

**AFTER RECORDING, RETURN TO:
BAIRD, CREWS, SCHILLER & WHITAKER, P.C.
15 North Main
Temple, Texas 76501-7629**

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIVE COVENANTS OF
MISTY CREEK SUBDIVISION
A subdivision in Temple, Bell County, Texas**

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BELL §

MISTY CREEK DEVELOPMENT, INC. (“Declarant”), is the owner of that certain tract of land situated in Bell County, Texas, more particularly described by metes and bounds in an exhibit entitled “Legal Description” attached to this Declaration, and designated as Misty Creek Subdivision, a subdivision in Temple, Bell County, Texas (sometimes referred to as the “Subdivision”).

Declarant makes and imposes the following covenants, conditions, and restrictive covenants upon the Subdivision, according to the above-referenced plat (“Subdivision Plat”), that will be covenants running with the land for the purposes set forth as follows:

PREAMBLE AND DECLARATION

Declarant has created a subdivision with designated “Lots” (as defined below) for the benefit of the present and future owners of the Lots within the Subdivision and desires to create and carry out a uniform plan for the improvement, development, and sale of the Lots.

Declarant desires to ensure the preservation of the values and amenities of the Subdivision and the maintenance of the “Common Area” (as defined below) and to this end desires to further subject the Subdivision to the assessments, charges, fines, and late fees (sometimes collectively referred to as “Charges”) conditions, covenants, easements, reservations and restrictions, and liens set forth below, each and all of which is and are for the benefit of the Subdivision and the Owners thereof.

Declarant has deemed it desirable for the enforcement of the “Declaration” (as defined below) to create an “Association” (as defined below) to which will be delegated and assigned the power of administering and maintaining the Common Area in the Subdivision and of administering and enforcing the Charges, conditions, covenants, easements, reservations and restrictions, and liens, including levying, collecting, and disbursing the Charges.

There has been or will be incorporated one or more non-profit corporations created under the laws of the State of Texas, including the first being the Misty Creek Homeowners’ Association, Inc., whose directors will establish the Bylaws by which the Association will be governed through its Board of Directors, for the purpose of exercising the functions mentioned in this Declaration. No more than one such non-profit corporation will be in existence at any time.

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Declarant declares that additional land within the “Properties” (as defined below) may be annexed into the Association in stages, as provided below and in accordance with Declarant’s scheme of the Properties. The annexed land will not be dependent upon future stages of the development but will be subject to this Declaration.

Declarant declares that the Subdivision and all future phases or additions to the Subdivision are and will be held, transferred, sold, conveyed, occupied, and enjoyed subject to the following Charges, conditions, covenants, easements, reservations and restrictions, and liens and will be subject to the jurisdiction and assessments of the Association.

ARTICLE I PURPOSE

The Subdivision is encumbered by this Declaration of Covenants, Conditions, and Restrictions for the following reasons:

To ensure the best and highest use and most appropriate development of the Properties;

to protect Owners against improper use of surrounding Lots to preserve so far as practicable the natural beauty of the Properties;

To guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials;

To encourage and secure the erection of attractive improvements on each Lot with appropriate locations;

To secure and maintain proper setbacks from streets and adequate free space; and

In general, to provide for development of the highest quality to enhance the value of investment made by Owners.

ARTICLE II DEFINITIONS

The following words when used in this Declaration or any supplemental Declaration (unless the context will prohibit) will have the following meanings.

“Architectural Review Committee” and “ARC” mean the Architectural Review Committee of the Association.

“Association” means Misty Creek Homeowners’ Association, Inc., a Texas non-profit corporation, its successors, assigns, and replacements as provided in this Declaration, that has jurisdiction over all Properties located within the land encumbered or to be encumbered under this Declaration, as may be amended. It has the power, duty, and responsibility of maintaining and administering the Common Area and administering and enforcing the Declaration and any amended or supplemental Declaration. The Association is a “property owners’ association” as that term is defined in Texas Property Code §202.001(2).

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“Board of Directors” and “Board” mean the Board of Directors of Misty Creek Homeowners’ Association, Inc., a Texas non-profit corporation, its successors, assigns, and replacements as provided in this Declaration, the election and procedures of which are set out in the Certificate of Formation and Bylaws of the Association. The Board of Directors will be the elected body having its normal meaning under Texas non-profit corporate law.

“Builder” or “Builders” includes but is not limited to contractors, general contractors, subcontractors, suppliers, tradesmen, craftsmen, and any other individuals in the building process in connection with construction of improvements on a Lot.

“Builder Member” means a builder approved by Declarant and who owns one or more Lots for construction of improvements upon one or more Lots for resale to others.

“Builder’s Guidelines” means a publication of the ARC that sets forth general guidelines as to various standards, including but not limited to construction types, aesthetics, and exterior harmony of any and all improvements placed upon or constructed on any Lot, which publication may be amended by the ARC without notice to the Owners.

“Common Area” means any easements or any real and personal property leased, owned, or maintained by the Association for the common use and benefit of the Members of the Association. Common Area also may include any entrance monuments, security gates and electronic controls, perimeter walls, lighting, drainage facilities and detention ponds, esplanade and right-of-way landscaping, all amenities and water features contained in the Common Area, and any improvement areas within indicated public easements or rights-of-way as deemed appropriate by the Board of the Association for the preservation, protection, and enhancement of property values and the general health, safety, or welfare of the Owners, safety lanes, and other areas as may be shown on the Subdivision Plat or as otherwise created by other documentation. The initial Common Area will be Common Areas A, B, and C as shown on the Subdivision Plat.

“Declarant” means Misty Creek Development, Inc., its successors, or assigns who are designated as such in writing by Declarant and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign. No person or entity purchasing one or more Lots from the Declarant in the ordinary course of business will be considered a “Declarant”.

“Declaration” means this Declaration of Covenants, Conditions, and Restrictions for Misty Creek Subdivision and any amendments and supplements to this Declaration made in accordance with the terms of this Declaration. “Improved Lot” means a Lot upon which a Living Unit has been constructed and such Living Unit is occupied by the Owner or its tenants. The term “Improved Lot” also will include model homes constructed by Declarant or a Builder Member.

“Governing Documents” includes the Declaration, Restrictive Covenants, Rules and Regulations, Builder’s Guidelines, and Bylaws of the Association.

“Living Unit” means a single-family residence and its garage situated on a residential lot.

“Lot” or “Lots” mean any of the plots of land as shown on the Subdivision Plat and being further described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of the Subdivision.

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“Member” or “Members” mean all those Owners who are members of the Association as provided in this Declaration.

“Nuclear Family” means a group related by blood, adoption, or marriage, or a number of unrelated roommates equal to the number of bedrooms in a Living Unit times two.

“Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot within the Properties, including contract sellers.

“Properties” means the properties collectively known as Misty Creek Subdivision, and all additions to the Subdivision, as are subject to this Declaration or any amended or supplemental Declaration.

“Resident” means each Owner or occupant of a Living Unit or any individual who is otherwise lawfully domiciled in a Living Unit. Occupant is a bona fide lessee who has an enforceable lease agreement with an Owner and who resides in a Living Unit, his guests, and invitees.

“Restrictive Covenants” means the restrictive covenants contained in this Declaration or attached to the Declaration as an exhibit, or the restrictive covenants set forth in instruments filed prior to or subsequent to the filing of this Declaration, together with all amendments of the foregoing.

“Rules and Regulations” means the rules and regulations promulgated by the Board of the Association from time to time and which may be filed in the Real Property Records of Bell County, Texas.

“Subdivision” means the Subdivision as defined above.

