

After Recording, Return To:

Esquire II POA, Inc.

P.O. Box 796

Mabank, Texas 75147

**AMENDED AND RESTATED DECLARATION**

**OF**

**RESTRICTIVE COVENANTS**

**FOR**

**ESQUIRE ESTATES UNIT NO. 2**

**Henderson County, Texas**

**2024**

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**AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS  
FOR  
ESQUIRE ESTATES UNIT NO. 2**

This Amended and Restated Declaration of Restrictive Covenants for Esquire Estates Unit No. 2 is made as of the \_\_\_\_ day of \_\_\_\_\_ 2024 to be effective as of the date this Declaration is recorded in the Official Public Records, hereinafter defined.

**RECITALS**

- A. Esquire Estates, Unit No. 2 is a subdivision established by the Plat, hereinafter defined, and described in Exhibit A attached to this Declaration.
- B. Restrictive Covenants for the Property, hereinafter defined, were recorded in the Official Public Records of Henderson County, Texas, on October 30, 1972, in Volume 692, Page 850, as amended by that certain Amendment to Restrictive Covenants recorded in the Official Public Records of Henderson County, Texas, on May 23, 1973, in Volume 705, Page 748, as further amended by certain restrictions recorded in the Official Public Records of Henderson County, Texas, on August 17, 1973, in Volume 711, Page 682, as further amended by Restrictive Covenants recorded in the Official Public Records of Henderson County, Texas, on March 6, 1998, in Volume 1809, Page 470, as may be further amended and supplemented (collectively, the "Original Declaration").
- C. Pursuant to and in accordance with the Act and Original Declaration, the requisite number of current Owners, as Members of the Association, hereinafter defined, duly approved through a vote of the Members owning at least a majority of the Lots, held at a duly called special meeting of the Association on \_\_\_\_\_, 2024 at which a quorum was present (the "Approval") the amendment and restatement of the Original Declaration by and through this Declaration, and, upon recordation in the Official Public Records of Henderson County, Texas, this Declaration shall supersede and amend and restate, in its entirety, the Original Declaration.
- D. The Owners established Esquire II POA, Inc., a Texas nonprofit corporation (the "Association"), to be the property Owners association responsible for exercising the functions set forth in the Original Declaration and Original Bylaws, as defined in the Bylaws, hereinafter defined, by filing the Articles of Incorporation with the Texas Secretary of State on June 19, 1995, a copy of which articles were recorded by and through that certain Notice of a Dedicatory Instrument for Esquire II, POA, Inc., in the Official Public Records of Henderson County, Texas, on September 1, 2021, as Document No. 202100016856, as may be amended.
- E. The Owners and the Association, by and through this Declaration, desire to (i) provide for the maintenance, repair, improvement and replacement of Common Areas and other Improvements on the Property according to the Governing Documents; (ii) provide for the implementation of the powers and duties of the Owners, the Association and the Board of Directors as set forth in the Governing Documents; (iii) preserve and enhance the Property; (v) clarify existing and establish new Easements; and (vi) implement the purposes of the Association as provided for in the Governing Documents.

NOW, THEREFORE, the Association, for and on behalf of the Owners, acting pursuant to the Approval and the authority granted to it in the Original Declaration and the Act, does hereby publish and declare that the following terms, provisions, covenants, conditions, Easements, restrictions, reservations, uses,

limitations and obligations are established and shall be deemed to run with the land and Lots in the Property and shall be a burden and benefit to the Association, the Owners, and their respective heirs, legal representatives, successors and assigns:

## **ARTICLE I DEFINITIONS**

Section 1.1. **Defined Terms.** Each capitalized term used in this Declaration shall have the meaning set forth in this Section 1.1:

"Access Easement." An easement as more particularly described in Section 7.2 of this Declaration.

"Act." Chapter 209 of the Texas Property Code, as amended from time to time, applicable to residential subdivisions subject to restrictions that authorize the property owners' association to collect regular or special assessments on all or a majority of the property in the subdivision and requires mandatory membership of all or a majority of the owners of the residential property in the association.

