responsible for all violations and all losses or damage resulting from violations by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be personally sanctioned for any violation. The Owner shall provide the Lessee a copy of the Dedicatory Instruments. In the event that the Lessee, or a person living with the Lessee, violates the Dedicatory Instruments for which a violation fine is imposed, such fine shall be assessed against the Owner. The Owner shall pay the violation fine(s) upon notice from the Association.

(h) Grandfathering. With respect to a Residence which is subject to a Lease as of the Effective Date, the Owner's only obligation is to complete the Tenant Information Form along with the yearly requirements to rent the Residence. Notwithstanding this exemption for Residences already subject to a Lease, upon termination, extension, or renewal of that Lease, the Owner must comply with Section 2.2.1 and Section 2.2.1.1 of this Declaration.

(i) Noncompliance. For any Lease of a Lot entered into or renewed after the Effective Date, the Association shall have the power and authority to enforce Section 2.2.1 and Section 2.2.1.1 by any means available at law or in equity, including, but without limitation, levying violation fines and filing suit for necessary damages, including injunctive relief.

EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS OR OTHERWISE REMOVE THE OCCUPANTS FROM HIS OR HER RESIDENCE AS NECESSARY TO ENFORCE COMPLIANCE WITH SECTION 2.2.1 AND SECTION 2.2.1.1. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Lot which, in the sound business judgment of the Board, are reasonably necessary to monitor compliance with Sections 2.2.1 and 2.2.1.1. Notwithstanding any proposed fine stated in the Association's enforcement or fine policy, violations under Section 2.2.1 and/or Section 2.2.1.1 shall be levied as follows:

- Initial fine of two hundred and fifty dollars (\$250.00)
- Subsequent daily fines of one hundred dollars (\$100.00) are levied no earlier than ten (10) days after the initial fine notice is placed in the U.S. mail for delivery to the last known address of the Owner.

**ALL OWNERS MUST PROVIDE A TENANT INFORMATION FORM.
FAILURE TO PROVIDE A TENANT INFORMATION FORM TO THE
ASSOCIATION OR ITS MANAGING AGENT MAY SUBJECT THE OWNER
TO A VIOLATION FINE FOR NONCOMPLIANCE.**

(i) Authority of Management To Act. The Board hereby authorizes and empowers the management company to do all such things and perform all such acts as are necessary to implement and effectuate the purposes of Section 2.2.1 and Section 2.2.1.1 without further action by the Board.

(j) Binding Effect. The terms and conditions for leasing under this Declaration shall bind all Owners including their heirs, successors, transferees or assigns, and all Lots as defined in the Declaration unless otherwise amended by amendment to this Declaration or by Resolution of the Board, and the Properties shall hereafter be held, occupied, transferred, and conveyed subject to the terms and conditions of this Declaration and more specifically, Section 2.2.1 and Section 2.2.1.1.

Section 2.5 Uses Specifically Prohibited.

(a) No temporary or permanent dwelling, shop, storage building, trailer or mobile home of any kind or any improvement of a temporary or permanent character shall be permitted on any Lot without the express written consent of the Architectural Control Committee (the "ACC"). At the ACC's sole discretion, the following may be allowed upon written consent: (i) children's playhouses, dog houses, small greenhouses not visible to adjoining Lots or Residences thereon, small gazebos, and buildings for storage of lawn maintenance equipment, which may be placed on a Lot subject to approval in accordance with ARTICLE III and provided no part of any such structure is visible from any front or side street, **notwithstanding certain structures such as small play sets and gazebos may be allowed to extend up to two feet (2') over the top of the fence line however, prior written approval of the ACC for installation of such structures shall be required.** and (ii) No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.

Commented [CK4]: 2.5(a) Information on Declarant and Builder or Contractor were removed.

Commented [CK5R4]: Changed from Board of Directors to ACC

(g) Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a Street or from another Lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the Residence (such as in an attic or garage) so as not to be visible from outside the Residence, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a Residence below the eaves. If an Owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the Owner may install the Antenna in the least conspicuous location on the Lot or Residence thereon where an acceptable quality signal can be obtained. The Association may adopt reasonable Rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law. An Owner must have written permission of the Association or Architectural Reviewer to install any apparatus to the roof of the structure.

Commented [CK6]: 2.5(g) Please note, the first draft I sent had the letters off. This section is (g) & has to do with antennas, satellite dishes, etc. It was updated to meet Texas Property Code requirements.

(k) No sign or signs of any kind or character shall be displayed to the Streets or otherwise to the public view on any Lot or Common Area, without the express written consent of the ACC except for:

Commented [CK7]: 2.5(k) the letter was corrected & this has to do with signs & also covers seasonal displays and political signs which language did not meet Texas Property Code requirements or allowances. Same with flags, etc.

(A) A professionally fabricated "for sale" or "for rent" or "for lease" sign (of not more than six [6] square feet in size) may be utilized by the Owner of a Lot for the applicable sale or rent situation, **ONLY providing that such sign first shall have been approved in writing by the Architectural Reviewer and provided further that no "for rent" or "for Lease" signs shall be permitted to be placed on a Lot in the one (1) year period immediately following the first sale of a Residence to an end-use homebuyer;** (B) Signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground

Commented [CK8R7]: Section was corrected to remove mention of Declarant & Builder signs and condensed.

mounted, (ii) limited to one (1) in number per Lot, and (iii) of a size not in excess of two (2) square feet in size; (C) Each Owner may display flags on or at a Residence consistent with the covenants, conditions and restrictions contained in the Declaration and upon prior written approval of the ACC. Owners should keep in mind the close proximity of other Owners and/or businesses. Some flags may not be conducive to the aesthetic harmony of the neighborhood, street or block upon which the Residence is located. The Architectural Reviewer reserves the right to request the prompt removal of flags and should the Owner not comply, the Architectural Reviewer reserves the right to remove the flag(s). Such removal shall not constitute trespassing and the Architectural Reviewer or the Association shall not be responsible for the return of or replacement of flag in the event of damage or loss; (D) Each Residence may display up to two (2) spirit signs or other signs in support of athletic events and/or teams during the applicable sport season which are not otherwise consistent with the covenants, conditions and restrictions contained in the Declaration; and (E) Seasonal decorations (including lights, lawn ornamentation, flags and banners) may not be displayed without the express written consent of the Architectural Reviewer. You may not individualize the outside of your Residence without permission. If approved, use may not exceed six (6) weeks during the applicable season and provided that such decoration is in any event consistent with this Declaration and does not constitute or cause disharmony among the Owners and must be removed within ten (10) days following the applicable season or holiday; and

(F) One (1) sign for each candidate and/or ballot item advertising such political candidate(s) or ballot item(s) for an election shall be permitted in accordance with Section 259.002 of the Texas Election Code, provided that:

(i) such signs may not be displayed (A) prior to the date which is ninety (90) days before the date of the election to which the sign relates, and (B) after the date which is ten (10) days after that election date; (ii) such signs must be ground-mounted; and (iii) such signs shall in no event (A) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component, (B) be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object, (C) include the painting of architectural surfaces, (D) threaten the public health or safety, (E) be larger than four feet (4') by six feet (6'), (F) violate a law, (G) contain language, graphics, or any display that would be offensive to the ordinary person, or (H) be accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

Section 2.7 Fences and Walls.