“Subdivision Plat” collectively means the map or plat of the Subdivision, filed of record in the Plat Records of Bell County, Texas, and any amendment, replat, or modification to the Subdivision Plat, and any master plat or plan, as may be amended or modified from time to time, for additional properties that may be added from time to time as provided by this Declaration. A copy of the master plat or plan may be attached to this Declaration as an exhibit entitled “Master Plat or Plan”.

“Unimproved Lot” means a Lot upon which no improvements have been constructed.

ARTICLE III PROPERTY RIGHTS

Every Owner, guest, invitee, customer, and tenant will have a right and easement of ingress and egress, use, and enjoyment in and to the Common Area that will be appurtenant to and will pass with the title to every Lot, subject to the following provisions.

1. The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

2. The right of the Association to suspend an Owner’s voting rights and the right to use any facility for any period during which any assessment of the Association against that Owner’s Lot remains

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unpaid, and for infractions by an Owner of the Restrictive Covenants contained in this Declaration and/or the Association's Rules and Regulations for the duration of the infraction.

3. The right of the Association to grant easements in and to the Common Area to any public agency, authority, or utility for such purposes as benefits the Properties and Owners.

4. The right of the Association to borrow money for the purpose of improving the Common Area, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located on the Common Area, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided a majority of each Class of Members present or represented by proxy at a meeting called for such purpose will approve; provided however, the lien and encumbrance of any such mortgage given by the Association will be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision.

5. The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer will be effective unless an instrument agreeing to such dedication or transfer has been approved by a majority of the Class A Members of the Association who are present or represented by proxy entitled to cast at a meeting duly called for such purpose, and by the Class B Members so long as the Class B membership exists.

6. The right of the Association to convey small portions of the Common Area to adjacent Owners when, in the sole opinion of the Board, the portion of the Common Area to be conveyed is so small in size, amount, and value that it will have no material consequence to or impact upon the Association or the Subdivision or negatively affect the overall usage of the Common Area by the Owners as a result of such conveyance. In such an event, the Board may authorize such conveyance without the joinder of any other Owner.

7. The right of the Association to prescribe Rules and Regulations as they may be expanded, amended, or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of the Owner's Lot may be affected by this provision and that the Rules and Regulations may change from time to time. The Board has the authority to enforce the Rules and Regulations by all appropriate means, including but not limited to the imposition of fines if notice and an opportunity to be heard are given. A Member found to have violated the Rules and Regulations will be liable to the Association for all damages and costs, including reasonable attorney's fees.

ARTICLE IV ARCHITECTURAL REVIEW

In order to protect the overall integrity of the development of the Subdivision as well as the value of improvements of all Owners, a committee of representatives designated as the Architectural Review Committee ("ARC") is established to carry out all duties noted in this Declaration. The ARC will have full authority to approve and disapprove, change, modify, or waive, and ultimately control all construction, development, and improvement activities of any kind (including without limitation structures, buildings, building materials, and the placement of improvements) within the Subdivision. The ARC will require that all improvements are constructed in a good and workmanlike manner and in

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accordance with standard industry trade practices and applicable codes. The ARC further will require that all improvements are architecturally, aesthetically, and ecologically designed to be compatible with Declarant's conceptual plan for the overall Subdivision and/or as decided by the ARC.

The ARC may prescribe Builder's Guidelines as they may be expanded, amended, or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the Builder's Guidelines may change from time to time. The ARC has the authority to enforce the Builder's Guidelines by all appropriate means, including but not limited to the imposition of fines, subject to the review of the Board, if notice and opportunity to be heard are given, and a Member found to have violated the Builder's Guidelines will be liable to the Association for all damages and costs, including reasonable attorney's fees. The Board will have the authority to enforce the Builder's Guidelines in accordance with this provision in the event the ARC fails to enforce the Builder's Guidelines.

No building, structure, fence, residence, house, garage, accessory building, outbuilding, addition, modification, or construction of any kind will be erected, placed, constructed, maintained, modified, redecorated, or altered until a complete set of plans, specifications, and other reasonably requested information (the "Plans and Specifications") have been formally submitted to the ARC with a written request for approval and the ARC's written approval received. Plans and Specifications that are submitted will contain and include, but not necessarily be limited to, the following information: nature, kind, shape, height, and location of the Living Unit and improvements; floor plans, including square footage, roof pitch, percentage of exterior finish materials, and finished floor and ground elevations; exterior elevations for any building, fence, or other structure; a plat or site plan showing easements and the location of any building, fence, or other structure (including location of light poles and curb cuts, if applicable); nature, kind, shape, height, materials, and location of all landscaping; exterior lighting and location; samples of exterior finish materials and color samples; and any other plans, specifications or information deemed pertinent by the ARC or Declarant.

The ARC will review all Plans and Specifications submitted (in accordance with the below-defined procedures) for compliance with all the requirements of this covenant and for the compatibility of any improvements with the architectural, aesthetic, and ecological goals of the Subdivision and Declarant. It is the intent that all improvements be compatible with all other improvements in the Subdivision and that they will be in harmony with their natural surroundings. It is the intent of the ARC to prevent unusual, radical, curious, odd, bizarre, peculiar, or irregular structures from being built within the Subdivision. The ARC will have full right and authority to utilize its sole discretion in approving or disapproving any Plans and Specifications that are submitted.

The ARC may disapprove the construction or design of any improvement on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or value of the Subdivision or to preserve the serenity and natural beauty of any surroundings. Prior approvals or disapprovals of the ARC pertaining to any improvement or activity or regarding matters of design or aesthetics will not be deemed binding upon the ARC for later requests for approval if the ARC believes that the repetition of such matters will have an adverse effect on the Subdivision. The ARC will have the express power to construe and interpret any covenant that may be capable of more than one construction.

During reasonable hours, members of the ARC, any member of the Board, or an authorized representative of any of them, will have the right to enter upon and inspect any Lot and the improvement

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or structure for the purpose of ascertaining whether or not the provisions of the Declaration have been or are being complied with, and said persons will not be deemed guilty of trespass by reason of such entry.

The ARC will have the authority to employ professional consultants or architects at the expense of the Association to assist it in performance of its duties, including but not limited to the review of all plans, specifications, and other information submitted for compliance. The decision of the ARC will be final, conclusive, and binding upon the applicant. ARC members are not entitled to any compensation for any services rendered pursuant to this covenant, other than as provided in the Bylaws.

Members of the ARC will not be liable to any person subject to, possessing, or claiming any benefits of this Declaration.

The number of and initial ARC members will be decided by Declarant. As long as there is a Class B membership, in the event of the death or resignation of any member of the ARC, Declarant will have full power and authority to appoint a successor ARC member or members, chosen in its sole discretion, with like authority. Upon the expiration of the Class B membership, the Board of Directors will appoint the members of the ARC, which will consist of at least 3 members.

Procedures for Approval: A complete copy of the final Plans and Specifications will be submitted in duplicate, with a written request for approval, by direct delivery or by certified mail to the ARC. Such Plans and Specifications must be submitted at least 30 days prior to the proposed construction of improvements or landscaping. The Plans and Specifications will be considered submitted and all timeframes set forth in this Article will begin as of the date the ARC signs a certified mail receipt or a delivery receipt (the "Date of Submission").

