

GP# 180074273

**THIS DOCUMENT AMENDS AND RESTATES IN THE ENTIRETY THAT CERTAIN MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE OAKMONT SUBDIVISION, RECORDED AS DOCUMENT NO. 2018059489 IN THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS.**

**AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE OAKMONT SUBDIVISION**

THE STATE OF TEXAS     §  
  §  
COUNTY OF WILLIAMSON   §

This AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE OAKMONT SUBDIVISION (this "Declaration") is made to be effective as of Feb 5, 2019 (the "Effective Date"), by OAKMONT GEORGETOWN, L.L.C., a Texas limited liability company ("Declarant").

**RECITALS:**

A. Declarant previously executed and recorded that certain Master Declaration of Covenants, Conditions and Restrictions for the Oakmont Subdivision, recorded as Document No. 2018059489, in the Official Public Records of Williamson County, Texas (the "Original Declaration").

B. Pursuant to Section 7.2(a) of the Original Declaration, During the Declarant Control Period, the Original Declaration may be amended by Declarant in its sole and absolute discretion in an instrument setting forth the amendment, which shall be executed by Declarant, acknowledged and recorded in the Official Public Records of Williamson County, Texas.

C. The Declarant Control Period has not expired.

D. Declarant now desires to amend and restate the Original Declaration in its entirety.

E. The OAKMONT SUBDIVISION development is a master planned community in the City of Georgetown, Williamson County, Texas. Declarant intends to develop the master planned community on the real property described on Exhibit "A" attached hereto (the "Property").

F. The purpose of this Declaration is to subject the Property to the protective covenants, conditions and restrictions as hereinafter set forth in order to: (a) create and carry out a uniform plan for the improvement, development and sale of the Property, (b) preserve so far as possible the natural beauty of the Property, (c) avoid harsh contrasts

between structures and landscape, (d) guard against the erection of poorly designed or proportioned structures and the use of unsuitable materials, (e) encourage and ensure the erection of attractive improvements which are harmonious with their sites, and (f) generally enhance the environmental quality and economic value of the Property for the benefit of the present and future owners of the Property.

G. In furtherance of such purposes, Declarant hereby adopts and establishes this Declaration to apply uniformly to the ownership, encumbrance, lease, use, occupancy, enjoyment and conveyance of the Property.

### **DECLARATION:**

NOW, THEREFORE, it is hereby declared that all of the Property shall be owned, encumbered, leased, used, occupied, enjoyed and conveyed subject to the following covenants, conditions and restrictions, which (a) are for the purpose of protecting the value and desirability of the Property, (b) shall run with the Property, (c) shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, and (d) shall inure to the benefit of each owner of any portion of the Property.

### **1.**

### **DEFINITIONS**

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

1.1. **“Architectural Committee”** means the committee created pursuant to this Declaration as provided in Article 3 hereof.

1.2. **“Assessment(s)”** means assessment(s) levied by the Association in accordance with Article 4 and Article 5 hereof, including Regular Assessments, Development Area Assessments, Special Assessments and Individual Assessments.

1.3. **“Association”** means the HOA of OAKMONT, Inc., a Texas non-profit corporation.

1.4. **“Association Certificate”** means the Certificate of Formation of the Association, which has been filed in the office of the Secretary of State of the State of Texas, as the Association Certificate may from time to time be amended.

1.5. **“Beneficiary”** means a mortgagee under a mortgage or a beneficiary under a deed of trust.

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

1.7. **“Building”** means a structure, including, without limitation, a residence, having a roof supported by columns or walls for the shelter, support or enclosure of persons or property.

1.8. **“Bylaws”** means the Bylaws of the Association, which may be adopted by the Board, as the Bylaws may from time to time be amended. Any amendment to the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Upon expiration of the Development Period, the Bylaws may be amended by a Majority of the Board.

1.9. **“Common Area and Facilities”** means any Lots or other real property (including any improvements located thereon) within or benefiting the Property, which are owned, held, maintained and/or operated by the Association for the common benefit of the Property and the Owners from time to time and at any time. The Common Areas and Facilities shall include Lots and other real property (i) the Association owns in fee simple or holds an easement interest in, (ii) designated as Common Areas and Facilities by Declarant, or (iii) designated or shown on any recorded plat or its equivalent of the Property or any portion thereof filed or approved by Declarant and identified as common areas, parkland, linear parks, greenbelt, preservation buffer, mixed use path, amenity area, walking or riding trail, Association owned Lot, detention and water quality area, drainage easement, public utility easement, or similar designations; provided, however, the Common Area and Facilities shall not include the real property designated by Declarant as “Special Common Area” in a Development Area Designation or Supplemental Declaration.

1.10. **“Declarant”** means **OAKMONT GEORGETOWN, L.L.C.**, a Texas limited liability company.

1.11. **“Declaration”** means this instrument, as may be amended or supplemented from time to time.

1.12. **“Development Area”** means any part of the Property that is designated by Declarant as a Development Area in a Development Area Declaration for the purpose of enjoying special amenities, benefits or services, paying Development Area Assessments, and/or or being subject to special covenants and restrictions as provided in a Development Area Declaration. Declarant may designate and modify one or more Development Areas which may be comprised of different types of Lots and residences and may include noncontiguous Lots and property. A Lot or parcel of property may be included in more than one Development Area.

1.13. **“Development Area Assessments”** means the assessments levied against the Lots in a particular Development Area to fund the Development Area Expenses.

1.14. **“Development Area Declaration”** means any declaration executed by Declarant which may be recorded hereafter in order to designate or modify one or more Development Areas.

1.15. **“Development Area Expenses”** means the expenses, actual and estimated, that the Association incurs or expects to incur for the benefit of the Owners or Lots within a particular Development Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge authorized by the Association.