Any fence or wall must be constructed of brick, wood, wrought iron or other material approved by the ACC. No vinyl or chain link fences are permitted except on the Common Properties or any school property. No fence or wall shall be permitted to extend nearer to any street than the front of any Residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed no nearer than five feet (5') inside the side Lot line and shall not extend beyond a point of five feet (5') behind the front of the Residence on that side. Fences or walls erected by Declarant shall become the property of the Owner of the Lot on which the same are erected and as such shall be maintained and repaired by such Owner except as is provided in ARTICLE IV and ARTICLE IX. Any fence or portion thereof that faces a public street shall be so constructed so that all structural members and posts will be on the side of the fence facing away from the street so that they are not visible from any street. Fences facing streets and major thoroughfares are required to be stained and kept in good repair at all times. No portion of any fence shall extend more than six feet (6') in height.

Section 3.1 Review Authority.

(a) General. The ACC will consist of three (3) persons. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. The Board of Directors may employ or contract with outside services for the architectural review process. Should the Board determine that adopting an Architectural Control Committee consisting of Class A Members, said Members appointed by the Board must be Owners and reside within the community in order to qualify. The ACC may but need not include architects, engineers and design professionals whose compensation, if any, may be established from time to time by the Board. A person may not be appointed or elected to serve on the ACC if the person is (a) a current Board member, (b) a current Board member's spouse; or (3) a person residing in a current Board member's household.

Commented [CK9]: This section was revised to remove mention of Declarant approval or review needed.

Commented [CK10]: This section was revised to remove any mention of Declarant having review authority. It was also revised to bring some of the language regarding Board Members or members of their household inability to serve on the ACC up to date.

Commented [CK11R10]: NEED TO BE OWNERS

Commented [CK12R10]: WAITING FOR RESPONSE FROM BOARD

Commented [CK13R10]: This was corrected to read that outside ACC review services are allowed and if in-house reviews are decided, an ACC member would have to be an owner & reside within the community.

(b) The Board of Directors shall appoint the Architectural Control Committee who shall serve until such Committee Member resigns or is removed by the Board. The ACC shall have the exclusive authority to administer, review and act upon all applications for architectural and other improvements within the Property.

(c) Architectural Control Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ACC, shall assume jurisdiction over architectural matters. The ACC shall consist of at least three (3) persons. The ACC members shall be designated, shall serve, and may be removed and replaced in the Board's sole discretion.

The Board may create and appoint subcommittees of the ACC. Subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and should be governed by procedures the Board or the ACC may establish. Notwithstanding the above, the ACC shall not be obligated to review all actions of any subcommittee, nor shall the failure to take action in any instance not be a waiver of the right to act in the future.

(d) Reviewer. The entity having jurisdiction in a particular case, namely the ACC shall be referred to as the "Reviewer".

Section 3.3 Procedure for Approval.

IN THE EVENT OF NEW OR RECONSTRUCTION OF A DWELLING AND PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION BY ANY PERSON OR ENTITY, THE BUILDER SHALL OBTAIN FROM THE REVIEWER A BUILDING PERMIT AND SHALL PAY, IN ADVANCE, A RELATED INSPECTION FEE AND FEE OWING OR TO BE OWED IN THE MINIMUM AMOUNT OF \$150.00 OR AS DETERMINED BY THE REVIEWER. THIS REQUIREMENT ALSO APPLIES TO POOL INSTALLATIONS, MODIFICATIONS OR ADDITIONS TO EXISTING STRUCTURES OF IMPROVEMENTS. FAILURE TO OBTAIN SUCH PERMIT OR PAY SUCH FEES PRIOR TO INITIATION OF CONSTRUCTION SHALL BE CAUSE FOR THE REVIEWER OR THE ASSOCIATION TO REQUEST AND OBTAIN EMERGENCY TEMPORARY RELIEF TO RESTRAIN ALL ASPECTS OF CONSTRUCTION. FEES SHALL BE PAYABLE TO THE REVIEWER AND ARE NON-REFUNDABLE.

In addition to the foregoing requirement, final plans and specifications may be submitted by mail, online, through the Association's website, if applicable, or hand delivered. The Reviewer or Association is not responsible for lost or delayed mail. The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements. The application shall specify in writing any requested variances from the requirements set forth in this Declaration, the Design Guidelines or any Community-Wide Standard. The Reviewer is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. At such time as the plans and specifications meet the approval of the Reviewer, one complete set of plans and specifications will be retained by the Association, for up to three (3) years, and a duplicate set of plans shall be marked "Approved", "Disapproved", or "More Information Needed" signed by a representative of the Reviewer and returned to the Lot Owner or his designated representative. If disapproved by the Reviewer, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the Reviewer. Any modification of the approved set of plans and specifications must again be submitted to the Reviewer for its approval. The Reviewer's approval or disapproval, as required herein, shall be in writing. Any reliance upon a verbal approval of any plans by the Reviewer shall be wholly unjustified, at the risk of the Lot Owner and subject to any subsequent or otherwise conflicting written response by the Reviewer.

Commented [CK14]: This Section was revised to update the language and remove mention of the Declarant.

All submissions shall be approved, disapproved, or returned for more information within thirty (30) calendar days excluding holidays after the date of submission. If Reviewer fails to return a decision on submissions, the application shall be deemed to have been disapproved. If an application is returned for more information, the Owner must provide the additional information requested within ten (10) days of the date of the request or the application will automatically be denied. If denied, the Owner must submit a new application with all required documentation and the review period will again be up to thirty (30) calendar days excluding holidays after the date of submission.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction and other work to be performed except for new or reconstruction of a dwelling must be completed within three (3) months of commencement of work unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. New or reconstruction of dwellings shall have up to twelve (12) months to complete. If approved work is not completed within the required time, it shall be in violation of this ARTICLE III and shall be subject to enforcement action. The Reviewer may but is not obligated to require that the construction of any improvement be inspected on a periodic basis prior to completion for compliance with the plans, codes and other matters relating to the quality or method of construction. The Association may conduct such inspections or, alternatively, it may contract with third parties for such purposes. The Owner on whose Lot the construction is taking place shall be responsible for the payment of costs relating to any such inspection and any such inspection shall not be deemed as trespass.