At such time as the Plans and Specifications meet the approval of the ARC, the ARC will send written authorization to proceed and will retain one set of the Plans and Specifications for its file and future reference. If disapproved by the ARC, the Plans and Specifications will be returned to the submitting party marked "Disapproved" and will be accompanied by a statement of the reasons for disapproval, which statement will be signed by a representative of the ARC. Compliance by the ARC and its response to the Plans and Specifications will be based upon the date the ARC's notice of approval or disapproval is mailed (postmark of certified mail receipt) or delivered (signed delivery receipt) and will not be based upon the date the submitting party actually receives such notice of approval or disapproval. Any modification of the approved set of Plans and Specifications must be resubmitted to the ARC for its approval. The ARC's approval or disapproval will be in writing. In no event will the ARC give verbal approval of any Plans and Specifications.

If the ARC fails to approve or disapprove properly submitted Plans and Specifications within 30 days after the Date of Submission, written approval of the matters submitted will not be required and compliance with this Article and this Declaration will be deemed to have been completed. In the case of a dispute about whether the ARC responded within the required time period, the person submitting the Plans and Specifications will have the burden of establishing that the ARC received the Plans and Specifications but failed to respond. The ARC's receipt of the Plans and Specifications may be established by a signed certified mail receipt or by a signed delivery receipt.

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Procedures for Request for Variance. In the event a variance is requested, Owner or its builder or a Builder Member must submit to the ARC, in duplicate:

- (a) A complete copy of the final Plans and Specifications, together with any supporting materials and a survey showing the encroachment across or into any setback line or easement, or other basis or grounds for the variance request;
- (b) A written request for the variance; and
- (c) Contact information for the Owner and, if applicable, its builder or the Builder Member.

The request for a variance may be by direct delivery or by certified mail to the ARC. The ARC will send its written decision to the Owner or its builder or the Builder Member within 30 days of the ARC's receipt of a request for a variance. If a request for a variance is made prior to the construction of improvements and such variance is granted, the ARC's approval will be conditional and preliminary until all improvements are constructed. Upon final completion of the improvements, the Owner or its builder or the Builder Member must submit to the ARC, in duplicate, an "as built" survey, reflecting the location of all improvements and the encroachment or subject of the variance. The "as built" survey may be submitted to the ARC by direct delivery or by certified mail. The ARC will send its written decision to the Owner or its builder or the Builder Member within 15 days of the ARC's receipt of the "as built" survey. Final ARC approval and granting of the variance will not be given until the ARC receives the final submissions. In the event the encroachment or subject of the variance differs from and exceeds the original request for a variance, the Owner will be subject to a fine. Any fine assessed by the ARC must be paid in full before the ARC approves the request and grants the requested variance.

ARTICLE V FILING OF MANAGEMENT CERTIFICATE

It is the intent of the Association to comply with all provisions of the Texas Property Code, and specifically Section 209, including but not limited to the filing of a management certificate in the Real Property Records of Bell County, Texas.

ARTICLE VI RESTRICTIVE COVENANTS

1. Restrictive Covenants. The restrictive covenants may be set out in an exhibit entitled "Restrictive Covenants" attached to this Declaration or may be filed as a separate instrument.
2. Character of Lots. Lots within the Subdivision refer not only to the architectural design of the Living Unit but also to the permitted number of inhabitants, which will be limited to a Nuclear Family per Living Unit. It is not the intent of the Declarant to exclude from a Living Unit any individual who is authorized to so remain by any state or federal law. If it is found that this paragraph or any other provision contained in this Declaration is in violation of any law, this Article will be interpreted to be as restrictive as possible to preserve as much of the original intent as allowed by law.
3. Business or Commercial Purpose. No Lot may be used for business or commercial purposes. This provision will not prohibit an Owner's conduct of business activities that are merely incidental to the Owner's residential use within a Living Unit so long as:

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(a) The existence or operation of the business activity is not apparent, detectable, or visible by sight, sound, or smell from outside the Living Unit;

(b) The business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property;

(c) The business activity does not involve visitation of the Living Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of the Owners; and

(d) The business activity is consistent with the residential character of the Subdivision and of the Properties and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Owners, as may be determined in the sole discretion of the Board.

The term “business” as used in this paragraph will be construed to have its ordinary, generally accepted meanings and will include without limitation any occupation, work, or activity undertaken on an ongoing basis that involves the manufacture or provision of goods or services for or to other persons other than the provider’s family, regardless of whether:

- (1) such activity is engaged in full or part-time,
- (2) such activity is intended to or does not generate a profit, or
- (3) a license is required therefore.

Notwithstanding the above, the leasing of the entire Living Unit will not be considered a business within the meaning of this paragraph 3 of Article VI. This paragraph 3 of Article VI does not apply to any activity conducted by the Declarant or a Builder Member with respect to its development and sale of its Lot.

ARTICLE VII MODIFICATIONS AND VARIANCES

The ARC has the authority to modify or waive any and all of the Restrictive Covenants that would not, in the ARC’s sole discretion, impair or detract from the quality of the Subdivision. In addition, the ARC has the authority to reduce the floor area requirement contained herein by 10% and to modify any building material requirements. Such modification or waiver may be by written instrument in recordable form.

The ARC, in its sole discretion, has the authority to grant variances (as requested in accordance with Article IV of this Declaration) of any setback line, alter any setback line, and waive any encroachment across or into any setback line, Common Area, or easement, to the extent that the ARC has the authority to waive such encroachment into an easement, as the ARC deems necessary. Such variance or waiver will be by written instrument in recordable form.

ARTICLE VIII BYLAWS

The Bylaws are operational documents of the Association and may be attached to this Declaration as an exhibit entitled “Bylaws” or may be a separate instrument filed prior or subsequent to the filing of

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this Declaration, together with all amendments of the foregoing, in accordance with Texas Property Code § 202.001 and § 202.006.

ARTICLE IX EASEMENTS AND ACCESS

Easements for installation and maintenance of fencing, utilities, and drainage facilities are reserved as shown on the recorded Subdivision Plat or through the Restrictive Covenants or any other documents filed of record. Within these easements, if any, no structure, planting, fence, or other material will be placed or permitted to remain that may damage or interfere with the installation and maintenance of the Subdivision's entryway, fence, or utilities or, in the case of drainage easements, that may change or impede the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such area will be maintained continuously by the Owner of the Lot, except for those improvements for which the Association, a public authority, or utility company is responsible. The Association, Declarant, or any utility company using the easements will not be liable for any damages done by it or its assigns, agents, employees, or servants to shrubbery, flowers, or other property of Owners situated on the land covered by the easements.

There is created a right of ingress and egress across, over, and under the Common Area in favor of Declarant and the Association for the sole purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including but not limited to water, sewer, telephone, cable TV, electricity, gas, and appurtenances thereto.

An easement is extended and acknowledged to all police, fire protection, ambulance, garbage and trash collector pickup vehicles, and all similar persons to enter upon the Common Area in performance of their duties.

Each Lot is conveyed subject to all easements, conditions, and reservations shown on the Subdivision Plat and each Owner will take notice of all such easements, conditions, and reservations. No Owner will maintain any condition or improvements in any platted easement or in any easement granted to the Association by separate document recorded in the Official Public Records of Real Property of Bell County, Texas, that will significantly interfere with the intended use of the easement.

Easements for drainage throughout the Subdivision are reserved as shown on the Subdivision Plat or by written instrument filed in the Official Public Records of Real Property of Bell County, Texas, prior or subsequent to the filing of the Subdivision Plat. No Owner of any Lot in the Subdivision may perform or cause to be performed any act that would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate, or impede the natural flow of water over and across the easements. More specifically and without limitation, no Owner, guest, invitee, customer, or tenant may:

1. Alter, change, or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;
2. Alter, change, or modify the existing configuration of the drainage easements, or fill, excavate, or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the ARC;

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3. Construct, erect, or install a fence or other structure of any type or nature within or upon such drainage easements unless such fences are found by the ARC not to impede or alter stormwater flow;

4. Permit storage, either temporary or permanent, of any type upon or within such drainage easements; or

5. Place, store, or permit to accumulate trash, garbage, leaves, limbs, or other debris within or upon the drainage easements, on a temporary or permanent basis.