1.16. **“Development Period”** means the period of time beginning on the date when this Declaration has been Recorded, and ending twenty-four (24) months after the date that Declarant no longer owns any portion of the Property, unless earlier terminated by a Recorded written instrument executed by the Declarant. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

1.17. **“Improvement(s)”** means every structure and all appurtenances thereto of every type and kind, including, but not limited to, Buildings, residences, outbuildings, garages, storage buildings and sheds, green houses patios, sport courts and goals, swimming pools, putting greens, recreational facilities, playscapes, play and tree houses, swing sets, fences, screening walls, retaining walls, stairs, steps, porches, mailboxes, walkways, driveways, decks, landscaping, irrigation or sprinkler systems, fountains, yard decorations, signs, exterior air conditioning, water softener fixtures or equipment, exterior lighting fixtures and equipment, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, aerials, satellite dishes, wind generators, solar collectors, rain and stormwater collection tanks, towers, equipment and facilities used in connection with water, sewer, gas, electric, telephone, television, telecommunications or other utilities.

1.18. **“Lot(s)”** means the lot or lots of land within the Property as established on the plats for the Subdivision.

1.19. **“Maintenance Fund”** means accumulation of Assessments collected by the Association for the maintenance of any property owned, leased, or managed by the Association.

1.20. **“Majority”** means more than half.

1.21. **“Manager”** means the person, firm or corporation, if any, employed by the Association pursuant to this Declaration and delegated any of the duties, powers and functions of the Association as provided in Section 4.6(c) hereof.

1.22. **“Member”** means any person or entity who is a member of the Association. Every fee simple owner of a Lot shall be a member of the Association.

1.23. **“Mortgage”** means any mortgage or deed of trust covering any portion of the Property, including any Lot or Lots, voluntarily given by an Owner to secure the payment of a debt.

1.24. **“Owner(s)”** means any person or entity, including Declarant, holding record legal title to a fee simple interest in any portion of the Property, including any Lot or Lots, but shall not include any Beneficiary whose sole interest in the Property or a portion thereof is derived from a Mortgage.

1.25. **“Plans and Specifications”** mean any and all documents designed to guide or control the construction, alteration or removal of any Improvement, including, but not limited to, those indicating location, size, height, relationship to adjoining Lots and Buildings located thereon, shape, configuration, materials, including roofing materials, site plans, excavation plans, grading plans, foundation plans, drainage plans, landscaping plans, fencing plans, screening plans, elevation drawings, floor plans, exterior lighting plans, specifications on all building products and construction techniques, samples of exterior colors and materials, plans for utility services and all other documentation or information relevant to such construction, alteration or removal.

1.26. **“Property”** initially means that certain tract of real property described on Exhibit “A” attached hereto. The Property is subject to additions, annexations and withdrawals of land pursuant to a Supplemental Declaration as set forth in this Declaration.

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

1.28. **“Resident”** means (A) an Owner of a Lot actually residing thereon or therein; or (B) any person who has executed a contract to purchase a Lot actually residing thereon or therein, regardless of whether a contract is recorded, and each tenant or lessee of a Lot actually residing thereon or therein.

1.29. **“Special Common Areas”** means any Lots or other real property (including any improvements located thereon) designated by Declarant in a Development Area Designation or Supplemental Declaration as common area, parkland, greenbelt, amenity area, Association owned Lot, detention and water quality, drainage easement, public utility easement, private street, private gate or entry, or similar designations which benefits one or more, but less than all, of the Lots and Owners, and is or will be conveyed, licensed or dedicated to the Association or otherwise held by Declarant for the benefit of a Development Area and/or Owners of the Lots and property to which such Special Common Areas benefit.

1.30. **“Subdivision”** means a subdivision plat of any portion of the Property as recorded in the Official Public Records of Williamson County, Texas, and any amendments thereto or replats thereof.

1.31. **“Supplemental Declaration”** means and refers to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order to (i) annex and make subject to the terms of this Declaration any other land, (ii) withdraw or remove land from this Declaration, or (iii) otherwise amend or modify this Declaration.

**2.****RESTRICTIONS**

2.1. **General.** All of the Property shall be owned, encumbered, leased, used, occupied, enjoyed and conveyed subject to the limitations and restrictions set forth in this Declaration. In addition, all restrictions and plat notes on the Subdivision plats of the Property shall be complied with at all times. Upon recordation of a Supplemental Declaration in the Official Public Records of Williamson County, Texas, the land subject to the Supplemental Declaration will automatically be incorporated into and be deemed to constitute part of the Property subject to this Declaration. To the extent any portion of the Supplemental Declaration or Development Area Designation shall conflict with this Declaration, the Supplemental Declaration or Development Area Designation shall control with respect to the portion of the land subject to the Supplemental Declaration. Except for the Property, no portion of any land owned by Declarant will be subject to the terms and provisions of this Declaration until a Supplemental Declaration has been filed for such additional land.

2.2. **Residential Use.** All Lots (other than the Common Area and Facilities and Special Common Area and any Lot or other portion of the Property retained by Declarant or an entity affiliated with Declarant) shall be improved and used solely for single family residential use and accessory uses, including, without limitation, a home, garage, fencing and such other Improvements as are necessary or customarily incident to residential use. The Common Area and Facilities and Special Common Area shall be used for roadways, utilities, stormwater detention and retention, water quality, amenities, parks, open space and similar uses necessary or customarily incident to residential use. No Improvement constructed on a Lot, other than any Lot or other portion of the Property retained by Declarant or an entity affiliated with Declarant, may be used as an apartment house, flat, lodging house or hotel, but such Improvement may be leased for single family residential purposes once per calendar year for a minimum term of six (6) months. No professional, manufacturing, industrial, business or commercial activity to which the general public is invited shall be conducted on any Lot, other than any Lot or other portion of the Property retained by Declarant or an entity affiliated with Declarant; provided that, in connection with its development of the Property and sale of Lots, Declarant and Declarant's licensees shall also have the right to maintain model homes, temporary or permanent sales, marketing and/or construction centers and offices, and conduct open houses or other marketing events to which the general public may be invited. Notwithstanding anything in this Section 2.2 or this Declaration to the contrary, Owner may conduct "discreet business activities" within a single family residence constructed upon a Lot so long as the existence or operation of the business activity is not apparent or detectable by site, sound or smell from outside the residence; the business activity does not involve regular visitation of the Lot or door-to-door solicitation of residents of the Property; the business activity is consistent with the residential character of the Property; and the business activity does not violate any term or provision of this Declaration. Owners may conduct "garage sales" on their

Lots, provided that no Owner shall conduct more than one (1) garage sale of no more than two (2) days' duration during any six (6) month period.