Section 3.5 Requests for Variance.

Upon submission of a written narrative request for same, the Reviewer may, from time to time, in its sole discretion, permit Owners and Builders to construct, erect or install improvements which are in variance from the requirements of this Declaration or which may be contained in the Design Guidelines. In any case, however, such variances shall be in basic conformity and shall blend effectively with the general architectural style and design of the community. No member of the ACC or the Board shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance request by any Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Reviewer's right to strictly enforce the Declaration, the Design Guidelines against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Reviewer must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted.

Commented [CK15]: 3.5 Any reference to Declarant was removed & other revisions as needed were made.

Section 3.6 Liability of Reviewer

The Board of Directors, the Architectural Control Committee, nor any of their respective members, officers, employees, designees, contractors, administrators, inspectors and agents, shall have any liability whatsoever for decisions made in accordance with this ARTICLE III so long as such decisions are made in good faith and are not arbitrary or capricious. The plans or the site plan submitted to the Reviewer shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Reviewer shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws, whether statutory or not, and whether the same relate to Lot lines, building lines, easements or any other issue. Review and approval of any plans pursuant to this ARTICLE III may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Commented [CK16]: 3.6 Same as above, reference to Declarant was removed & other required revisions made.

THE ASSOCIATION HEREBY UNCONDITIONALLY AND PERPETUALLY INDEMNIFIES AND HOLDS DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR INACTIONS TAKEN HEREUNDER BY THE REVIEWER, IRRESPECTIVE OF WHETHER OR NOT THE REVIEWER, ITS EMPLOYEES, CONTRACTORS, AGENTS AND OTHER INDIVIDUALS OR ENTITIES TO OR EMPLOYED BY THE REVIEWER ACTED NEGLIGENTLY OR WITH WILLFUL MISCONDUCT.

Section 3.7 Deleted in its Entirety.

Commented [CK17]: 3.7 Special Rights of the Declarant was deleted in its entirety.

Section 4.5 Fifteen (15) Year Limitation.

The provisions of this ARTICLE IV regarding any existing Declarant's rights as may be applicable shall terminate and be of no further force and effect from and after the expiration of the Development Period. The rights of the Association shall continue throughout the term hereof.

Commented [CK18]: 4.5 Slight revisions to the Declarant rights during the Development Period which is different than the Declarant or Class B period.

Section 6.1 Special Enforcement Rights of the Board of the Association.

In the event an Owner fails to comply with any provision of this Declaration or the Design Guidelines, including but not limited to any requirement contained in ARTICLE V, then, prior to the Board or the Association enforcing the compliance of such failure or seeking against such Owner remedies in accordance with this Declaration (or such other remedies as may be available to the Board and/or the Association at law or in equity), the Board shall first be obligated to give such Owner a minimum of one (1) notice of such failure and a reasonable time of not less than ten (10) days to abate the violation, *excluding violations that may be deemed an emergency, safety hazard, or danger to the Owner or other Residents.* After the date of such notice in which to cure such violation or failure has lapsed, if the Owner shall not have corrected such failure within the time allotted, the Board of Directors shall have the right but, not the obligation, to assess monetary fines which may be levied in one lump sum amount not to exceed Seven Hundred Fifty and No/Dollars (\$750.00) per violation or the fine may be divided into a series of fines until the maximum amount of \$750.00 is reached. The Board may adopt a Notice and Hearing; Schedule of Fines Policy by which such enforcement and fine scheduling may be outlined. Each day a violation exists shall constitute a separate violation and subject the Owner to Notice of Fine and Fines. The Board of Directors shall also have the right after the initial ten (10) day notice to exercise self-help action and enter upon the Lot and to bring the Lot, and any improvements thereon, into full compliance with this Declaration, the Design Guidelines, or rules and regulations of the Association promulgated by the Board of Directors. Should self-help actions be initiated, the Board shall send or cause to be sent by posting to the door of the residence or by e-mail one (1) additional notice of not less than three (3) days advising the Owner of the Board's intention to initiate self-help action *notwithstanding, if the Board deems the matter to be of an emergency where life, health, or safety of the Owner, Residents, neighbors, neighborhood, or community are at risk, the additional notice requirement shall not apply.* Entry upon an Owner's Lot to abate a violation considered to be an emergency shall not be construed as trespassing against the Association, the Board, any service provider or agent performing self-help actions. All costs and expenses incurred by the Association in connection with correcting any such failure shall be borne by the Owner which may include costs and fees associated with self-help actions including trip charges incurred by the Association. If any Owner does not promptly reimburse the Association for all such costs, expenses and violation fines assessed after receipt of written request for same, the Board shall have the right to assess the Owner for same plus interest, such assessment, interest and fines being a special individual assessment under the provisions of Section 10.6 below.

Commented [CK19]: 6.1 This entire section was updated to meet the current Texas Property Code requirements & remove any mention of Declarant as applicable.

Section 7.1 Amendment.

This Declaration and subsequently the Bylaws of the Association may be amended by an instrument containing such amendment(s) and recorded in the Official Public Records of the County, provided that (i) such amendment shall first be approved by the affirmative vote or written consent of the Association's Members representing fifty-one (51%) percent of those Members present in person or by proxy at a duly convened meeting of the Association. Furthermore, the Board may, at its sole discretion and without a vote or the consent of any other party or Member, modify, amend, or repeal this Declaration: (i) as necessary to bring any provision into compliance with any applicable statute, governmental rule, regulation, or judicial determination; (ii) as necessary to comply with the requirements of VA, or HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency, State Statute, Texas Property Code, Texas Business Organizations Code, or secondary mortgage market entity, or (iii) as necessary for clarification or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii) and/or (iii) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration must be recorded in the Real Property Records of the County.

Commented [CK20]: 7.1 was revised to remove most mentions of Declarant & to reduce the percentage of votes needed by the HOA in order to amend the CCRs from 67% to 51%. Additional language in regard to Board's ability to amend the CCRs without consent of owners in regard to certain Freddie Mac, Fannie Mae, and FHA/VA requirements as well as to correct typographical errors, etc. was revised or added.

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

Section 7.2 Termination.