The failure of any Owner to comply with the provisions of this Article in no event will be deemed or construed to impose liability of any nature on the Association, ARC, or Declarant, and the ARC or Declarant will not be charged with any affirmative duty to police, control, or enforce such provisions.

ARTICLE X LOT CONSOLIDATION

Any Owner owning 2 or more adjoining Lots or portions of 2 or more such Lots may consolidate such Lots or portions thereof into a single building site for the purpose of constructing improvements as are permitted in this Declaration. The Lot resulting from the consolidation will bear, and the Owner will be responsible for, all assessments applicable to the original Lots before consolidation. Each consolidated Lot will meet all lawful requirements of any applicable statute, ordinance, or regulation.

ARTICLE XI ENFORCEMENT

If the Owner of any Lot, or his heirs, executors, administrators, successors, assigns, or tenants, violates or attempts to violate any of the restrictions and covenants set forth in the Declaration, the Association, Declarant, or any Owner subject to this Declaration may prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. If there is a failure by any Owner, guest, invitee, or tenant to comply with any restriction or covenant in the Declaration and if irreparable damage to Declarant and other Owner results or would result, then the breach of any provision of the Declaration may not only give rise to an action for damages at law but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce the terms of the Declaration or prohibit violations of the Declaration, and the party bringing such action prevails, in addition to any other remedy provided in this Declaration or provided by law, such party will be entitled to recover court costs and reasonable attorney's fees. The ARC, Association, nor Declarant will be charged with any affirmative duty to police, control, or enforce the terms of the Declaration and these duties will not be borne by and be the responsibility of Owners.

ARTICLE XII MEMBERSHIP IN THE ASSOCIATION, VOTING RIGHTS, AND REGISTRATION

Every person or entity who is a record Owner of a free or undivided interest in any Lot that is subject to the jurisdiction of and to assessment by the Association will be a Member of the Association.

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1. Classes of Membership. The Association has two classes of membership:

Class A: Class A members will be all Owners and Builder Members, with the exception of Declarant, and will be entitled to 1 vote for each Lot owned. When more than 1 person holds an interest in a Lot, all such persons will be Members. The vote for the Lot will be exercised as they among themselves determine, but in no event will more than 1 vote be cast per Lot.

Class B: The Class B Member will be Declarant who is entitled to 3 votes for each Lot owned including all Lots shown on the Subdivision Plat. Class B membership will cease and be converted to Class A membership at such time as the Declarant has conveyed and/or sold the last of the Unimproved Lots within the Subdivision and all of the land area comprising the Properties, whether in a single or multiple transaction, to an Owner or to any governmental authority for public use.

2. Eligibility. Eligibility to vote or serve as a representative, director, or officer will be predicated upon being a Member in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no outstanding financial obligations to the Association that are delinquent. Additionally, no Member will be allowed to vote or hold office if that Member is noted within the records of the Association to have a current deed restriction violation on 1 or more Lots in the Subdivision.

3. Suspension of Voting Rights. All voting rights of an Owner may be suspended by the Board of Directors during any period in which the Owner is delinquent in the payment of any duly established assessment or Charge or is otherwise in default or violation of any of the terms of the Declaration.

4. Special Voting Requirements. In the event a vote is required by the Members to alter or amend this Declaration, it will take at least two-thirds of the votes of the Members who own Lots who are present in person or by proxy at any meeting to approve such amendment or alteration.

5. Registration with the Association. In order that the Declarant and the Association can properly determine voting rights and acquaint every Owner and Member with the Governing Documents and the day-to-day matters within the Association's jurisdiction, each Owner and Member will have an affirmative duty and obligation to provide, and subsequently revise and update, within 15 days after a material change has occurred, various items of information to the Association such as:

(a) The full name, mailing address, telephone number, facsimile number, and email address of each Owner and Member, and Fiduciary;

(b) The business address, telephone number, facsimile number, and email address of each Owner and Member;

(c) The name, address, and telephone number of other local individuals who can be contacted (in the event the Owner or Member cannot be located) in case of an emergency; and

(d) Such other information as may be reasonably requested from time to time by the Association.

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In the event any Owner or Member fails, neglects, or refuses to so provide, revise, and update such information, the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information, and the non-cooperating Owner and Member will become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

ARTICLE XIII COVENANTS FOR MAINTENANCE ASSESSMENTS

Declarant, for each Lot owned by it within the Properties, covenants, and each Builder Member and every Owner, by acceptance of a deed, whether or not it is so expressed in the deed or other conveyance, will be deemed to covenant and agree to pay to the Association:

1. Annual assessments or charges;
2. Special assessments, to be fixed, established, and collected from time to time as provided below;
3. Member Charges levied against individual Owners to reimburse the Association for extra or unusual costs incurred by the Association for curing the Owner's violation of a restrictive covenant contained in this Declaration; and
4. Fines and Late Fees levied against individual Owners. The Charges, together with interest, reasonable attorney's fees, and costs of collection, as provided in this Declaration, will be a charge on the land and will be a continuing lien upon the Lot against which the Charges are made. Each Charge, together with interest, reasonable attorney's fees, and cost of collection as provided in this Declaration, also will be the personal obligation of the Owner of the Lot at the time the obligation accrued.

The Charges levied by the Association will be used for the purpose of promoting the recreation, health, safety, and welfare of the Members, and, in particular, for the improvement, maintenance, and operation of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area by Members.

1. Annual Assessments. The annual assessments ("Annual Assessments") for both Class A and Class B membership will be determined by the Board in the manner provided below after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made. The maximum Annual Assessment may be adjusted by a majority vote of the Board, without membership vote, but will not increase to more than the greater of:

- (a) 110% of the prior year's Annual Assessment, or
- (b) The result of multiplying the prior year's Annual Assessment by a fraction, the numerator of which is the latest Consumer Price Index published on or before the 60th day prior to the date the Board sets the new maximum Annual Assessment rate and the denominator of which is the Consumer Price Index published on the year prior to the one used in the numerator. "Consumer Price Index" is the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers. In the event the compilation or publication of the Consumer Price Index is substantially revised, transferred to any other governmental department, bureau, or agency, or is

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discontinued, then the index (or a substitute procedure that reasonably reflects and monitors fluctuations in consumer prices most nearly the same as the Consumer Price Index) will be used to make the calculations.

The Association may increase the maximum Annual Assessment rate by more than the amount specified above only upon receipt of a majority of the approving vote of the Owners present in person or represented by proxy at a meeting called for vote on the proposed increase.

The initial Annual Assessment will be established by Declarant. The initial Annual Assessment for Lots 1 through 13, inclusive, and Lots 21 through 24, inclusive (collectively, the "Perimeter Lots") will be \$450.00. The initial Annual Assessment for Lots 14 through 20, inclusive (collectively, the "Interior Lots"), will be \$650.00. The Annual Assessment, or a pro rata portion of the initial Annual Assessment based upon the date of closing of the Lot, will be due and payable from the new Owner at the closing of the initial sale of the Lot by Declarant to a third party.