2.3. Construction, Alteration or Removal of Improvements. No Improvement may be constructed, altered or removed upon or from any of the Property without the prior written approval of the Architectural Committee. Any action, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, including, without limitation, its color, or which involves the removal of any Improvement or the material alteration of the landscaping plan on a Lot, shall be performed only with the prior written approval of the Architectural Committee. Except for Improvements approved by the Architectural Committee, the positioning of all Improvements upon all Lots is hereby expressly made subject to Architectural Committee review. The Architectural Committee may prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot; provided, however, notwithstanding anything to the contrary in this Declaration, the Architectural Committee, the members thereof and the Board shall not be liable to any Owner for monetary damages or otherwise due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from such Owner's Lot or Lots. No Improvement shall be allowed on any Lot that is of such size or architectural design or that involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development on the Property. All foundations for Improvements shall, to the extent possible, conform to the topography of the Lot on which the Improvement is being constructed. All Buildings constructed on the Property shall be built in place on the Lot.

2.4. Condition and Repair of Improvements and Landscaping. All Improvements upon the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. All landscaping shall at all times be kept in a neat and well-groomed condition and appearance and watered appropriately. The Board, in its sole discretion, shall determine whether the provisions of this Section 2.4 have been satisfied.

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

2.6. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property or any portion thereof and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage

and trash shall be kept at all times in covered containers and all such containers shall at all times be kept within an enclosed structure or appropriately screened from view of all adjacent property and public and private rights-of-way; provided, however, garbage containers shall be permitted to be placed outside of enclosed structures and may be removed from screened areas a maximum of two (2) times each week, for no longer than twelve (12) hours each time, for garbage collection. All construction sites shall be kept clean and orderly and no discharge of any oil, grease or other similar substances shall be permitted. All Owners must take every reasonable action to minimize dust, noise and fumes during construction activities on their Lots.

**2.7. Noise; Nuisances.** No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any portion of the Property such that it becomes or will become clearly audible at the property line of adjoining property owners. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or its occupants. No construction activity shall be conducted on any portion of the Property between the hours of 7:00 p.m. and 7:00 a.m., except for the pouring of foundations. No noxious or offensive activity shall be conducted on any portion of the Property. The Board, in its sole discretion, shall determine whether an action or activity constitutes a violation of this Section 2.7.

**2.8. Hazardous Activities; Fertilizers, Pesticides and Herbicides.**

(a) No activities shall be conducted or allowed to exist on any portion of the Property, and no Improvements shall be constructed on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, activities that are expressly prohibited include (1) mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, earth or water, (2) the use or discharge of firecrackers or other fireworks within the Property, (3) the use or storage of liquid propane gas, gasoline, oil or any type of flammable liquids or gases in other than closed tanks within an enclosed structure or permanently screened from view; provided, however, only such liquids and gases as are customarily used for residential purposes shall be allowed on the Property, (4) any activities which may be offensive or hazardous by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion, (5) hunting, trapping and the discharge of firearms, (6) open fires in other than a contained barbecue unit for cooking purposes, while attended and in use, or within a safe and well designed interior or exterior fireplace, (7) the use of bows and arrows, crossbows, slingshots, darts or other projectile devices, or (8) the discharge or leakage of any type of hazardous or toxic chemical or material, such as oil, fertilizers, pesticides or herbicides; provided, however, only such materials as are customarily used for residential purposes shall be allowed on the Property. The foregoing notwithstanding, Declarant and the Association shall be permitted to drill and operate water wells on the Property.



(b) No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by an agency having jurisdiction for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provided with such materials and all applicable laws, regulations and ordinances and shall take proper precautions in placing, using and storing such materials.

2.9. Vehicles; Unsightly Articles.

(a) No articles deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, recreational vehicles, wagons, buses, golf carts, motorcycles, motor scooters and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. The foregoing notwithstanding, service and delivery vehicles may be parked on the Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery and construction equipment may be left on a Lot during construction on such Lot, but shall be removed as soon as such equipment is no longer needed in such construction.

(b) Passenger vehicles, motorcycles and scooters owned or used by an Owner or an Owner's guest shall not be parked or left on any portion of the Property other than in such Owner's garage or driveway for longer than twelve (12) hours at a time, and no more than two (2) passenger vehicles may be parked on the driveway or other manner as to be visible from any other portion of the Property on a day-to-day basis.

(c) No recreational equipment, including, but not limited to, sport courts, goals and nets, swing sets, playscapes, skate boards, bicycles or skate board or bicycle ramps, shall be permitted in the front yard of any residence on the Property without the express approval of the Architectural Committee. Vegetable gardens shall be permitted for household use only and shall not be permitted in the front or side yards of residences. Service areas, compost piles and facilities for hanging, drying or airing clothing or household materials shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view.

2.10. Animals. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. Only the keeping of ordinary household pets such as dogs and cats, not to exceed three (3) each in number, is allowed. No breeding, raising,

training or boarding animals for hire or remuneration is permitted on any Lot. All pets permitted by this Declaration to be kept on a Lot shall at all times be properly vaccinated, neutered or spayed and cared for. No kennel, dog run or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. No pit bull terriers or other dangerous breed of dogs or any animal considered dangerous as determined by the Board in its sole discretion may be kept on any Lot for any period of time. All Owners shall take every reasonable action to ensure that their dogs do not create a nuisance by barking or other action. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all time. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. Animals shall be allowed to leave the Owner's Lot only when kept on a leash.

2.11. Underground Utility Lines. No utility lines or wires, including, but not limited to, wires or other devices for the communication or transmission of telephone, electric current or power or cable television, shall be erected, placed or maintained in or upon any Lot unless the same shall be contained in conduit or cables that are installed and maintained underground or that are concealed in, under or on Buildings; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including, but not limited to, location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utility lines and wires shall be included in the Plans and Specifications for all Improvements.

2.12. Exterior Lighting. Exterior lighting or illumination of Improvements, Buildings, yards, landscaping and parking areas shall be designed and installed with adequate top and side shielding to avoid visible glare (direct or reflected) onto other Lots. Christmas and other holiday lights shall be permitted without the prior approval of the Architectural Committee from December 1<sup>st</sup> to January 5<sup>th</sup> of each year. All Christmas and other holiday lights must be removed by January 15<sup>th</sup>. No lighting shall be permitted that constitutes a nuisance or hazard to any Owner or occupant of any Lot. The Architectural Committee, in its sole discretion, shall determine whether the provisions of this Section 2.12 have been satisfied.

