

**Denton County  
Juli Luke  
County Clerk**

---

**Instrument Number:** 209190

ERecordings-RP

DECLARATION

Recorded On: November 15, 2021 02:51 PM

Number of Pages: 84

---

**" Examined and Charged as Follows: "**

Total Recording: \$358.00

---

**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 209190  
Receipt Number: 20211115000611  
Recorded Date/Time: November 15, 2021 02:51 PM  
User: Melissa K  
Station: Station 41

**Record and Return To:**

Simplifile



STATE OF TEXAS  
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke  
County Clerk  
Denton County, TX

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE RESIDENCES AT RAYZOR RANCH**

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS .....	2
ARTICLE II MASTER ASSOCIATION .....	9
ARTICLE III RAYZOR RANCH HOMEOWNERS ASSOCIATION, INC. ....	10
Section 3.1      Organization.....	10
Section 3.2      Membership .....	10
Section 3.3      Governance .....	11
Section 3.4      Voting Rights .....	12
Section 3.5      Powers.....	12
Section 3.6      Acceptance of Common Area and Limited Common Area.....	15
Section 3.7      Indemnification .....	16
Section 3.8      Insurance .....	16
Section 3.9      Bulk Rate Contracts .....	16
Section 3.10     Protection of Declarant’s Rights .....	17
Section 3.11     Administration of Common Area and the Limited Common Area.....	17
Section 3.12     No Liability of Association.....	17
Section 3.13     Merger.....	18
Section 3.14     City Right to Enforce .....	18
ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION .....	18
Section 4.1      Common Areas .....	18
Section 4.2      Personal Property and Real Property for Common Use .....	19
Section 4.3      Rules and Regulations.....	19
Section 4.4      Implied Rights.....	19
Section 4.5      Governmental Interest.....	19
Section 4.6      Dedication of Common Areas .....	19
Section 4.7      Safety and Security .....	20
Section 4.8      Construction Activities .....	20
ARTICLE V MAINTENANCE .....	21
Section 5.1      Common Area Maintenance Responsibility .....	21
Section 5.2      Area of Association Responsibility .....	23
Section 5.3      Owner’s Responsibility.....	24
Section 5.4      Enforcement.....	25
Section 5.5      Standard of Performance.....	25
Section 5.6      Indemnification .....	26
Section 5.7      Party Structures.....	26
Section 5.8      INDEMNIFICATION.....	27
ARTICLE VI COVENANT FOR ASSESSMENTS .....	27
Section 6.1      General.....	27
Section 6.2      Purpose of Assessments; Maintenance Fund.....	28
Section 6.3      Regular Assessment .....	28
Section 6.4      Service Area Assessments .....	29

Section 6.5	Special Assessments .....	30
Section 6.6	Specific Assessments .....	30
Section 6.7	Commencement Date of Assessments .....	31
Section 6.8	Late Charges .....	31
Section 6.9	Owner's Personal Obligation; Interest .....	31
Section 6.10	Assessment Lien and Foreclosure .....	31
Section 6.11	Capitalization of the Association .....	33
Section 6.12	Exempt Property .....	34
Section 6.13	Fines and Damages Assessment .....	34
Section 6.14	Amount of Assessment .....	34
ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE .....		35
Section 7.1	Construction of Improvements .....	35
Section 7.2	Architectural Control Committee .....	35
Section 7.3	Driveways and Garages .....	39
Section 7.4	Walls, Fences and Hedges .....	39
Section 7.5	Building Restrictions .....	39
Section 7.6	Compliance with Setbacks .....	39
Section 7.7	Sidewalks .....	40
Section 7.8	Underground Utility Lines .....	40
Section 7.9	Drainage .....	40
ARTICLE VIII PROTECTIVE COVENANTS AND USE RESTRICTIONS .....		40
Section 8.1	General .....	40
Section 8.2	Residents Bound .....	40
Section 8.3	Business Use .....	40
Section 8.4	Signs .....	41
Section 8.5	View Impairments .....	42
Section 8.6	Aboveground Utilities .....	42
Section 8.7	Outside Repairs .....	43
Section 8.8	Exterior Lighting .....	43
Section 8.9	Mineral Operations .....	43
Section 8.10	Soil Erosion .....	43
Section 8.11	Accessory Buildings .....	43
Section 8.12	Subdivision and Time Sharing .....	43
Section 8.13	Pools .....	43
Section 8.14	Irrigation .....	44
Section 8.15	Removal of Plants and Trees .....	44
Section 8.16	Solar Energy Devices .....	44
Section 8.17	Leasing of Lots .....	45
Section 8.18	Antennas .....	46
Section 8.19	Animals and Pets .....	47
Section 8.20	Parking and Prohibited Vehicles .....	47
Section 8.21	Flags .....	48
Section 8.22	Standby Electric Generators .....	49
Section 8.23	Rainwater Harvesting Systems .....	50
Section 8.24	Roofing Materials .....	51

Section 8.25	Xeriscaping .....	51
Section 8.26	Provision of Benefits and Services to Service Areas.....	52
Section 8.27	Compliance and Enforcement.....	53
ARTICLE IX INSURANCE.....		54
Section 9.1	Association Insurance .....	54
Section 9.2	Individual Insurance.....	55
Section 9.3	Insurance for Construction or Modification of Improvements .....	56
Section 9.4	Damage or Destruction of Common Area .....	56
Section 9.5	Destruction of Improvements on Lots .....	57
ARTICLE X NO PARTITION .....		57
ARTICLE XI CONDEMNATION.....		58
Section 11.1	Condemnation.....	58
Section 11.2	Disbursement .....	58
ARTICLE XII COMMON AREAS AND LIMITED COMMON AREAS .....		58
Section 12.1	Common Areas .....	58
Section 12.2	Private Use .....	59
Section 12.3	Limited Common Areas.....	59
Section 12.4	Designation of Limited Common Areas .....	59
Section 12.5	Use by Others.....	59
ARTICLE XIII EASEMENTS .....		60
Section 13.1	Easements of Encroachment.....	60
Section 13.2	Easements for Utilities, etc .....	60
Section 13.3	Right of Entry .....	60
Section 13.4	Certain Easements for Owners.....	61
Section 13.5	Construction and Sale Period Easement .....	61
Section 13.6	Easement and Right to Inspect.....	61
Section 13.7	Easement for Entry Features.....	61
Section 13.8	Easement for Screening Walls .....	62
Section 13.9	Easement of Support.....	62
Section 13.10	Easement for Maintenance of Adjoining Lots .....	62
ARTICLE XIV MORTGAGEE PROVISIONS .....		63
Section 14.1	Notice of Action.....	63
Section 14.2	Examination of Books.....	63
Section 14.3	Taxes, Assessments and Charges.....	63
ARTICLE XV DEVELOPMENT RIGHTS OF DECLARANT.....		63
Section 15.1	General .....	63
Section 15.2	Use of Development Name .....	64
Section 15.3	Additional Covenants.....	64
Section 15.4	Enforcement Rights .....	64
Section 15.5	Addition of Land.....	65
Section 15.6	Withdrawal of Land .....	65

Section 15.7	Notice of Plat Recordation.....	65
Section 15.8	Assignment of Declarant's Rights .....	66
ARTICLE XVI GENERAL PROVISIONS .....		66
Section 16.1	Term.....	66
Section 16.2	Amendment.....	66
Section 16.3	Severability .....	67
Section 16.4	Notice.....	67
Section 16.5	Titles and Gender.....	67
Section 16.6	Conflicts.....	67
Section 16.7	Dispute Resolution.....	67
Section 16.8	Acceptance by Grantees.....	68
Section 16.9	Higher Authority.....	68
Section 16.10	Venture Notice and Cure .....	68
Section 16.11	Enforcement.....	68

Exhibit "A" – Property Subject to Declaration

Exhibit "B" – Enhanced Swale Maintenance Plans

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE RESIDENCES AT RAYZOR RANCH**

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

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESIDENCES AT RAYZOR RANCH** (this "Declaration") is made this 18 day of November, 2021, by WB Denton Land LP, a Texas limited partnership (the "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant, WB Denton Home Building LLC, a Texas limited liability company ("WB Denton Home"), and WB Churchill II LLC, a Delaware limited liability company ("WB Churchill"), are the owners of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property") which is a part of that certain master planned mixed-use development located in Denton County, Texas, and commonly known as Rayzor Ranch.

**WHEREAS**, the Property is subject to the Master Declaration (as hereinafter defined), which Master Declaration imposes certain restrictions and obligations on the Property in addition to those imposed by this Declaration.

**WHEREAS**, Declarant desires by this Declaration to establish a sub-association within the Rayzor Ranch development to provide a flexible and reasonable procedure for the overall development of the Property, and to impose upon the Property and Owners (as hereinafter defined) those covenants, conditions and restrictions set forth hereinbelow for the benefit of: (i) the Owners of any and all real property now or in the future annexed into the Property; and (ii) the Association (as hereinafter defined) established herein.

**WHEREAS**, Declarant's affiliate, WBWT 001 LLC, a Texas limited liability company (the "WB Member") and WELL WB Portfolio Member LLC, a Delaware limited liability company (the "Welltower Member") have entered into that certain Limited Liability Company Agreement of WBWT Rayzor Ranch LLC, a Delaware limited liability company (the "Venture") in connection with the development of certain Lots located upon the Property; and pursuant to and in connection with the purpose of the Venture, the WB Member has consented to the grant of those certain consent and approval rights, as set forth herein, to the Welltower Member, on behalf of, and as the managing member of the Venture.

**NOW, THEREFORE**, the Declarant hereby declares that: (i) the Property, and those portions of any other real property as and when made a part of the Property and subject to this Declaration, shall be held, sold, conveyed, and occupied subject to the Master Governing Documents (as hereinafter defined) and to the following covenants, conditions, easements and restrictions which shall run with the Property and shall be binding upon all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof; (ii) each contract or deed

conveying any portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to this Declaration, the Governing Documents, and the following covenants, conditions, easements and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) the Declarant, WB Member, Welltower Member and the Venture each acknowledge the grant to the Welltower Member on behalf of, and as managing member of, the Venture, and the Venture and the Welltower Member accept and consent to those certain consent and approval rights, as set forth herein.

This Declaration does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann. §82.001 (Vernon 2012).

## ARTICLE I

### DEFINITIONS

The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

“Applicable Law” means the statutes and public laws and ordinances in effect at the time a provision of this Declaration is applied, and pertaining to the subject matter of the Declaration provision, including but not limited to, all ordinances and any other applicable building codes, zoning restrictions and permits or other applicable regulations. Statutes and ordinances specifically referenced in this Declaration are “Applicable Law” on the date of the Declaration, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

“Architectural Control Committee” or “ACC” shall mean the committee created pursuant to this Declaration to review and approve or deny plans and applications for the construction, placement, modification, alteration or remodeling of any Improvements within the Property (subject to the rights reserved to the Declarant in Article XV hereof) and to administer and enforce the architectural controls described in Article VII hereof.

“Area of Association Responsibility” shall mean and refer to those areas, if any, which comprise a portion of an Owner’s Lot or which are located outside the Property, which the Association has or assumes maintenance responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements with the owner of such property. This may include agreements with the Master Association or other neighboring property owners’ associations.

“Assessment” or “Assessments” shall mean any charge levied against an Owner by the Association, pursuant to this Declaration or other Applicable Law, including but not limited to Regular Assessments, Service Area Assessments, Special Assessments, Specific Assessments, and Capital Assessments, as described in Article VI hereof.

“Assessment Unit” has the meaning set forth in Section 6.14(b).

“Association” shall mean and refer to Rayzor Ranch Homeowners Association Inc, a Texas nonprofit corporation, which has been created by Declarant to exercise the authority and assume



the powers specified in Article III and elsewhere in this Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate of Formation, the Bylaws, and Applicable Law.

“Board of Directors” or “Board” shall be the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law. Subject to any limitations set forth in this Declaration and the Governing Documents, references herein to the Board’s power or authority to undertake a specific action shall be construed to mean on behalf of the Association and all such actions taken by the Board shall be in the best interest of the Association and its Members.

“Builder” shall mean any Person who acquires one or more Lots within the Property for the purpose of constructing Residences thereon for later sale to a third-party, or who purchases land within the Property for further subdivision, development and/or resale in the ordinary course of such Person’s business.

“Bulk Rate Contract” or “Bulk Rate Contracts” means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, “broadband” services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property. Each Bulk Rate Contract must be approved in advance and in writing by Declarant until expiration or termination of the Development Period.

“Bylaws” shall refer to the Bylaws of the Association as Recorded in the Policy Manual.

“Capital Assessment” shall mean Assessments levied in accordance with Section 6.11 hereof.

“Certificate of Formation” shall refer to the Certificate of Formation of the Association filed in the Office of the Secretary of State of the State of Texas and Recorded in the Policy Manual.

“Certificate of Occupancy” shall refer to a certificate or other similar document issued by the City or other applicable governmental authority certifying or authorizing a Lot for occupancy.

“City” shall mean the City of Denton, Texas.

“Common Expenses” shall mean the actual and estimated expenses incurred, or anticipated being incurred, by the Association in performing its functions and exercising its powers under the Governing Documents, for the general benefit of all Owners, including any reasonable reserve, as the Board may find to be necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include expenses incurred during the Development Period for initial development or other original construction costs unless approved by Members representing a majority of the total votes of the Association.

"Common Areas" shall mean and refer to all real property (including the Improvements thereto) and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in and for the common use and enjoyment of the Owners, including any landscaping, walkways, parking areas, and other structures on and Improvements to such real property. To the extent not included above, Common Areas shall also include property dedicated to the Association either by separate instrument or as shown on any Recorded (as hereinafter defined) plat or its equivalent of the Property or any portion thereof filed or approved by Declarant. Common Areas include the Limited Common Areas, as defined below.

"Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property, or the minimum standards established pursuant to the Master Governing Documents or the Association's Governing Documents, whichever is the highest standard. Such standard shall be established initially by the Declarant through the Association's Governing Documents, Design Guidelines, Rules and Regulations and Board resolutions and may include both objective and subjective elements. The Community-Wide Standard may evolve and change as development progresses and as the needs and desires within the Property change. Any determination or interpretation regarding the Community-Wide Standard, including, without limitation, whether the Community-Wide Standard has been met in a particular situation, shall be made by the Board.

"Declarant" shall mean and refer to **WB Denton Land LP**, a Texas limited partnership, or any successor or assign who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant. Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

"Declarant Control Period" shall refer to the period of time during which the Declarant controls the operation and management of the Association. The Declarant Control Period shall expire upon the first to occur of the following:

(a) Within one hundred and twenty (120) days after seventy-five percent (75%) of the maximum number of lots that may be created and made subject to the terms and provisions of this Declaration are conveyed to Owners other than the Declarant or a Builder;

(b) Not later than the tenth (10<sup>th</sup>) anniversary of the date this Declaration is Recorded;  
or

(c) when, in its sole discretion, the Declarant so determines and declares in a Recorded instrument.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot adopted pursuant to Section 7.2(c), as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. During the Development Period, at Declarant's option, Declarant may adopt or amend from time to time the Design Guidelines for the Property or any portion thereof. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines for the Property or any portion thereof.

"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 Declarant. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property or the right to direct the size, shape and composition of the Property.

