

**AMENDED AND RESTATED**  
**3rd AMENDMENT OF THE DECLARATION OF COVENANTS, CONDITIONS, AND**  
**RESTRICTIONS FOR**  
**THE COVES SUBDIVISION**

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

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for:  
The Coves Subdivision (“Declaration”) is made by the Coves Homeowners Association, herein  
after called HOA (the “Association”), and it is as follows:

RECITALS:

- A. Association did file of record two amendments and one incorporation to amendment number one of the covenants, conditions, restrictions applicable to all residential lots located in The Coves Subdivision (the “Property”), said amendments and incorporation being recorded under Clerk’s File No. 119998, 926507 and 1625798, Official Records, Hidalgo County, Texas (the “Amendments”).
- B. Association now desires to revise and update certain provisions of the Declaration and its Amendments and Incorporations, and Amend and Restate the entire Declaration and its Amendments and Incorporations as provided in the pages that follow.

NOW, THEREFORE, the Declaration and subsequent Amendments and Incorporations are hereby amended as provided below and restated in its entirety to read as follows:

## ARTICLE I

### Definitions

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

- 1.1 **Association.** “Association” shall mean and refer to THE COVES HOMEOWNERS, INC., or THE COVES SUBDIVISION, a Texas non-profit corporation created pursuant to the Articles.
- 1.2 **Association Rules.** “Association Rules” shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.
- 1.3 **Board.** “Board” shall mean the Board of Directors of the Association.
- 1.4 **Bylaws.** “Bylaws” shall mean the Bylaws of the Association, which may be adopted by the Board, as the same are from time to time amended.
- 1.5 **Common Area.** “Common Area” shall mean either a fee simple or an easement interest in any land within or benefiting any portion of the Property, which is designated by Declarant, in Declarant’s sole discretion, as Common Area, and thereafter is maintained and operated by Declarant or the Association for the benefit of the Property, including, but not limited to, the Private Roadways and all other easements, roads, roadways, rights-of-way, parkways, medians, sidewalks, parks, paths, trails, and other recreational facilities. The use of the Common Area is non-exclusive and intended for recreational use and to the common use and enjoyment of the owners of the properties. Common Areas are not individually owned or intended to be individually owned.

1.6 **Declarant.** “Declarant” shall mean the Board of Directors of the Association and at least sixty-seven percent (67%) of all property owners who voted to approve this Declaration as amended, percentage to be updated as stated in this instrument. Any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.7 **Declaration.** “Declaration” shall mean this instrument as it may be amended from time to time.

1.8 **Developing Period,** means the period stated in the original declaration of restrictive covenants recorded in vol. 2775, page 292 Deed Records of Hidalgo County, Texas. Pursuant to the original document, the developing period and temporary administration of the association by the Developer ended after the election of the board at the first annual meeting.

1.9 **Developer.** “Developer” shall mean a person with simple fee interest in Property, who acquires Property for the exclusive purpose of betterment and resale of all Property. The resale of property by Developer must be realized during the developing period. The developer status is conferred to a person who continuously improves, develops and beautifies the subdivision with the purpose of enhancing and improving the value of Property in the subdivision within the Developing Period. Property owners who rent, own, sale only a portion of all property owned in the Coves, or occupy property are not developers for the purpose of this amended declaration.

1.10 **Improvement.** “Improvement” shall mean every structure and appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, recreational facilities of any kind, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or

equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.11 **Landscaping.** “Landscaping” shall mean any proposed modification to a Lot, including but not limited to any berms, irrigation systems, subsurface drainage systems, paving, introduced gravel or rock, nonstructural retaining walls, and introduced vegetation.

1.12 **Lot.** “Lots” or “Lots” shall mean any parcel or parcels of land within the Property shows as a subdivided lot on any Plat, together with all Improvements located thereon, except any Common Areas, as defined above.

1.13 **Member.** “Member” or “Members” shall mean any Person holding membership rights in the Association, as provided in Article III, Section I below.

1.14 **Mortgage.** “Mortgage” shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.15 **Mortgagee.** “Mortgagee” shall mean the holder or holders of any Mortgage, typically a banking institution.

1.16 **Owner.** “Owner” or “Owners” shall mean the record owner, where a Person or one (1) or more entities, hold fee simple title or interest to any lot or any portion of the Property, but shall not mean a mortgagee, unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure, or unless such Mortgagee acquires a fee simple interest in a portion of the Property by other means. Purchasers under contract for a deed are not owners with voting rights.

1.17 **Person.** “Person” or “Persons” shall mean any individual(s), entity or entities having the legal right to hold title to real property.

1.18 **Plans and Specifications.** “Plans and Specifications” shall mean any and all documents designed to guide or control the construction or erection of any Improvement including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specification on a building products and construction techniques, samples of exterior colors (including roof color), plans for utility services, and all other documentation or information relevant to such Improvement. The Plans and Specifications shall locate by scaled drawings all sidewalks, driveways, utility lines and other Improvements.

1.19 **Plat.** “Plat” shall mean a subdivision plat of any portion of the Property of record in the Plat Records of Hidalgo County, Texas.

1.20 **Private Roadways.** “Private Roadways” shall mean all private streets or private drives within the Property, as depicted on a Plat, or serving the Property, and designated as “Common Area” by Declarant, and all security gates or other devices controlling access to such private streets or private drives. The Association has the authority to assign private property as public and public property as private as necessary to accommodate the needs and preferences of the Association. The Board may designate and classify property as private or public from time to time in the Bylaws of the Association.

1.21 **Property.** “Property” shall mean the land described on the original declaration, together with such land as may be annexed from time to time, which are subject to this Declaration, in accordance with Article 2 below, all subject to withdrawals made pursuant to Article 2 below.

1.22 **Public View.** “Public View” shall mean, as to each Lot, visibility of a location on the Lot from a Common Area or another Lot.

1.23 **Restrictions.** “Restrictions” shall mean this Declaration (including all amendments hereto), together with the Association Rules, the Articles and the Bylaws.

1.24 **Subdivision.** “Subdivision” shall mean any portion of the Property that is subdivided, as shown on a Plat.