Any increase or decrease in the Annual Assessment will be made on a pro rata basis among the Perimeter Lots bearing 62% of the costs of the annual budget (including any increase or decrease thereof) and the Interior Lots bearing 38% of the costs of the annual budget (including any increase or decrease thereof). The Annual Assessment to be paid by the Owners of the Perimeter Lots will be an amount equal to 62% of the total amount of the annual budget multiplied by a fraction, the numerator of which is the number of Perimeter Lots attributable to that Owner and the denominator of which is 17 (being the total number of Perimeter Lots in the Subdivision). The Annual Assessment to be paid by the Owners of the Interior Lots will be an amount equal to 38% of the total amount of the annual budget multiplied by a fraction, the numerator of which is the number of Interior Lots attributable to that Owner and the denominator of which is 7 (being the total number of Interior Lots in the Subdivision).

Regardless of any language to the contrary, the Charges will not apply to Declarant, as owner of or holder of title of any Lot unless Declarant occupies a Living Unit constructed upon its Lot or uses the Living Unit for its own personal use as rental property. Annual Assessments and Special Assessments (as defined below) will not apply to Builder Members in the business of purchasing Lots for construction of improvements and subsequent resale to a third party unless the Builder Member occupies the Living Unit constructed on its Lot or uses the Living Unit for its own personal use as rental property. Membership Assessments (as defined below) will not apply to Builder Members for Lots purchased for resale to third parties but will apply to any subsequent sale and purchase of the Lots to third parties.

2. Membership Assessments. In addition to the Annual Assessments provided for above, the Association may levy a membership assessment ("Membership Assessment") on Class A membership at any time a Lot is sold by the Owner, including Declarant, to a third party. The Membership Assessment will be established by Declarant so long as the Declarant is the Owner of a Lot and thereafter determined and established by the Board. The Membership Assessment will be collected from the purchaser of the Lot at closing. The initial Membership Assessment for a Lot (the "Membership Assessment") to be collected at the sale of a Lot will be as follows:

- (a) For the initial sale of the Lot by Declarant, \$250.00; and
- (b) For each subsequent sale of the Lot to a third party, \$250.00.

A table is attached to this Declaration setting forth the initial Annual Assessments and Membership Assessments.

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3. Special Assessments. In addition to the Annual Assessment and Membership Assessment provided for above, the Association may levy a special assessment (“Special Assessment”) on Class A membership and Class B membership as follows:

(a) For the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement on or which is a part of the Common Area in an amount determined by the Board;

(b) To respond to the unusual emergency needs of the Association as may be expected to appear from time to time in an amount determined by the Board; or

(c) For such other lawful purpose related to the use of the Properties as the Board or the Owners may determine, provided that this assessment will have the approval of a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the date, time, and purpose of the meeting will be sent to all Owners.

4. Member Charge. In addition to the Annual Assessment, Membership Assessment, and Special Assessment described above, the Association, by vote of the Board, may impose a charge (“Member Charge”) upon any Owner for the purpose of reimbursing the Association for all direct and indirect costs incurred by the Association with regard to the maintenance, repair, or replacement of improvements on any particular Lot when the Board has determined the maintenance, repair, or replacement of improvements associated with the Lot has been neglected to the point where conditions existing on the Lot are not in conformance with the maintenance obligations set forth in this Declaration or in the Restrictive Covenants, or an Owner places anything in the Common Area. The Owner of the Lot will be notified in writing of the Board’s determination and the specific deficiencies found to exist. The Owner will be afforded a reasonable period of time to respond to the Board’s notice and to correct the deficiencies. The Owner will be assessed the cost necessary to reimburse the Association for any and all costs to secure compliance, including attorney’s fees.

5. Fines and Late Fees. In addition to the Annual Assessment, Membership Assessment, Special Assessment, and Member Charge described above, the Association, by vote of the Board, may impose fines and late fees (sometimes referred to as “Fine and Late Fee” or “Fines or Late Fees”) upon any Owner for non-compliance or violations of the covenants of the Declaration or the Restrictive Covenants, or for late or nonpayment of any Annual Assessment, Membership Assessment, Special Assessment, or Member Charge. The Owner of the Lot will be notified in writing of the Fine or Late Fee assessed to the Owner and the cause of such Fine or Late Fee. The Owner will be afforded a reasonable period of time and notice to pay the applicable delinquent Annual Assessment, Membership Assessment, Special Assessment, or Member Charge, prior to the assessment of any Fine or Late Fee. The Owner will be assessed the cost necessary to reimburse the Association for any and all costs to secure compliance, including attorney’s fees.

6. Due Dates, Budget, and Late Charges. The Annual Assessments will be due and payable and collected as the Board determines. The amount of the Annual Assessment will be an amount that bears the same relationship to the Annual Assessment provided for above as the remaining number of months in that calendar year bear to twelve. The Board will use reasonable efforts to provide each Owner with an invoice statement as of the appropriate amount due, but any failure to provide a notice will not relieve any Owner of the obligation.

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The Membership Assessment is due and payable at the closing of a sale of any Lot to a third party.

The due date of any Special Assessment will be as set out above or as fixed in the resolution authorizing such assessment.

The Member Charge and Fine and Late Fee are due and payable within 30 days after the Owner was served with notice by the Association of the amount of the Member Charge or Fine or Late Fee.

Each year, the Board will adopt an annual budget and set the amount of the Annual Assessment, taking into consideration the Association's operating cost for the then current year, expected increases or decreases in the costs over the next year, and future needs of the Association. The annual budget will be adopted by the Board at least 30 days prior to the commencement of each calendar year.

Any assessment, Member Charge, or Fine or Late Fee not paid within 30 days after the due date will bear interest from the due date at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. If the Board refuses or fails to determine a rate of interest, the rate of interest will be the lesser of 18% per annum or the maximum rate allowed by law.

7. Remedies and Lien for Annual Assessment, Membership Assessment, Special Assessment, Member Charge, and Fine and Late Fee. Each Owner, by his acceptance of a deed to a Lot, expressly vests in the Association, or its agents, the right and power to bring all actions against the delinquent Owner personally for the collection of the Charge as a debt and to enforce the lien by all methods available for the enforcement of liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with the lien. The President of the Board will have the right to appoint an agent and trustee, to mail and file the notices required by Texas Property Code §51.002, and, if applicable, by Texas Property Code §209, to conduct the sale, and to otherwise comply with the statutes. The lien provided for in Section 209 will be in favor of the Association and will be for the benefit of all other Owners. No Owner may waive or otherwise escape liability for the Charges for nonuse of the Common Area or abandonment of his Lot.

In addition to the foregoing charges for delinquent accounts, each Owner will be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees, as and when allowed by law, and such reasonable late charges and collection charges as the Board may establish, all of which also will be subject to the liens of the Association.

In the event of a delinquent account, the Association will provide all notices to the delinquent Owner as required by Texas Property Code §209. A summary of the relevant parts of Texas Property Code §209 will be maintained by the Association for review by each Owner upon request.

All payments will be applied first to costs and attorney's fees, then to interest, then to delinquent Charges, then to any unpaid Charges that are not the subject matter of suit in the order of their coming due, and then to any unpaid Charges that are the subject matter of suit in the order of their coming due.

Notice of the lien may be given, but is not required, by the recordation in the Real Property Records of Bell County, Texas an Affidavit of Delinquent Payment and Notice of Assessment Lien, duly

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executed by an officer, managing agent, attorney, or officer of the Association, setting forth the amount owed, the name of the last known Lot Owner or Owners of record, and the legal description of the Lot.