"Development Period Rights" shall mean generally those rights reserved to Declarant under this Declaration to (i) facilitate the development, construction, and marketing of the Property; and (ii) direct the size, shape and composition of the Property. Such rights include, without limitation, the right to: (a) adopt and amend Design Guidelines for the construction and modification of Improvements within the Property pursuant to Article VII hereof; (b) amend the Governing Documents without the consent or approval of other Owners or Mortgagees pursuant to Article XVI hereof; and (c) exercise the additional rights set forth in Article XV hereof, and any other rights reserved to the Declarant during the Development Period pursuant to the Governing Documents.

"Governing Documents" means the restrictions, covenants, and conditions contained in this Declaration, the Bylaws, the Certificate of Formation, the Policy Manual, the Rules and Regulations, any Board resolutions, the Design Guidelines (if adopted), or any other dedicatory instrument of the Association, as each may be supplemented and amended from time to time in accordance with the terms and conditions of this Declaration. See *Table 1* for a summary of the Governing Documents.

"Improvements" shall mean all physical enhancements and alterations to the Property and the Common Area, including but not limited to grading, clearing, removal of trees, and site work, alteration of drainage flow, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"Limited Common Areas" shall mean a portion of the Common Areas primarily benefiting one or more, but less than all Lots, as more particularly described in Article XII hereof.

"Lot" shall mean any portion of the Property the Declarant designates as such in a Recorded instrument or as shown as a subdivided lot on a Plat other than areas designated as Common Area or as an 'HOA' lot thereon.

"Majority" means more than half.

"Manager" has the meaning set forth in Section 3.5(h).

"Master Association" shall mean and refer to Rayzor Ranch Master Association, Inc., a Texas nonprofit corporation, which has been created by the "Master Declarant" under the Master Declaration to serve as the mandatory membership owners association having jurisdiction over the properties within the Rayzor Ranch development.

"Master Declaration" shall mean and refer to that certain Master Plan for Denton Hillview Center (now known as Rayzor Ranch) Recorded as Instrument Number 2006-41742, as may be amended or supplemented from time to time, and which is applicable to the properties within the Rayzor Ranch mixed-use master planned development and will provide for the administration of such properties and enforcement of the terms of the Master Governing Documents by the Master Association.

"Master Governing Documents" shall mean all of the dedicatory instruments governing the use and ownership of property within Rayzor Ranch, including the Master Declaration, the articles of incorporation of the Master Association, the bylaws of the Master Association, and any applicable design guidelines established by the Master Association.

"Master Plan" shall refer to the master land use plan for the development of the Property (as set forth in the Master Governing Documents) and approved by the City, as it may be amended from time to time, which includes the property described in Exhibit "A" hereof.

"Member" shall mean a member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

"Mortgage" shall mean a mortgage, a deed of trust, a deed to secure debt, a vendor's lien, or any other form of security instrument encumbering title to any Lot.

"Mortgagee" shall mean the beneficiary or holder of a Mortgage.

"Notice of Addition of Land" means the Recorded notice executed by Declarant for the purpose of adding all or any portion of real property to the Property for the purpose of subjecting such land to the terms, covenants, conditions, restrictions and obligations of this Declaration and the jurisdiction of the Association for purposes of this Declaration in accordance with Section 15.5 hereof.

"Owner" shall mean the Person(s), including Declarant, holding legal title to all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

"Person" shall mean any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any governmental authority and any party acting in such capacity on behalf of any of the foregoing.

"Plat" shall mean any subdivision plat for all or a portion of the Property Recorded in the applicable plat records, which may be amended from time to time.

"Policy Manual" means the compilation into a singular policy manual of any policies, Rules and Regulations, Certificate of Formation of the Association, and the Bylaws governing the Association, which shall be initially adopted and Recorded by Declarant for the benefit of the Association as part of the initial project documentation. The Rules and Regulations and other policies set forth in the Policy Manual may be amended, from time to time, by Declarant during the Development Period, or by a Majority of the Board, with the advance written consent of Declarant during the Development Period. Upon expiration or termination of the Development Period, the Policy Manual may be amended by a Majority of the Board.

"Property" shall mean and refer to the real property (including Improvements now or hereafter placed, constructed, installed, or located thereon) described in Exhibit "A" hereof.

"Record, Recording, Recordation and Recorded" means recorded or to be recorded in the Official Public Records of Denton County, Texas.

"Regular Assessment" shall refer to assessments levied on all Lots subject to assessment under Article VI hereof to fund Common Expenses for the general benefit of all Lots.

"Residence" shall mean and refer to any building, or part thereof, and any appurtenant Improvements, constructed on a Lot which is intended for use and occupancy as a single family dwelling.

"Resident" shall mean and refer to any Person who inhabits a Residence, either permanently or temporarily, and may include, without limitation, an Owner or a lessee and their respective families, guests, invitees, servants or employees.

"Rules and Regulations" or "Rules" means any instrument, whether containing rules, policies, regulations, resolutions or other similar denominations, which is adopted by the Board for the regulation and management of the use of or activities, and conduct on or within the Property or the Common Area, including any amendments thereto. All such Rules and Regulations or Rules shall be applied to the Property or Common Area (as applicable) in a manner that uniformly and non-discriminately applies to the Owners affected by the same.

"Rayzor Ranch" shall mean that certain mixed-use master planned development located in Denton County, Texas, of which the Property is a component, and including the real property developed or to be developed as residential property, commercial property and/or mixed commercial-residential property, including the Property subject to this Declaration and other real property included on the Master Plan approved by the City.

"Service Area" means a group of Lots designated as a separate Service Area pursuant to this Declaration for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in Section 8.26. No Service Area shall include Lots owned by the Venture, without the express consent of the Welltower Member.

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

“Service Area Expenses” means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.

“Solar Energy Device” means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

“Special Assessment” shall mean and refer to Assessments levied against Owners to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 6.5 hereof.

“Specific Assessment” shall mean Assessments levied in accordance with Section 6.6 hereof.

“Standby Electric Generator” means a device that converts mechanical energy to electrical energy and is: (a) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen; (b) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure; (c) connected to the main electrical panel of a Residence by a manual or automatic transfer switch; and (d) rated for a generating capacity of not less than seven (7) kilowatts.

“Supplemental Declaration” shall mean a Recorded instrument which designates Service Areas, designates an Area of Association Responsibility, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

“Townhome” shall mean a building containing two or more Residences constructed upon two or more Lots that share a common wall, roof and foundation with each other.

If Service Areas are established in accordance with Section 8.26 hereof, a Service Area shall be deemed to be a single Lot until such time as a Plat is Recorded subdividing all or a portion thereof. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat and the portion not subdivided shall continue to be treated as a single Lot.

TABLE 1: GOVERNING DOCUMENTS	
<b>Declaration</b> (Recorded)	Creates obligations that are binding upon the Association and all present and future Owners of any portion of the Property.
<b>Certificate of Formation</b> (filed and Recorded)	Establishes the Association as a Texas nonprofit corporation by filing with the Secretary of State.
<b>Bylaws</b> (Recorded)	Governs the Association’s internal affairs, such as elections, meetings, etc.

<b>Policy Manual</b> (Recorded)	Sets forth the policies and Rules and Regulations which are enforced by the Association to govern various conduct and activities in and on the Property.
<b>Design Guidelines</b> (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto. Declarant shall have no obligation to adopt the Design Guidelines.
<b>Rules and Regulations</b> (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property or the Common Area
<b>Board Resolutions</b> (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners and Association.
<b>Notice of Addition of Land</b> (Recorded)	Adds additional land to the Property, so such land will be considered part of the Property and subject to the terms of this Declaration and under the jurisdiction of the Association.
<b>Notice of Plat Recordation</b> (Recorded)	Identifies specific residential Lots or lots within a Plat and withdraws any portion of the Property not comprising a residential Lot or lot from the terms and provisions of this Declaration.

## ARTICLE II

### MASTER ASSOCIATION

This Declaration is intended to supplement the Master Governing Documents as they apply to the Property. Every Owner, by acceptance of an interest in any Lot, acknowledges that he or she is subject to the Master Governing Documents, in addition to this Declaration, and that he or she is automatically a member of and subject to any applicable assessment by the Master Association, as well as by the Association.

In addition to all of the rights and obligations which are conferred or imposed upon the Association pursuant to this Declaration, the Bylaws and the Certificate of Formation, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Governing Documents. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Governing Documents. The Association shall take no action in derogation of the rights of, or contrary to the interests of the Master Association.

The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Master Governing Documents; provided, however, in the event of a conflict between or among the provisions of this Declaration, the Bylaws, Certificate of Formation or Rules and Regulations pursuant thereto and the Master Governing Documents, those of the Master Association shall be superior to those of the Association. The foregoing priorities shall not prevent enforcement by the Association of provisions or rules which are more stringent than those of the Master Association.

THE FOREGOING PRIORITIES GIVEN TO THE MASTER GOVERNING DOCUMENTS PROMULGATED BY THE MASTER ASSOCIATION AND ITS BOARD, ITS DECLARANT OR ITS COMMITTEES SHALL NOT PREVENT ENFORCEMENT BY THE ASSOCIATION, THE DECLARANT OR THE ARCHITECTURAL CONTROL COMMITTEE OR THE ADOPTION BY THE ASSOCIATION, THE DECLARANT OR THE ARCHITECTURAL CONTROL COMMITTEE OF COVENANTS, DESIGN GUIDELINES, ARCHITECTURAL BULLETINS, RULES, REGULATIONS, BYLAWS, CERTIFICATE OF FORMATION OR ANY OTHER GOVERNING DOCUMENT WHICH IS MORE RESTRICTIVE, STRINGENT, LIMITING, SPECIFIC, AND/OR LESS PERMISSIVE THAN THOSE ADOPTED BY, ENFORCED BY OR PROMULGATED BY THE MASTER ASSOCIATION OR ANY COMMITTEE THEREOF.

### ARTICLE III

#### RAYZOR RANCH HOMEOWNERS ASSOCIATION, INC.

Section 3.1 Organization. The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas nonprofit corporation. Neither the Certificate of Formation nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

#### Section 3.2 Membership.

(a) Mandatory Membership. Any Person, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the legal title to the fee simple interest to such Lot. Within thirty (30) days after acquiring legal title to the fee simple interest in a Lot, if requested by the Board, an Owner must provide the Association with: (1) a copy of the Recorded deed by which the Owner has acquired legal title to the fee simple interest to the Lot; (2) the Owner's name, address, email address and phone number; (3) any Mortgagee's name and address; and (4) the name, phone number, and email address of any Resident other than the Owner.

(b) Easement of Enjoyment – Common Area. Every Member will have a non-exclusive right and easement of enjoyment in and to all of the Common Area and a non-exclusive access easement by and through any Common Area, which easements will be appurtenant to and will pass with legal title to the fee simple interest to the Member's Lot, subject to the following restrictions and reservations:

(i) The right of Declarant, or Declarant's designee, during the Development Period, to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by Declarant, in Declarant's sole and absolute discretion;



(ii) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such Member is in violation of any provision of this Declaration;

(iii) The right of Declarant, during the Development Period, and the Board with the advance written approval of Declarant during the Development Period, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

(iv) The right of Declarant, during the Development Period, and the Board, with the advance written approval of Declarant during the Development Period, to grant easements or licenses over and across the Common Area;

(v) With the advance written approval of Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area (subject to the Welltower Member's consent);

(vi) The right of Declarant, during the Development Period, and the Board, to promulgate Rules and Regulations regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may reasonably determine, except that during the Development Period, all such contracts must be approved in advance and in writing by Declarant.

Section 3.3 Governance. As more specifically described in the Bylaws, the Board will consist of at least three (3) individuals 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 tenth (10<sup>th</sup>) anniversary of the date this Declaration is Recorded. Not later than the tenth (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 ( $\frac{1}{3}$ ) of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds ( $\frac{2}{3}$ ) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period. Notwithstanding anything to the contrary in the Bylaws or this Declaration, at all times as Declarant has the right to appoint and remove any or all members of the Board, (a) at least one (1) member of the Board shall be a representative of the Venture which such member's appointment shall be subject to revocation by the Welltower Member upon notice to the WB Member (and, in the event of any such revocation, each of the Declarant and the WB Member shall take all actions necessary for such member to cease to be a member of the Board and a replacement member appointed by the Welltower Member shall become the member of the Board appointed on behalf of the Venture) and (b) any increase in the size of the Board to a number greater than three (3) members shall require the express consent of the Welltower Member.

Section 3.4 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 3.3) 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) Co-Owner Votes. When more than one Person owns a portion of the fee simple interest in any Lot, all such Persons will be Members. The vote for such Lot will be exercised by one 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 one (1) total vote to which such Lot is otherwise entitled under this Section 3.4.

Section 3.5 Powers. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

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

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

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Governing Documents available for inspection by an Owner (or an individual identified as an Owner's agent, attorney or certified public accountant, provided the designation is in writing and delivered to the Association) upon submission of a written request in accordance with the Association's adopted policies set forth in the Policy Manual.

(d) Assessments. To levy and collect assessments, as provided in Article VI below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an Emergency (or in the case of a non-Emergency, after twenty four (24) hours written notice), without being liable to any Owner or Resident (except in the event of the Association's gross negligence or willful misconduct), upon any Lot and into any Improvement thereon for the purpose of enforcing the Governing Documents or for the purpose of maintaining or repairing any area,

Improvement or other facility to conform to the Governing Documents. The actual expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed a Specific Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in Article VI hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Governing Documents. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem reasonably necessary or expedient to enforce the Governing Documents. The Association may not alter or demolish any Improvements on any Lot other than Common Area or Limited Common Area in enforcing the Governing Documents before a final non-appealable judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.5(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.** As used herein, "Emergency" means a condition or event that requires immediate action to prevent: (i) serious bodily injury or loss of life; and/or (ii) material damage to a Lot or the Improvements located thereon.

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

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

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar Improvements or facilities to those described in this Section 3.5(g).

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Governing Documents or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this Section 3.5(g) must be approved in advance and in writing by Declarant. In addition, the Association (with the advance written approval of Declarant during the Development Period) and Declarant are expressly authorized and permitted to convey easements over and across Common Area or Limited Common Area for the benefit of property not otherwise subject to the terms and provisions of this Declaration.

(h) Manager. To retain and pay for the services of a Person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. In the event that Declarant or any affiliate of Declarant is designated as the Manager, the fees for its services shall be consistent with the prevailing market rate for similar services provided by other managers and operators in the geographic location of the Property. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

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

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

(k) Construction on Common Area and Limited Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, including but not limited to the Common Area and the Limited Common Area, subject to the approval of the Board and Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Limited Common Area, Improvement, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by Declarant. Upon the expiration or earlier termination of the Development Period, notwithstanding anything to the contrary herein, the Association shall comply in all respects to the requirements and provisions of Section 209.0052 of the Texas Property Code related to contracts for services, including but not limited to Bulk Rate Contracts, entered into by the Association.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by Declarant.

(n) Allocation of Votes. To determine votes when permitted pursuant to Section 3.4 above.

(o) Authority with Respect to the Governing Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Governing Documents. Any decision by the Board to delay or defer the exercise of the power and authority granted by this Section 3.5(o) will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

(p) Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Area, Limited Common Area, and any Improvements thereon. All Rules and Regulations governing and limiting the use of the Common Area, Limited Common Area, and any Improvements thereon must be approved in advance and in writing by Declarant during the Development Period.