"Annexed Property." Any real property added to the Property by a Supplemental Declaration, as further described in Section 11.1 of this Declaration.

"Architectural Control Committee" or "ACC." The committee established following Section 12.2 of this Declaration.

"Architectural Guidelines." The architectural guidelines set forth in Exhibit B to this Declaration and any other procedural or substantive rules, guidelines, criteria, requirements, standards and procedures as may be adopted by the Association, or the ACC, from time to time, in accordance with this Declaration or contained in the Rules, if established, which establish and include, without limitation, standards and requirements for construction and planning of Improvements on Lots, Signage, and the use and occupancy of the Lots, as may be amended from time to time.

"Articles." The Articles of Incorporation filed with the Texas Secretary of State on June 19, 1995, a copy of which articles was recorded by and through that certain Notice of a Dedicatory Instrument for Esquire II, POA, Inc., in the Official Public Records of Henderson County, Texas, on September 1, 2021, as Document No. 202100016856, as may be amended.

"Assessments." Regular Assessments, Special Assessments and Individual Assessments owing to the Association by an Owner or levied against Lots by the Association.

"Association." Esquire II POA, Inc., a Texas nonprofit corporation, and its successors and assigns, organized under the TNCL, and created for the purposes and possessing the rights, powers, authority and obligations set forth in the Governing Documents, whose address for notice purposes is c/o Board of Directors, P.O. Box 796, Mabank, Texas 75147, as may be changed by the Association from time to time.

"Board." The board of directors of the Association.

"Budget." An annual budget prepared by the Association which sets forth the anticipated Common Expenses for the ensuing calendar year.

**"Builder."** A Person who is in the business of constructing residences for third parties and is hired by an Owner to construct a Residence or other related Improvements on such Owner's Lot.

**"Bylaws."** The Amended and Restated Bylaws adopted by the Association and recorded in the Official Public Records of the County, as may be amended from time to time.

**"Charges."** Any damage charges, costs, expenses, interest, fees, late fees, fines, collection costs, attorneys' fees, insurance deductible payments, services and other sums, excluding Common Expenses, arising under the Governing Documents owing to the Association.

**"Claim"** or **"Claims."** Any and all demands, actions, causes of action, proceedings, losses, costs, expenses (including reasonable attorneys' fees applicable thereto), damages or liability of any kind or nature, including, without limitation, for death, personal injury, and loss of use and damage to real or personal property, as applicable.

**"Common Areas."** Portions of the Property, and the Improvements thereon, which are (a) identified as green or open space on the Plat, if any; (b) owned by the Association, if any (other than any Lot acquired by the Association through the foreclosure of an Assessment Lien according to the Declaration); (c) Easement Area(s) naming the Association as grantee, including without limitation the Easements shown on the Plat; and (d) any other area shown on the Plat or otherwise, including Private Road(s), designated or intended as an area for the use and enjoyment of all Owners, including the location of any dumpster serving the Property, but excluding (i) Property Roads for so long as they remain conveyed to the County, and (ii) any other portions of the Property dedicated or conveyed to the County or open to members of the general public.

**"Common Area Damage."** Shall have the meaning assigned to such term in Section 15.15 of this Declaration.

**"Common Area Easement."** An easement as more particularly described in Section 7.2 of this Declaration.

**"Common Expenses."** Expenditures made or liabilities incurred by or on behalf of the Association, together with any and all applicable reserves, including (a) expenses of administration, management, maintenance, care or operation of any Systems serving the entire Property, Common Area or the Association; (b) costs for any social events sponsored by the Association; (c) costs and expenses due and payable in accordance with this Declaration; (d) expenses designated Common Expenses by the Governing Documents or by the Board; and (e) such reasonable reserves as may be established by the Association.

**"County."** Henderson County, Texas.

**"Declaration."** This Amended and Restated Declaration of Restrictive Covenants for Esquire Estates Unit No. 2, amended and supplemented from time to time.