At any foreclosure, judicial or non-judicial, the Association will be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney’s fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any foreclosure, the occupants of the Lot will be required to pay a reasonable rent for the use of such Living Unit. Their occupancy of the Lot will constitute a tenancy-at-sufferance, and the purchaser at the foreclosure sale will be entitled to appoint a receiver to collect rents and will be entitled to sue for recovery of possession of such Lot by forcible detainer or by Writ of Possession.

The lien of the Charges will be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lot subject to the Charges, provided, however, that such subordination will apply only to the assessments that have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, non-judicial foreclosure, or conveyance in lieu of foreclosure or in satisfaction of mortgage debt. The sale or transfer will not relieve the Lot Owner from liability for any Charges thereafter becoming due or from the lien of any subsequent Charge.

**ARTICLE XIV
REQUIREMENTS OF TEXAS PROPERTY CODE §209**

- 1. The Association must give notice to Owners under the following circumstances:
 - (a) When charging an Owner for property damage;
 - (b) When levying a fine for a violation of the Declaration;
 - (c) When filing a lawsuit except for:
 - (1) Lawsuits to collect regular or special assessments;
 - (2) Lawsuits where one of the causes of action is foreclosure under an Association lien;
 - (3) Lawsuits for a temporary restraining order or temporary injunction.

In the event notice is given for any of the foregoing, Owner must first receive advance notice of his responsibility and obligation to pay attorney’s fees in accordance with Texas Property Code §209 (“Section 209”).

(d) When suspending an Owner’s right to use a Common Area, except for a temporary suspension of a person’s right to use a Common Area if the violation involved a significant and immediate risk of harm to others in the Subdivision.

- 2. Each notice required under Section 209 must contain the following:
 - (a) A description of any violation of the Declaration, Restrictive Covenants, property damage, or imposition of any Charges;

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(b) State any amount due the Association; and

(c) A statement that informs the Owner:

(1) The Owner is entitled to a reasonable time to cure the violation and avoid the fine or suspension and state what the reasonable time is to cure the violation and avoid the fine or suspension (unless Owner has already been given notice and opportunity to cure a similar violation within the preceding 6 months); and

(2) The Owner may request in writing a hearing before the Board or designated committee on or before the 30th day after the date the Owner receives the notice; or

(3) If the hearing is before a designated committee, then the Owner has the right to appeal the decision of the committee to the Board by written notice to the Board.

3. If a hearing is requested by an Owner as provided above, then the Association must:

(a) Hold a hearing within 30 days from the date of receipt of the Owner's request for a hearing.

(b) Notify the Owner of the date, time, and place of the hearing not later than the 10th day before the hearing.

(c) Must grant a postponement of the hearing for a period of not more than 10 days if a postponement is requested by either the Board or Owner; however, additional postponements may be granted by agreement of both parties.

(d) Allow the Owner or the Association to make an audio recording of the hearing.

(e) Give the Owner the opportunity to attend the hearing; however, an Owner need not be present in order to hold a hearing.

4. The Association may receive reimbursement of its attorney's fees and costs relating to collection and damages for enforcement of the Declaration and Restrictive Covenants but only if it first gives the Owner written notice stating that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain.

5. An Owner will not have to pay for attorney's fees that are incurred before the conclusion of the hearing or the date by which an Owner could have requested a hearing (which is 30 days after the date the Owner receives the notice). Consequently, if an attorney sends letters prior to a hearing requested by an Owner or an attorney participates at such a hearing, attorney's fees will not be reimbursable to the Association by the Owner.

6. Upon written request from an Owner, the Association must provide copies of invoices for attorney's fees and other costs relating to the matter for which the Association is seeking reimbursement of fees and costs.

7. In the event of a non-judicial foreclosure, the amount of attorney's fees the Association may seek reimbursement for is limited to the greater of:

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(a) One-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs if those amounts are permitted to be included by law or by the Declaration; or

(b) \$2,500.

8. All attorney's fees, costs, and other amounts collected from an Owner must be deposited into an account maintained at a financial institution in the name of the Association or its managing agent.

9. The Association may not foreclose an assessment lien if the debt consists solely of fines or attorney's fees associated with the fines.

10. If the Association conducts a foreclosure sale on a Lot, the Association must send written notice to the Owner by certified mail, return receipt requested, to the last known address as reflected in the records of the Association. This notice must be sent regardless of whether the foreclosure is non-judicial or judicial. The notice must be sent no more than 30 days after the foreclosure sale date informing the Owner of the following:

(a) The date and time of the sale and a statement informing the Owner that the Owner has 180 days from the date of the notice to redeem the Lot.

(b) Not later than the 30th day after the date the notice described above is sent, the Association must record an Affidavit in the Official Public Records of Real Property of Bell County, Texas stating:

(1) The date the Notice was sent to the Owner, and

(2) A legal description of the Lot sold.

11. If a foreclosure sale occurs, then the Owner is required to file an affidavit conforming with the provisions of Section 209. Failure to file the affidavit within the redemption period of 180 days from the date of the foreclosure sale will result in a conclusive presumption that the Owner did not redeem the Lot.

12. An Owner will have 180 days to redeem the property following the date the Association mails written notice of sale to the Owner. Additionally, the Purchaser at foreclosure may not transfer ownership of the property to anyone other than the redeeming Owner during the 180-day redemption period.

13. If the purchaser of the Lot at the foreclosure sale is the Association, in order to redeem the Lot, the Owner must pay to the Association:

(a) All amounts due the Association at the time of the foreclosure sale;

(b) Interest from the date of sale to date of redemption on all amounts owed to the Association at the rate stated in the Declaration or 10% (if no rate is stated);

(c) Costs incurred by the Association in foreclosing and conveying the Lot to the Owner, including reasonable attorney's fees;

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- (d) Any assessments coming due on the Lot since the foreclosure;
- (e) Any reasonable costs incurred by the Association, including mortgage payments, costs of repair, maintenance, or leasing of the Lot; and
- (f) The purchase price paid by the Association at the foreclosure sale less any amounts in the items above that were satisfied out of the foreclosure sale.

14. If the purchaser of the Lot at the foreclosure sale is a person other than the Association ("Purchaser at Foreclosure"), in order to redeem the Lot:

- (a) Owner must pay to the Association:
 - (1) All amounts due the Association at the time of the foreclosure sale less the sales price received by the Association from the Purchaser;
 - (2) Interest from the date of foreclosure through date of redemption on all amounts owed to the Association at the interest rate as stated in the Declaration or if no rate is stated then an annual interest rate of 10%;
 - (3) Costs incurred by the Association foreclosing the lien and conveying the property back to the redeeming Owner, including reasonable attorney's fees;
 - (4) Any unpaid assessments coming due after the foreclosure; and
 - (5) Any taxable costs.
- (b) Owner must pay to the Purchaser at foreclosure sale:
 - (1) Any assessments levied on the Lot after the foreclosure that were paid by the Purchaser at sale;
 - (2) The purchase price paid by the Purchaser at sale;
 - (3) The amount of the deed recording fee;
 - (4) Any ad valorem taxes, penalties, and interest on the Lot that were paid by the Purchaser at sale after the date of foreclosure; and
 - (5) Any taxable costs.

15. If the Owner redeems the Lot, then the Purchaser at Foreclosure must immediately give the Owner a deed transferring the Lot back to the redeeming Owner. If the Purchaser at foreclosure does not comply, then the redeeming Owner may file a suit against the Purchaser to recover reasonable attorney's fees.

16. A Lot that is redeemed remains subject to all liens and encumbrances on the Lot before foreclosure.

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17. If the Purchaser at sale enters into a lease on the Lot and the Owner redeems, that Owner will have the right to re-occupy the Lot immediately upon redemption.