Section 3.6 Acceptance of Common Area and Limited Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate by written and Recorded instrument portions of the property being held by Declarant for the benefit of the Association. Upon the filing of such designation, the portion of the property identified therein will be considered Common Area or Limited Common Area for the purpose of this Declaration. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property or the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Declaration. Such property will be accepted by the Association and thereafter will be maintained as Common Area or Limited Common Area, as applicable, by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon

Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines, as determined in the sole and absolute discretion of Declarant. Pursuant to the Plat, the Association shall be responsible for mowing and otherwise maintaining all lots designated as "HOA", easements, open channels, drainage easements, detention and water quality areas, parkland, landscape buffers, and greenbelts, within the subdivision.

Section 3.7 Indemnification. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate of Formation or Bylaws of the Association, the Association will indemnify any individual who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such individual is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by such individual in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (1) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the individual did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 3.8 Insurance. The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any individual who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such individual in any such capacity, or arising out of such individual's status as such, whether or not the Association would have the power to indemnify such individual against such liability or otherwise.

Section 3.9 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in Section 3.5 hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly; provided that if Declarant or any affiliate of Declarant is designated as the service provider, the rates for such services under the Bulk Rate Contract shall be consistent with the prevailing market rate for similar services provided by other service providers in the geographic location of the Property). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its reasonable discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, or Specific, as the case may be) against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract,

then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

Section 3.10 Protection of Declarant's Rights. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots or any other portion of the Property owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

Section 3.11 Administration of Common Area and the Limited Common Area. The administration of the Common Area or the Limited Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Governing Documents, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or the Limited Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area. Declarant and/or its assignees may construct and maintain upon portions of the Common Area or the Limited Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area or the Limited Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

Section 3.12 No Liability of Association. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Resident of any Lot or any other Person or resulting from any utility, rain, snow or ice which may leak or flow from

any portion of Common Area, Limited Common Area, or Service Area, or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner or Resident of any Lot for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Area, Limited Common Area, or Service Area or any Lot. The Association shall not be liable to any Owner or Resident, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Declaration. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

Section 3.13 Merger. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by at least two-thirds (2/3) of the votes entitled to be cast by Members of the Association and the express consent of the Declarant and Welltower Member. The foregoing sentence shall in no way be interpreted to mean two-thirds (2/3) of a quorum as established pursuant to the Bylaws. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

Section 3.14 City Right to Enforce. Pursuant to the Plat and this Declaration, the Association has a binding, continuing responsibility for the maintenance, repair, and operation of the storm water system and the private streets located within the subdivision. If the Association defaults or fails to perform these duties and obligations, and if such default continues for a period of thirty (30) days after written notice from the City to the Association, which notice includes a description of the maintenance required to be performed, the City shall have the right to perform such maintenance. In such an event, the City may charge the Association for the reasonable cost incurred by the City for such maintenance, which amount will be paid by the Association on or before the expiration of thirty (30) days after the City has provided the Association with written substantiation of such costs. Nothing contained herein is intended to, nor shall it be interpreted as or deemed to waive, limit or restrict the City's authority and ability to pursue any remedies available to the City under Applicable Law.

## ARTICLE IV

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.1 Common Areas. The Association, subject to the Master Association's and City's maintenance responsibilities, shall be responsible for the exclusive management and control of the Common Areas and all Improvements thereon (including, without limitation, furnishings,



equipment and common landscaped areas), and shall keep them in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard, and shall pay as a Common Expense all state and local taxes applicable thereto.

Section 4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property, subject to such restrictions as are set forth in the Governing Documents. Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other interests in any improved or unimproved real estate located within the Property. Upon conveyance or dedication by Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed of conveyance. Upon written request of Declarant, the Association shall re-convey to the Declarant for no or nominal monetary consideration any unimproved portions of the Property originally conveyed by Declarant to the Association for no or nominal monetary consideration, to the extent conveyed in error or needed by Declarant to make minor adjustments in property lines.

Section 4.3 Rules and Regulations. The Board may make, amend and enforce reasonable and non-discriminatory rules and regulations governing, among other things, the collection of assessments (including, without limitation, the application of payments received from Owners) and the use and operation of the Common Areas and Lots (including, without limitation, the use, occupancy, leasing or sale, maintenance, repair, modification and appearance of Lots) which such rules and regulations shall be consistent with the rights and duties established by this Declaration.

Section 4.4 Implied Rights. The Association may exercise any other right or privilege given to it expressly by the Governing Documents. The Association may also exercise every other right or privilege reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by Applicable Law, all rights and powers of the Association may be exercised by the Board without a vote of the membership; provided however, that if the exercise of any such right or power by the Board would materially or adversely affect the Lots owned by the Venture, a vote by the membership shall be required.

Section 4.5 Governmental Interest. During the Development Period, Declarant may re-designate Common Areas within the Property for parks, public bicycle and pedestrian pathways and trails, and water and sewer facilities that conform to the overall aesthetic of the development.

Section 4.6 Dedication of Common Areas. Subject to such approval requirements as may be set forth in this Declaration, the Association shall have the power to dedicate portions of the existing Common Areas to the City and/or Denton County, Texas, or to any other local, state or federal governmental entity. In addition, until expiration or termination of the Development Period, any grant, dedication, or conveyance under this Section 4.6 must be approved in advance and in writing by Declarant and the Welltower Member.

Section 4.7 Safety and Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the security of the Property. **NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT, NOR THE DIRECTORS, EMPLOYEES, OR AGENTS THEREOF SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY OR THE COMMON AREA, NOR SHALL SUCH PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM OR RELATED TO AN OWNER'S OR RESIDENT'S, OR THEIR RESPECTIVE GUEST'S AND INVITEE'S, PRESENCE IN OR USE OF ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY OF THE COMMON AREA OR IMPROVEMENTS THEREON.**

**NO REPRESENTATION OR WARRANTY IS MADE BY SUCH PARTIES THAT ANY SYSTEMS OR MEASURES, INCLUDING SECURITY MONITORING SYSTEMS OR ANY GATE, MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTY OR THE COMMON AREA, CANNOT BE COMPROMISED OR CIRCUMVENTED; OR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT THEY SHALL BE RESPONSIBLE FOR INFORMING ANY RESIDENTS OF SUCH OWNER'S LOT THAT NEITHER THE DECLARANT, THE ASSOCIATION, NOR THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND COMMITTEES OF SUCH ENTITIES, ARE INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY RESULTING FROM ACTS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ANY DAMAGE OR LOSS TO ANY RESIDENCES OR IMPROVEMENTS CONSTRUCTED UPON ANY LOT AND THE CONTENTS LOCATED THEREIN.**

Section 4.8 Construction Activities. All Owners are hereby placed on notice that there may be, from time to time, excavation, construction and other activities within or in proximity to the Property. By the acceptance of a deed or other conveyance or Mortgage, leasehold, license, easement or other interest, and by using any portion of the Property, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any affiliate of Declarant, and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses and damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing. Notwithstanding the foregoing, any construction activities undertaken by Declarant (or on behalf

of Declarant) on the Property shall be subject to the terms and conditions set forth in Section 15.1(b) hereof.

## ARTICLE V

### MAINTENANCE

Section 5.1 Common Area Maintenance Responsibility. Except as may be otherwise provided by this Declaration, any Supplemental Declaration or the Master Declaration, the Association shall maintain and keep in good repair the Common Areas, such maintenance to be funded as hereinafter provided. The City shall have no responsibility for maintenance within the Property except as expressly provided in the Master Declaration. The Association's maintenance responsibility for the Common Area shall include, but need not be limited to:

(a) All portions of and all structures and Improvements situated upon the Common Areas, including, without limitation, (i) all entry features, fountains and monuments constructed by the Declarant or the Association, including the expenses for water and electricity, if any, provided to all such items, (ii) any sprinkler or irrigation systems installed by the Declarant or the Association, (iii) screening walls or retaining walls constructed by the Declarant or the Association along public streets, and the grounds between such public streets and any such screening or retaining wall, (iv) any common driveways and common parking areas, and (v) any lamp posts;

(b) Landscaping, including grass median strips, within public rights-of-way within or abutting the Property, and landscaping and other flora within any public utility easement within the Property (subject to the terms of any easement agreement relating thereto);

(c) On-site drainage easements serving the Property subject to this Declaration. The maintenance required will include, but not be limited to: (i) periodic inspection of detention easements for conditions that may affect operation or structural integrity; (ii) periodic removal of debris, i.e., brush, leaves, or trash that may become lodged in the outlet control structure; (iii) removal of sediment that accumulates within the detention easements (accumulation shall be removed once the depth of accumulation is six (6) inches over the original constructed grades); and (iv) repair of any damaged areas;

(d) Maintenance of the enhanced swale constructed, or to be constructed, on HOA 25, Block J, of The Residences at Rayzor Ranch, Phase 2, an addition to the City of Denton, Denton County, Texas, according to the Plat recorded under Clerk's File No. 2021-141, Plat Records of Denton County, Texas, and which is contemplated to be annexed into this Declaration in the future.

During the first year, beginning once the temporary erosion control measures have been removed, the maintenance shall consist of the following, once every six (6) months:

- Inspection of grass alongside slopes for erosion and formation of rills or gullies and correction
- Removal of trash and debris accumulated in the inflow forebay

- Inspection and correction of erosion problems in the sand/soil bed of swale
- Based on inspection, planting of an alternative grass species if the original grass cover has not been successfully established
- Inspection of pea gravel diaphragm for clogging and correction of the problem

Once the vegetation has been established, or one (1) year after the temporary erosion control measures have been removed, whichever occurs later, the maintenance shall consist of the following:

- Seasonally:
  - Mowing of grass to maintain a height of four (4) to six (6) inches and removal of grass clippings
- Annually:
  - Inspection of grass alongside slopes for erosion and formation of rills or gullies and correction
  - Removal of trash and debris accumulated in the inflow forebay
  - Inspection and correction of erosion problem in the sand/soil bed of swale
  - Based on inspection, planting of an alternative grass species if the original grass cover has not been successfully established
  - Inspection of the swale draw down time after rainfall events and roto-tilling or cultivating the surface for the sand/soil bed if the swale does not draw down within forty-eight (48) hours
  - Inspection of sediment build-up within the bottom of the swale and removal once it has accumulated to twenty-five percent (25%) of the original design volume

See Exhibit "C" attached hereto and made a part hereof for the Enhanced Swale Maintenance Plans.

(e) Maintenance and operation of privately owned and maintained alleys and providing access for City service vehicles; and

(f) All portions of and all structures and Improvements situated upon the Limited Common Areas, if any.

The Association shall maintain the equipment within the Common Areas in continuous operation, except for any periods of maintenance or repairs, or unless a Majority of the Members of the Association, at an open meeting, vote in favor of discontinuing such operation and the same

is included within a written instrument. The foregoing sentence shall in no way be interpreted to mean the Majority of a quorum as established pursuant to the Bylaws. Except as provided hereinabove, the Common Areas shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant and the Welltower Member.

The costs associated with maintenance, repair and replacement of the Common Areas shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Areas pursuant to this Declaration, any Supplemental Declaration, a covenant to share costs, other Recorded covenants, or agreements with the owner(s) thereof.

All costs associated with the maintenance, repair or replacement of Limited Common Areas intended for the exclusive use and benefit of a particular Service Area shall be assessed as a Service Area Assessment solely against the Lots within the benefited Service Area, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

The Common Areas are private and maintained by the Association. Although the public may have a non-exclusive easement on Common Areas, the Common Areas are not public and the City has no obligation to maintain or inspect the Common Areas or the structures and improvements situated upon the Common Areas. Certain City services shall not be provided on streets and alleys located in the Common Areas, including, but not limited to, routine police patrols, enforcement of traffic and parking ordinances and preparation of accident reports.

Section 5.2 Area of Association Responsibility. In addition to the Association's maintenance responsibilities for the Common Areas, and except as may be otherwise provided by this Declaration or a Supplemental Declaration, the Association shall also maintain and keep in good repair the Area of Common Responsibility including the following:

(a) Such portions of any property located adjacent to the Property, including property dedicated to the public, such as streets, curbs and sidewalks, the maintenance of which is deemed to be in the best interest of the Association to maintain or which must be maintained according to this Declaration, any Supplemental Declaration, any covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association;

(b) All retaining walls and fences installed by the Declarant or the Association and located wholly or partially on a Lot;

(c) All utility lines, chutes, flues, pipes, ducts, wires, vents and conduits serving more than one Residence or the Common Areas, to the extent that such utility lines, chutes, flues, pipes, ducts, wires, vents and conduits are not maintained by public, private or municipal utility companies; and

(d) Such portions of the Lots within a Service Area as may be designated by the Declarant in a Supplemental Declaration as an Area of Association Responsibility, or as may be designated by the Board as an Area of Association Responsibility if such designation is approved by the Declarant during the Development Period and by a Majority of the votes in the Service Area who are present and voting at a meeting called for such purpose; provided, however,

to the extent the designation is inclusive of any Lot owned by the Venture, the express written consent of the Welltower Member must be obtained. Portions so designated may be undesignated by the Declarant during the Development Period, or by the Board upon the approval of the Declarant if during the Development Period or by a Majority of the votes in the Service Area subject to such designation who are present and voting at a meeting called for such purpose; provided, however, if such portions undesignated are inclusive of any Lot owned by the Venture, the express written consent of the Welltower Member must be obtained. To evidence the designation or removal of an item from the Area of Association Responsibility, the Association shall Record a Supplemental Declaration describing the item to be designated or undesignated as an Area of Association Responsibility.

The costs associated with the maintenance, repair or replacement of an Area of Association Responsibility will be assessed uniformly against all Lots within the Service Area possessing the designated feature as part of each Owner's Service Area Assessment; provided that, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Association Responsibility pursuant to this Declaration, any Supplemental Declaration, a covenant to share costs, other Recorded covenants, or agreements with the owner(s) thereof.

Section 5.3 Owner's Responsibility. Unless the maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other declaration of covenants applicable to such Lot, each Owner shall maintain, repair and replace, as necessary, the following items:

(a) the interior and exterior portion of the Lot and Residence and all landscaping, structures, parking areas, sidewalks and other Improvements within the boundaries of the Lot, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation):

- (i) the proper seeding, consistent watering and mowing of all lawns;
- (ii) the pruning and cutting of all trees and shrubbery;
- (iii) the prompt removal of all litter, trash, refuse and waste;
- (iv) watering of all landscape;
- (v) keeping exterior lighting and mechanical facilities in working order;
- (vi) keeping lawn and garden areas alive, free of weeds and attractive;
- (vii) keeping structures, windows, window frames, garage doors, shutters, eaves, fascia, gutters, downspouts, roofs, shingles, decking, walls, foundations, driveways and sidewalks, in good repair and condition;
- (viii) promptly repairing any exterior damage;

(ix) complying with all governmental health and police requirements;  
and

(x) keeping any drainage easement free of items which would impede the flow of storm water within the drainage easement unless the maintenance responsibility is otherwise assumed by or assigned to the Association or other declaration of covenants applicable to such Lot.