**"Delinquent Assessments Policy."** That certain Delinquent Assessments and Alternative Payment Policy for Esquire II, POA, Inc., recorded in the Official Public Records of the County on October 4, 2021, as Document No. 2021-00019128, which establishes guidelines in accordance with the Act for the payment of delinquent Assessments and other amounts owed to the Association, as may be amended and supplemented from time to time.

"Designee." A Person acting at the request of another Person, including Builders, contractors, subcontractors, employees, agents, representatives and licensees.

"Director." A member of the Board as appointed or elected from time to time in accordance with the Bylaws.

"Dispute." Any Claim, grievance or other dispute arising out of or relating to (a) the failure of any Owner to obtain prior approval for any construction of or changes, modifications or alterations to Improvements on such Owner's Lot according to Article XII of this Declaration, the Architectural Guidelines, the Rules or any other Governing Document; (b) any prohibited use within the Property; (c) the failure of any Owner to comply with requirements set forth in the Governing Documents; (d) the failure of any Owner to maintain its Lot and all Improvements thereon which such Owner is responsible for maintaining, in accordance with the Maintenance Responsibility Chart and other Governing Documents and in compliance with applicable Legal Requirements; (e) the interpretation, application or enforcement of the Governing Documents; (f) any conflict or dispute arising between or among Owners, the Association, the ACC or the Board; (g) the proper party to bear a maintenance cost or expense; (h) any other rights, obligations and duties of any Owner under the Governing Documents; (i) the authority of the Association, the Board or the ACC under any Legal Requirement or under the Governing Documents to (i) require any Owner to take any action or not to take any action involving such Owner's Lot or Improvements thereon; or (ii) alter, subtract from or add to the Common Areas or the Property; or (j) the failure of the Association, in accordance with all Legal Requirements and the Governing Documents to (i) properly conduct elections; (ii) give adequate notice of meetings or actions; (iii) properly conduct meetings; or (iv) allow inspection of the Minute Book or such other books and records of the Association as may be required under the Governing Documents. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to arbitration pursuant to Section 14.2 of this Declaration: (1) any suit by the Association, the Board or the ACC to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's, the Board's or the ACC's ability to enforce the provisions of the Governing Documents; (2) any action permitted under Section 12.11 of this Declaration; (3) any action permitted under Article VI of this Declaration in connection with the enforcement of any Owner's obligation to pay Assessments under this Declaration or collection of any past due or unpaid Assessments; (4) any suit between Owners which does not include the Association, Board or ACC, if such suit asserts a dispute that would constitute a cause of action independent of this Declaration; (5) any disagreement that primarily involves title to any Lot; or (6) any suit in which the applicable statute of limitations would expire within one hundred eighty (180) days of the giving of notice as provided in this Declaration, unless the Persons who are involved in a Dispute agree to toll the statute of limitations for a period of time necessary to comply with the arbitration provisions of this Declaration.

"Drainage Easement." An easement as more particularly described in Section 7.2 of this Declaration.

"Drainage Facilities." Drainage ways, channels, pipes, culverts, paths, patterns and systems, and any other structures, if any, located on any portion of the Property, whether public or private, whether now or at any time in the future existing, necessary for the proper drainage of water and liquid substances, including surface stormwater runoff, within the Property.

"Easement Area." Any portion of the Property burdened by an Easement.

"Easements." Collectively, those easements described in Section 7.1 and Section 7.2 of this Declaration.



"Environmental Laws." Any federal, State, or local law, statute, ordinance or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene or the environmental conditions on, under or about the Property or the Improvements.

"Fine Policy." That certain Policy for Fines, Fees and Charges recorded in the Official Public Records of the County on October 4, 2021, as Document No. 2021-00019129, which establishes guidelines and procedures in accordance with the Act for violations of the Governing Documents and the levy of fines in connection with same, as may be amended and supplemented from time to time.

"Governing Documents." Those documents listed in Section 2.4 of this Declaration, as they may be amended from time to time.

"Governmental Approvals." All permits, licenses, certificates, consents, and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any Governmental Authority.

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, State, County, district, municipal or otherwise) whether now or hereafter in existence.