At any time, the Owners may terminate and extinguish this Declaration in its entirety by executing an instrument terminating this Declaration and recording same in the Official Public Records of the County, provided, however, a vote or written consent of ninety percent (90%) of the Association's Members must be obtained in the affirmative.

Commented [CK21]: 7.2 Revised to remove mention of Declarant and to increase the percentage of owners needed in order to terminate the Association from 75% to 90%.

Section 8.2 Classes of Membership.

The Association shall have Class A Members:

"Class A Members" shall be all Members. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).

CLASS B. The "Class B Member" deleted in its entirety.

Commented [CK22]: Class B reference deleted.

Section 8.3 Quorum and Notice Requirements.

8.3.1 Except as expressly provided herein to the contrary, any action of the Members taken at an annual meeting or special meeting of the members shall require the assent of a majority of the votes of those Association Members who are present at a meeting, in person or by proxy, written notice of which shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of such meeting. For the purposes of clarification, actions of the Members are not actions performed or taken by the Board of Directors for the oversight, operations and business of the Association as no consent or joinder of the Members is required for the Board to conduct business or perform their responsibilities and functions as set forth in the Governing Documents of the Association.

Commented [CK23]: 8.3.1 was revised to clarify the notice requirements only pertain to annual or special meetings of the members. Such notices do not pertain to board members or special meetings of the board.

8.3.2 A ten percent (10%) quorum is required for any action requiring an annual or special meeting of the members as referred to in 8.3.1 and, unless otherwise provided, for any action for which a percentage vote at a meeting is required. A quorum shall be determined as set forth in this Section 8.3.2. The aforementioned quorum applies to annual and special meetings, the presence at the meeting of Members, or of proxies, entitled to cast at least ten percent (10%) of all of the votes shall constitute a quorum. If the required quorum is not present at the initial meeting, additional meetings may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such subsequent meeting(s) shall be one-half (1/2) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum. At such adjourned or subsequent meeting at which a quorum shall be present or represented, any business may be transacted which may have been transacted at the meeting as originally notified.

Commented [CK24]: 8.3.2 revised to clarify meetings in which a quorum of the members would apply.

Section 9.2 Additional Common Properties.

Additional property may be added to the Common Properties hereunder upon the sole discretion of Declarant during the Development Period. Thereafter, additional property may be added to the Common Properties hereunder upon the affirmative vote of fifty-one percent (51%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

Commented [CK25]: 9.2 Mention of Declarant removed or revised and percentage of owner votes lowered from 60% to 51%. No more than a majority of the owners should ever be required.

Section 9.3 Acceptance and Control of Common Properties.

Initial transfer to the Association by Declarant of Common Properties is an administrative task and the Association accepts Common Properties, personal property and/or fee title or other property interests in any improved or unimproved state real property included in its as is condition within the property described in Exhibit A or any other real property made subject to this Declaration in the future.

Commented [CK26]: 9.3 Revised to remove some of the language regarding transfer of common areas by Declarant.

Section 10.1 Creation of the Lien and Personal Obligation of Assessments.

Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be

Commented [CK27]: Most all of Article 10 was revised to bring the language up to date with the current state and Texas Property Code requirements. Mentions of the Declarant where applicable were also removed.

deemed to covenant and agree to pay to the Association (or other collection agency designated by the Association) the following: (a) Annual Assessments or charges; (b) Acquisition Assessments; (c) Special Assessments for capital improvements; (d) Special Individual Assessments (including, without limitation interest and fines) levied against individual Owners for violations of the Declaration, Design Guidelines or the Community-Wide Standard or to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his tenant(s) occupying his Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with the terms and provisions hereof. Assessments and the payment of same are not contingent upon the construction of, placement of, or existence of any common area or amenity. All such Assessments shall be fixed, established and collected as hereinafter provided.

The Annual Assessments, Acquisition Assessments, Special Assessments, and Special Individual Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which such assessment is made. Each such Assessment, together with late charges, collection costs, such interest thereon and cost of collection thereof, including attorneys' fees, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the Assessment fell due.

Fines, not to exceed \$750.00 per violation occurrence, shall be assessed upon the expiration of a reasonable time after the date notice of such violation was sent to the violating Owner. In all instances of violations, the Owner shall be responsible for correcting such violation within a reasonable time after the date of such notice, regardless as to whether the Residence is occupied by the Owner or a tenant. The lien provided for herein shall secure payment of fines not timely paid and the Owner shall also have personal liability for the payment of same.

Section 10.2 Power to Establish Assessments and Purpose of Assessments.

The Association is empowered to establish and collect Assessments as provided in this Article 10 for the purpose of obtaining funds to maintain the Common Area, perform its other duties, and otherwise preserve and further the operation of the Property as a first-class, quality residential subdivision. The purposes for which Assessments may be used to fund the costs and expenses of the Association (the "Common Expenses") in performing or satisfying any right, duty or obligation of the Association hereunder or under any of the Documents, including, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area, or any improvements thereon; mowing grass and maintaining grades and signs; charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Properties, paying the cost of maintenance of the monument sign for the Property, if any, carrying out the purposes of the Association as stated in its Articles of Incorporation, paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering Assessments; paying insurance premiums for liability and fidelity coverage for the ACC, the Board and the Association; paying operational and administrative expenses of the Association including ; and satisfying any indemnity obligation under the Documents. The Board may reject partial payments and demand payment in full of all amounts due and owing the Association. The Board is specifically authorized to establish a policy governing how payments are to be applied. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

Section 10.3 Basis and Amount of Annual Assessments.

10.3.1 The Board of Directors may fix the annual assessment (the "Annual Assessment") at any amount equal to or less than the maximum annual assessment for that year, as herein below provided. The share of liability for Common Expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or Residence. The maximum Annual Assessment for each Lot for the year 2017 shall be **Seven Hundred Fifty and No/100 Dollars (\$750.00)**. Commencing with the year 2017 and each year thereafter, the Board of Directors may set the amount of the maximum Annual Assessment for that year (and for following years) for each Lot provided that the maximum Annual Assessment may not be increased more than twenty-five percent

(25%) above the maximum Annual Assessment for the previous year without a vote of the membership taken in accordance with the provisions of 10.3.2.

10.3.2 Commencing with the year 2017, and in each year thereafter, the Board of Directors may set the **maximum Annual** Assessment for the following year for each Lot at an amount more than twenty-five percent (25%) above the maximum Annual Assessment for the previous year; provided that any such increased Assessment shall be approved by the affirmative vote of fifty-one percent (51%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

Section 10.4 Acquisition Assessments.