18. If an Owner makes a partial payment of amounts due the Association at any time during the redemption period, but fails to pay all amounts necessary to redeem, the Association must refund any partial payments no later than the 30th day after the expiration date of the redemption period (or 210 days after the notice of foreclosure). Such payment will be mailed to the Owner's last known address as shown in the Association records.

19. If an Owner sends a written request by certified mail, return receipt requested, with a request to redeem the Lot on or before the last date of the redemption period, the Owner's right of redemption is extended until 10 days after the Association and the Purchaser at Foreclosure provide written notice to the Owner of the amounts that must be paid to redeem the Lot.

20. The Association or Purchaser at Foreclosure must record an affidavit in the Official Public Records of Real Property of Bell County, Texas stating that the Owner did not redeem the Lot during the redemption or extended redemption periods.

21. The Association or Purchaser at Foreclosure must state in the affidavit filed of record in the Official Public Records of Real Property of Bell County, Texas the date the citation was served in a lawsuit to foreclose (if applicable), a legal description of the property, and any other relevant facts relating to the foreclosure sale. Any person then may conclusively rely upon the information contained in the affidavit.

ARTICLE XV MAINTENANCE FUND

The Board, for the benefit of the Owners, will establish and maintain a maintenance fund into which will be deposited the Charges collected from Owners and this maintenance fund will be used, without limitation, for the payment of the following.

1. Taxes, assessments, and other liens and encumbrances that properly will be assessed or charged against the Common Area rather than against the individual Owners, if any.

2. Care and preservation of the Common Area.

3. The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board (provided that any contract for management of the Association will be terminable by the Association, with no penalty, upon 90 days' prior written notice to the managing party) and the services of other personnel as the Board or the manager deems necessary.

4. Legal and accounting services.

5. A policy or policies of insurance insuring the Common Area, the Association, its Directors, and Officers against any liability to the public or to the Owners (and/or guests, invitees, or tenants) incident to the operation of the Association in any amount or amounts determined by the Board.

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6. Workers compensation insurance to the extent necessary to comply with any applicable laws.
7. Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.
8. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, or assessments (including taxes or assessments assessed against an individual Owner) that the Board is required to obtain or pay for pursuant to the terms of this Declaration, the Restrictive Covenants, or by law or which in its opinion is necessary or proper for the enforcement of this Declaration or the Restrictive Covenants.
9. Perpetual maintenance and enhancement of the Common Area, including walls, gates, electronic controls, grounds, landscaping, lights, irrigation, rock drainage feature between Lots 13 and 14 and between Lots 20 and 21, water features, other amenities, and electric and gas service for right-of-way and all entry monuments, walls, lights, pumps, and signs owned or maintained by the Association.
10. Enforcement of this Declaration, the Restrictive Covenants, Builder's Guidelines, and Rules and Regulations.
11. The operation of the ARC.

**ARTICLE XVI
GENERAL POWERS AND DUTIES
OF THE BOARD OF DIRECTORS OF THE ASSOCIATION**

The Board, for the benefit of the Owners, will have the following general powers and duties, in addition to the specific powers and duties provided in this Declaration and in the Bylaws of the Association:

1. To execute on behalf of all Owners all declarations of Ownership for tax assessment purposes with regard to the Common Area.
2. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.
3. To enter into contracts, maintain one or more bank accounts, and generally have all the power necessary or incidental to the operation and management of the Association.
4. To protect or defend the Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements or repairs.
5. To make reasonable Rules and Regulations for the operation of the Common Area and to amend them from time to time; provided that any rule or regulation may be amended or repealed by an instrument signed by a majority of the Owners.
6. To make available for inspection by Owners within 60 days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

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7. To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and, if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

8. To enforce the provisions of any Rules and Regulations, Builder's Guidelines, Restrictive Covenants, or other provisions of this Declaration or the Bylaws of the Association, and to enjoin and seek damages and fines from any Owner for violation of the same.

9. To collect all Charges and enforce all penalties for non-payment, including the assessment of a Fine and Late Fee, the filing of liens, and the institution of legal proceedings.

10. To establish or amend a monetary "fines" system that will include due process hearings and a discretionary range of fine amounts, which, when levied, will constitute a permitted Member Charge secured by the lien herein established.

11. To establish reserve funds that may be maintained or accounted for separately from other funds maintained for annual operating expenses.

12. To convey small portions of Common Area to adjoining Owners if, in the opinion of the Board, such conveyance does not materially impact the Association or the Subdivision or negatively affect the overall usage of the Common Area by the Owners.

The Board will have the exclusive right to contract for all goods, services, and insurance payments to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as provided in this Declaration.

The Board, on behalf of the Association, will have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services that the Board is not otherwise required to perform pursuant to the terms of this Declaration, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interest of the Association.

ARTICLE XVII TITLE TO COMMON AREA

All initial Common Area within the Properties may be conveyed to the Association free of lien prior to the conveyance of the first Lot by the Declarant. The Association may own all Common Area in fee simple or by easement granted in separate document recorded in the Official Public Records of Real Property of Bell County, Texas, and will assume all maintenance obligations with respect to any Common Area that may be established after the filing of the Declaration. Nothing in this Declaration will create an obligation on the part of Declarant to establish any Common Area.

Any and all Common Area will be for the common use and benefit of each Member of the Association.

This Article will not be construed to prohibit the Board from acquiring and disposing of tangible personal property, or from acquiring title to real property that may or may not be subject to this Declaration, or from disposing of small tracts of Common Area in accordance with the provisions of this Declaration.

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**ARTICLE XVIII
INSURANCE AND CONDEMNATION**

1. Fire, Hazard, and Casualty Insurance. Each Owner, at his sole cost and expense, covenants and agrees with all other Owners and the Association to carry all-risk casualty insurance on each Lot. Each Owner further covenants and agrees that, in the event of a partial loss or damage and destruction resulting in less than total destruction, the Owner will proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original Living Unit. In the event the Living Unit is totally destroyed and the Owner determines not to rebuild or reconstruct, the Owner will clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of the construction.

Each Owner will be responsible, at his own cost and expense, for personal liability insurance to the extent not covered by the Association and public liability insurance acquired by the Association on behalf of all Owners with respect to the Common Area. Each Owner will be responsible, at his own cost and expense, to obtain and maintain hazard and/or liability insurance on the Lot once a Living Unit has been constructed on a Lot.

2. Property and Public Liability Insurance With Respect to Common Area, Errors and Omissions and Indemnification.

(a) The Board may, at the Board's sole discretion, obtain and continue in effect property insurance to insure the improvements in the Common Area, naming the Association as beneficiary with an endorsement to the mortgagee, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions. This insurance also will include coverage against vandalism.

(b) The Board may, at the Board's sole discretion, obtain comprehensive public liability insurance in such limits as it deems desirable insuring the Association, its agents and employees, and each Owner from and against liability in connection with the Common Area.

(c) The Board may, at the Board's sole discretion, obtain liability insurance covering errors and omissions of directors, officers, managers, employees, and representatives of the Association and fidelity bonds for all officers and employees who have control over the receipt or disbursement of funds.

(d) The Association may indemnify directors, officers, employees, and agents and may purchase indemnity insurance in accordance with the provisions of Article 2.22A of the Texas Non-profit Corporations Act.

3. Insurance Premiums with Respect to Common Area. All costs, charges, and premiums for all insurance with respect to the Common Area that the Board authorizes will be a common expense of all Owners and will be part of the Annual Assessment.

4. Other Insurance. None of the above prevents the Board from obtaining other insurance as may be required by law (e.g., workers compensation) or other insurance coverages that may become the norm for properties of this nature.