1.25 **Supplemental Declaration.** “Supplemental Declaration” shall mean any declaration of covenants, conditions, and restrictions that may be hereafter recorded by Declarant (or another Person with Declarant’s approval) which is imposed against real property, and which expressly subjects such property to all the terms and restrictions of this Declaration (except as otherwise expressly stated in the Supplemental Declaration).

1.26 **Visible Location.** “Visible Location” shall mean a location on a Lot or Common Area, which is in Public View.

## **ARTICLE II**

### **Property Subject To This Declaration Amendment and Additions To and Withdrawals From The Property.**

2.1 **Existing Property.** The real property, which is subject to this Declaration, is located in Hidalgo County, Texas, and is particularly described above.

2.2 **Addition to Existing Property.** The HOA may subject additional properties to this Declaration, by filing a record of a Supplementary Declaration of Covenants and Restrictions with respect to the additional property.

Such supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with

the scope of this Declaration. No such Supplementary Declaration shall revoke, modify, or add to the covenants established by this Declaration of THE COVES SUBDIVISION.

### **ARTICLE III**

#### **The Association**

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

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

3.3 **Voting Rights.** The right to cast votes, and the number of votes, which may be cast, for election of members to the Board and on all other matters to be voted on by the Members shall be calculated as follows:

- a) The Owner of each Lot within the Property shall have one vote for each Lot owned.
- b) Any property interest entitling the Owner thereof to vote as herein provided held by a legal entity or jointly or in common by more than one Owner shall require that such Owners thereof designate, in writing, a single Owner who shall be

entitled to cast such vote and no other person shall be authorized to vote on behalf of such property interest. A copy of such written designation shall be filed with the Board before any such vote may be cast, and upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

- c) The Association shall not suspend the rights of any Property Owner from voting in a Property Owner's association election of board members or on any matter concerning the rights or responsibilities of the Owner pursuant to Section 209.0059 et seq. of the Texas Property Code.
- d) The Association may, in its sole discretion, elect to authorize electronic voting, voting by email or voting by proxy.

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

- a) Rules and Bylaws. To make establish and promulgate, and in its discretion to amend or repeal and re-enact, the Association Rules and Bylaws. The content of the Association Rules and Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.



- b) Assessments. To levy Assessments as provided in Article 10 and Section 11.7 below.
- c) Right of Entry and Enforcement. To enter at any time in an emergency, or after twenty-four (24) hours written notice in a non-emergency, without being liable to any Owner or occupant, upon any Lot, for the purpose of enforcing the Restrictions or for the purpose of maintain or repairing any Common Area, Improvement, or other facility so as to conform to the Restrictions. The Association may levy a Compliance Assessment against such Owner and Lot in order to reimburse the Association for all expense incurred by the Association in connection with the entry upon any Lot and the cost of the maintenance and repair work conducted thereon. Failure to pay the Compliance Assessment upon demand shall be deemed a breach of the Restrictions with gives rise to all penalties for breach set forth in section 10.6 of this Declaration. The Association shall have the power and authority from time to time, in tis own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to begin and maintain actions and suites to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action, as it may deem necessary or expedient to enforce the Restrictions. Each Owner shall indemnify and hold harmless the Association its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 3.4 (c) (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.

d) **Common Area.** To own, improve, declare as public or private property, grant and convey to any Person any Common Area, with the majority approval of the Owners before conveyance, Improvement thereon, and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or Mortgage, out of, in, on, over, or under any of same only for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

- i. roads, streets, walks, driveways, parking lots, trails, and paths;
- ii. lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- iii. sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; or
- iv. any other Improvements or facilities, which the Board determines, will benefit the Owners generally.

The Association has the authority to change the status of the common area and declare the Association's private property as public and public property as private as necessary to accommodate the needs and preferences of the Association. The Board may designate and classify property as private or public from time to time

and promulgate such change in the rules or Bylaws. Upon declaration of the common area as public or private, the Board will follow existing procedures of the City of La Joya, if any and as promulgated and communicated by the City to the Association, in order to effect the change. This Declaration prevails and the statement of such change in the rules or Bylaws will suffice, if the City does not communicate any directives regarding the existence of a procedure to follow regarding the change in private or public property designation.

Nothing in this subparagraph (d) shall be construed to permit the use or occupancy of any Improvement in any way, which would violate other provisions of this Declaration. The Association further has the power to own personal property used in connection with the Common Area and Improvement located thereon.

- e) **Manager.** To retain and pay for the services of a manager to manage and operate the Association, including the Common Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the manager.

The Owners hereby release the Association and the members of the Board from liability for any omission or improper exercise by the manager of any such duty, power, or function so delegated.

- f) **Other Property or Amenities.** To obtain and pay for any other property (real or personal) or services and to pay any other taxes or assessments which the

Association or the Board is require to secure or to pay for pursuant to applicable law or this Declaration.

- g) **Other Property.** To acquire, own, and dispose of all manner of real and personal property, whether by grant, ease, gift, or otherwise.
- h) **Construction in Common Areas.** To construct Improvements in Common Areas and contract or grant access to third parties to conduct improvements.
- i) **In General.** To do all things reasonably necessary in order to perform the duties of the Association set forth in the Restrictions.

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

- a) **Common Area.** Accept, own and maintain in good condition and repair the Common Area, all Improvements thereon, all appurtenance thereto, and all personal property used in connection with same, including without limitation, all Private Roadways if applicable (including median areas), entry signs and related Landscaping.
- b) **Taxes.** Pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Aria, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- c) **Insurance.** Obtain and maintain in effect policies of insurance, which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association.

- d) **Books and Records.** Keep books and records of the Association's affairs and to make such books and records, together with a current copy of this Declaration, available for inspection by Owners and Mortgagees upon request during normal business hours and pursuant to Section 209.005 et seq. of the Texas Property Code.
- e) **In General.** Carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

3.6 **Indemnity.** As more particularly provided in the Bylaws, the Association shall indemnify any Person who was or is a party or is threatened to be a made party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Person is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against all claims and expenses including attorney's fees reasonably incurred by such Person in connection with such action, suit or proceeding, to the full extent permitted from time to time by the Texas Business Organization Code.

3.7 **Termination of Membership.** The Board of Directors, by affirmative vote of at least two-thirds (2/3) of all of the Directors voting, may suspend or expel a member of the Board after affording the member an opportunity to speak to the Board of Directors (i.e., a hearing). Any member suspended or expelled may appeal the action to the general membership at the next regular membership meeting after the action was taken by the Directors. A two-thirds (2/3) vote of all members present shall be required to overturn a suspension or termination of a member by the Directors.