At any time record title is transferred to any Owner, an acquisition assessment (the "Acquisition Assessment") shall be paid to the Association by such Owner at closing initially in the amount of Three Hundred Fifty And No/100 Dollars (\$350.00) for each Lot acquired. Acquisition Assessments shall be in addition to, not in lieu of, any other assessment provided for herein. Acquisition Assessments are not refundable and shall be available for all necessary expenditures of the Association as determined by the Board. The Board may increase annually by Resolution an additional amount equal to up to fifty percent (50%) of the Acquisition Assessment collected in the prior calendar year without joinder or consent of any other Owner or Member

Commented [CK28]: 10.4 Revisions to remove unnecessary mention of Declarant.

Commented [CK29R28]: BOARD WANTS IT INCREASED TO \$500

Commented [CK30R28]: RESOLUTION PREPARED AND SENT TO THE BOARD

The Board may, at its sole discretion, enter into a contract with a Managing Agent to oversee the daily operation and management of the Association. A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for Resale Certificates (as hereinafter defined), estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace are not refundable shall be in addition to any Acquisition Assessments, and may not be regarded as a prepayment of or credit against Annual Assessments, Acquisition Assessments, or Special Assessments, and are in addition to the contribution to the Reserve Fund or Working Capital Fund. The Managing Agent may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a "Resale Certificate" (herein so called), which fees shall not exceed \$375.00 in the aggregate per Lot per transfer. The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate shall in no event exceed the greater of (i) the current annual rate of Annual Assessment applicable at the time of the transfer/sale for each Residence being conveyed and are not refundable and may not be regarded as a prepayment of or credit against Annual Assessments or Special Assessments, and are in addition to the contribution to the Reserve Fund or Working Capital Fund. This Section 10.4 does not obligate the Board or any third party to levy such fees. Transfer-related fees charged by or paid to a Managing Agent are not subject to the Association's Assessment Lien, and are not payable by the Association. Declarant is exempt from transfer related fees.

Commented [CK31]: CHANGE LANGUAGE ON RESALE FEES

Commented [CK32R31]: REDUCED TO \$375

After termination of Declarant control it shall be the responsibility of the Board of Directors to establish a Reserve Fund for the Association. Funds delegated to a Reserve Fund may be restricted by the Board to major repairs or improvements or capital improvements and may be separate from the Acquisition Assessment fund. A restricted Reserve Fund may be funded from the Acquisition Assessments collected or from the operating account of the Association. Declarant is not responsible for funding of any Reserve Fund.

Section 10.5 Special Assessments.

The Association may also levy in any assessment year a special assessment (a "Special Assessment"), applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any unbudgeted or unforeseen expense, construction or reconstruction, maintenance, unexpected repair or replacement of a described improvement or capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; provided that any such Special Assessment greater than one-half (1/2) of the current Annual Assessment rate shall be approved by the affirmative vote of fifty-one percent (51%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose (a "Special Assessment").

Commented [CK33]: 10.5 Broadened the use of Special Assessment to include unbudgeted or unforeseen expenses.

Section 10.6 Special Individual Assessments, Interest and Fines.

In the event that any Owner fails to comply with the provisions of this Declaration, the Design Guidelines, any rules and regulations promulgated by the Board of Directors or the Community-Wide Standard and/or the Association incurs any cost or expense in either enforcing said provisions against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner and the Lot of such Owner a special individual assessment (a "**Special Individual Assessment**") in the amount of all such costs incurred by the Association, including trip charges and other similar costs and expenses, plus interest and/or in the amount of any violation fine(s) and other charges levied by the Board. Special Individual Assessment, interest and fines shall be paid by the applicable Owner upon demand by the Association.

Commented [CK34]: 10.6 added language regarding certain charges for self-helps like trip charges not previously mentioned.

Section 10.9 Duties of the Board of Directors with Respect to Assessments.

10.9.1 The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner upon proper written request.

Commented [CK35]: 10.9.1 Added language that an owner must submit request in writing for inspection of roster, etc. Owners should be made to comply with the records request & retention policy of the HOA.

Section 10.10 Assessment Lien to Secure Charges and Assessments.

Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments, special assessments, and other charges to be established and collected as provided herein. The obligation of each Owner(s) of a Lot to pay such assessments and charges, together with interest thereon (if any) for past due payments at a rate or rates of interest determined and established from time to time by the Association (which rate or rates shall in no event exceed the maximum lawful rate of interest permitted under Texas law from time to time prevailing), late charges (in an amount or amounts determined and established from time to time by the Association), and costs incurred by the Association in connection with the collection of any of the foregoing assessments, charges, and other sums, or in connection with the enforcement of this provision, including without limitation reasonable attorneys' fees incurred by the Association in connection therewith, shall be a continuing charge and lien upon each such Lot as a covenant running with the land, and any such assessments, interest, costs and other charges assessed or charged and remaining unpaid with respect to any Lot shall constitute a lien and encumbrance on such Lot until the same is paid in full. Declarant hereby reserves such a lien upon each Lot in the name of and for the benefit of the Association. Such lien shall constitute a contractual lien, and a power of sale is hereby granted with respect to such lien for the benefit of the Association as hereinafter set forth. Each such assessment or other charge, together with interest, late charges, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such Lot at the time the assessment or other charge comes due (the "**Personally Obligated Owner**"); but personal liability for payment of delinquent assessments or other charges shall not pass to successors in title to the Personally Obligated Owner unless expressly assumed by them.

Commented [CK36]: 10.10 This section was updated with current "attorney" language from our most recent CCRs drafted by our HOA attorney to ensure all the most up to date language was included.

Section 10.11 Effect of Nonpayment of Assessment.