2.13. Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural

Committee, provided that such waiver shall be only for the reasonable period of such construction.

2.14. Unfinished Structures. No Improvement shall remain unfinished for more than one (1) year after the same has been commenced.

2.15. Liability of Owners for Damage to Common Area and Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work whatsoever upon any Common Area or Facilities and Special Common Areas without the prior written approval of the Board and the Declarant during the Development Period. The Owner of each Lot shall be liable to the Association for all damages to: (i) the Common Area and Facilities or Special Common Areas or any Improvements constructed thereon or (ii) to any Improvements constructed upon any Lot, the maintenance of which has been assumed by the Association, which damage is caused by the neglect, misuse or negligence of such Owner or any tenant or other occupant of such Owner's Lot or such Owner's guest or invitee. The full cost of all repairs of such damage shall be an Assessment against the Owner's Lot, secured by a lien against the Owner's Lot and collectible in the same manner as provided in this Declaration. In the event an Owner or any tenant or other occupant of such Owner's Lot or such Owner's guest or invitee repeatedly violate the rules established by the Board for the use of the Common Area and Facilities or Special Common Areas, the Association may thereafter prohibit the use of the Common Area or Facilities or Special Common Areas by such Owner or tenant or other occupant of such Owner's Lot or such Owner's guest or invitee.

2.16. Compliance with Provisions of this Declaration and Applicable Laws. Each Owner shall comply strictly with the provisions of this Declaration and all applicable laws, statutes, ordinances and regulations. Any conflict between the requirements of this Declaration and any such applicable laws, statutes, ordinances and regulations shall be construed to require that the more restrictive requirements shall be adhered to by the Owners. Failure to comply with any provision of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover the sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by Declarant or an aggrieved Owner. The Board or Declarant shall determine, in their sole discretion, whether the provisions of this Declaration have been satisfied. Nothing contained herein shall relieve any Owner from complying with all applicable laws, statutes, ordinances and regulations. All Owners shall be obligated to obtain all necessary building permits, certificates of occupancy and other similar governmental permits and approvals required by all applicable laws, statutes, ordinances and regulations.

### 3.

#### ARCHITECTURAL COMMITTEE

##### 3.1. Membership and Duties of Architectural Committee.

(a) The Architectural Committee shall be composed of one (1) to three (3) persons, as designated by Declarant or the Board as provided below. Members of the Architectural Committee need not be Members of the Association.

(b) The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it may require relating to the question of whether any proposed Improvement would unreasonably obstruct the view from other portions of the Property. The Architectural Committee shall have the authority to approve or disapprove any proposed Improvement based upon the terms of this Declaration and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for inspecting any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval of any Improvement as to structural safety, engineering soundness or conformance with any building or other codes.

3.2. Term. Each member of the Architectural Committee shall hold office for a period of two (2) years or until such time as he or she has resigned or has been removed.

3.3. Declarant's Rights of Appointment. Except as provided below, Declarant, its successors and assigns, shall have the sole right to appoint and remove all members of the Architectural Committee during the Development Period. The Board shall have the right to appoint and remove all members of the Architectural Committee (i) upon the delegation of this right by Declarant to the Board by written instrument or (ii) upon the expiration of twenty-four (24) months after the expiration of the Development Period.

3.4. Review of Construction, Alteration or Removal of Improvements.

(a) Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, materials, construction samples and other information which it considers, in its sole discretion, to be relevant. Prior to commencement of any construction, alteration or removal of any Improvement on any Lot, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction, alteration or removal thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. All such construction, alteration or removal shall conform to the approved Plans and Specifications.

(b) Each Owner should consult with the Architectural Committee about such Owner's general plans for an Improvement prior to completion of Plans and Specifications. Declarant may, but is not obligated to, adopt, modify or supplement, from time to time, "**Design Guidelines**" to establish the standards for design, construction,

landscape and hardscape for Lots and Development Areas. In the event of any conflict between the provisions of any Design Guidelines and this Declaration, a Supplemental Declaration, or a Development Area Designation, the provisions of this Declaration, a Supplemental Declaration, or a Development Area Designation shall control, in that order.

(c) No improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color, schemes, exterior finishes and materials and similar features as to be incompatible with development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith.

(d) If the Architectural Committee fails to act on any Plans and Specifications submitted to it within sixty (60) days after receipt by the Architectural Committee of all information requested by it in connection with such Plans and Specifications or required by this Declaration, disapproval of the matters submitted to it shall be presumed.

(e) The Board shall establish and may thereafter amend from time to time an application fee that shall be paid by each Owner at the time of submittal of any application and Plans and Specifications to the Architectural Committee. Such fee shall not exceed the reasonable costs and expenses of the Board and the Architectural Committee (including costs of hiring third party architects and other consultants) for the processing and review of Plans and Specifications. The Board or Architectural Committee may, but is not obligated to, adopt additional procedural and substantive rules and guidelines as it may deem necessary or appropriate in connection with the performance of its duties hereunder, provided such additional rules and guidelines shall not conflict with this Declaration.

(f) Any proper approval of Plans and Specifications or grant of waiver or variance pursuant to this Declaration shall be valid for a period of one hundred eighty (180) days only.

3.5. Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one (1) or two (2) of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Committee taken at a meeting shall constitute an act of the Architectural Committee. In the event that the members of the Architectural Committee cannot agree by majority vote on any matter submitted to them, the Board may elect to consider and decide such matter. In the event the members of the Architectural Committee and the Board do not agree and decide any such matter submitted to the Architectural Committee, the matter may be raised at any meeting of the

Members of the Association and decided by a majority of those present, provided that a quorum is present.

3.6. Permitted Waivers and Variances. The Architectural Committee may grant such waivers of and variances from compliance with any of the restrictions contained in this Declaration as it considers appropriate based upon the quality and design of a proposed Improvement. Additionally, during the Development Period, Declarant may grant such waivers and variances from compliance with any of the restrictions contained in this Declaration as it considers appropriate based upon the quality and design of a proposed Improvement. All waivers and variances must be evidenced in writing and approved by the Architectural Committee or Declarant.