3.8 **Resignation.** Any member may resign by filing a written resignation with the Secretary.

3.9 **Transfer of Membership.** Membership in this corporation is not transferable or assignable, except by legal transfer of the ownership of a lot. No Lessee of a lot is entitled to vote as a member except with a valid proxy under the Texas Non-Profit Corporation Act.

3.10 **Quorum.** A quorum is required to conduct any business of the HOA. A quorum represents fifty-one (51) percent of eligible to vote members. If the number of members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

## **ARTICLE IV**

### **Architectural Control Committee**

4.1 **Review by Committee.** No building, wall, or other structure shall be built or maintained upon the properties, nor shall any exterior addition to or change of alteration therein be made, until the plans and specifications showing the nature, dimensions, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of exterior design and location in relation to surrounding structures and topography.

4.2. **Membership of ACC.** The ACC shall consist of not more than three (3) voting members ("Voting Members").

4.3 **Term Limits.** Members of the Architectural Committee shall be subject to the same term limits as the Board of Directors. Each Voting Member shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. In the event of death or resignation of any Voting Member, the remaining Voting member or Voting Members shall have full authority to act until a replacement Voting member or Voting

Member have been designated. If the Architectural Control Committee ceases to exist, this Declaration places the authority of the ACC in the property owners' association and the Board until a new Committee has been elected.

4.4 **Adoption of Rules.** The ACC may adopt such design guidelines and procedural and substantive rules, standards and policies, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties and the orderly development of the Property.

4.5 **Review of Proposed Construction.** Whenever in this Declaration the approval of the ACC is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, which in its sole discretion are relevant. Except as otherwise specifically provided herein, before beginning any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefore shall be submitted to the ACC. No construction shall begin unless and until the ACC has approved in writing the Plans and Specifications for the Improvements. The ACC shall consider and act upon any and all Plans and Specifications submitted for its review and such other information, as it deems proper. Until receipt by the ACC of any information or documents deemed necessary by the ACC, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed upon any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with development within the Property and the surrounding areas. The ACC shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence or elsewhere in the Restrictions and the decision of the ACC shall be final and binding so long as it is made in good faith. The ACC shall not

review, or be responsible for reviewing, any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

4.6 **Actions of the ACC.** The ACC may, by resolution, unanimously adopt in writing, designate one or two of its Voting Members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of the majority of the Voting Members taken with or without a meeting shall constitute an act of the ACC. Notwithstanding anything to the contrary, if the committee, or designated representative, fails to give written approval or disapproval within thirty (30) days after plans and specifications have been submitted to it, the provisions of the Article will be deemed to have been fully complied with. A majority vote shall mean approval or disapproval of a plan.

4.7 **No Waiver of Future Approvals.** The approval or consent of the ACC to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

4.8 **Work in Progress.** The ACC, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

4.9 **Address.** Plans and Specifications shall be submitted to the ACC at its office, or such other address as may be designated from time to time.

4.10 **Fee.** The ACC shall have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review, for alterations to pre-existing Improvements or for proposed improvements appurtenant to the main dwelling structure. In addition, the ACC will



require a one-time fee to cover maintenance and repair expenses related to the wear and tear of the road. This deposit shall be paid before the construction of the residence or the Improvement takes place. The fee will be adjusted by the Board according to a determination of certain factors including, but not excluding, the proportionate use of the road, the length of the construction period and other applicable factors. The Board may request a bond or construction insurance to cover for any damages or accidents that may take place in common areas including the road, regardless of its designation as private or public.

4.11 **Certificate of Compliance.** The ACC will require from the Owner to present to the ACC all construction plans with all necessary signatures before the Owner submits those plans to the city for permitting.

## **ARTICLE V**

### **Use Restrictions**

5.1 **Residential Use.** All lots shall be improved and be used solely for single-family residential use, inclusive of a garage; fencing and such other Improvements as are necessary or incident to residential use. No building, outbuilding or portion of either may be build on a Lot for use as income-producing property (i.e., for lease to tenants who do not occupy an entire Lot).

A “single family” shall be defines as any number of persons related by blood, marriage or adoption, and shall also include foster children and domestic servants. This Declaration shall not, however, exclude from Lot any person who is authorized to so remain by any state or federal law. If this Article is deemed to be in violation of any law, this Section shall be interpreted as restrictive as possible in order to preserve as much of the original intent of this Section as is permitted by law.

5.2 **Incidental Uses.** No trade or business may be conducted in or from any Lot, except as follows: an Owner or occupant may conduct business activities that are incidental to the primary residential use of the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling structure; (b) the business activity conforms to all zoning requirements and other provisions of the Restrictions; (c) the business activity does not involve visitation of the Lot by clients, customers, vendors or other business invitees, or door-to-door solicitation of residents of the Property; (d) 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 by the Board; and (e) the business activities are permitted under applicable City of La Joya ordinances. Day care facilities, churches, nurseries, pre-schools and similar facilities are expressly prohibited. The lease of an entire Lot to be used for single-family residential purposes shall not be deemed the conduct of a trade or business from a Lot; provided, however, that the term of any such lease shall be no less than six (6) months. Tenants are the owner's responsibility, but as occupants and residents in physical possession of the property, must comply with the declaration and bylaws at all times and are subject to enforcement actions by the Association.

5.3 **Common Area.** No Common Area shall be improved, used or occupied by any individual property Owner, except in such manner as shall have been approved by the Association. Such required approval shall extend to the nature and type of use, occupancy and improvement.

## ARTICLE VI

### General Restrictions

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

6.1 **Animals.** No farm animals are permitted in the subdivision. Pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered being a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property. Only household pets are permitted. Dogs should be maintained on leashes or on the property of the owner. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No vicious or dangerous animals shall be allowed on the Property. Pets shall be of the normal and usual type and size of household pets. All animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all rules established by the Association. It shall be the responsibility of Owners of such household pets to prevent the animals from running loose or becoming a nuisance to the other residents. Pets must not constitute a nuisance of cause detriment to neighbors.