If any assessment is not paid within thirty (30) days from the due date thereof, in addition to any interest which may accrue thereon as may be determined by the Board of Directors of the Association at any time and from time to time, a late charge shall be assessed against the non-paying Owner for each month that any assessment remains unpaid as more specifically provided herein, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association its reasonable attorneys' fees. Should any assessment provided for herein be payable in installments, the Association may accelerate the entire assessment and demand immediate payment thereof. A late charge shall be assessed against the non-paying Owner for each month that any assessment remains unpaid. The late charge shall be in the amount of at least **Twenty-Five and No/100 Dollars (\$25.00)** per month and shall serve to reimburse the Association for administrative expenses and time involved in collecting and processing delinquent assessments. An additional fee of at least **Twenty-Five and No/100 Dollars (\$25.00)** shall be assessed to an owner's account for every check returned for non-sufficient funds. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its efforts in collecting delinquent assessments. All fees and other charges of Managing Agent shall be pursuant to the then current contract between the Managing Agent and the Association. The Association through its Board may establish its own fees and charges. The Association, in the Board's discretion, have the right to waive any part of or all of such fees and/or interest owed to the Association. The Association may bring an action at law against the Personally Obligated Owner or foreclose the lien against the Lot(s) subject to the unpaid assessments, interest or other

Commented [CK37]: 10.11 Same as above. Drafted from the most up to date language for collection and non payment of assessments from our most recent attorney drafts.

charges, and in either event, the Association shall be entitled to recover the unpaid assessment, interest or other charges, the late charge specified above, and any expenses and reasonable attorney's fees incurred by the Association in prosecuting such foreclosure and/or such collection. Each Owner of any Lot by acceptance of a deed therefore hereby grants to the Association a power of sale with respect to such Owner's Lot in connection with the enforcement of the lien established by this Declaration, together with the right to appoint and remove a trustee and any number of substitute trustees and to cause the trustee or substitute trustee to foreclose the Association's lien against such Lot pursuant to a non-judicial foreclosure sale conducted in accordance with the provisions of Section 51.002 of the Texas Property Code, as from time to time amended, or its successor provision. However, nothing herein shall prevent the Association from seeking a judicial foreclosure of such lien or any other right or remedy available to the Association with respect to any amounts owed hereunder. No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Properties or abandonment of his Lot.

Section 10.12 Reservation, Subordination, and Enforcement of Assessment Lien.

The Association hereby reserves for the benefit of the Association, a continuing contractual lien (the "Assessment Lien") against each Lot located on the Property to secure payment of (1) the assessments imposed hereunder, and (2) payment of any amounts expended by the Association in performing a defaulting Owner's obligations as provided for in this Declaration, the rules, policies, and/or regulations of the Association, the Design Guidelines, and any other governing documents promulgated hereunder or by the Association. THE OBLIGATION TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN THIS ARTICLE, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT INTEREST RATE SET FORTH IN THIS DECLARATION, THE CHARGES AND FEES MADE AS AUTHORIZED IN THIS DECLARATION, ALL VIOLATION FINES AND APPLICABLE CHARGES, AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, IS SECURED BY A CONTINUING CONTRACTUAL ASSESSMENT LIEN AND CHARGE ON THE LOT COVERED BY SUCH ASSESSMENT, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The continuing contractual Assessment Lien shall attach to the Property and Lots developed or to be developed therein as of the date of the recording of this Declaration in the Official Public Records of the Collin County, Texas, and such Assessment Lien shall be superior to all other liens except as otherwise provided in this Section 10.12. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate only to the liens of any valid first lien mortgage or deed of trust encumbering a particular Lot and the Assessment Lien established by the terms of the Declaration. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to a first mortgage or deed of trust foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall only extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability and the Assessment Lien for any assessments thereafter becoming due. The Assessment Lien may be non-judicially foreclosed by power of sale in accordance with the provisions of Section 51.002 of the Texas Property Code (or any successor provision) or may be enforced judicially. Each Owner, by accepting conveyance of a Lot, expressly grants the Association a power of sale in connection with the foreclosure of the Assessment Lien. The Board is empowered to appoint a trustee, who may be a member of the Board, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for in Section 51.002 of the Texas Property Code (or any successor statute). The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The rights and remedies set forth in this Section 10.12 are subject to the Texas Residential Property Owners Protection Act, as amended from time to time (Texas Property Code, Section 209.001 *et seq.*).

Commented [CK38]: 10.12 Same as above.

(a) Notices of Delinquency or Payment. The Association, or the Association's attorney may file notice (a "Notice of Unpaid Assessments") of any delinquency in payment of any Assessment in the Official Public Records of Collin County, Texas. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. Upon the timely curing of any default for which a notice was recorded by the Association, the Association, through its attorney, is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and

Commented [CK39]: a)& (b) were revised or added to ensure the most up to date language needed.

filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Board, through its agents, may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(b) Suit to Recover. The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

Section 10.17 Declarant Subsidy.

Declarant may, but shall not be obligated to, pay a subsidy to the Association (in addition to any amounts paid by Declarant under the terms of this Declaration in order to reduce the total annual assessment which would otherwise be necessary to be levied against all Lots to cover the estimated expenses of the Association (including reserve contributions, if any). Any such subsidy shall not be a loan or recoverable by the Declarant but shall be disclosed as a line item in the income portion of the budget. Any subsidy that is over and above those funds needed to ensure the Association is able to meet its ongoing and recurring expenses may be treated by the Declarant, in its sole discretion, as a loan from the Declarant to the Association or as an advance against future Assessments due or as a contribution. During the Declarant Control Period, Declarant may, at its sole discretion, require the Association to utilize working capital funds to offset any deficit in the operating budget prior to seeking deficit funding from the Declarant. Any deficit caused by delinquencies shall be promptly and diligently pursued through proper collection efforts.

Commented [CK40]: 10.17 Was revised to clarify that Declarant subsidy paid to cover any existing deficit or deficiency in HOA expenses when assessments collected are not enough are not a loan. After the statute of limitations has expired, this will better allow the board to remove most if not all the notes payable on the balance sheet. We have to ensure the Declarant has been allotted plenty of time to make claim to repayment prior to this section being amended.

Section 10.18 Declarant's Assessment.

Notwithstanding any provision of the Documents to the contrary, so long as there is Class B membership in the Association, the Declarant as described in Exhibit B attached hereto shall not be liable for the payment of Assessments on any Lot it owns. The Declarant may however, fund any deficit of the Association during the Declarant Control Period existing after the application of all income received by the Association from Assessments and revenues of the Association from all other sources have been taken into account. If any provision of this Section 10.18 conflicts with the Declarant's Reservations and Representations as set forth in Exhibit B, then Exhibit B shall prevail. Upon ninety (90) days' notice to the Association, the Declarant may change its election hereunder during the fiscal year. "All sources" includes, but is not limited to, revenues from the operation of Common Properties, capital contributions, Acquisition Assessments, accounting service fees, property management fees, guest fees, user fees, and the assessments levied against the Owners of Lots, other than the Declarant. Such difference, herein called the "deficiency" or "deficit", shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments, and Declarant shall not be responsible, in any event, for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments. Any sums paid by the Declarant to the Association to fund the "deficiency" or "deficit" or any sums paid by the Declarant to the Association in excess of the annual assessment otherwise due on the Declarant's unsold Lots may be considered by the Declarant to be the payment of a subsidy to the Association pursuant to Section 10.17 but shall not be subject to repayment except as may be set forth in Section 10.17 above. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" consideration of services or materials, or by a combination of these. After termination of the Declarant Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

Commented [CK41]: 10.18 We can discuss this section in conjunction with my prior email regarding Exhibit B. Some of this section would need to remain in place.