3.7. No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee or Declarant shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatsoever, subsequently or additionally submitted for approval or consent by the same or a different Owner. The granting of any waivers and variances shall not operate to waive or amend any of the terms and provisions of this Declaration for any purpose except as to the particular work done or proposed and in the particular instance covered by the variance, and such waiver or variance will not be considered to establish a precedent for any future waiver, variance, amendment or approval of similar matters or of the terms and provisions of this Declaration.

3.8. Nonconforming or Unapproved Improvements. The Architectural Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications. The Architectural Committee may require any Owner to restore such Owner's Lot to the condition existing prior to construction, alteration or removal of any Improvement thereon, including, without limitation, the demolition and removal of any unapproved or nonconforming Improvement, if such Improvement was constructed or altered in violation of this Article 3. In addition, the Architectural Committee may, but has no obligation to, cause such restoration, demolition and removal of any such Improvement, and levy the amount of the cost thereof as a special Individual Assessment (defined below) against the Lot upon which such unapproved or nonconforming Improvement was constructed or altered.

3.9. Nonliability of Architectural Committee, Board and Declarant. Notwithstanding anything to the contrary in this Declaration, neither Declarant, nor the Architectural Committee nor the members thereof, nor the Board nor the members thereof, shall be liable in any way to any Owner or any other third party due to (i) the construction of any Improvement within the Property, (ii) the compliance of any Owner's Plans and Specifications or Improvements with applicable governmental laws, ordinances and codes or this Declaration, (iii) the creation of an obstruction to the view from an Owner's Lot or Lots, or (iv) any other act or omission of the Architectural Committee, Declarant,

the Board or their respective members in connection with this Declaration, the Lots or the Property.

3.10. **Building Materials; Dwelling Size.** All single-family dwellings shall be of recognized standard construction quality and shall be constructed of materials approved by the Architectural Committee. All single-family dwelling shall contain not less than 1,400 square feet of finished heated and air-conditioned living space, exclusive of porches (open or covered) decks, and garages. All roofing materials must be 30-year dimension type composition shingle in a weathered wood or heatherblend color, or other materials specifically approved by the Architectural Committee. Any fences constructed on a Lot must be four (4) feet in height and composed of metal tubular materials. No wood fencing or stone columns will be allowed, and all fencing must be approved by the Architectural Committee.

#### 4.

#### THE ASSOCIATION

4.1. **Organization.** The Association is a non-profit corporation created by Declarant for the purposes, and charged with the duties and vested with the powers, prescribed by law and set forth in its Certificate of Formation and Bylaws or in this Declaration. Neither the Certificate of Formation nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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

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

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

(b) **Declarant Votes.** In addition to the votes to which Declarant is entitled by reason of *Section 4.3(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) **Co-Owner Votes.** When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote

or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 4.3*.

**4.4. Election of Board Directors.** The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the 10<sup>th</sup> anniversary of the date this Declaration is Recorded. Not later than the 10<sup>th</sup> anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board shall hold a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.**

**4.5. Duties of the Association.** Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have and perform each of the following duties:

(a) To accept, own, operate and maintain all Common Areas and Facilities and Special Common Areas which may be conveyed, licensed or leased to it by Declarant or third parties with Declarant's consent, together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real or personal, conveyed, licensed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by or licensed or leased to the Association.

(b) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to Common Area and Facilities, Special Common Areas or any other property owned by or leased to the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(c) To obtain and maintain in effect policies of insurance which, in the Board's judgment, are reasonably necessary or appropriate to carry out the Association functions.

(d) To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.



(e) To keep books and records of the Association's affairs.

(f) To improve, maintain, repair, replace, clean, inspect and protect any real property owned by the Association and landscape easements, sign easements, postal easements, drainage easements or any other easements ever granted to the Association, including all improvements, landscaping and equipment located therein or thereon.

(g) To carry out and enforce all duties of the Association set forth in this Declaration.

4.6. Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit corporation and a Texas property owners' association, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two (2) preceding sentences, the Association and the Board acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) To levy Assessments as provided in Article 5 below.

(b) To enter at any time in an emergency, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, upon any Lot or into any Improvement thereon, for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration, and the expense incurred by the Association in connection with the entry upon any Lot or Improvement and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 5 hereof for regular and special Assessments. EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASONS OF THE ASSOCIATION'S ACTS PURSUANT TO THIS SECTION 4.6, EVEN IF CAUSED BY THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH, EXCEPT TO THE EXTENT ANY SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY OR CLAIM IS CAUSED BY THE ASSOCIATION'S ACTUAL GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of this Declaration. The Association is also authorized to settle claims, enforce liens and take all

such action as it may deem necessary or expedient to enforce this Declaration; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its agents, attorneys, contractors, successors or assigns. Specifically, the Association shall have the right to enter onto any Lot to maintain, repair, or replace the walls, landscaping, and associated improvements between the Property and the adjacent roadways. The wall, landscaping, and associated improvements in question is and shall remain the property and responsibility of the Association.

(c) To retain and pay for the services of a Manager to manage and operate the Association, to the extent deemed advisable by the Board. To the extent permitted by law, the Association and the Board may delegate any duties, powers and functions to the Manager. The Members hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(d) To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(e) To establish accounts into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association.

(f) To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of this Declaration.

(g) To enter into contracts with Declarant and with other parties on such terms and provisions as the Board shall determine, and to acquire and own, and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

(h) To adopt and amend rules regarding the use of the Common Areas and Facilities and Special Common Areas; provided, however that any modifications thereto proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

4.7. Power to Indemnify and to Purchase Indemnity Insurance. The Association shall indemnify a director or officer of the Association against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person to the maximum extent permitted by the Texas Business Organizations Code, as may from time to time be amended or superseded. Further, the Association may indemnify and/or reimburse and/or advance expenses and/or purchase and maintain insurance or any other arrangement on behalf of any person, other than any person who is a director of the Association, who is or was an officer, attorney, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer,

partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trustee, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person, to such extent (or, in the case of officers of the Association, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of this Section 4.7 shall not be deemed exclusive of any other rights to which any such person may be entitled under any Bylaw, agreement, insurance policy, vote of Members or otherwise.