6.2 **Division and Consolidation of Lots.** The Association is prohibited from adopting a provision that prohibits or restricts an Owners of two or more adjacent lots from using for residential purpose an adjacent lot owned by the property Owner, pursuant to Section 209.15 et seq. of the Texas Property Code and subject to the following:

- a) An owner must obtain the approval of the ACC or the Association and follow the use and construction guidelines prescribed by this declaration related to the use of

a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and appearance of the proposed construction before the Owner undertakes the construction or placement of a building, shed, or improvement on the adjacent lot.

- b) An Owner who elects to sell all or part of the Property, including adjacent lots that were altered to be used for residential purposes must do so pursuant to one of the provisions established by the Texas Property Code.

6.3     **Hazardous Activities.** No activity shall be conducted on the Property, which might be hazardous or dangerous to any person, or property. No firearms or fireworks shall be discharged upon the Property; no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units for cooking purposes while attended by a responsible adult.

6.4     **Insurance Rates.** Nothing shall be done or kept on the Property that would increase the rate of insurance, or cause the cancellation of insurance, on any Lot, Common Area or any of the Improvements located on either.

6.5     **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, and no shafts, wells or derricks shall be allowed upon the Property.

6.6     **Mobile Homes, trailers and recreational vehicles.** Mobile homes are not allowed. No mobile home or manufactured housing in transit shall be parked or placed on any Lot or Private or Public Roadway or Common Area at any time. The Association may adopt further rules and regulations governing the use, parking, storage of and removal of any commercial, recreational

and other vehicles ( including but not limited to those named in this Section) within the Property. The Board may include any such rules and regulations in the Bylaws, or in a resolution by the Board. But any such rules and regulations so adopted shall be binding upon each Owner as if set forth herein. In addition, any vehicle described in this Section that is present in the Property in violation hereof may be towed away or otherwise removed by or at the request of the Association, and at the sole expense of the Owner of the Lot upon which or for whose benefit or enjoyment such vehicle is present. In the event of any such towing, neither the Association nor any Association employee or agent shall be liable or responsible to such Owner for trespass, conversion or damage incurred incident to such removal, or for the cost of such removal, or otherwise, nor shall the Association or any Association employee or agent be guilty of any criminal act or have any civil liability by reason of such towing or removal, and such towing and removal shall not be grounds for relief by such Owner of any kind.

**6.7 Noise and Nuisances.** No noxious or offensive activity shall be permitted on any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Offensive activities may include activities that are considered to diminish or negatively affect property values, including but not limited to, repairing or maintaining vehicles and gathering or organizing public meetings in public view.

No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist, which will adversely affect the other Living Units, or the Owners or residents.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to the neighboring property (except reasonable security and landscape lighting that has approval of the ACC).

No exterior speakers, horns, whistles, bells or other sound devices that are offensive to adjacent lot neighbors or exceed the City of La Joya noise ordinance levels (except security devices used exclusively to protect the lot an improvement situated thereon) shall be placed or used upon any Lot.

The discharge of any firearm including BB guns and pellet guns, and the hunting or killing of any animal within any part of the Subdivision is prohibited. Additionally, it is prohibited to use any bow arrow, slingshot, or other launching or catapulting device.

**6.8 Other buildings and trees.** No structure shall be moved onto any residential lot.

(h) Used buildings. No used structures shall be moved onto any residential lot.

(j) Existing trees. No trees are to be removed from any lot or common area without the Architectural Control Committee's approval.

**6.9 Odors, Garbage cans, Rubbish, and Debris.** Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. In no event shall such containers be maintained in a Visible Location, except to make same available for collection, and then only for the shortest time reasonably necessary to effect such collection.

No rubbish or debris of any kind (including weeds, brush or material of any nature deemed to be rubbish or debris by the ACC) shall be placed or permitted to arise therefrom so as to render the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other portion of the

Property, other property or the occupants of the same. Brush will be kept out of Public View, except to make same available for collection, and only for the shortest time reasonably necessary to effect such collection.

6.10 **Parties.** Noise from parties on school nights shall end at 10 pm. On non-school nights, noise shall end at midnight.

6.11 **Signs and flag display.** No signs or banners larger than 3 ft. by 4 ft. shall be displayed to public view on any single-family residential Lot or from any home or be attached to any home. All signs must be professional signs and any deviation from the size and approval of sign must be granted by the ACC. For rent, for lease, distressed, foreclosure bankruptcy references are specifically prohibited. Signs advertising subcontractors or suppliers are specially prohibited. For signs advertising property for sale shall state only the name and phone number of the seller and or their agent. The ACC shall have control over all verbiage on all signs.

Flags on Lots may be flown from ACC approved flagpole standards attached to the main structure. No freestanding flagpoles without having a flag are allowed.

A property owners' association may remove a sign displayed in violation of this section or the Texas Property Code.

6.12 **Tanks.** The ACC shall have the right to approve the location of any tank used or proposed in connection with a single-family residential structure, including tanks for storage of water and swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. All tanks shall be screened so as not to be visible from any other portion of the Property. Tanks structures for the storage of fuel or oil are not permitted.

6.13 **Temporary Structures.** No permanent tent or canopy, shack, or other temporary building, or structure shall be placed upon the Property without the prior written approval of the

ACC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of the Association, approval to include the nature, size, duration, and location of such structure.

**6.14 Towers and Antennas.** No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon a Visible Location unless a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the ACC. The ACC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the “Telecommunications Act”), without ACC approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Lot, (b) no television broadcast antenna mast may extend above the height of the center ridge of the roof of the primary dwelling structure on the Lot, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12’) above the center of the ridge of the roof.

**6.15 Unsightly Articles.** No unsightly articles shall remain on any Lot in a visible location. Without limiting the generality of the foregoing, trailers, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance



equipment shall be kept at all times except when in actual use, in enclosed structures or screened from Public View. Basketball goals, and other athletic equipment, shall not be deemed “unsightly” if installed or maintained in a manner approved by the ACC. No repair, restoration or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures screened from Public View.

Service areas, storage area, air conditioning units, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from Public View at ground level. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structure or appropriately screened from Public View at ground level. No article of storage, articles for sale, clothing, exercise equipment, furniture, or any other household item shall be displayed and must be screened from Public View at all times. Any dispute as to whether an article is unsightly shall be resolved by the ACC, in its sole discretion.