(b) all landscaping on that portion of the Common Areas or public right-of-way between the Lot boundary and the nearest curb or pavement edge of the adjoining street(s) or the nearest fence, wall or berm constructed on the adjacent Common Areas.

During construction of Improvements on a Lot, reasonable care shall be taken by the Owner thereof to protect all public and private streets from damage due to such construction. During such construction, it shall be the responsibility of the Owner to (i) keep all Lots as clean as possible to avoid blowing trash and to prevent dirt/mud and other debris from entering onto other portions of the Property; and (ii) keep streets reasonably clean and free of dirt/mud and debris. Neither the Declarant nor the Association shall have responsibility or liability for the streets during construction. Owners shall not store any excavation of soil on streets or adjacent sites without prior written permission of the ACC. Soil runoff due to rain or irrigation shall be removed promptly from streets and sidewalks by the Owner. The Board may adopt reasonable rules regarding the maintenance of construction sites, including the imposition of fines for violations of this Section 5.3 hereof.

Section 5.4 Enforcement. If, at any time, an Owner of any Lot, shall fail to control weeds, grass and/or other unsightly growth, or permit accumulation of garbage, trash or rubbish, or otherwise fail to maintain the Lot or other area required to be maintained by the Owner hereunder (such as a drainage easement), the Association shall have the right to perform such maintenance for the purpose of mowing, cleaning or maintaining such property or Lot. The Association may assess and collect from such Owner a reasonable sum for mowing, cleaning or maintaining such property or Lot on each respective occasion of such mowing, cleaning or maintenance. However, the Association shall afford the Owner at least ten (10) days' prior written notice and an opportunity to cure the violation prior to entry, except when immediate entry is required due to an Emergency. Any such Assessment, together with interest thereon at the highest lawful rate, and costs of collection thereof, shall be a charge on the Lot and shall be a continuing lien upon such Lot against which each such Assessment is made in accordance with Section 6.6 and Section 6.10 hereof.

Section 5.5 Standard of Performance. Unless otherwise specifically provided in the Governing Documents or in other instruments creating or assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard. Repair and replacement shall include improvement, if necessary, to comply with applicable building codes or other regulations or if otherwise deemed appropriate, in the Board's reasonable discretion. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in

accordance with Article VII hereof. Alternatively, the Owner shall clear the Lot and maintain it in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance.

Section 5.6 Indemnification. If the Association, the Declarant or Owner, or any of their agents, employees or contractors (i) causes any damage to the Common Areas or to any Lot, or to any Improvements located thereon, or (ii) causes any injury to any Person utilizing the Common Areas or any Lot, or any Improvements located thereon, which damage or injury arises in whole or in part out of the exercise of any of the easements granted by Article XIII hereof, the party responsible for such damage or injury shall:

(a) Restore the Common Areas or Lot(s) to their respective condition immediately preceding such entry;

(b) Repair any damage to any Improvements located on the Common Areas or any Lot, and replace any such Improvements located thereon which are not capable of repair; and

(c) Indemnify, defend and hold harmless the Association, the Declarant or any Owner not responsible for such damage or injury from any and all damages, liability and expenses incurred by such innocent party as a result of the exercise of rights granted by such easement.

Section 5.7 Party Structures.

(a) General Rules of Law to Apply. Each foundation, roof, wall, fence or driveway built as a part of the original construction on the Lots which shall serve and/or separate any two adjoining Lots shall constitute a "Party Structure". To the extent not inconsistent with the provisions of this Section 5.7, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Right to Repair. If a Party Structure is damaged or destroyed from any cause, the Owner of any of the Lots of the Party Structure may repair or rebuild the Party Structure to its previous condition, and the Owner(s) of the other Lot(s), their successors and assigns, have a right to the full use of the repaired or rebuilt Party Structure. No Party Structure may be constructed, repaired, or rebuilt without the advance written approval of the ACC in accordance with Article VII hereof.

(c) Maintenance Costs; Right to Contribution. Unless the maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other declaration of covenants applicable to such Lots upon which a Party Structure is located, the Owners of such Lots share equally the costs of repair, maintenance, reconstruction, or replacement of the Party Structure, subject to the right of one Owner to call for larger contribution from the other Owner(s) under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Structure, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Structure, the Owner advancing monies has a right to Record a claim of lien for the monies advanced, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an



Owner to require contribution from another Owner under this Section 5.7 is appurtenant to the Lot and passes to such Owner's successors-in-title.

(d) Dispute Resolution. In the event of any dispute arising concerning a Party Structure, or under the provisions of this Section 5.7 (the "Dispute"), the parties shall submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board shall appoint a mediator. If the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration. Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board, the Board shall appoint an arbitrator. The decision of the arbitrator shall be binding upon the parties and shall be in lieu of any right of legal action that either party may have against the other. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable. If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for the cost of obtaining the all costs and expenses incurred by the Association in conjunction therewith. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

Section 5.8 INDEMNIFICATION. THE ASSOCIATION, AS OWNER OF VARIOUS PRIVATE FACILITIES AND PROPERTY WITHIN A COMMON AREA, INCLUDING PRIVATE STREETS, ALLEYS, DRAINAGE FACILITIES, LOTS, AND EASEMENTS WITHIN, OR UNDER THE CONTROL OF THE ASSOCIATION, SHALL AND HEREBY DOES INDEMNIFY, DEFEND AND SAVE HARMLESS, THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL COSTS, EXPENSES, SUITS, DEMANDS, LIABILITIES, DAMAGES, ACTIONS, OR CLAIMS OF ANY NATURE, TYPE, CHARACTER OR DESCRIPTION BROUGHT FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING WITHOUT LIMITATION, MENTAL ANGUISH AND DEATH, ARISING FROM THE CONDITION, USE OR OPERATION OF ANY PRIVATELY OWNED FACILITIES AND COMMON AREAS.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

Section 6.1 General. Except as hereinafter provided, each Owner of a Lot hereby covenants, and each successor-in-title of any such Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Association (1) Regular Assessments or charges (as specified in Section 6.3); (2) Service Area Assessments, for expenses benefiting only those Lots within a particular Service

Area, as described in Section 6.4; (3) Special Assessments (as specified in Section 6.5); (4) Specific Assessments (as specified in Section 6.6); and (5) Capital Assessment (as specified in Section 6.11) (collectively, the "Assessment(s)").

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

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

Section 6.2 Purpose of Assessments; Maintenance Fund. The Assessments levied by the Association shall be used exclusively for the purpose of benefiting the Owners of the Property, or any part thereof, for the improvement and maintenance of the Common Areas and Area of Association Responsibility and for carrying out the purposes of the Association as stated in its Certificate of Formation. The Board will establish a maintenance fund 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 under this Declaration. The funds of the Association may be used for any purpose authorized by the Governing Documents and Applicable Law.

Section 6.3 Regular Assessment.

(a) Budget. At least thirty (30) days before the beginning of each fiscal year, the Board shall unanimously agree upon and prepare a budget covering the estimated Common Expenses of the Association during the coming year, including any contributions to a reserve fund. After the initial budget is established, if the Board fails to unanimously agree upon and prepare a budget covering the estimated Common Expenses of the Association during any subsequent year, the budget for the immediately preceding year shall be increased by the percent of increase, if any, between the most recently published Consumer Price Index for all Urban Consumers (CPI U) for the U.S. City Average of all items (1982-84=100) (published by the Bureau of Labor Statistics of the United States Department of Labor) ("CPI") available on the first day of the fiscal year in question and the corresponding CPI in effect at the start of the immediately preceding fiscal year in which the Board adopted a budget.

(b) Computation. The Regular Assessment shall be levied against all Owners based on Assessment Units and shall be set at a level which is reasonably expected to produce the total income of the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of Assessments, the Board may consider other sources of funds available to the Association, the number of Lots subject to Assessment under Section 6.7 hereof on the first day of the fiscal year for which the budget is prepared, the number of Lots owned by Builders and the number of Lots reasonably anticipated to become subject to Assessment during the fiscal year.

Notwithstanding the foregoing, the Declarant shall be exempt from the payment of the Regular Assessment so long as Declarant is funding budget deficits pursuant to Section 6.3(d) hereof.

(c) Approval and Amendment of Annual Budget. The approval of an annual budget or the approval of an amendment to an annual budget shall be conducted in an open meeting for which prior notice has been given to Owners in accordance with Texas Property Code § 209.0051(e).

(d) Budget Deficits. Declarant shall pay the difference between the amount of Assessments (exclusive of reserve contributions) levied on all other Lots subject to Assessment and the amount of actual expenditures (exclusive of reserve contributions) incurred by the Association during each fiscal year (the "Budget Deficit"). This obligation to fund Budget Deficits shall cease upon the earlier of: (i) the termination of the Development Period, or (ii) the elimination of the budget deficit for a fiscal year (exclusive of Declarant contributions). The Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Section 6.3(d), which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Declarant's obligation to fund Budget Deficits, the Declarant shall pay Assessments on its unsold Lots in the same manner as any other Owner.

(e) Declarant Subsidy. Declarant may, but is not obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 6.3(d) above), which may be either a contribution, or a loan, in the Declarant's absolute discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not otherwise obligate Declarant to continue payment of such subsidy in future years, unless provided in a written agreement between Declarant and the Association.

#### Section 6.4 Service Area Assessments.

(a) Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Service Area Expenses for each Service Area on whose behalf Service Area Expenses are expected to be incurred during the coming year, including any contributions to a reserve fund for capital items maintained as a Service Area Expense. Each such budget shall include any costs for additional services or amenities or a higher level of services which have been approved by the Owners in such Service Area and accepted by the Association pursuant to Section 8.26.

(b) Computation. Service Area Expenses shall be allocated equally among all Lots within the Service Area; provided, however, that Declarant shall be exempt from the payment of Service Area Assessments during the period that Declarant is funding budget deficits pursuant to Section 6.3(d) hereof.

(c) Approval and Amendment of Annual Budget. The approval of an annual budget, or the approval of an amendment to an annual budget shall be conducted in an open

meeting for which prior notice has been given to Owners in accordance with Texas Property Code § 209.0051(e).

(d) Use of Service Area Assessments. All amounts collected by the Association as Service Area Assessments shall be expended solely for the benefit of the Service Area for which they were collected.

Section 6.5 Special Assessments. The Association may levy in any Assessment year or years a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described improvement including the necessary fixtures and personal property related thereto, to cover unbudgeted expenses or expenses in excess of the amount budgeted or for carrying out other purposes of the Association as stated in the Governing Documents. Any such Special Assessment shall be levied against all Owners based on Assessment Units if such Special Assessment is for Common Expenses, or against the Lots within any Service Area, if such Special Assessment is for Service Area Expenses. Except as otherwise provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent, or any combination thereof, of Owners (if a Common Expense) or Owners within the affected Service Area(s) (if a Service Area Expense) representing a Majority of the total number of votes cast with respect to such Special Assessment, and shall be done in an open meeting for which prior notice was given to Owners in accordance with Texas Property Code § 209.0051(e). Special Assessments may be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Any Special Assessment to be levied solely against the Lots owned by the Venture shall require the express consent of the Welltower Member.

Section 6.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover any costs incurred in bringing a Lot or Lots into compliance with the provisions of the Governing Documents;

(b) to cover the costs of providing benefits, items or services not provided to all Lots or all Lots within a Service Area, such as landscape maintenance, child care, pest control service, security and transportation services; such Assessments may be levied in advance of the provisions of the requested benefit, item or service as a deposit against charges to be incurred;

(c) for fines for violations levied pursuant to the Governing Documents;

(d) for interest, late charges, and collection costs levied on delinquent Assessments;

(e) for transfer-related fees and resale certificate fees;

(f) for estoppel letter fees and project documents;

(g) for insurance deductibles;

(h) for damages caused to the Common Area or Area of Association Responsibility by an Owner, his or her family members, tenants, guests, invitees or contractors; and

(i) for any other cost or expense authorized by the Governing Documents to be levied against an Owner and the Lot.

Section 6.7 Commencement Date of Assessments. Unless otherwise provided in a Supplemental Declaration, the obligation to pay Assessments shall commence as to all Lots on the first day of the month following the month in which the Board first determines a budget and levies Assessments pursuant to this Article. The first Regular Assessment and Service Area Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot.

Section 6.8 Late Charges. If any Assessment is not remitted by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Specific Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

Section 6.9 Owner's Personal Obligation; Interest. Any Assessment provided for herein shall be the personal and individual debt of the Owner of the property covered by such Assessment. No Owner may exempt himself from liability for such Assessments by non-use of Common Areas, abandonment of the Lot or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority or for any other action taken or failed to be taken by the Association. In the event of default in the payment of any such Assessment, in addition to the late charge referred to in the preceding paragraph, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one-half percent (1½%) per month), together with all late charges, costs and expenses of collection, including reasonable attorney's fees.

Section 6.10 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in Section 6.8 and interest as provided in Section 6.9 hereof and all costs of collection, including reasonable attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to Section 6.1(b) above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (a) tax liens and governmental assessment liens; (b) all sums secured by a Recorded first mortgage lien or Recorded

first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; (c) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record; or (d) as otherwise required by Applicable Law; provided that, in the case of subparagraphs (b), (c), and (d) above, such Mortgage was Recorded before the delinquent Assessment was due.

The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination shall be signed by an authorized officer, agent or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the authorized officers, agents, or attorneys of the Association and will be Recorded.

Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien.

In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale.

Upon payment of all sums secured by a lien of the type described in this Section 6.10, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an authorized officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable service provided

through the Association and not paid for directly by an Owner or Resident to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

Section 6.11 Capitalization of the Association. Upon the initial acquisition of record title to a Lot by the first Owner thereof from the Declarant, and upon each transfer of title thereafter, a contribution shall be made by or on behalf of the transferee to the working capital of the Association in an amount equal to \$3,000.00 if a single-family Residence exists or is to be constructed on the Lot and \$1,500.00 if a Townhome exists or is to be constructed on the Lot (the "Capital Assessment"). The Capital Assessment shall be in addition to, not in lieu of, any other Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the Association's designated account(s) and disbursed therefrom to the Association for use in covering operating expenses, capital expenditures and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Capital Assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (b) transfer to, from, or by the Association; (c) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; or (d) transfer by Declarant to the Venture. Additionally, an Owner who is a Builder or acquires a Lot for the purpose of resale to a Builder (a "Development Owner") will not be subject to the Capital Assessment; provided, however, the Capital Assessment will be payable by any Owner who acquires a Lot from a Builder or Development Owner for residential living purposes or by any Owner who: (y) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (z) who acquires the Lot for any purpose other than constructing a Residence thereon for resale to a third party. In the event of any dispute regarding the application of the Capital Assessment to a particular Owner, Declarant's, during the Development Period, and thereafter the Board's, determination regarding the application of the exemption will be binding and conclusive without

regard to any contrary interpretation of this Section 6.11. The Capital Assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

Section 6.12 Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Regular Assessments, Service Area Assessments and Special Assessments:

- (a) all Common Areas and Limited Common Areas;
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks, if any; and
- (c) Lots owned by the Declarant during Declarant's funding of budget deficits under Section 6.3(d).

Section 6.13 Fines and Damages Assessment.