Commented [CK42R41]: ELIMINATE WHAT CAN BE REMOVED IN THIS SECTION & EXHIBIT B

Commented [CK43R41]: CHANGED SO SUBSIDY CANNOT BE CLAIMED AS A LOAN

Section 11.5 Liability Limitations; Indemnification.

No Declarant, Member, director, officer or representative of the Association or the Board or the Committee shall be personally liable for the debts, obligations or liabilities of the Association. The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Association dedicatory instruments. Declarant and directors, officers and Committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and **THE**

Commented [CK44]: 11.5 Revised to provide the most up to date language from HOA attorney for protection & indemnification of the Board, Association, and managing agent.

ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, SHALL INDEMNIFY AND HOLD HARMLESS DECLARANT, DIRECTORS, OFFICERS AND MEMBERS OF THE COMMITTEE FROM ANY AND ALL EXPENSES, LOSS OR LIABILITY TO OTHERS ON ACCOUNT OF ANY SUCH CONTRACT OR COMMITMENT (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS). IN ADDITION, EACH DIRECTOR AND EACH OFFICER OF THE ASSOCIATION AND EACH MEMBER OF THE COMMITTEE SHALL BE INDEMNIFIED AND HELD HARMLESS BY THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, FROM ANY EXPENSE, LOSS OR LIABILITY TO OTHERS (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) BY REASONS OF HAVING SERVED AS SUCH DIRECTOR, OFFICER OR COMMITTEE MEMBER AND AGAINST ALL EXPENSES, LOSSES AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH DIRECTOR, OFFICER OR COMMITTEE MEMBER IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY OR HAVE BECOME INVOLVED BY REASON OF BEING SUCH DIRECTOR, OFFICER OR COMMITTEE MEMBER AT THE TIME ANY SUCH EXPENSES, LOSSES OR LIABILITIES ARE INCURRED SUBJECT TO ANY PROVISIONS REGARDING INDEMNITY CONTAINED IN THE ASSOCIATION'S DEDICATORY INSTRUMENTS, EXCEPT IN CASES WHEREIN THE EXPENSES, LOSSES AND LIABILITIES ARISE FROM A PROCEEDING IN WHICH SUCH DIRECTOR, OFFICER OR COMMITTEE MEMBER IS ADJUDICATED GUILTY OF WILLFUL MISFEASANCE OR WILLFUL MALFEASANCE, WILLFUL MISCONDUCT OR BAD FAITH IN THE PERFORMANCE OF SUCH PERSON'S DUTIES OR INTENTIONAL WRONGFUL ACTS OR ANY ACT EXPRESSLY SPECIFIED IN THE ASSOCIATION'S DEDICATORY INSTRUMENTS AS AN ACT FOR WHICH ANY LIMITATION OF LIABILITY SET FORTH IN THE ASSOCIATION'S DEDICATORY INSTRUMENTS IS NOT APPLICABLE; PROVIDED, HOWEVER, THIS INDEMNITY DOES COVER LIABILITIES RESULTING FROM SUCH DIRECTOR'S, OFFICER'S OR COMMITTEE MEMBER'S NEGLIGENCE. Any right to indemnification provided herein shall not be exclusive of any other rights to which a director, officer or Committee member, or former director, officer or Committee member, may be entitled. The Association shall have the right to purchase and maintain, as a Common Expense, directors', officers', and Committee members', insurance on behalf of any Person who is or was a director or officer of the Association or the Committee member against any liability asserted against any such Person and incurred by any such Person in such capacity, or arising out of such Person's status as such Person.

Section 11.6 Notice and Hearing; Dispute Resolution; Liens.

- (a) Prior to the imposition of any fine for a violation of this Declaration or the levying of any special assessment on an Owner, the Association will give notice to the Owner in compliance with Section 209.006 of the Texas Property Code (the "**Property Code**"), as the same may be hereafter amended. Such notice shall be as follows:
- (i) Notices other than a courtesy or first notice will be delivered by certified mail and if applicable, return receipt requested.
 - (ii) The notice must describe the violation or property damage that is the basis for the fine for such violation, and state any amount due to the Association from the Owner to include trip charges when such are levied by a vendor regardless of the type of violation.
 - (iii) All notices must inform the Owner that the Owner is entitled to a reasonable time to cure the violation. Notices other than a courtesy and/or first notice must include a reasonable time to cure the violation and avoid fine(s) and that the Owner may request a hearing under this Section 11.6 and Section 209.007 of the Texas Property Code on or before the 30th day after the Owner receives the notice.
 - (b) Notwithstanding the foregoing, prior notice is not required with respect to entry onto a Lot by the Association to cure violations that are an emergency or hazardous in nature or pose a threat or nuisance to the Association or another Owner and no cure period shall be required for (1) any violations that are incurable, or (2) a violation for which an Owner has been previously given notice of and the opportunity to cure in the preceding six (6) months. Uncurable violations include shooting fireworks, an act constituting a threat to health or safety; a noise violation that is not ongoing; property damage, including the removal or alteration of landscape; and holding a garage sale or other event prohibited by a dedicatory instrument. Examples of curable violations include a parking violation; a maintenance violation; the failure to construct improvements or modifications in accordance with approved

Commented [CK45]: 11.6 Entire section revised and description changed to meet State & Texas Property Code requirements.

plans and specifications; and an ongoing noise violation such as a barking dog. No notice to an Owner shall be required (A) if a suit is filed by the Association against an Owner seeking temporary restraining order or temporary injunctive relief, or if the Association files a suit against an Owner including foreclosure as a cause of action, or (B) with regard to a temporary suspension of a person's right to use Common Properties if the temporary suspension is the result of a violation that occurred in a Common Property and involved a significant and immediate risk of harm to others in the Subdivision.

(c) In compliance with Section 209.007 of the Property Code, if the Owner submits a written request for a hearing, the Association shall hold a hearing not later than the thirtieth (30th) day after the date the Board receives the Owner's request, and shall notify the Owner of the date, time and place of the hearing and shall provide to an Owner a packet containing all documents, photographs, and communications relating to the matter the Association intends to introduce at the hearing not later than the tenth (10th) day before the date of the hearing; failing which the Owner is entitled to a fifteen (15) day postponement of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than fifteen (15) days. Additional postponements may be granted by agreement of the parties. If the hearing is to be held before a committee appointed by the Board, the notice described in this Declaration shall state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board. Owner or its designated representative is entitled to present the Owner's information and issues relevant to the appeal or dispute at such hearing.