## 5. ASSESSMENTS

### 5.1. Assessments.

(a) The Association may from time to time levy Assessments against each Owner and each Lot. Except as specifically provided otherwise in this Declaration, the amount of Assessments shall be equal and uniform among all Lots. Any provision herein to the contrary notwithstanding, Declarant and Lots and land owned by Declarant or the Association are exempt from the payment of Assessments.

(b) The Assessments shall be used exclusively for the purpose of promoting the comfort, health, safety and welfare of the Owners, the maintenance and improvement of the Lots, Development Areas, Common Areas and Facilities, Special Common Areas, and for carrying out the purposes of the Association as stated in this Declaration or as otherwise provided in the Certificate of Formation of the Association, including but not limited to pond maintenance and the cost of utilities servicing such ponds.

(c) Where an Owner's obligation to pay Assessments first arises after the commencement of the year or other period for which an Assessment was levied, such Assessment shall be in a prorated amount proportionate to the fraction of the year or other period remaining after said date.

(d) Each purchaser of any Lot, by acceptance of a deed therefor, shall be deemed to covenant to pay to the Association each Assessment levied hereunder against such Lot, whether or not such covenant shall be expressed in any such deed or other conveyance. Each unpaid Assessment, together with interest thereon and costs and expenses of collection thereof, including, without limitation, reasonable attorneys' fees, as hereinafter provided, shall be the personal obligation and debt of the Owner of the Lot against which the Assessment was levied.

(e) The obligation to pay Assessments levied by the Association hereunder is part of the purchase price of each Lot when sold to an Owner. An express vendor's lien is hereby retained to secure the payment of each and every Assessment levied hereunder as well as all interest thereon as provided in Section 5.6 below and the costs and expenses of

collection thereof, including reasonable attorneys' fees, and each such vendor's lien is hereby transferred and assigned to the Association, each such vendor's lien to be superior and paramount to any homestead or other exemption provided by law. The Association may enforce the payment of Assessments in accordance with the provisions of this Article 5.

(f) Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. Any subsidy and the characterization thereof will be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.2. Regular Annual Assessments. Prior to the beginning of each fiscal year for the Association, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund ("**Regular Assessments**"). Regular Assessments sufficient to pay such estimated net expenses shall then be levied by the Association as herein provided, and the amount of such Regular Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. All Regular Assessments shall be due and payable to the Association in equal bi-annual installments, or in such other manner as the Board may designate in its sole and absolute discretion. The Owner of a Lot shall pay only one-half (1/2) of the then current Regular Assessment until construction of a residence commences on such Lot. "**Construction**" for such purposes shall be deemed to be the issuance of a building permit for a residence on the Lot together with initial site clearing of the Lot.

5.3. Development Area Assessments. Prior to the beginning of each fiscal year for the Association, the Board shall estimate the Development Area Expenses, if any, to be incurred by the Association during such year in performing its functions under this Declaration relating to Development Areas or Special Common Areas, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund to determine the Development Area Assessments. Assessments sufficient to pay such estimated net Development Area Expenses and replacement reserve funds shall then be levied by the Association as herein provided against the Owners of the Lots designated by Declarant to benefit from the Development Areas or Special Common Areas, and the amount of such Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. All such Development Area Assessments shall be due and payable to the Association at the beginning of the fiscal year for the Association for which such Assessments are payable, or during such fiscal year in equal monthly

installments on or before the first (1<sup>st</sup>) day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.4. Special Assessments. In addition to the Regular Assessments and Development Area Assessments provided for above, the Association may levy special Assessments (“**Special Assessments**”) whenever in the Board's sole opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any Special Assessments shall be determined by the Board in its sole discretion and shall be due and payable in any manner as the Board may designate.

5.5. Individual Assessments. In addition to any other Assessments, the Board may levy “**Individual Assessments**” against an Owner and the Owner's Lot. Individual Assessments may include Assessments due upon the transfer of ownership of a Lot subject to the following limitations: At each closing of the purchase of a Lot from Declarant, the purchaser shall pay to the Association an Individual Assessment of Two Hundred and Fifty and No/100 Dollars (\$250.00) per Lot. At the time of each subsequent conveyance of such Lot, an Individual Assessment shall be payable to the Association equal to two (2) times the then current regular monthly Assessment. In addition, Individual Assessments may include working capital fee contributions, fees for review of Plans and Specifications submitted by an Owner to the Architectural Committee; fees or charges levied by the Association on a per-Lot basis; pass through expenses for services to Lots or Owners provided by the Association and which are equitably paid by each Lot according to the benefits received; fines for violations of this Declaration; late charges, interest and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with this Declaration; and reimbursement for damage or waste caused by willful misconduct or negligent acts of the Owner or the Owners' guest, invitees or residents.

5.6. Owner's Personal Obligation for Payment of Assessments. Each Assessment provided for herein shall be the personal and individual debt of the Owner of the Lot against which such Assessment was levied. No Owner, other than Declarant, may exempt himself from personal liability for such Assessments. In the event of default in the payment of any Assessment, the Owner of the Lot against which such Assessment was levied shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent [1.5%] per month) together with all costs and expenses of collection, including, without limitation, reasonable attorneys' fees.

Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property from any Assessments levied or charged pursuant to this *Article 5*; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

**5.7. Assessment Lien and Foreclosure. To the extent the following does not comply with applicable local, state, or federal law, the following provisions shall be amended or revised to comply with all applicable rules, ordinances, and statutes:**

(a) The payment of each unpaid Assessment levied hereunder together with interest thereon as provided in Section 5.6 above and the costs and expenses of collection thereof, including reasonable attorneys' fees, as herein provided, is secured by a continuing lien and charge on the Lot against which such Assessment was levied. Such lien for payment of Assessments shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns, and shall be superior to all other liens and charges against such Lot, except only for tax liens, and all sums unpaid on any first lien Mortgage securing sums borrowed for the purchase or improvement of such Lot, provided such Mortgage was recorded in the Official Public Records of Williamson County, Texas, before such Assessment was due. The Association shall have the power, in the Board's sole and absolute discretion, to subordinate the aforesaid lien for payment of Assessments to any other lien. Any such subordination shall be signed by an officer of the Association and recorded in the Official Public Records of Williamson County, Texas. Upon the written request of any Beneficiary holding a lien on any Lot that is superior to the lien for payment of Assessments as provided herein, the Association shall report to said Beneficiary the amount of any Assessments levied against such Lot remaining unpaid for a period of more than thirty (30) days after the same are due.