(a) Board Assessment. After any applicable notice and cure period set forth in this Declaration or the Governing Documents, the Board may assess fines against an Owner for violations of the Governing Documents which have been committed by an Owner, a Resident, or an Owner's or Resident's guests, agents or invitees pursuant to any fine and enforcement policy adopted by the Board. Any fine and/or charge levied in accordance with this Section 6.13 will be considered a Specific Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area caused by the Owner, Resident, or their guests, agents, or invitees. The Association will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and Regulations and/or informing them of potential or probable fines or damage assessments. The Board may, from time to time, adopt a schedule of fines.

(b) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in Section 6.9 hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to Section 6.1(b) of this Declaration. Unless otherwise provided in this Section 6.13, the fine and/or damage charge will be considered an Assessment for the purpose of this Article VI and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this Article VI.

Section 6.14 Amount of Assessment.

(a) Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in Section 6.14(b) below). Unless otherwise provided in this



Declaration, Assessments levied pursuant to Section 6.3 and Section 6.5 shall be levied uniformly against each Assessment Unit allocated to a Lot. Service Area Assessments levied pursuant to Section 6.4 shall be levied: (i) equally; (ii) based on Assessment Units allocated to the Lots within the Service Area; or (iii) based on the benefit received among all Lots in the benefited Service Area that has been included in the Service Area to which such Service Area Assessment relates.

(b) Assessment Unit. Each Lot upon which a Residence is constructed shall constitute one (1) Assessment Unit and each Lot upon which a Townhome is constructed shall constitute one-quarter (1/4) Assessment Unit.

(c) Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this Article VI; 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.

## ARTICLE VII

### ARCHITECTURAL CONTROL COMMITTEE

**Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a Person to exercise the rights of the ACC. No Improvement constructed or caused to be constructed by Declarant will be subject to the terms and provisions of this Article VII and need not be approved in accordance herewith.**

Section 7.1 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

#### Section 7.2 Architectural Control Committee.

(a) Composition. The ACC will be composed of not more than three (3) individuals (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration of twenty-four (24) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon

the expiration of twenty-four (24) months after the expiration of the Development Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems reasonably necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re subdivide or consolidate Lots, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with Section 7.2(c) to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the Builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Design Guidelines. Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt, amend, modify, or supplement the Design Guidelines, if any. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to Section 7.2(a), will have the power from time to time, to amend, modify, or supplement the Design Guidelines, if any; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal

package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

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

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

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

(g) Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this Section 7.2(g) and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

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

(i) Non Liability of Committee Members. NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

(j) Pre-Approval of Venture Plans. Notwithstanding anything to the contrary herein, (i) initial plans and specifications of Improvements to be built on any Lot owned by the Venture shall be deemed as pre-approved and no such submission of plans and specification as provided for herein shall be required, and (ii) any subsequent alteration, remodel, improvement, renovation, repair, and/or reconstruction of the Improvements initially built on the Lots owned by the Venture which is substantially similar to the initial plans and specifications submitted (and approved herein) shall be deemed as pre-approved and no such submission of plans and specifications as provided for in this Declaration shall be required.

(k) Construction Deposit. In order to insure an Owner's compliance with this Declaration, the Design Guidelines (if adopted) and the rules and regulations promulgated thereunder, each Owner of a Lot (other than a Declarant or the Venture) shall pay to the Association a construction deposit, in an amount established by the Board from time to time, upon the Owner's submission of final plans and specifications for the construction or modification of an improvement under this Article VII. This deposit is in addition to any such deposit required under a separate agreement between an Owner and Declarant. In the event the Architectural Control Committee disapproves of the final plans and specifications, the Association shall promptly return the construction deposit to said Owner upon receipt of the Owner's written request to do so. If said plans and specifications are approved, the entire construction deposit shall be held by the Association until construction of the Improvement is completed in accordance with the approved plans and a certificate of occupancy has been issued to the Owner by the City. The Association shall release the construction deposit to the Owner, less any funds expended or reserved by the Association pursuant to this Section 7.2(k), within thirty (30) days of receipt from the Owner of written notice of completion of the improvement and a copy of the certificate of occupancy.

The Association may, without waiving any other remedy provided by this Declaration or by law, draw upon the construction deposit or withhold the release of the deposit as necessary to cover, among other things (i) the cost or anticipated cost to repair damage to the Common Areas caused by the Owner, his contractors, subcontractors, agents or employees, (ii) the cost or anticipated cost to perform the care, maintenance or repairs required to be performed by an Owner pursuant to this Declaration and any rules promulgated thereunder, and (iii) the cost or anticipated cost to restore an Owner's Lot to a condition existing prior to the commencement of nonconforming work (including, without limitation, the demolition and removal of any

unapproved or nonconforming improvement). If any part of the construction deposit is applied by the Association, the Owner shall, immediately upon demand, deposit with the Association a sum equal to the amount so applied in order to restore the construction deposit to its original amount.

Section 7.3 Driveways and Garages. All driveways and garages must comply with the requirements of the Plat and Applicable Law. Each Residence constructed upon a Lot shall have a private garage capable of accommodating not less than two (2) automobiles and a driveway capable of accommodating not less than two (2) additional automobiles in accordance with Applicable Law. The location, orientation and opening of each garage to be constructed on a Lot shall be approved in advance of construction by the ACC. All garage doors shall remain closed at all times, save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein, when an individual is in the garage or engaged in yard work, or there is another activity occurring on the Lot which is reasonably facilitated by an open garage door. No garage may be permanently enclosed or otherwise used for habitation. The parking of vehicles in the yard of any Lot is not permitted.

Section 7.4 Walls, Fences and Hedges. The construction of walls, fences and hedges (except for those included in the plans and specifications for the Lots owned by the Venture) shall be subject to the prior written consent of the ACC. The ACC may, in its discretion, prohibit the construction of any proposed fence, or specify the material of which any proposed fence must be constructed, or require that any proposed fence be partially screened by vegetation. All fences shall be constructed according to the Design Guidelines, if any, adopted by the ACC. The design, materials and specifications of such fencing shall be approved by the ACC.

(a) Maintenance. Wall, fence and hedge maintenance shall be the responsibility of the Owner and all damage shall be repaired within thirty (30) days of written notification by the Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (1) any portion of a wall, fence or hedge to lean so that its axis is more than five (5) degrees out of perpendicular alignment with its base; (2) missing, loose, or damaged stone or wood rails in the wall, fence or hedge; and (3) symbols, writings, and other graffiti on the wall, fence or hedge.

Section 7.5 Building Restrictions. All building materials (except for those included in the plans and specifications for the Lots owned by the Venture) must be approved in advance by the ACC. All projections from a Residence or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the ACC, match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

Section 7.6 Compliance with Setbacks. No Residence or any other permanent structure or Improvement may be constructed on any Lot nearer to a street than the minimum building setback lines shown on the Plat or as required by Applicable Law, and no building shall be located on any utility easements. The ACC may require additional setbacks in conjunction with the review and approval of proposed Improvements in accordance with this Article VII.

Section 7.7 Sidewalks. A sidewalk shall be constructed, in accordance with Applicable Law, on each Lot, and the plans and specifications for all residential buildings on each Lot shall include plans and specifications for such sidewalk, and the same shall be constructed and completed prior to occupation of the residential building. No other sidewalks shall be placed on any Lot without the approval of the ACC.

Section 7.8 Underground Utility Lines. No utility lines including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television, or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Improvements approved in writing by the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the ACC; and further provided that this provision shall not apply to utilities installed along the perimeters of the Property. 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 utilities shall be subject to review and approval by the ACC.

Section 7.9 Drainage. No structure, fences, walls, or other obstructions that impede drainage shall be placed within the limits of the drainage easements shown on the Plat. No landscaping or other modifications which alter the cross-sections of the drainage easements as approved, shall be allowed. An Owner shall allow access to City employees or designees across his or her Lot as necessary to monitor or maintain or otherwise access any drainage easement.

## ARTICLE VIII

### PROTECTIVE COVENANTS AND USE RESTRICTIONS

Section 8.1 General. The Property shall be used only for residential, recreational and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of any portion of the Property, offices for any property manager, or business offices for Declarant or the Association) consistent with the Governing Documents.

Section 8.2 Residents Bound. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Residents, guests and invitees of any Lot. Every Owner shall cause all Residents of his or her Lot to comply with the Governing Documents. Every Owner shall be responsible for all violations and losses to the Common Areas caused by such Residents, notwithstanding the fact that such Residents of a Lot are fully liable and may be sanctioned for any such violation or loss.

Section 8.3 Business Use. No business, trade or similar activity may be conducted in or from any Lot, except that an Owner or Resident residing in a Lot may conduct business activities within the Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot, (ii) the business activity conforms to all zoning requirements for the Property, (iii) the business activity does not noticeably increase the

level of vehicular or pedestrian traffic or the number of vehicles parked in the Property, (iv) the business activity does not involve door-to-door solicitation of Residents of the Property, and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property, as may be determined in the sole discretion of the Board.

Garage sales, moving sales, rummage sales, or similar activities on any Lot shall not be permitted except upon such dates as the Board may establish from time to time. Any such sales shall be subject to such other restrictions as may be imposed by the Board from time to time.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Nothing in this Declaration shall prevent the occasional sale of lemonade or other nonalcoholic beverages from a stand located on a Lot by an individual younger than eighteen (18) years of age who has the permission of the Lot Owner for the sale (a "Beverage Sale"). In accordance with Texas Property Code § 202.020(b), the Association (i) does not owe a duty of care to individuals participating in a Beverage Sale; and (ii) is not liable for any injury to individuals participating in a Beverage Sale, except for willful or wanton acts or gross negligence of the Association.

Notwithstanding the above, the leasing of a Lot shall not be considered a business or trade within the meaning of this Section 8.3. This Section 8.3 shall not apply to any activity conducted by: (i) Declarant or a Builder approved by Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property; and (ii) the Venture with respect to the lease of any of the Lots which it owns within the Property to a third party.

Section 8.4 Signs. Except for those permitted signs as set forth below or otherwise permitted by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC.

(a) Expressly Permitted. Signs which are expressly permitted pursuant to the Design Guidelines or Rules and Regulations may be displayed on a Lot.

(b) Sales and Marketing. Signs which are part of Declarant's or a Builder's overall marketing, sale, or construction plans or activities for the Property shall be permitted on any Lot.

(c) School Spirit. One (1) temporary school "spirit" sign may be placed on any Lot so long as the sign: (i) is professionally made; (ii) is limited to maximum face area of five square feet (e.g., 2' x 2.5') on each visible side; (iii) is mounted on a single or frame post if free standing; (iv) does not exceed four feet (4') in height from finished grade at the location where the sign is located; and (v) is removed within five (5) business days following the athletic season for which the sign relates.

(d) For Sale. One (1) temporary "For Sale" sign placed on any Lot so long as the sign: (i) is professionally made; (ii) is limited to a maximum face area of five square feet (e.g., 2' x 2.5') on each visible side; (iii) is mounted on a single or frame post if free standing; (iv) does not exceed four feet (4') in height from finished grade at the location where the sign is located; (v) is removed within two (2) business days following the sale of the Lot; provided, however, that "For Lease" and "For Rent" signs are expressly prohibited.

(e) Elections. Political signs may be displayed on any Lot provided that: (i) the sign is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) the sign is removed no later than the 10th day after the date of the election to which the sign relates; (iii) the sign is ground-mounted; (iv) only one sign may be erected for each candidate or measure; (v) signs which include any of the components or characteristics described in Section 259.002(d) of the Texas Election Code are strictly prohibited; and (vi) the Association may remove a sign displayed in violation of this Section.

(f) Religious Items. A religious item may be displayed on the Owner's Lot provided that the item does not: (i) threaten the public health or safety; (ii) violate a law other than a law prohibiting the display of religious speech; and (iii) contain language, graphics, or any display which is patently offensive to a passerby for reasons other than its religious content. A religious item may not: (i) be installed on Common Area or other property owned or maintained by the Association; (ii) be attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture; or (iii) violate any applicable building line, right-of-way, setback, or easement.

(g) Permits. Permits may be displayed on any Lot as may be required by: (i) Applicable Law; or (ii) a governmental entity.

(h) No Solicitation. A "no soliciting" and "security warning" sign may be displayed on or near the front door of a Residence, provided that the sign does not exceed twenty-five square inches (e.g., 5" x 5").

Section 8.5 View Impairments. No tree, shrub or plant of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any street, sidewalk or any other pedestrian way from ground level to a height of seven (7) feet without the prior written approval and authorization of the Architectural Control Committee or in accordance with any ordinance of the City prohibiting obstructions within its required visibility triangles. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. There shall be no express or implied easements for view purposes or for the passage of light and air.

Section 8.6 Aboveground Utilities. No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.



Section 8.7 Outside Repairs. No repairs or washing of any detached machinery, equipment or fixtures, including, without limitation, motor vehicles, shall be made upon any portion of any Lot within view of neighboring property, Residences, pathways and streets except in designated areas, if any.

Section 8.8 Exterior Lighting. No exterior light shall be installed or maintained on any Lot which light is found to be objectionable by the Association. Upon being given notice by the Association that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or have it shielded in such a way that it is no longer objectionable. If the Owner fails to honor the request, the Association may remove the light at the Owner's sole cost and expense and without being liable for trespass.

Section 8.9 Mineral Operations. No oil drilling, water drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, water wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot.

Section 8.10 Soil Erosion. Every Owner shall maintain his or her Lot so as to prevent any soil, dirt or debris from flowing, eroding or otherwise being deposited onto, or removed from, any adjacent property, street, alley or Common Areas. Each Owner shall be responsible for cleaning up any soil, dirt or debris that is deposited onto any adjacent property, street, alley or Common Areas and shall reimburse the Association or adjacent property owner for all costs incurred by them in cleaning up any such soil, dirt or debris.

Section 8.11 Accessory Buildings. One (1) accessory building may be allowed on each Lot, subject to the Architectural Control Committee's approval. The use of an accessory building must be incidental to that of the Residence. All accessory buildings must be substantially the same color as the Residence, including, but not limited to, siding, brick and shingles.

Section 8.12 Subdivision and Time Sharing. No Lot shall be subdivided into two or more Lots, nor shall two or more Lots be combined into a single Lot, nor shall a Lot have its boundary lines changed after a Plat including such Lot has been approved and Recorded except with the prior written approval of the Board and the affected Owner(s). Declarant, however, hereby expressly reserves the right to subdivide, change the boundary line of and replat any Lot(s) owned by Declarant. Notwithstanding the combination of two or more Lots into a single Lot, the Owner of the combined Lot(s) shall be obligated to pay the Regular Assessment, any Service Area Assessment or any Special Assessment, based upon the number of Lots originally comprising the Lot as shown on the original approved and Plat of the portion of the Property including such Lots.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 8.13 Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all Applicable Law and be approved in advance by the ACC. Nothing in this Section 8.13

is intended or shall be construed to limit or affect an Owner's obligation to comply with any Applicable Law concerning swimming pool enclosure requirements. No above-ground swimming pools shall be erected, constructed or installed on any Lot. Jacuzzis, whirlpools or spas approved pursuant to Article VII shall not be considered an above-ground pool for the purposes of this Section 8.13.