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5. Condemnation. If part or all of the Common Area is taken or condemned by any authority having the power of eminent domain, any compensation and damages will be paid to the Association. The Board will have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting the to-be-condemned Common Area. The Owners may, by vote of 75% or more of the total voting power, agree to distribute the proceeds of any condemnation or taking by eminent domain to each Owner and his mortgagee, if any, as their interest may appear. In the event that the Owners do not agree, the proceeds will be added to the funds of the Association, and the Association will decide on whether or not to replace or restore, as far as possible, the Common Area so taken or damaged.

The Association will give timely notice of the existence of the proceedings to all Owners and, if information is available, to their mortgagees, if any. The expense of participation in the proceedings will be common expenses chargeable to the Owners.

6. Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a Special Assessment as provided for in this Declaration.

ARTICLE XIX AMENDMENT AND ANNEXATION

This Declaration will remain in force and effect for a period of 30 years after this Declaration is recorded, and, each 10th anniversary thereafter, this Declaration will be renewed and continued for a period of 10 years unless amended as provided in this Declaration. This Declaration may be amended by written instrument approved by the affirmative vote of the Members of the Association holding at least 75% of the total votes. The amendment will be effective when it is certified by the President of the Association as to the requisite number of votes and recorded in the Official Public Records of Real Property of Bell County, Texas. Any amendment so certified and recorded will be conclusively presumed to have been duly adopted. Declarant will have the right to file an amendment to this Declaration, or any other Restrictive Covenant that may be filed, for any reason, without the necessity of joinder by any other Owner, at any time during the construction period of the Subdivision or the Properties, and for so long as Declarant is developing the Properties. Notwithstanding the foregoing, after Declarant has ceased to develop the Properties, Declarant will have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner, for the limited purposes of correcting a clerical error, clarifying an ambiguity, removing any contradiction in the terms of this Declaration, or for the purpose of making such additions or amendments to this Declaration as may be required by FHA, HUD, VA, or other governmental authority to qualify the Properties for mortgage guaranties issued by FHA or VA.

During the construction period of the Subdivision and the Properties and for so long as Declarant is developing the Properties, Declarant will have the right, privilege, and option to annex additional land to make it subject to this Declaration until Declarant no longer owns a Lot by filing in the Official Public Records of Real Property of Bell County, Texas, an amendment annexing additional property. Additional property may be annexed and made subject to this Declaration by written instrument approved by the affirmative vote of the Members of the Association holding at least 75% of the total votes and filed of record in the Official Public Records of Real Property of Bell County, Texas.

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**ARTICLE XX
GOVERNMENTAL REQUIREMENTS**

By acceptance of a deed to a Lot, or initiating construction of improvements to a Lot, each Builder Member and builder assume responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including but not limited to those promulgated or issued by the Environmental Protection Agency or any other governmental authority and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Commission on Environmental Quality and the Clearwater Underground Conservation District related to each Lot, including without limitation the provisions of Chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms of the foregoing. The foregoing references are made for the benefit of builders and do not in any way limit the terms and requirements of this Declaration and the requirement that all Builder Members and builders comply with all governmental regulations and any plan required by regulations, such as Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. Each Builder Member and builder, by acceptance of a deed to a Lot or undertaking the making of improvements to a Lot, holds harmless and indemnifies Declarant and the Association from all cost, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation, or permit related to the Properties.

By acceptance of a deed to a Lot, each Builder Member and Owner accepts responsibility to maintain the Lot so that any storm water drainage facility or ditch does not fill up, become clogged, or prohibit the free flow of drainage or pollute storm water.

By acceptance of a deed to a Lot, each Builder Member and Owner agrees that Declarant and the Association will have the right to enter upon any Lot on which 1 or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority. The Declarant and the Association may enter upon the Lot for the purpose of curing any violation, provided that the Owner or Builder Member has been given 5 days' prior written notice and has failed to remedy the complained of violation within such time. Each Owner and Builder Member indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner or Builder Member with respect to his Lot or the Properties. The foregoing remedy will be cumulative of all other remedies for violations of provisions of this Declaration.

**ARTICLE XXI
GENERAL PROVISIONS**

1. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part thereof is susceptible to more than one interpretation or conflicting interpretations, then the interpretation that is most nearly in accordance with the general purposes and objectives of this Declaration will govern. Whenever the application of the provisions of this Declaration, or any amendment hereto, conflicts with the application of any provision of the Bylaws of the Association, or any other restriction or covenant

**DECLARATION OF COVENANTS, CONDITIONS,
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filed separately or as a part of this Declaration, the provisions or application of this Declaration will prevail.

If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration is omitted from this Declaration, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision will be supplied by inference.

The singular, whenever used herein, will be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions herein apply either to corporations or individuals, males or females, will in all cases be assumed as though in each case fully expressed.

2. Notices. Any notice required to be given to any Owner or Member will be complete when the notice is:

(a) deposited in the United States Postal Service mail, postage prepaid, and addressed to the Owner or Member at the last known address as shown by the records of the Association;

(b) faxed to the Owner or Member at the last known facsimile number as shown by the records of the Association and a confirmation of successful transmission is obtained and filed by the Association; or

(c) emailed to the Owner or Member at the last known email address as shown by the records of the Association, pursuant to Article XII, Number 5 of this Declaration.

3. Headings. The headings contained in this Declaration are for reference purpose only and will not in any way affect the meaning or interpretation of this Declaration.

4. Invalidation. Invalidation of any one or more of these covenants, restrictions, conditions, and limitations by judgment or court order will in no way affect any of the other provisions of this Declaration, which will remain and continue in full force and effect.

5. Zoning Compliance. These covenants, restrictions, conditions, and limitations are in all respects subject to any applicable zoning regulations lawfully in force or hereafter adopted.

EXECUTED effective December 17th, 2007.

MISTY CREEK DEVELOPMENT, INC.,
a Texas corporation

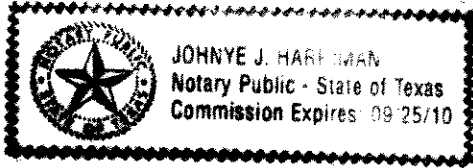
By: 
MICHAEL L. BROCK, President

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ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF BELL §

This instrument was acknowledged before me on December 17th, 2007, by MICHAEL L. BROCK, in his capacity as President of MISTY CREEK DEVELOPMENT, INC., a Texas corporation, on behalf of said corporation.



Johnye J. Harbman

NOTARY PUBLIC

PREPARED IN THE LAW OFFICE OF:
crm
BAIRD, CREWS, SCHILLER & WHITAKER, P.C.
ATTN: THOMAS C. BAIRD
15 North Main
Temple, Texas 76501

DECLARATION OF COVENANTS, CONDITIONS,
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LEGAL DESCRIPTION

All lots and blocks within Misty Creek Subdivision, a subdivision in the City of Temple, Bell County, Texas, according to the map or plat of record in the Plat Records of Bell County, Texas, as may be amended from time to time.

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DECLARATION OF COVENANTS, CONDITIONS,
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ANNUAL ASSESSMENTS AND MEMBERSHIP ASSESSMENTS

Lot Classification	Initial Annual Assessment *	Initial Membership Assessment*	Initial Membership Assessment (Subsequent Purchaser)*
Perimeter	\$450.00	\$250.00	\$250.00
Interior	\$650.00	\$250.00	\$250.00

* Annual Assessments and Membership Assessments are due and payable in accordance with the Minutes and Declaration, on a per Lot basis, beginning with the calendar year 2007.

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