(b) This Declaration alone evidences the aforesaid lien for payment of Assessments. The Association may also from time to time prepare written notices of Assessment liens setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the Owner of such Lot. Such notices shall be signed by one of the officers of the Association and shall be recorded in the Official Public Records of Williamson County, Texas. The aforesaid lien for payment of Assessments shall attach with the priority set forth above from the date the payment of such Assessments becomes delinquent. The Association may enforce such lien by all lawful means, including, without limitation, by a foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Section 51.002 of the Texas Property Code, as the same may be amended or modified, or the Association may institute suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The Owner of the affected Lot shall be required to pay all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Association in connection with any foreclosure proceeding, whether judicial or non-judicial. The Association shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

(c) The liens for payment of Assessments provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-

judicial foreclosure sale or otherwise; provided, however, that in the event of foreclosure of any first lien Mortgage superior to the lien for the delinquent Assessment, the lien for the delinquent Assessment will be extinguished, and the delinquent Assessment shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any lien for payment of Assessments as herein provided will not relieve any Owner from the obligation to pay Assessments subsequently becoming due and payable.

5.8 Initial Assessment Amounts. The initial annual Regular Assessment shall be \$650, due on or before January 1 of each year, and there shall be an initial Special Assessment of \$600 due at the time of closing on any Lot.

## 6.

### DEVELOPMENT AND DECLARANT RIGHTS

6.1. Exemption of Declarant. Anything in this Declaration to the contrary notwithstanding, neither Declarant, the Lots, nor any other land owned by Declarant, nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Board, the Association or the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade; to construct and alter drainage patterns and facilities; to construct any and all types of Improvements, homes, sales and leasing offices and similar facilities; and to post signs incidental to construction, sales and leasing anywhere within the Property.

6.2. Reserved Easements. Declarant hereby reserves easements upon, across, over and under all of the Property and Lots for the purposes of installing, replacing, repairing, maintaining and removing all (i) roadways, (ii) stormwater drainage, detention, retention and discharge infrastructure and (iii) utility lines and facilities of any kind, including, but not limited to, electric, water, wastewater, gas and telecommunications lines and appurtenances thereto, and providing access thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service line or other utility facilities or appurtenances thereto, on, above, across and under the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this Section 6.2, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the plat of the Property, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements. Declarant further reserves the right to determine which utility providers are allowed to utilize the easements or otherwise provide utilities within the Property to the fullest extent allowed by law.

6.3. **Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and as shown on the plat of the Property. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Committee. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and the prior written approval of the Architectural Committee is obtained. The surface area of easement areas for underground utility services shall be maintained by the Owner of the Lot which such easement overlays and such Owner may use the surface of such easement areas for planting of shrubbery, trees, lawns or flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

6.4. **Additional Land.** Declarant may, at any time and from time to time, add other land in proximity to the Property, and upon the filing of a Supplemental Declaration, this Declaration and the covenants, conditions, restrictions and obligations set forth herein (as modified or amended by the covenants, conditions, restrictions and obligations, if any, set forth in a Supplemental Declaration affecting such other land), and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the Property originally covered by this Declaration. In order to add other land to the Property hereunder, Declarant shall be required only to record in the Official Public Records of Williamson County, Texas, a Supplemental Declaration containing the following provisions: (a) a reference to this Declaration, which reference shall state the document number of the Williamson County Official Public Records wherein this Declaration is recorded; (b) a statement that the provisions of this Declaration shall apply to the other land, as applicable and (c) a legal description of the additional land.

6.5. **Withdrawal of Land.** Declarant may at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portions of the Property that are either (i) owned by Declarant or (ii) owned by parties other than Declarant, provided that Declarant obtains the unanimous written consent of the owners of such portions of the Property. Upon any such withdrawal and removal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn or removed. In order to withdraw or remove portions of the Property hereunder, Declarant shall be required only to record in the Official Public Records of Williamson County, Texas, a Notice of Withdrawal of Land containing the following provisions: (a) a reference to this Declaration, which reference shall state the



document number of the Williamson County Official Public Records wherein this Declaration is recorded; (b) a statement that the provisions of this Declaration shall no longer apply to the withdrawn portion of Property and (c) a legal description of the withdrawn portion of the Property.

6.6. Development Area Designations. Declarant may at any time and from time to time, designate portions of the Property as Development Areas for the purpose of enjoying special amenities, benefits or services, paying Development Area Assessments, and/or or being subject to special covenants and restrictions as provided in a Development Area Declaration. In order to subject property to a Development Area Designation, Declarant shall be required only to record in the Official Public Records of Williamson County, Texas, a Development Area Declaration containing the following provisions: (a) a reference to this Declaration, which reference shall state the document number of the Williamson County Official Public Records wherein this Declaration is recorded; and (b) a legal description of the additional land. Declarant may designate and modify one or more Development Areas which may be comprised of different types of Lots and residences and may include noncontiguous Lots and property. A Lot or parcel of property may be included in more than one Development Area.

6.7. Assignment of Declarant Rights. Anything in this Declaration to the contrary notwithstanding, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Such assignment shall be evidenced by a written instrument, executed by Declarant, recorded in the Official Public Records of Williamson County, Texas. In the event of any partial assignment by Declarant of any of its privileges, exemptions, rights and duties under this Declaration, Declarant shall continue to remain responsible and liable for all its obligations and duties under this Declaration until such time as Declarant has completed a full assignment of all of its privileges, exemptions, rights and duties under this Declaration to any other person or entity. The mere conveyance of a portion of the Property without such a written, recorded assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

6.8. Declarant's Right to Specify Utilities. To the fullest extent allowed by law, for any utility service, including but not limited to phone, internet, satellite, cable, water, electrical, natural gas, or wastewater, Declarant may mandate or prohibit the use of any such utility provider; however, in the event Declarant mandates the use of any utility provider, an Owner may opt out of such mandate by paying a fee of \$1,500 per utility opted out of, all due at the time such Owner elects to opt out of such mandate(s) in writing.