Section 8.14 Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, ponds, lakes, wetlands or other surface water within the Property shall be installed, constructed or operated within the Property unless prior written approval has been received from the ACC. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Areas. All private wells shall be subject to approval in accordance with Article VII of this Declaration.

Section 8.15 Removal of Plants and Trees. No trees or shrubs, except for those which are diseased or dead or create a safety hazard, shall be removed except in strict compliance with the Design Guidelines and upon prior approval in accordance with Article VII of this Declaration. In the event of an intentional or unintentional violation of this Section 8.15, the violator may be required by the ACC to replace the removed tree with one or more comparable trees of such size and number and in such locations as the ACC may determine necessary, in its sole discretion, to mitigate the damage.

Section 8.16 Solar Energy Devices. Solar Energy Devices may be installed with the advance written approval of the ACC, subject to the following provisions:

(a) Application. To obtain approval of a Solar Energy Device, the Owner shall provide Declarant or the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application. The Solar Application shall be submitted in accordance with the provisions of Article VII of this Declaration.

(b) Approval Process. Declarant or the ACC will review the Solar Application in accordance with the terms and provisions of Article VII of this Declaration. Declarant or the ACC will approve a Solar Energy Device if the Solar Application complies with Section 8.16(c) below **UNLESS** Declarant or the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with Section 8.16(c), will create a condition that substantially interferes with the use and enjoyment of the property within the Property by causing unreasonable discomfort or annoyance to individuals of ordinary sensibilities. Declarant's or the ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on Common Area or property owned or maintained by the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this Section 8.16 when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by Declarant or the ACC, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the Residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the Residence, Declarant or the ACC may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten (10%) percent above the energy production of the Solar Energy Device if installed in the location designated by Declarant or the ACC. If the Owner desires to contest the alternate location proposed by Declarant or the ACC, the Owner should submit information to Declarant or the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the Residence located on the Owner's Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

(d) Maintenance. Any Solar Energy Device shall be maintained in good order, condition, and repair and in accordance with all Applicable Laws and the provisions of this Declaration. Any Owner that obtains approval from the ACC to install a Solar Energy Device shall promptly and adequately repair or replace any Solar Energy Device that is damaged or inoperable; provided that any replacement of a Solar Energy Device shall be subject to the approval process set forth in this Section 18.16. Notwithstanding anything to the contrary herein, to the extent that Solar Energy Devices are installed on any of the Lots owned by the Venture, the Venture shall be permitted to have third parties provide maintenance services for the Solar Energy Devices and such third parties shall have reasonable access to perform such maintenance services.

Section 8.17 Leasing of Lots. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any Person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument.

Lots may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing and shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board (but in no event less than one (1) month). Owners may not list their Dwelling for lease on short-term rental websites such as www.airbnb.com, www.vrbo.com, www.homeaway.com, or other vacation or short-term rental website. No transient tenants may be accommodated in a Lot.

Within ten (10) days after the effective date of a lease, the Owner shall provide the following information to the Association regarding the lease or rental applicant: (1) contact information, including the name, mailing address, phone number, and e-mail address of each Person who will reside at the Owner's Lot and Improvements under the lease; and (2) the commencement date and term of the lease.

The Owner must make available to the lessee copies of the Governing Documents. In the event of a tenant's violation of the Governing Documents, applicable violation notices may be sent to the Owner and fines assessed against the Owner's Lot in accordance with this Declaration. The Owner shall remain liable to the Association for all Assessments, fines, and/or charges against the Lot.

Section 8.18 Antennas. Antennas shall only be permitted within the Property subject to the requirements set forth below:

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

(i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is twenty-four inches (24") or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is twenty-four inches (24") or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television or radio broadcast signals;

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

(b) Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, Common Area, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

(i) attached to the back of the Residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) attached to the side of the Residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

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

Section 8.19 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Property, except that no more than a total of three (3) dogs, cats or other usual and common domesticated household pets, or any combination thereof, may be permitted on a Lot. Notwithstanding the above, those pets which are permitted to roam free or, in the sole discretion of the Board, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Residents of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined whenever outside the Residence, Townhome or the enclosed portion of the Lot. The pet owner is responsible for the removal of his or her pet's waste from the Property. Unless the Rules and Regulations otherwise provide, a pet owner must prevent his or her pet from relieving itself on the Common Area or the Lot of another Owner. Structures designed to keep or contain pets, including dog houses, animal pens, dog runs and the like, must be approved by the Architectural Control Committee and placed in a location on the Lot that is not visible from outside the Lot.

Section 8.20 Parking and Prohibited Vehicles.

(a) Parking of Motor Vehicles. No vehicles or similar equipment shall be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (a) has less than one (1) ton carrying capacity; (b) has less than three (3) axles; (c) is in operating condition; and (4) is generally in daily use as a motor vehicle operating on public streets and highways in compliance with Applicable Law. When parked on a driveway constructed on a Lot, no vehicle, when parked, may obstruct or otherwise block ingress and egress to and from sidewalks adjacent to or which cross the driveway of a Lot.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, golf carts, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and watercraft trailers shall not be parked within the Property or on any Lot, except in an enclosed garage. Notwithstanding any term or provision herein to the contrary, construction, service, commercial and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Residence, a Lot, or the Common Area. Any vehicle parked in violation of this Section or any parking rules promulgated by the Board may be towed at the vehicle owner's expense.

Section 8.21 Flags. Owners are permitted to display certain flags on the Owner's Lot, as further set forth below.

(a) Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and is permitted to install a flagpole no more than five feet (5') in length affixed to the front of the Residence near the principal entry or affixed to the rear of the Residence ("**Permitted Flagpole**"). Only two (2) permitted Flagpoles are allowed per Residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("**Freestanding Flagpole**").

(b) Installation and Display. Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

(ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');

(iv) The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole must comply with all Applicable Law, easements and setbacks of Record;

(vi) Each Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction thereof and harmonious with the Residence;

(vii) Any Permitted Flag, Permitted Flagpole, and Freestanding Flagpole must be maintained in good condition and any deteriorated Permitted Flag or deteriorated or structurally unsafe Permitted Flagpole or Freestanding Flagpole must be repaired, replaced or removed;

(viii) A Permitted Flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring Lot; and

(ix) Any external halyard of a Permitted Flagpole or Freestanding Flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

Section 8.22 Standby Electric Generators. The installation, operation and maintenance of all Standby Electric Generators must comply with the following:

(a) The installation and maintenance of any Standby Electric Generator must be in compliance with manufacturer's specifications and all Applicable Law;

(b) The installation of all electrical, plumbing and fuel line connections must be performed only by licensed contractors;

(c) The installation of all electrical connections must be performed in accordance with Applicable Law;

(d) The installation of all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections must be performed in accordance with Applicable Law;

(e) The installation of all liquefied petroleum gas fuel line connections must be performed in accordance with the rules and standards promulgated and adopted by the Railroad Commission of Texas and other Applicable Law;

(f) The installation and maintenance of non-integral Standby Electric Generator fuel tanks must comply with applicable municipal zoning ordinances and other Applicable Law;

(g) All Standby Electric Generators and their electrical lines and fuel lines must be maintained in good condition. In addition, the repairing, replacing and removal of any deteriorated or unsafe component of the Standby Electric Generator, including electrical or fuel lines, is required;

(h) Owners must screen the Standby Electric Generator if it is:

(i) Visible from the street faced by a Residence; or

(ii) Located in an unfenced side or rear yard of a Residence and is visible either from an adjoining Lot or from adjoining Common Area; or

(iii) Located in a fenced side or rear yard and is visible either from an adjoining Lot or from adjoining Common Area (*i.e.*, through wrought iron or aluminum fencing);

(i) Any periodic testing of the Standby Electric Generator consistent with the manufacturer's recommendation must only be performed during the hours of 9:00 a.m. to 5:00 p.m., Monday through Saturday;

(j) Use of a Standby Electric Generator to generate all or substantially all of the electrical power to a Lot is strictly prohibited, except when utility-generated electrical power is not available or is intermittent due to causes other than nonpayment for utility service;

(k) No Standby Electric Generator shall be located on Common Area; and

(l) No Standby Electric Generator may be installed prior to obtaining written approval pursuant to Article VII of the Declaration.

Section 8.23 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the ACC, subject to the following provisions:

(a) Application. To obtain ACC approval of a Rainwater Harvesting System, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

(b) Approval Process. The decision of the ACC will be made in accordance with Article VII of this Declaration. Any proposal to install a Rainwater Harvesting System on Common Area or Limited Common Area must be approved in advance and in writing by the Board, and the Board need not adhere to this Section 8.23 when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the Residence constructed on the Owner's Lot, as reasonably determined by the ACC.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the Residence constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACC. See Section 8.23(d) for additional guidance.

(d) Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, Common Area, Limited Common Area, or another Owner's Lot, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the



Owner to shield the Rainwater Harvesting System from the view of any street, Common Area, Limited Common Area, or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, Common Area, the Limited Common Area, or another Owner's Lot, any additional regulations imposed by the ACC to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the ACC.

Section 8.24 Roofing Materials. The roofs of all buildings must comply with the requirements set forth in the Design Guidelines. In addition, roofs of buildings may be constructed with "Energy Efficiency Roofing" with the advance written approval of the ACC. For the purpose of this Section 8.24, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Governing Documents. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in this Section 8.24. Any other type of roofing material shall be permitted only with the advance written approval of the ACC.

Section 8.25 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("Xeriscaping") upon written approval by the ACC. All Owners implementing Xeriscaping shall comply with the following:

(a) Application. Approval by the ACC is required prior to installing Xeriscaping. To obtain the approval of the ACC for Xeriscaping, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "Xeriscaping Application"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The ACC is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

(b) Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the ACC. For purposes of this Section 8.25, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the ACC determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or, b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

(ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over ten percent (10%) of such Owner's front yard or ten percent (10%) of such Owner's back yard.

(iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the ACC.

(c) Process. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this Section 8.25 when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the ACC, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the ACC may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the Property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

#### Section 8.26 Provision of Benefits and Services to Service Areas.

(a) Designation by Declarant. Declarant, in any Recorded written notice, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Property. Declarant may unilaterally amend any Recorded written notice to re-designate Service Area boundaries, provided however, that if any such Service Areas

contemplate inclusion of Lots owned by the Venture, the Declarant must seek the express written consent of the Welltower Member. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) Owner Petition. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). Notwithstanding the foregoing, until expiration or termination of the Development Period, Declarant shall have the right to withhold its consent for any petition to designate Lots as a Service Area in Declarant's sole and absolute discretion. If approved by the Board, Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

(c) Petition by Owners. The Association may, from time to time, include additional components of Improvements or Lots or remove components of Improvements or Lots from a Service Area; however, unless otherwise approved by Declarant during the Development Period, in no event may the Association at any time remove from any Service Area components of any Improvements or Lots previously designated as a Service Area under this Declaration. During the Development Period, any addition to a Service Area must also be approved by Declarant. After expiration or termination of the Development Period, any addition or removal of components of Improvements or Lots must be approved by two-thirds (2/3) of the total number of votes held by all Lots within a Service Area. During the Development Period, the Service Area may be modified or amended by Declarant, acting alone. Any modification or amendment to the Service Area must be Recorded.

#### Section 8.27 Compliance and Enforcement.

Each Owner, his or her family, Residents of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the restrictions set forth in the Governing Documents as the same may be amended from time to time. Failure to comply with any such restrictions shall constitute a violation of such restrictions and may result in a fine against the Owner in accordance with Section 6.13 hereof, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Board on behalf of the Association, the ACC, or by an aggrieved Owner.

Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of the Governing Documents, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

EACH SUCH OWNER SHALL RELEASE AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 8.27 (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

## ARTICLE IX

### INSURANCE

Section 9.1 Association Insurance. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket "all-risk" property insurance for all insurable Improvements on the Common Areas and on other portions of the Area of Association Responsibility to the extent that the Association has been assigned maintenance responsibility under this Declaration or under a Supplemental Declaration or has assumed responsibility for maintenance thereof in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of the insured property under current Applicable Law (including, without limitation, building codes and ordinances);

(b) Commercial general liability insurance on the Area of Association Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting

on its behalf. If generally available at reasonable cost, such policy shall have a limit of at least \$5,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage;

(c) Workers' compensation insurance and employers' liability insurance, if and to the extent required by Applicable Law;

(d) Directors' and officers' liability coverage as determined reasonable and necessary under the circumstances but in no event less than \$5,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors, or omissions for directors and officers while acting in their capacities as such;

(e) In the event a motor vehicle is to be used by the Association or any of its employees, or agents in connection with its duties and responsibilities under this Declaration, Comprehensive Automobile Liability Insurance coverage with limits of not less than \$5,000,000.00 combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of the Association, its agents and employees in connection with this Declaration, of any owned, non-owned, or hired motor vehicles;

(f) Pollution Liability Insurance for environmental liabilities, which would include, but are not limited to, claims for bodily injury, property damage, environmental damage, and remediation costs resulting from pollution conditions caused by the Association or the Association's employees and agents, or any activities of the Association and its employees and agents relating thereto, with a combined single limit coverage of not less than \$5,000,000.00 per occurrence;

(g) Blanket crime and fidelity insurance; and

(h) Such additional insurance as the Board, in its business judgment, determines advisable.

The insurance coverage under this Section 9.1 shall be written in the name of the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Assessments made by the Association, except premiums for insurance on Limited Common Areas may be included in the Service Area Expenses of the Service Area(s) to which such Limited Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

To the extent that the Association retains a property manager to perform and carry out the property operation and management services at the Property, then only such property manager (and not the Association itself) shall be required to carry and maintain professional liability insurance coverage for liability arising out of the performance of such property operation and management services at the Property.

**Section 9.2 Individual Insurance.** By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners that each Owner shall carry blanket "all-risk" property insurance on its Lot(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible), unless the Association assumes the responsibility for or is required

to carry such insurance under this Declaration or a Supplemental Declaration. If the Association assumes or carries responsibility for obtaining any insurance coverage on Lots or Residences within, or Limited Common Areas assigned to a particular Service Area, the premiums for such insurance shall be a Service Area Expense levied as part of a Service Area Assessment against the Owners within such Service Area. The Association shall have no obligation to verify or insure that an Owner is in compliance with this Section 9.2. Each Owner is responsible for insuring his or her personal property and property not insured by the Association.

Section 9.3 Insurance for Construction or Modification of Improvements. The Board shall require an Owner or Builder to obtain a comprehensive general liability policy prior to the commencement of construction or modification of any improvement for which plans and specifications must be submitted to the ACC for approval under this Declaration. Such policy, if required, shall have a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) covering all losses, damages and claims arising out of the original contractor's or Builder's use of, activities on and/or ownership of the Lot, including property damage, bodily injury and death. Such policy, if required, shall also name the original contractor or Builder, as applicable, as the insured party and the Association as an additional insured. In addition, the original contractor or Builder shall obtain (i) workers' compensation insurance as required by Applicable Law, (ii) employers' liability insurance, (iii) automobile liability insurance covering all motor vehicles owned, hired or used in connection with the original contractor's or Builder's construction activities in the Property, and (iv) builders' risk insurance covering the original contractor's or Builder's activities in the Property, all in such amounts as are reasonable to the Association; provided that the builders' risk insurance policy shall be in an amount equal to the full value of the project to be completed by such Builder.