"Governmental Impositions." All real property and personal property taxes, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution of this Declaration may be assessed, levied or imposed upon the Property or any Lot therein by any Governmental Authority.

"Hazardous Substances." Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law.

"Improvements." Any and all physical structures, facilities, alterations or changes of any type or nature made to or on or constructed or installed on any portion of the Property, Common Areas and Lots, including, without limitation, any man-made improvements, buildings, Residences, parking lots, parking areas, parking structures, roadways, driveways, alleys or alleyways, ramps, loading areas, equipment, utilities, fencing, antennae, walls (including retaining walls), screens, landscaping, hardscape, streetscapes, monument signage for the Property, electrical poles, grading changes, walkways, exterior lighting facilities, Drainage Facilities, sidewalks and curbs (if any), and grates existing or in the future placed on any portion of the Property, including all Systems.

"Indemnified Party." Shall have the meaning assigned to such term in Subsection 15.12(a) of this Declaration.

"Individual Assessments." Assessments established, imposed and levied from time to time by the Association pursuant to Section 6.2 of this Declaration.

"Insurance Trustee." The Association acting in the capacity of a trustee per the provisions of Section 9.4 of this Declaration to negotiate losses under any property insurance policies required to be obtained by the Association, as applicable, in this Declaration.

"Landscape and Signage Easement." An easement as more particularly described in Section 7.2 of this Declaration.

"Legal Requirements." Any Restrictive Covenants and any other matters of record and any and all then-current judicial decisions, statutes (including without limitation the Act and Chapters 202 and 207 of the Texas Property Code, as may be amended), rulings, orders, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to the Property, Lots or any Owner's use and enjoyment of any portion of the Property or any Lot, including Environmental Laws, zoning ordinances, subdivision and building codes, flood disaster laws, and applicable architectural barrier and health laws and regulations.

"Lot." Any plot or tract of land identified as a platted lot on the Plat or upon which a Residence is constructed.

"Maintenance Responsibility Chart." The chart attached to this Declaration as Exhibit C, as may be amended.

"Maintenance Standard." Good repair and attractive and clean condition for the Property necessary to maintain the Lots and Improvements thereon, as applicable, in a condition reasonably suitable for their intended purpose.

"Minute Book." The record-keeping mechanism of the Association that contains certain information and documentation required to be kept by the Association and available for inspection by Owners per the Records Policy.

"Member." The Owner of a Lot in the Property.

"Membership." The rights and obligations associated with being a Member of the Association.

"Mortgagee." Any Person who is the holder, insurer or guarantor of any mortgage or deed of trust securing indebtedness on the Property or on a Lot.

"Occupant." Any Person from time to time entitled to the use and occupancy of any Lot and Improvements thereon pursuant to an ownership right or any lease, sublease, license or other similar agreement.

"Owner." Any Person owning fee title to a Lot but excluding any Person having an interest in a Lot solely as security for an obligation.

"Official Public Records." The records of the office of the county clerk of the County where instruments concerning real property are recorded.

"Past Due Rate." The maximum lawful rate of interest allowed under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum.

"Payment Plan." Shall have the meaning as defined in the Delinquent Assessments Policy.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association and any other legal entity, including any Governmental Authority.

"Plans." The plans and specifications for the construction or alteration of Improvements with respect to a particular Lot, as further described in Article XII, prepared by or on behalf of an Owner and approved by all applicable Governmental Authorities, and which include all applicable items set forth in the Architectural Guidelines and Rules and any other information requested or required by the ACC. Plans will include, without limitation, the nature, kind, shape, height, materials, floor plans and location of new or altered Improvements, as applicable and as may be further described in Article XII of or Exhibit B to this Declaration.

"Plat." That certain Plat of Esquire Estates Unit No. 2 recorded on October 30, 1972, in Volume 8, Page 64, Cabinet C, Slide 209, Plat Records of Henderson County, Texas, as amended.

"Private Road(s)." Any road, street, drive, or driveway existing on and serving the entire Property which has not been dedicated to the County and/or for which the County is not responsible to maintain.