## 7.

### MISCELLANEOUS

7.1. **Term.** This Declaration, including all of the covenants, conditions and restrictions hereof, shall continue in force and effect until January 1, 2060, unless terminated as herein provided. After January 1, 2060, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by Declarant (if during the Development Period) and the Owners of at least seventy-five percent (75%) of the Lots.

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

7.3. **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

7.4. **Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address given by such person to the Association for the purposes of service of notices, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

7.5. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.6. Enforcement and Nonwaiver.

(a) Except as otherwise provided in Article 8 or any other provision of this Declaration, any Owner at his own expense, Declarant or the Board shall have the right to enforce the provisions of this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach or threatened breach of any such provision.

(b) Every act of omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined by any Owner (at his own expense), Declarant or the Board.

(c) Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(d) The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

(e) The Association shall have the right, when appropriate in its judgment, to claim and impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right under, or effect compliance with, this Declaration.

7.7. Construction.

(a) The provisions of this Declaration shall be deemed independent and severable. If any clause or provision of this Declaration is or should ever be held to be illegal, invalid or unenforceable under any present or future law applicable to the terms hereof, then and in such event, it is the intention that the remainder of this Declaration shall not be affected thereby, and that in lieu of each such clause or provision of this Declaration that is illegal, invalid or unenforceable, this Declaration be reformed to automatically add as a part of this Declaration a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(b) Unless the context requires a contrary construction, the singular shall include the plural and the plural, the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

## 8. DISPUTE RESOLUTION

8.1. Encouragement of Alternative Dispute Resolution. Declarant, the Association and its officers, directors and agents, the Architectural Committee and each party subject to this Declaration (individually, a “**Party**,” and collectively, the “**Parties**”) acknowledge and agree that it is in the best interest of all Parties to encourage the amicable resolution of disputes, controversies and claims involving the Property without the costs of litigation. Each of the Parties agree not to file suit in any court regarding a Claim unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Article 8 and processed such Claim in a good faith effort to resolve such Claim.

8.2. Alternative Dispute Resolution Claims. The term “**Claim(s)**” shall mean any dispute, controversy or claim arising out of or relating to (a) the interpretation, application or enforcement of this Declaration, any Supplemental Declaration, any Design Guidelines, the Association Certificate, the Bylaws, and the rules and regulations for the Property adopted by the Board (collectively, the “**Declaration and Association Documents**”); (b) the rights, obligations and duties of any Party under the Declaration and Association Documents and (c) the design or construction of Improvements within the Property.

8.3. Exempt Claims and Actions. Any provision to the contrary notwithstanding, the following “**Exempt Claims and Actions**” shall not be considered Claims and are not subject to the limitations and requirements to participate in the alternative dispute resolution procedures set forth in this Article 8: (i) any suit by the Association to collect Assessments or other amounts due from any Owner, (ii) any action or judicial or non-judicial procedure to foreclose the liens created by this Declaration; (iii) any suit by the Association or Declarant to enforce the terms of this Declaration or preserve the Association's ability to enforce this Declaration; (iv) any suit in which any indispensable party is not a Party; and (v) any suit filed within thirty (30) days prior to the expiration of an applicable statute of limitations for the applicable Claim. Any attempt to resolve the Exempt Claims and Actions through alternative dispute resolution procedures shall not be deemed a waiver of, and a party shall not be deemed estopped from exercising, the right of such party to institute any action at law or equity to resolve such Exempt Claims and Actions.

8.4. Alternative Dispute Resolution Procedures.

(a) Notice. The Party asserting a Claim (“**Claimant**”) against another Party (“**Respondent**”) shall give written notice to each Respondent plainly stating: the nature of the Claim, the parties involved, the legal basis of and authority for the Claim, and Claimant's proposed resolution or remedy.

(b) Negotiation. Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by reasonable and good faith negotiations. The Board may, but shall not be obligated to, appoint a representative to assist the Parties in negotiating a resolution of the Claim.

(c) Mediation. If the applicable Parties have not resolved the Claim through negotiation within thirty (30) days after delivery of the notice of claim (or such other negotiation period as the parties may agree upon), Claimant will have thirty (30) days thereafter to submit the Claim to mediation by an impartial person or entity designated by the Association; provided if the Association is a party to the Claim, the Association shall designate an impartial party not personally acquainted with the Board or the officers of the Association. Each Party shall bear its own costs of the mediation, including its attorneys' fees. Each Claimant and Respondent party shall share equally all reasonable fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the applicable Parties.

8.5. Litigation. If the applicable Parties have not resolved the Claim through mediation within thirty (30) days after submittal to the mediator, the Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim.

8.6. WAIVER OF JURY TRIAL. EACH OF THE PARTIES WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS DECLARATION. ANY SUCH DISPUTES SHALL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

EXECUTED to be EFFECTIVE as of the Effective Date.

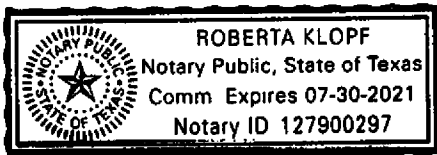
**DECLARANT:**

**OAKMONT GEORGETOWN, L.L.C., a Texas  
limited liability company**

By: *Norm Ashby*  
NORM ASHBY, Its Manager

THE STATE OF TEXAS       §  
  §  
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on February 5, 201~~8~~<sup>9</sup>, by **Norm Ashby**, as the Manager of **OAKMONT GEORGETOWN, L.L.C.**, a Texas limited liability company.



*Roberta Klopff*  
NOTARY PUBLIC, State of Texas

**EXHIBIT "A"**

**EXHIBIT A**

Lots 1 through 15, Block A; Lots 16 through 25, Block B; Lot 26, Block C; Lots 27 through 42, Block D; Lots 44 through 66, Block E; and Lots 67 through 72, Block F, of OAKMONT, a subdivision in Williamson County, Texas, according to the map or plat of record under Document No. 2018057449, Official Public Records, Williamson County, Texas.



**ELECTRONICALLY RECORDED  
OFFICIAL PUBLIC RECORDS**

**2019011735**

Pages: 33 Fee: \$145.00  
02/14/2019 12:23 PM



*Nancy E. Rister*

Nancy E. Rister, County Clerk  
Williamson County, Texas