A certificate evidencing insurance required to be maintained pursuant to this Section 9.3 shall be provided to the Association prior to the commencement of any construction or modification of an improvement on a Lot, and such insurance shall be maintained in effect so long as the original contractor and/or Builder is engaging in any construction on any Lot within the Property.

Section 9.4 Damage or Destruction of Common Area. The Association shall undertake the following actions subsequent to damage or destruction to all or any part of the Common Area covered by insurance:

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this Section 9.4(a), means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area will be repaired unless Members representing a Majority of the total votes in the Association, decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and

detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area will be restored to its natural state, cleared of all debris and ruins, and thereafter maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive landscaped condition consistent with the Community-Wide Standard.

(d) Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in Article VI, against all Owners. Additional Assessments may be made in a like manner at any time during or following the completion of any repair.

(e) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated equally and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

Section 9.5 Destruction of Improvements on Lots. In the event that any Improvements constructed on a Lot are damaged or destroyed and are thereafter abandoned for at least thirty (30) days, the Owner of the Lot shall cause the Improvements to be removed and the Lot cleared. The expense of such removal and clearing shall be the sole cost and expense of the Owner. In the event the Owner does not comply with this provision, then the Association may, after ten (10) days' written notice to the Owner, cause such Improvements to be removed and the Lot cleared and charge the cost thereof to the Owner. In such event, the Association shall not be liable in trespass or for damages, expenses, costs or otherwise to the Owner for such removal and clearing. The Association shall have no obligation to procure insurance to protect against fire or other casualty to any of the Residences and each Owner is encouraged to procure and maintain such insurance coverage as is deemed prudent or desirable by such Owner.

## ARTICLE X

### NO PARTITION

Except as permitted in this Declaration, the Common Areas shall remain undivided, and no Person shall bring any action seeking judicial partition without the written consent of all Owners and Mortgagees. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## ARTICLE XI

### CONDEMNATION

Section 11.1 Condemnation. In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Limited Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners.

Section 11.2 Disbursement. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot. In the event any proceeds attributable to acquisition of Limited Common Area are paid to Owners who have been assigned the obligation to pay any assessment for the use of such Limited Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on their respective Lots.

## ARTICLE XII

### COMMON AREAS AND LIMITED COMMON AREAS

Section 12.1 Common Areas. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas, including, but not limited to, a perpetual easement over the Property's streets and sidewalks, as may be reasonably required, for vehicular and pedestrian ingress and egress to and from his or her Lot, subject to:

- (a) This Declaration and any other applicable covenants or easements, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) the right of the Board to adopt rules regulating the use and enjoyment of the Common Areas, including rules limiting the location and number of vehicles which may be parked on the public streets or prohibiting vehicles from being parked on the public streets;
- (c) the right of the Board to suspend the right of an Owner to use the Common Areas (i) for any period during which any Assessment or other charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and an opportunity for a hearing if required by the Governing Documents or Applicable Law;
- (d) the right of the Board to dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration; and



(e) the right of the Board to mortgage, pledge or hypothecate any or all of the Association's real or personal property as security for money borrowed or debts incurred, subject to (i) any limitations contained in the Bylaws and (ii) the Welltower Member's consent.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Residence shall be deemed to have assigned all such rights to the lessees of such Residence.

Section 12.2 Private Use. The Common Areas are intended for the exclusive use of the Property's Owners and their family members, tenants, guests and invitees. Neither the Association nor Declarant intends for the Common Areas to be a public accommodation or a public facility.

Section 12.3 Limited Common Areas. Certain portions of the Common Areas may be designated as Limited Common Areas and reserved for the exclusive use or primary benefit of Owners within a particular Service Area or Service Areas. By way of illustration and not limitation, Limited Common Areas may include entry features, fountains, landscaped medians and cul-de-sacs, ponds and other portions of the Common Areas within a particular Service Area or Service Areas. All costs associated with maintenance, repair, replacement and insurance of a Limited Common Area shall be assessed as a Service Area Assessment against the Owners of Lots in those Service Areas to which the Limited Common Area is assigned.

Section 12.4 Designation of Limited Common Areas. Initially, any Limited Common Areas shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Areas to the Association or on the Plat relating to such Common Areas or on such other Recorded instrument deemed appropriate by the Declarant; provided, any such assignment shall not preclude the Declarant from later assigning the use of the same Limited Common Areas to additional Lots and/or Service Areas during the Development Period.

A portion of the Common Areas may be assigned as Limited Common Areas and Limited Common Areas may be reassigned, upon the approval of the Board and the vote of Members representing a majority of the total votes in the Association, including a majority of the votes within the Service Area(s) affected by such assignment and/or reassignment. During the Development Period, any such assignment or reassignment shall also require the written consent of the Declarant.

Notwithstanding anything to the contrary herein, under no circumstances may: (i) any Limited Common Areas upon any Lot owned by the Venture be designated, assigned, or reassigned without the express written consent of the Welltower Member; and (ii) any Service Area consist of any Lot owned by the Venture without the express written consent of the Welltower Member.

Section 12.5 Use by Others. The Association may, upon majority vote of the members for the Service Area(s) to which Limited Common Areas are assigned, permit Owners of Lots in other Service Areas to use all or portions of such Limited Common Areas and may require the

payment of reasonable user fees and administrative fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Areas.

## ARTICLE XIII

### EASEMENTS

Section 13.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Areas and between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three feet (3'), as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of the Person claiming the benefit of such easement.

Section 13.2 Easements for Utilities, etc. Declarant hereby reserves unto itself and Declarant's agents, employees, and assigns, a perpetual non-exclusive easement under, over and across the Property, or any areas conveyed or maintained by the Association, including but not limited to any Service Area, or any areas reserved or held as Common Area or the Limited Common Area for the installation, operation, maintenance, repair, relocation, removal and/or modification of any Improvements, roadways, walkways, pathways, street lighting, sewer lines, water lines, utility lines, drainage or storm water lines, and/or other pipelines, conduits, wires, and/or any public utility function on, beneath, or above the surface of the ground that serve the Property, and any other property owned by Declarant, with the right of access to the same at any time. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in this Section 13.2. The exercise of the easement reserved herein will: (i) not extend to permitting entry into any Residence; (ii) not unreasonably interfere with the use of any Lot or Residence or Improvement constructed thereon; and (iii) require consent of the Welltower Member to the extent such easement affects the Lots owned by the Venture. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Limited Common Area, or a Service Area.

Section 13.3 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for an Emergency, security and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Except in an Emergency, entry shall only be during reasonable hours and after written notice to the Owner. This right of entry shall include the right of the Association to enter upon a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Residence without permission of the Owner except by emergency personnel acting in their official capacities. The easement granted hereunder shall not create an obligation or duty on the part of Declarant or the Association to provide for the safety or security within the Property. In exercising this easement right, neither the Declarant nor the Association shall be liable to the Owner for trespass.

Section 13.4 Certain Easements for Owners. There is hereby reserved to each Lot reciprocal appurtenant easements for access over, across and upon the adjacent Lot (exclusive of the interior of the Residence) and the adjacent Common Areas for the construction, maintenance and repair of Residences or party structures to a distance of not more than five feet (5'), as measured from any point on the common boundary along a line perpendicular to such boundary. The use of said easement by an Owner shall not exceed a total of thirty (30) days each year for maintenance unless approved in writing by the Board. Any landscaping or irrigation systems damaged by the Owner during the construction, maintenance or repair of his or her Residence or party structure shall be repaired or replaced, if necessary, at the expense of the Owner causing such damage. If the Owner fails properly to perform such repairs or replacements, the Association may perform such maintenance responsibilities and assess all reasonable costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 6.6. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when immediate entry is required due to an Emergency.

There is also hereby reserved to each Lot reciprocal appurtenant easements of encroachment over, across and upon the adjacent Lot and adjacent Common Areas for water drainage from the roof of the Residence or other structures. Owners shall not attach any object to a Residence of an adjacent Lot or disturb the grading of the area located between the adjacent Lots or otherwise act with respect to such area in any manner which would damage the adjacent Lot. In the event of a dispute arising out of the rights and obligations created under this Section 13.4, the parties agree to resolve the dispute in accordance with Section 5.4(e).

Section 13.5 Construction and Sale Period Easement. Notwithstanding any provisions contained in the Governing Documents, until expiration of the Development Period, Declarant reserves an easement across the Property to maintain and carry on, upon such portion of the Property as Declarant may reasonably deem necessary, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction, completion, management, maintenance, leasing, marketing or sale of such Lots including, but not limited to, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, commercial vehicles of every type, business offices, signs, sales offices and models. Notwithstanding the foregoing, no such easements shall be granted over Lots owned by the Venture, without the express consent of the Welltower Member.

Section 13.6 Easement and Right to Inspect. During the Development Period, Declarant reserves for itself and its employees, agents and representatives, the right to inspect, monitor, test any structure, improvement, material, or condition that may exist on any portion of the Property, including the Lots. Any damage to a Lot resulting from the exercise of these easements shall promptly be repaired by, and at the expense of, the Person exercising these easements.

Section 13.7 Easement for Entry Features. The Association is hereby granted a perpetual easement (the "Entry Feature Easement") over each Lot that abuts or contains a portion of the Property's formal entrances, for the purposes stated in this Section 13.7, regardless of whether or how the Plat shows the easement or entry features.

(a) Entrance Lots. On recording of this Declaration, Declarant burdens any Lots on which the formal entrances are located with the Entry Feature Easement.

(b) Purpose of Easement. The purpose of the Entry Feature Easement is to provide for the existence, repair, improvement, and replacement of the Property's formal entrances, to be maintained by the Association as a Common Area. In exercising this easement, the Association may construct, maintain, improve, and replace Improvements reasonably related to the entrance of a residential subdivision, including: screening walls; fences and/or berms; planter beds; landscaping and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage related to the Property.

(c) Rights Reserved. The Owners of the Lots burdened by this easement will have the continual use and enjoyment of their respective Lots for any purpose that does not unreasonably interfere with or prevent the Association's use and easement rights hereunder.

(d) Temporary Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of the burdened Lot as may be reasonably necessary for the Association to perform its contemplated work on the easement.

(e) Duration, Termination & Assignment of Easement. This easement is perpetual. This easement will terminate, if at all, if and when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may unilaterally assign this easement, or any portion thereof, to the City if the City agrees to accept the assignment.

Section 13.8 Easement for Screening Walls. Declarant does hereby perpetually dedicate, establish, create and set aside a non-exclusive ten foot (10') wide easement over, across and upon the Property, such easement to be five feet (5') on either side of screening/retaining walls. Such easements are reserved for the exclusive benefit of Declarant and the Association, and the designees of each (which may include, without limitation, the City and any utility) for the construction, maintenance and repair of screening/retaining walls. Owners shall not alter, paint, attach fences to or otherwise use such walls even though certain of such walls and/or the easement reserved herein may be located on such Owner's Lot. Notwithstanding the foregoing, the Welltower Member shall be entitled to approve any proposed easement for screening walls located on the Lots owned by the Venture.

Section 13.9 Easement of Support. Every portion of a Lot contributing to the support of an abutting Lot shall be burdened with an easement of support for the benefit of such abutting Lot.

Section 13.10 Easement for Maintenance of Adjoining Lots. There shall be and is hereby imposed on each Lot an easement for reasonable ingress and egress by or on behalf of the Owner of any adjoining Lot for the purpose of repair, maintenance or replacement of Improvements on such adjoining owner's Lot. Such easement shall be exercised only during reasonable hours and after reasonable notice to the Owner or Residents of the Lot upon which entry is to be made.

## ARTICLE XIV

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 14.1 Notice of Action. An institutional holder, insurer or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot address, therefore becoming an "Eligible Mortgage Holder") will be entitled to timely written notice of:

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

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

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

Section 14.2 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

Section 14.3 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual lots or Lots and not to any other portion of the Property.

## ARTICLE XV

### DEVELOPMENT RIGHTS OF DECLARANT

Section 15.1 General. Without limiting the rights of the Declarant as otherwise provided by the Governing Documents, the Declarant shall have the following additional rights as Declarant, exercisable at Declarant's sole discretion, at any time during the Development Period:

(a) Changes to Development Plan. Declarant may modify from time to time the development plan applicable to the Property to respond to changes or perceived changes in the marketplace, subject to (i) the approval requirements of any governmental agency; and (ii) the approval of the Welltower Member. Such changes may include, without limitation, (1) changes to the size, dimensions, and configurations of Lots and streets; (2) changes to the minimum dwelling size; (3) changes to building setback requirements; (4) changes to the initial design and construction standards; and (5) changes to any other feature of the Property.

(b) Declarant Construction Activities. Declarant may construct and maintain and carry on upon portions of the Common Areas, the Area of Association Responsibility or upon Lots owned by Declarant, such facilities and activities as, in the sole discretion of the Declarant, may be reasonably required, convenient or incidental to the construction, completion, management, maintenance, leasing, marketing or sale of such Lots, including, but not limited to, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, commercial vehicles of every type, business offices, signs, sales offices and model Residences. Declarant shall have easements for access to and use of such facilities and shall take commercially reasonable precautions to limit the amount of vibration, noise, dust and debris resulting from such activities. The construction, placement or maintenance of Improvements by Declarant shall not unreasonably interfere with the rights of Owners and commercially reasonable efforts should be employed to mitigate impacts to such Owners. In addition, Declarant shall limited its construction activities to the hours of 8 a.m. to 5 p.m., Monday through Saturday. Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section 15.1(b) until twenty-four (24) months after expiration or termination of the Development Period.

(c) Declarant Marketing Activities. Declarant reserves for itself an easement and right to place, maintain, locate, relocate, replace, remove or install from time to time signs, promotional materials, flyers, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that may be prohibited to other Owners and Residents, for the purposes of promoting, identifying, and marketing the Property, Declarant's homes, lots, developments or other products located outside the Property. Declarant also reserves the right to sponsor marketing events, such as open houses, MLS tours, and broker parties, at the Property to promote the sale of Lots.

Section 15.2 Use of Development Name. No Person shall use the name "The Residences at Rayzor Ranch" or any derivative of such name in any printed or promotional material without the Declarant's prior written consent. However, Owners within The Residences at Rayzor Ranch may use the name "The Residences at Rayzor Ranch" in printed or promotional material where such term is used solely to specify that particular property is located within The Residences at Rayzor Ranch, and any commercial Association shall be entitled to use the words "The Residences at Rayzor Ranch" in its name and the Association shall be entitled to use the words "The Residences at Rayzor Ranch" in its name.

Section 15.3 Additional Covenants. No Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and Recorded in the public records.

Section 15.4 Enforcement Rights. Declarant, during the Development Period, may enforce all of the provisions of the Governing Documents to the same extent and in the same manner as the Association. In the event that neither the Association or the Owner cures a violation and Declarant incurs expenses to correct or enforce such violation, Declarant shall be entitled to

recover from the Association all reasonable costs expended in curing or enforcing the violation, including, without limitation, reasonable attorney's fees and costs. The Association shall promptly reimburse Declarant for all such costs and such amounts shall be assessed as a Specific Assessment levied against the Lot of the Owner violating the Governing Documents in accordance with Section 6.6 hereof. Owner shall have no action in trespass or for damages for any action taken under this Section 15.4, except in the event of Declarant's gross negligence or willful misconduct.