**6.16 Unsightly Vehicles.** No junked vehicle shall be stored within the Property. For the purpose of this section, “junk vehicle” is defined according to Section 683.071 of the Texas Transportation Code and the “ *City of La Joya Junk Motor Vehicle Ordinance 2003-02*” as follows:

- a) “ Junk vehicle means any motor vehicle as defined in [Section 683.071 of the Texas Transportation Code], which vehicle is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and a valid motor vehicle safety inspection certificate and which is wrecked, dismantled, partially dismantled, or discarded.”

b) It is unlawful to leave a junk vehicle or portion thereof :

- i. In private or public property within the City of La Joya.
- ii. For any period of time exceeding ten (10) days.

Therefore, no junk vehicle may be kept upon a lot unless it is concealed from public view, nor shall it be kept on common property or any street.

The Association may adopt further rules and regulations governing the use, parking, storage of and removal of any commercial, recreational and other vehicles (including but not limited to those named in this Section) within the Property. Any rules and regulations so adopted shall be binding upon each Owner as if set forth herein. In addition, any vehicle described in this Section that is present in the Property in violation hereof may be towed away or otherwise removed by or at the request of the Association, and at the sole expense of the Owner of the Lot upon which or for whose benefit or enjoyment such vehicle is present. In the event of any such towing, neither the Association nor any Association employee or agent shall be liable or responsible to such owner for trespass, conversion or damage incurred incident to such removal, or for the cost of such removal, or otherwise, nor shall the Association or any Association employee or agent be guilty of any criminal act or have any civil liability by reason of such towing or removal, and such towing and removal shall not be grounds for relief by such Owner of any kind.

**6.17 Window treatments.** No exposed cardboard, metal foil, or bedding shall be seen from the windows of homes in this subdivision. Window tinting may be used in concert with blinds, shades, curtains, drapes another other commercially produced window treatments.

## ARTICLE VII

### Construction Covenants and Restrictions.

**Covenants and Restrictions on lots.** All of the property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

7.1 **Construction of Improvements.** No improvement shall be built or placed on any of the Property, nor any site preparation undertaken thereon, without the approval of the ACC.

7.2 **Minimum floor area and exterior walls.** Any residence constructed on lots must have heated/cooled area of at least 1200 square feet, exclusive of open or screened porches, terrace, patios, driveways, carports, and garages. The front exterior walls of any residence construction shall consist of not less than fifty percent (50%) brick veneer or material approved by the Architectural Committee.

7.3 **Construction in Place.** All primary dwelling structures constructed on the Property shall be built in place on the Lot. No manufactured housing or prefabricated dwelling structure may be placed or assembled on a Lot, and no mobile home or pre-existing Improvement may be moved onto any Lot. The use of prefabricated materials other than trusses, wall panels, window and doors is prohibited unless expressly approved by the ACC.

7.4 **Setbacks.** Minimum front and rear building setback lines shall be those shown on the recorded plat of the subdivision. Side setback lines shall be five (5) feet on all lots and minimum rear setback lines shall be five (5') feet.

7.5 **Fences.** Masonry, wooden, or welded iron construction are permitted. Chain link fences are not permitted, unless grandfathered under previous covenants and restrictions. Those with fences on exterior portions of the subdivision must maintain those fences for the good of the community as a whole. Fences may run on the property line on the sides and back, but they may

not go beyond the fifteen (15) foot setback in the front. There is no height restriction as to the privacy fences permitted within the front building setback line the side and rear property lines, as long as the fence is attractive and meets the approval of the ACC. The ACC may consider the property Owner's need for privacy, security, protection of property against outside insects, animals and weeds, shield against neighbors noise, road noise and unsightly articles and structures among the factors to consider in the approval of the installation of a fence. An hedge no higher than two (2) feet may be maintained outside the front building setback line.

**7.6 Yard appearance.** All lots shall be attractively landscaped and kept in a sanitary, healthful, and attractive condition. The owner or occupant of a lot shall keep all weeds and grass thereon cut and shall not use any lot to store material and equipment except for normal residential requirements, and shall not burn any garbage, trash, or rubbish. All clothes lines, yard equipment, lawn tractors, implements, woodpiles, or storage piles shall be kept screened so as to conceal them from view of neighboring lots, streets, or other property at all times. If the owner or occupant fails to keep the weeds and grass cut, then the HOA may have that lot mowed, and the cost of mowing shall be paid by the lot's owner on demand, and if not so paid, shall be a continuing lien on the lot, which may be foreclosed by the HOA in the same manner as the lien for unpaid assessments. Lots shall not permit grass or weeds to grow into the street. Curbs are highly encouraged. Herbicide is not to be used in lieu of mowing.

**7.7 Required improvements.** Each lot owner shall construct a minimum concrete parking area for two (2) vehicles and connection sidewalk to the residence. Each lakefront lot owner shall, in addition, construct a seawall along the lakeshore at the location specified by the Architectural Committee, within two (2) years after purchase, unless a form of a seawall is already in place and continues to be serviceable as decided by the Architectural Committee.

## ARTICLE VIII

### **Repair and Maintenance**

8.1 **Repair and Maintenance.** Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot cultivated, pruned, free of trash, and other unsightly material. Improvements shall at all times be kept in good, attractive condition and repair, and adequately painted or otherwise maintained by the Owner and/or occupants thereof. Maintenance obligations shall include, but are not limited to: maintenance of all visible exterior surfaces of Improvements and prompt removal of paper, debris, and refuse; removal of dead or diseased trees and landscaping from the Property; prompt replacement of dull and /or peeling paint from the exterior of improvements; mowing, weeding, pruning, replanting and replacement of landscaping; and during construction, the cleaning of dirt, construction debris, and other construction-related refuse from street and storm drains and inlets as often as deemed necessary by the Board. The ACC's recommendations with respect to tree disease control shall be followed immediately. Grass and weeds shall at no time be allowed to exceed 6" in height on any Lot (whether improved or unimproved) and Owners of unimproved Lots shall keep same neatly trimmed and free of trash and other unsightly material. The Board, the Association, and the ACC shall have the right at any reasonable time to enter upon any Lot as provided in Section 3.4(c) above to replace, maintain, and cultivate shrubs, trees, grass, or other landscaping as deemed necessary, and to paint, repair, or otherwise maintain any Improvements in need thereof, and may charge the cost thereof to the Owner of the Lot, as provided in Section 3.4(c) above and Sections 10.6 and 11.7 below.