(d) The Association must notice an Owner via certified mail prior to levying any fine or charges against such Owner under this Declaration, the rules, regulations, or any other policies adopted by the Association.

ARTICLE XII AUTHORITY AND CONTROL BY DECLARANT

Section 12.1 Declarant Rights deleted in its entirety.

Commented [CK46]: 12.1 Deleted in its entirety.

Section 12.2 Easement to Inspect and Right to Correct.

Declarant reserves for itself and the Association acting through its Board of Directors the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee and the Association from responsibility for repairs or damages relating to defective workmanship or materials.

Commented [CK47]: 12.2 Language changed to allow the Association (the Board) the same rights of easement to inspect, etc. as the Declarant would have.

Section 12.3 Right to Develop is deleted in its entirety.

Commented [CK48]: 12.3 Deleted in its entirety.

Section 12.5 Changes in Master Plan.

Each Owner acknowledges that Cyprus Villas is a planned community and agrees that the Association shall not engage in, or use Association funds to support any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Property, or (b) changes in the master plan of Cyprus Villas, including, without limitation, the enlargement of the master plan and the acquisition or revision of regulatory approvals to reflect the annexation of real property, without prior written consent of the Board, which consent may be granted or withheld in the Board's sole discretion.

Commented [CK49]: 12.5 Revised to remove unnecessary mention of Declarant or Declarant's rights over ACC.

Each Owner acknowledges and agrees that the present plans and themes for the Property's development may change and that it has not relied on any representation, warranty, or assurance by any person: (a) that any Lots, or other property or facilities will or will not be added, modified, or eliminated within the Property; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of the Property; or (b) the number, types, sizes, prices, or designs of any residential structures or improvements built or to be built in any part of the Property.

Section 12.7 Declarant Provisions.

Subject to any consent from the City of Plano, which is required pursuant to Section 7.1, Declarant, during the Declarant Control Period, has an exclusive right to unilaterally amend this Declaration for the purposes stated in **Appendix B**. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment during the Declarant Control Period may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. During the Declarant Control Period, this Section 12.7 may not be amended without Declarant's written and acknowledged consent. Further, and without regard to whether or not the Declarant has been released from obligations and duties to the Association, during the Development Period or so long as the Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any Member of the Association nor Owner shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section 12.7, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any Member of the Association from further breach of this Section 12.7.

Commented [CK50]: 12.7 Revisions to this section will depend largely on what is decided for Exhibit B as well.

Commented [CK51R50]: REMOVE WHAT CAN BE REMOVED ALONG WITH EX B

Section 14.1 Expansion of the Property.

Declarant, during the Declarant Control Period and thereafter, the Board of Directors in its sole discretion and without the approval of any other party, may from time to time subject this Declaration to additional real property by recording in the Real Property Records of the County, a Supplemental Declaration describing the additional real property to be subjected to this Declaration. Any such Supplemental Declaration which is executed by the Declarant or the Board and the owner of such additional property, and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional real property to be incorporated herein. Nothing in this Declaration shall be construed to require Declarant or the Board to subject additional real property to this Declaration.

Commented [CK52]: 14.1 Revised to limit Declarant's rights to the Declarant Control Period & expand on the HOAs rights for expansion.

Section 14.2 Additional Covenants and Easements.

Declarant or the Board of Directors, in its sole discretion and without the approval of any other party, may from time to time subject any portion of the Property, whether now or hereafter a part of this Declaration, to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the assessments, as described in ARTICLE X hereof. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Property, whether now or hereafter a part of this Declaration, in order to reflect the different character and intended use of such Property. Any such Supplemental Declaration which is executed by Declarant and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional covenants and easements to be incorporated herein.

Commented [CK53]: 14.2 Same as above.

Section 15.2 Term.

This Declaration shall be enforceable by Declarant, during the Declarant Control Period, the Association through its Board of Directors, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns until December 31, 2067, after which time this Declaration shall extend automatically for successive 10-year periods unless at least seventy-five percent (75%) of the then Owners have signed, within a six month period preceding the end of the initial term or any extension, an instrument which terminates this Declaration and such instrument is recorded in the Real Property Records of the County prior to the end of the term.

Commented [CK54]: 15.2 Removed any unnecessary mention of Declarant & expanded the percentage requirement for termination by owners from 67% to 75%.

Section 15.5 Notices.

Any notices or correspondence to an Owner shall be addressed to the street address of the Lot or to such other address as is specified by any such Owner in writing to the Association. The burden shall be on the Owner to prove that such written notification was duly given and delivered to the Association as provided below. Any notices or correspondence to the Association shall be addressed to the registered office of the Association as shown by the records of the Secretary of State for the State of Texas or to such other address as is specified by the Association in writing to the Owners.

Commented [CK55]: 15.5 Updated language & added alternate methods of deliver when applicable.

Except as this Declaration or the Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under this Declaration or the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or by private carrier; or, if this Declaration, the Bylaws, or a Policy offers alternate methods of delivery, according to such other methods including delivery by facsimile or electronic mail with written confirmation of transmission.

Notices sent in accordance with this Declaration shall be deemed to have been duly given and effective:

- (i) sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class postage prepaid;
- (ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery or confirmation of delivery by an assigned service or individual. This requirement does not refer to self-help postings or notices of violation; or
- (iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation.

Section 15.8 No Liability for Trespass.

Whenever the Association, the Board of Directors or managing agent exercises any right hereunder and in connection therewith entering any Lot, such parties shall not be liable for trespass upon such Lot.

Commented [CK56]: 15.8 Updated language.

Section 15.12 Limitation of Liability is deleted in its entirety.

Commented [CK57]: 15.12 Deleted in its entirety.

No Other Effect. Except as expressly modified, amended and supplemented by this Amendment, the terms and provisions of the Declaration are not amended, modified or supplemented, and the Declaration, as modified, amended and supplemented hereby, is hereby amended as provided herein.

Commented [CK58]: Closing remarks added.

Severability. Invalidation of anyone provision of this Amendment by judgment or court order shall in no way affect any other provision of this Amendment or the remainder of this Amendment which shall remain in full force and effect. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Amendment a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Headings. The headings contained in this Amendment are for reference purposes only and shall not in any way affect the meaning or interpretation of this Amendment. Some headings may have been changed or amended to better reflect the provisions set forth in that Section.