Section 15.5 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property subject to the terms and conditions of this Declaration. Upon the filing of a notice of addition of land (a "Notice of Addition of Land"), such added land will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth herein and the jurisdiction of the Association for purposes of this Declaration. Upon the recordation of a Notice of Addition of Land, the rights, privileges, duties and liabilities of the Persons subject to this Declaration will be the same with respect to such added lands as with respect to the real property already encumbered by and subject to this Declaration. To add lands to the Property, Declarant will be required only to Record a Notice of Addition of Land containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is recorded;
- (b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and
- (c) A legal description of the added land.

Section 15.6 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property; provided that Declarant obtains the express consent of the Welltower Member. 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. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land (a "Notice of Withdrawal of Land") containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is recorded;
- (b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (c) A legal description of the withdrawn land.

Section 15.7 Notice of Plat Recordation. Declarant may, at any time and from time to time, Record a notice of plat recordation (a "Notice of Plat Recordation"). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific lots or Lots subject to the terms and provisions of this Declaration after portions of the Property are made subject to a

Plat. Unless otherwise provided in the Notice of Plat Recordation, portions of the Property included in the plat identified in the Notice of Plat Recordation, but not shown as a residential lot or Lot on such plat, shall be automatically withdrawn from the terms and provisions of this Declaration (without the necessity of complying with the withdrawal provisions set forth in Section 15.6 hereof). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Declaration.

Section 15.8 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any Person and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other Person in any of its privileges, exemptions, rights and duties hereunder.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 16.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2071, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this Section 16.1 to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date that this document is first Recorded, descendants of Elizabeth II, Queen of England.

Section 16.2 Amendment. This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant 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; provided, however, any (i) amendment that adversely affects the Lots owned by the Venture or (ii) termination of this Declaration shall require the express consent of the Welltower Member. 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, during the Declarant Control Period, unilaterally amend this Declaration if such amendment is necessary: (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.

Section 16.3 Severability. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 16.4 Notice. Wherever written notice to a Member (or Members) is permitted or required hereunder, such notice may be given by either: (i) mailing notice to the Member at the address of such Member appearing on the records of the Association, unless such Member has given written notice to the Association of a different address, in which event such notice shall be sent to the Member at the address so designated; or (ii) electronically mailing notice to the Member's registered email address appearing on the records of the Association. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, properly addressed, postage prepaid. If the delivery is made by electronically transmitting the notice to the registered email address, it will be deemed to have been delivered went sent by the Association.

Section 16.5 Titles and Gender. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not be used in construing this Declaration or any part thereof. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

Section 16.6 Conflicts. If there is any conflict between the provisions of this Declaration, the Certificate of Formation, the Bylaws, or any Rules and Regulations adopted pursuant to the terms of such documents, the provisions of this Declaration, the Certificate of Formation, the Bylaws, and the Rules and Regulations, in such order, will govern.

Section 16.7 Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director or manager of the Association, the Owner or Resident must first request and attend a hearing before the Board. Any such request shall be in writing and shall be personally delivered to any member of the Board or the Resident shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Resident's grievance before filing suit. Upon receiving a request for a hearing, the Board shall

give notice of the date, time and place of the hearing to the Person requesting the hearing. The Board shall schedule this hearing for a date not less than ten (10) days from the date of receipt of the request.

Section 16.8 Acceptance by Grantees. Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any Person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 16.9 Higher Authority. The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

Section 16.10 Venture Notice and Cure. Notwithstanding anything to the contrary herein, the Venture shall not be deemed to be in default in the performance of any obligation, requirement, or provision of this Declaration with respect to the Lots owned by the Venture, and no lien, enforcement, or foreclosure right provided under this Declaration (including, without limitation, Sections 3.5(e), 3.9, 5.4, 5.7(c), 6.1(b), 6.6, 6.8, 6.10, 6.13, 15.4, or 16.10 hereof) to either the Declarant, Association, or the Board (as applicable) shall exist, unless and until the Venture has failed to perform such obligation or requirement for thirty (30) days after receipt of written notice by Declarant, Association, and/or the Board (as applicable) to the Venture specifying wherein the Venture has failed to perform such obligation or requirement; provided, however, that if the nature of the Venture's obligation is such that more than thirty (30) days are reasonably required for its performance, then the Venture shall not be deemed to be in default or violation of this Declaration if the Venture shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

Section 16.11 Enforcement. Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce, by a proceeding at law or in equity, the Governing Documents. The Association and/or Declarant may initiate, defend or intervene in any action brought to enforce any provision of the Governing Documents. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property or the Common Area is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. Failure to enforce any right, provision, covenant, or condition set forth in the Governing Documents will not constitute a waiver

of the right to enforce such right, provision, covenants or condition in the future. Failure of Declarant or the Association to enforce the terms and provisions of the Governing Documents shall in no event give rise to any claim or liability against Declarant, the Association, or any of their partners, directors, officers, or agents. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE GOVERNING DOCUMENTS.**

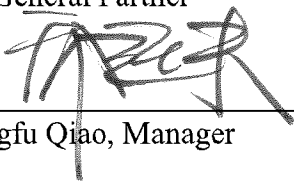
*[Signature and Acknowledgment Follow]*

**EXECUTED** as of the day and year first above written.

**DECLARANT:**

**WB DENTON LAND LP,**  
a Texas limited partnership

By: Wan Bridge Three Capital Management, LLC,  
A Texas limited liability company,  
Its General Partner

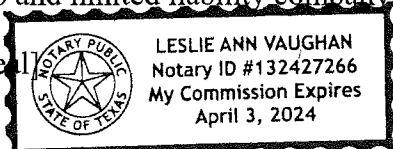
By:   
Tingfu Qiao, Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS                   §  
   §  
COUNTY OF Harris           §

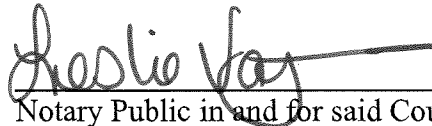
This instrument was acknowledged before me on November 10, 2021 by Tingfu Qiao, Manager of Wan Bridge Three Capital Management LLC, a Texas limited liability company, General Partner of WB Denton Land LP, a Texas limited partnership, on behalf of said limited partnership and limited liability company, and in the capacity herein stated.

[notarial seal]



My commission expires:

April 3, 2024

  
\_\_\_\_\_  
Notary Public in and for said County and State


Print Name of Notary:

Leslie Vaughan

The undersigned executes, acknowledges, and consents to submission of its property to this Declaration.

**WB DENTON HOME:**

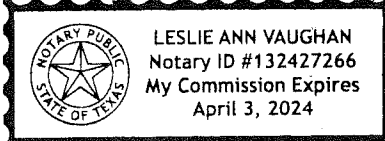

**WB DENTON HOME BUILDING LLC,**  
a Texas limited liability company

By:   
Tingfu Qiao, Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS                   §  
   §  
COUNTY OF Harris           §

This instrument was acknowledged before me on November 10, 2021 by Tingfu Qiao, Manager of WB Denton Home Building LLC, a Texas limited liability company, on behalf of said limited liability company, and in the capacity herein stated.


[notarial seal]    
My commission expires: April 3, 2024 Notary Public in and for said County and State  
Print Name of Notary: Leslie Vaughan

The undersigned executes, acknowledges, and consents to submission of its property to this Declaration.

**WB CHURCHILL:**

**WB CHURCHILL II LLC,**  
a Delaware limited liability company

By: Wan Bridge Churchill LLC,  
A Delaware limited liability company,  
Its Sole Member

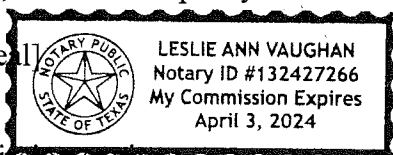
By:   
Tingfu Qiao, Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS                   §  
   §  
COUNTY OF Harris           §


This instrument was acknowledged before me on November 10, 2021 by Tingfu Qiao, Manager of Wan Bridge Churchill LLC, a Delaware limited liability company, the Sole Member of WB Churchill II LLC, a Delaware limited liability company, on behalf of said limited liability companies, and in the capacity herein stated.

[notarial seal]



My commission expires.

April 3, 2024


  
Notary Public in and for said County and State  
Print Name of Notary:

Leslie Vaughan

The undersigned executes, acknowledges, and consents to the grant of certain approval rights to the Welltower Member as set forth in this Declaration.

**VENTURE:**

**WBWT RAYZOR RANCH LLC,**  
a Delaware limited liability company

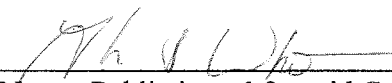
By:   
Name: Mary Ellen Pisanelli  
Title: Authorized Signatory

**ACKNOWLEDGMENT**

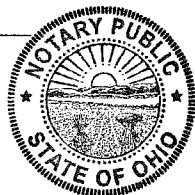
STATE OF OHIO       §  
                                  §  
COUNTY OF LUCAS   §

This instrument was acknowledged before me on November 9, 2021 by Mary Ellen Pisanelli, the Authorized Signatory of WBWT RAYZOR RANCH LLC, a Delaware limited liability company, on behalf of said limited liability companies, and in the capacity herein stated.

[notarial seal]

  
Notary Public in and for said County and State  
Print Name of Notary:

My commission expires:



Theresa S Whetro  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
June 16, 2025

The undersigned executes, acknowledges, and consents to the acceptance of certain approval rights as set forth in this Declaration.

**WELLTOWER MEMBER:**

**WELL WB Portfolio Member LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Mary Ellen Pisanelli

Title: Authorized Signatory

**ACKNOWLEDGMENT**

STATE OF OHIO       §  
                                  §  
COUNTY OF LUCAS   §

This instrument was acknowledged before me on November 9, 2021 by Mary Ellen Pisanelli, the Authorized Signatory of WELL WB Portfolio Member LLC, a Delaware limited liability company, on behalf of said limited liability company, and in the capacity herein stated.

[notarial seal]

\_\_\_\_\_  
Notary Public in and for said County and State

My commission expires:

Print Name of Notary:



Theresa S Whetro  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
June 16, 2025



**EXHIBIT "A"**

**Property Subject to Declaration**

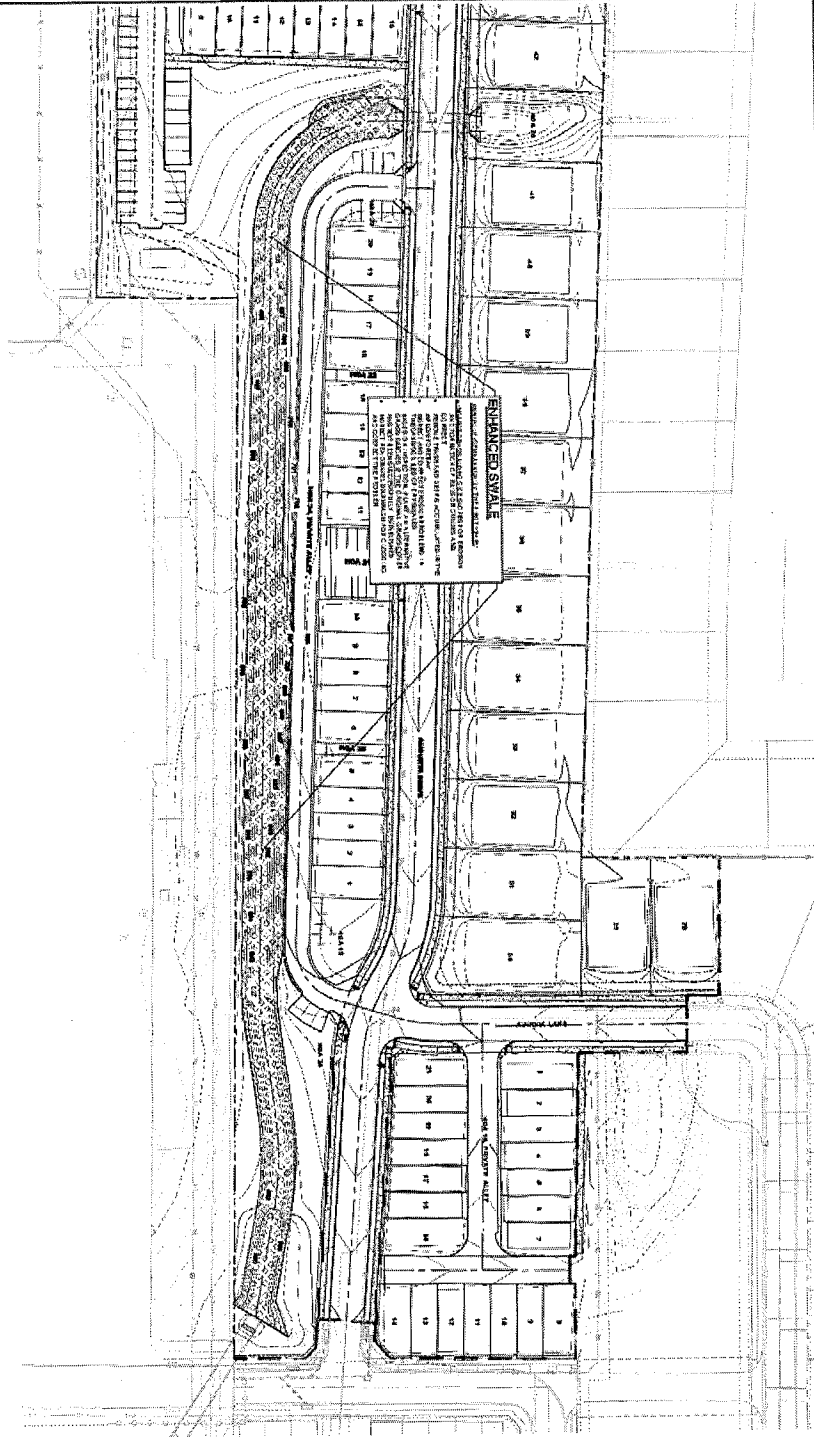
Final Plat of Lots 1-27, Block A, Lots 1-7, Block B, Lots 1-16, Block C, Lots 1-20, Block D, Lots 1-22, Block E, Lots 1-44, Block F, Lots 1-40, Block G, & Lots 1-10, Block H, HOA 1, Block A, HOA 2, Block B, HOA 4, 5 & 14, Block C, HOA 6-9, Block D, HOA 10-13, Block E, HOA 15, Block F, HOA 16, Block G, HOA 3, Block H, HOA 17, Block I, **THE RESIDENCES AT RAYZOR RANCH, PHASE 1**, an addition to the City of Denton, Denton County, Texas, according to the Plat recorded under Clerk's File No. 2020-97, Plat Records of Denton County, Texas.

**EXHIBIT “B”**

**Enhanced Swale Maintenance Plans**

[See Attached]

INCLUDE THIS PLAN IN ANY AND  
ALL FUTURE HOA DOCUMENTS  
FOR THIS DEVELOPMENT



	<b>2024 BRIDGES GROUP</b> <b>THE RESIDENCES AT RAYZOR RANCH</b> <b>PHASE II</b> <b>PRE-ESTABLISHED (SWALE) MAINTENANCE PLAN</b> 1000 STA DRIVE AND AROUND LAKE 1000 STA. 20	REV. NO.	DESCRIPTION	DATE