## ARTICLE IX

### Property Rights in the Common Area

9.1 **Member's Easements of Enjoyment.** Every member shall have a right and easement to use and enjoy, in common with others, the Common Area, as herein designated, and such easement shall be appurtenant to and shall pass with the title to every lot. In addition, each lakefront lot owner shall have an exclusive easement to use and enjoy that portion of the shore of Walker Lake situated to the rear of his lot and bounded by his side property lines, as extended, and such easement shall be appurtenant to and shall pass with the title of every lakefront lot.

9.2 **Extent of Easement.** Every Owner shall have the right and easement of enjoyment subject to the following:

- a) The Association's right to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Area.
- b) Title to Common Properties. The HOA shall retain legal title to the Common Properties. However, the Association's right to sell and convey the Common Area, or any part thereof, provided that after Declarant no longer owns any portion of the property, such sale or conveyance must be approved by the majority of the votes of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- c) The Association's right to borrow money for the purpose of improving the Common Area, or any part thereof, and to mortgage pledge or hypothecate any or all of this real or personal property as security for money borrowed or debts

incurred, provided that after Declarant no longer owns any portion of the Property, such mortgage, pledge or hypothecation is approved the majority of the votes of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set for the purpose of the meeting.

- d) The Association's right to take such steps as are reasonably necessary to protect the Common Area, or any part thereof, against foreclosure.

**9.3 Fines and Penalties.** The Association may make reasonable rules and regulations, and may prescribe fines and penalties, as it determines reasonable and necessary, in order to promote safety within the Property, including without limitation, establishing maximum rates of speed on Roadways. If an Owner or Owner's family member or guest violates posted maximum rates of speed, such Person may be liable for a fine per occurrence (not to exceed the maximum fine for which such Person would be liable in the event of violation of a speed limit on a public street). THE ASSOCIATION DOES NOT MAKE ANY WARRANTY OR REPRESENTATION TO THE OWNERS THAT THE GATES TO THE PROPERTY PROVIDE ANY SECURITY WHATSOEVER, AND EACH OWNER IS SOLELY RESPONSIBLE FOR PROVIDING SECURITY FOR THEIR HOME AND OTHER PROPERTY.

**9.4 Public Easement.** An express easement is hereby reserved across the Roadways for the use of the surface for all governmental functions, vehicular and non-vehicular, including fire and police protection, solid and other waste material pickup and any other purpose any governmental authority deems necessary.

## **ARTICLE X**

### **Covenants for Funds and Maintenance Assessments**

**10.1 Creation of the Lien and Personal Obligation of Owners for Assessments.** Any individual who has signed a contract for sale for the purchase of a lot and each owner of any lot, by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant and agree to pay to the Association in Hidalgo County, Texas, (1) monthly assessments or charges; (2) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereafter provided. In addition, any developer in lieu of paying Assessments shall be obligated to pay any shortfall between the amounts collected in Assessments and the total expenses of the Association. If and when additional Lots are annexed into the Property, the Owners of such annexed Lots shall be obligated to pay Assessments effective as of the date of the annexation.

Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

The monthly and special assessments, together with such late charges and costs of collection as hereinafter provided, shall be a charge on the land and shall be a continuing lien on the property and be secured by a Vendor's lien against each such Lot and all Improvements thereon. Each such assessment, together with late charges and costs of collection, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. No owner shall be exempt from liability for such Assessment or be exempt from paying any assessment by waiver of the use of or enjoyment of the Common Properties or by the



abandonment of his lot or interest therein. The Association may enforce payment of Assessments in accordance with the provisions of this Article.

**10.2 Purpose of assessments.** The assessments levied by the HOA shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the properties and in particular to improve and maintain the properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, including the front entrance, subdivision signs, streets, and attendant landscaping.

**10.3 Operating Fund.** The Board shall establish an operating fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Covenant. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

**10.4 General Assessments (Monthly/Quarterly Assessments).** Effective as of January 1, 2016, the per Lot monthly assessments shall be twenty-five dollars (\$25.00) paid quarterly, which shall be payable as provided in Section 10 hereof. The Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, including but not limited to duties required and activities authorized herein for the Association, the Board, and the ACC, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied against all Lots in the Subdivision as herein provided, including Lots still owed by any developers, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any

individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in monthly, quarterly or annually installments, on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal semi-annual installments on or before the first day of January and July, or in such other manner as the Board may designate in its sole and absolute discretion. The Board reserves the authority and the right to escalate any and all payments after a payment becomes ninety (90) days in arrears, to the end of the year.

**10.5 Special Assessments.** In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any special Assessments shall be at the reasonable discretion of the Board.

**10.6 Compliance Assessments.** The Board further shall have the right to levy a Compliance Assessment against any Lot as reimbursement for costs (including attorney's fees) incurred by the Association or the ACC in order to place such Lot in compliance with the Restrictions, as authorized and provided in Section 3.4(c) and Section 11.7 of this Declaration.

**10.7 Interest; Late Fees.** In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof, together with all costs and expenses of collection, including reasonable attorneys' fees. The Board further shall

have the right to charge late fees for delinquent payment of Assessments in such amounts as the Board may from time to time deem appropriate.

**10.8 Alternative Payment Schedule.** The Association establishes an alternative payment schedule by which an owner may make partial payment to the Association for delinquent regular or special assessments or any other amount owed to the Association without accruing additional monetary penalties. While under the payment plan, the Owner may still owe reasonable costs associate with administering the payment plan or interest. These costs are not included under the definition of “monetary penalties.” Terms of the Alternative Payment Plan:

a) The minimum term for a payment plan offered by the Association is three months. The maximum plan allowed will be twelve months.

b) The Association will not enter into a payment plan with an Owner who failed to honor the terms of a previous payment plan during the two years following the Owner’s default under the previous payment plan.

**10.9 Assessment Lien.** All sums assessed in the manner provided in this Article but unpaid, together with interest and late fees as provided in Section 10.7 above and the cost of collection, including attorneys’ fees as herein provided, shall be secured by the Assessment Lien, which will be a continuing lien and charge on the Lot assessed, and which shall bind such Lot in the hands of the Owner, and such Owner’s heirs, devisees, personal representatives, successors or assigns, The Assessment Line shall be superior to all other liens and charges against the Lot, except for tax liens and liens of first Mortgages securing unpaid sums borrowed for acquisition or improvement of the Lot in question, which shall be superior to the Assessment Line. See as follows:

(A) Priority of Lien. The lien established by this article shall have preference over any other assessments, liens, and judgments or charges of whatever nature, except the following:

(a) General and special assessments for real estate taxed on a lot; and,

(b) The liens of any deeds of trust, mortgage instruments or encumbrance duly recorded on the lot prior to the assessment of the lien thereon or duly recorded on said lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien was current as of the date of recordation of the said deed of trust, mortgage instrument, or encumbrance.

(B) Subordination and mortgage protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any lot shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale of transfer of such lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, and shall not in such instance apply to claims for a share of such assessments or charges resulting from a reallocation of such assessments of charges to all lot owners, including the mortgages lot. Such sale of transfer shall not relieve the purchaser at such sale of the lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, claimed shall have the same effect and been forced in the same manner as provided herein.

No amendment to this section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to the recordation of such amendment

unless the holder thereof (or indebtedness secured thereby), shall join in the execution of such amendment

The Association, in the discretion of the Board, may subordinate an assessment Lien to any other lien. Such subordination must be signed by a duly authorized officer of the Association. To evidence and Assessment Lien, the Association shall prepare a Notice of Lien stating the amount of the unpaid debt, the Owners of the Lot covered in the lien and a description of the Lot. Such notice shall be signed by an officer of the Association and shall be recorded in the office of the County Clerk of Hidalgo County, Texas. The Assessment Lien shall attach with the priority above set forth from the date that the payment secured becomes delinquent. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any Assessment, which then has been unpaid more than thirty (30) days after the date due.

#### **10.10 Foreclosure.**

(1) ESTABLISHMENT OF A TRUSTEE. By acceptance of the deed to his Lot, each Owner expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association (from time to time serving) as trustee (and to any substitute or successor trustee as hereinafter provided for), that Owner's Lot and all rights appurtenant thereto, in trust, for the purpose of securing such Owner's payment of Assessments and other sums due hereunder from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and filed in the Office of the County Clerk of Hidalgo County, Texas. If the Board elects to foreclose the Assessment Line because of nonpayment of sums secured by such lien, then it shall be duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request

shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto and pursuant to the provisions of Ch. 51.002 of the Texas Property Code.

(2) PRIOR TO FORECLOSURE PROCEDURES. Prerequisite to foreclosure: Notice and Opportunity to Cure for Certain Other Lienholders. Pursuant to section 209.0091 et seq. of the Texas Property Code, the Association may not foreclose a property owners' association assessment lien on real property by giving notice of sale under Section 51.002 or commencing a judicial foreclosure action unless the Association has:

(1) Provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and

(2) Provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the recipient receives the notice. Notice under this section must be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property that is subject to the property Owner's association assessment lien.

(3) JUDICIAL AND NON-JUDICIAL FORECLOSURE Each Owner, by accepting a deed to his Lot, recognizes the Assessment Lien as existing prior to his ownership of his Lot and hereby grants the Board the right and power to bring all actions against such Owner or Owners personally to collect unpaid Assessments and other sums due hereunder as a debt, and to enforce the Assessment Lien by all methods available for the enforcement of liens both by judicially and non-judicial foreclosure pursuant to Section 51.002 and 209.0092 et seq. of the Texas Property Code (as same may be amended or revised from time to time hereafter).

Procedure description: at the door of the County Courthouse of Hidalgo County, Texas on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m.. to the highest bidder for cash at public auction after the trustee and the Board, respectively, shall have given notice of the proposed sale in the manner hereinafter set forth, and to make due conveyance of the purchaser(s), with general warranty of title to such purchaser(s) binding upon the Owner(s) of such Lot and his heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Hidalgo County, Texas, and in addition, the Board shall serve written notice at least twenty-one (21) days preceding the date of sale or the proposed sale by certified mail on each of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner(s) at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such services was completed shall be prima facie evidence of the fact of such service. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred.

At any foreclosure, judicial or non-judicial, the Association may bid up to the amount of the sum secured by the Assessment Lien, together with costs and attorneys' fees, and may apply as a cash credit against its bid all sums due to the Association secured by the Assessment Lien foreclosed. From and after any such foreclosure, the occupants of such Lot shall pay a reasonable rent for the use of such Lot, such occupancy shall constitute a tenancy-at-will, and the purchaser at such

foreclosure shall be entitled to the appointment of a receiver to collect such rent, and further may sue to recover possession of such Lot by forcible detainer without further notice.

This Section is intended to comply with the provisions of Section 51.002 et seq. of the Texas Property Code, relating to non-judicial sales by power of sale. If Section 51.002 et seq. is amended in a manner which affect this Section, the President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the Office of the County Clerk of Hidalgo County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 et seq.

**(1) Foreclosure sale is prohibited under certain circumstances .** The Association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists *solely* of (1) fines assessed by the Association; (2) attorney's fees incurred by the Association solely associated with fines assessed by the Association; (3) or amounts added to the owner's account as an assessment for the reasonable costs of materials, labor, and overhead related to the compilation, production, and reproduction of information retained by the Association.

## **ARTICLE XI**

### **Miscellaneous**

**11.1 Duration and Amendments.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the HOA, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, unless amended or extinguished by either of the following means:



- a) Upon the vote or express written consent, or any combination thereof, in a written instrument executed by the Owners of at least twenty-five percent (25%) of the Lots within the Property then subject to this Declaration.
- b) The Board, upon obtaining the vote or the express written consent of at least fifty-one percent (51%) of its members present at a duly called regular or special meeting where a quorum is present, set forth the amendment and certify that such amendment has been approved pursuant to this section and section 3.3 of this Declaration.

Any and all amendments, if any, shall be recorded in the office of the County Clerk of Hidalgo County Official Records.

11.2 **Attorney's Fees.** The Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing Restrictions or the Bylaws or rules of the Association only if the Owner is provided a written notice that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain.

11.3 **Notices.** Except as provided in Section 11.3 and Section 11.5 of this Declaration, any notice permitted or required to be sent to any member or owner under the provisions of this Declaration shall be in writing and may be delivered either by E-mail, personally or by mail. If delivery is made by mail, it shall be deemed to have been properly delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices or to the last known address of the person who appears as a member or Owner on the records of the HOA at the time of such mailing. Such

address may be changed from time to time by notice in writing given by such person to the Association.

#### **11.4 Notice Required Before Enforcement Action.**

a) The Association is required to send written notice to the owner by certified mail, return receipt requested under the following situations:

- (1) Before suspending an Owner's right to use a common area;
- (2) Before filing a suit against an Owner other than a suit to collect a regular or special assessment or foreclosure under an association's lien;
- (3) Before charging an Owner with property damage;
- (4) Before levying a fine for a violation of the restrictions or bylaws or rules of the association.

b) The notices must:

- (1) Describe the violation
- (2) Inform the Owner that the Owner:
  - (a) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months;
  - (b) may request a hearing under Section 209.007 et seq. on or before the 30th day after the date the owner receives the notice; and
  - (c) may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act, if the owner is serving on active military duty.

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

11.6 **Nonliability of ACC and Board Members.** Neither the ACC, nor any member or agent thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other Person for any loss, damage, or injury arising out of their being in any way connected with the performance of the ACC's or the Board's respective duties under this Declaration, including without limitation the obstruction of views from Lots by any Improvements, approval or disapproval of Plans and Specifications, or construction of any Improvement within the Property, unless due to the willful misconduct, gross negligence or bad faith of the ACC or its member of the Board or its member as the case may be.

11.7 **Compliance with the Restrictions.** Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. In addition to the Association's rights set forth in Article, 3 Section 3.4(c) above, if any Owner fails to comply with any of the Restrictions within ten (10) days after notice of such failure from the Board, such failure shall constitute a violation of this Declaration, and shall give Declarant the immediate right to impose fines for non-compliance. Further, such failure shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, which may be maintained by the Board, or by any Owner, at the individual Owner's election and expense. The Board may establish a schedule of fines for violations of the Restrictions, and may adjust the amounts set forth on such schedule from time to time. The schedule, as adjusted, shall be provided to an Owner upon such Owner's request. If

any Owner defaults in the payment of a fine so assessed, such Owner shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the fine beginning ten (10) days after the date the fine is assessed (or if there is no such highest rate, then at the rate of 2% per month), together with all costs and expenses of collection, including reasonable attorneys' fees. The Board may charge a one-time late fee for delinquent payment of a fine in such amount as the Board may from time to time deem appropriate. The payment of any fine so assessed, together with attorneys' fees, interest and/or late fees thereon, shall be secured by the Assessment Lien, and shall be subject to the same penalties for non-payment, including without limitation, judicial or non-judicial foreclosure. Once the ten-day notice period of a violation has expired, each day during which a violation continues shall be deemed a separate violation for which an additional fine may be imposed.

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

**11.9 Nonwaiver.** The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of the Restrictions.

**11.10 Construction.** The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not

affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

**11.11 Dispute Resolution.** No Owner (a “Complaining Owner”) may commence any judicial action or process against the Board, the Association or the ACC (as applicable, the “adverse Party”) until and unless (i) the Complaining Owner notifies the Adverse Party that the Complaining Owners intends to institute a judicial action against the Adverse Party, and (ii) the Adverse Party does not elect to submit the dispute to non-binding mediation by notice to the Complaining Owner delivered within thirty (30) days after the Complaining Owner’s notice of intent to institute judicial action. If no election is made within said thirty-day period, the Complaining Owner may proceed to institute a judicial action against the Adverse Party. If any Adverse Party elects to submit the dispute to non-binding mediation, however, the Adverse Party shall so notify the Complaining Owner within said thirty-day period, which notice of election shall include the name of three (3) qualified mediators acceptable to the Adverse Party, and no judicial action or process may be commenced against the Adverse Party until mediation has concluded. A qualified mediator shall be any attorney-mediator with experience in mediating disputes involving real estate who does not reside within the Property, work for any party involved in the dispute or have any conflict of interest with any party involved in the dispute. The Complaining Owner shall have five (5) days within which to accept one of the three mediators, so named in the notice of election and to so notify the Adverse Party. If the

Complaining Owner does not timely notify the Adverse Party of the Complaining Owner's acceptance of a mediator, the Adverse Party may select one of the named mediators as the sole mediator for the mediation. The mediation shall take place within thirty (30) days after the mediator is determined. The cost of such mediator shall be paid equally between the parties.

11.12 **Severability.** Invalidation of any one of these covenants or restriction by judgment or court order shall in no way affect the remainder thereof, which shall remain in full force and effect

11.13 **Amended and Restated Declaration.** This Amended and Restated Declaration amends, restates, replaces and supersedes in its entirety the prior Declaration and Amendments recorded under Clerk's File No. 119998, 926507 and 1625798, Official Records, Hidalgo County, Texas (the "Amendments") by the signature of the Owners of two-thirds (2/3) of the Lots (As shown on Exhibit "A" of this Declaration).

IN WITNESS WHEREOF, the President and the Secretary of the Board executed this Amended Declaration on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015

THE COVES SUBDIVISION

\_\_\_\_\_  
By: Helen Spalding

Name Print:

Title:

STATE OF TEXAS                   §  
   §  
COUNTY OF HIDALGO         §

Before me, the undersigned authority, on this day personally  
appeared \_\_\_\_\_, President of the Coves Homeowners  
Association, a Texas non-profit corporation, known to me to be the person whose name is

subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation for the purposes and consideration therein expressed.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public, State of Texas

THE COVES SUBDIVISION

\_\_\_\_\_  
By: Susan Butler

Name Print:

Title:

STATE OF TEXAS                   §  
   §  
COUNTY OF HIDALGO         §

Before me, the undersigned authority, on this day personally  
appeared \_\_\_\_\_, Secretary of the Coves Homeowners  
Association, a Texas non-profit corporation, known to me to be the person whose name is  
subscribed to the foregoing instrument and acknowledged to me that the same was the act of the  
said corporation for the purposes and consideration therein expressed.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public, State of Texas