"Property." That certain real property located in the County and more particularly described in Exhibit A attached to this Declaration, together with all and singular the Easements, rights and appurtenances pertaining thereto and any Annexed Property.

"Property Roads." The road(s), streets, drives, driveways and rights-of-way at any time existing on the Property which have been dedicated to the County and/or for which the County has the responsibility to maintain.

"Records Policy." That certain policy Records Retention, Inspection and Production Policy for Esquire II, POA, Inc., recorded in the Official Public Records of the County on October 4, 2021, as Document No. 2021-00019127, which establishes guidelines in accordance with the Act for the retention, inspection, production and copying of Association records, and costs associated therewith, for the Minute Book and certain other books and records of the Association, as amended from time to time.

"Regular Assessment." Assessments established, imposed and levied by the Association pursuant to Section 6.1 of this Declaration.

"Residence." A building or structure located on a Lot used for residential purposes in which any Owner or Occupant resides.

"Restrictive Covenants." Collectively, the Water District Rules, as defined in Section 3.8 of this Declaration; the Utility Easement; and any instruments filed of record in the Official Public Records affecting title to the Property (other than this Declaration and the Governing Documents), as each may be amended and supplemented.

"Rules." Rules and regulations of the Association, as may be adopted by the Board and recorded in the Official Public Records of the County, as may be amended from time to time, which may include, without limitation, the Architectural Guidelines.

"Signage." Any signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window coverings, or other similar types of expression on portions of Property, Improvements thereon or in the interior of the Improvement if the same is visible from the exterior.

"Special Assessments." Assessments established, imposed and levied from time to time by the Association pursuant to Subsection 6.1(d) of this Declaration.

"State." The State of Texas.

"Supplemental Declaration." A written instrument executed by a duly authorized officer of the Association and recorded in the Official Public Records that subjects Annexed Property to this Declaration and supplements the covenants, conditions or restrictions contained in this Declaration as to such Annexed Property, if applicable, as further described in Section 2.4 and Article XI of this Declaration.

"Systems." All fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, transmission towers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers, cisterns, sprinkler devices and other systems used in the production of, or for, heating, cooling and/or transmission of air, water, gas, electricity, communications, wastewater, sewage, audio and video signals, and other utility services including, without limitation, television, telephone and the internet, and conduits, plumbing chases and mechanical shafts on the Property that are designed to serve the Common Areas or one or more Lots.

"Systems and Services Easement." An easement as more particularly described in Subsection 7.2(d) of this Declaration.

"Taking." The taking or threat of taking of all or a portion of the Property or Common Area for any public or quasi-public use, by eminent domain proceedings or otherwise, by a Governmental Authority or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property or Common Area in lieu thereof.

"TBOC." Chapter 22 of the Texas Business Organizations Code, as amended from time to time.

"TNCL." The Texas Nonprofit Corporation Law, including the TBOC, as amended from time to time.

"Utility Easement(s)." The installation and maintenance of utilities easement(s) shown on the Plat and set out in that certain document recorded in Henderson County, Texas, on May 23, 1973, in Volume 705, Page 748, as amended by that certain document recorded in Henderson County, Texas, on March 6, 1998, in Volume 1809, Page 470, as may be further amended.

"Water District." The Texas water district to which the Property is subject, as further described in Section 3.8 of this Declaration.

## **ARTICLE II SUBMISSION**

Section 2.1. **Submission of the Property to this Declaration**. The Property and any other real property described on Exhibit A and covered by this Declaration and the Act shall constitute the Property, subject to the annexation of real property as further described in Article XI of this Declaration. Unless

otherwise specifically set forth herein, all of the Property and any right, title or interest therein shall be owned, held, leased, sold, occupied, used and conveyed to an Owner, subject to the covenants, conditions, restrictions, Restrictive Covenants, Easements, Charges, liens and all provisions of this Declaration and other Governing Documents, and to any other existing dedication, restriction, reservation or easement over, on and across the Property and the Common Areas set forth in a document recorded in the Official Public Records of the County.

Section 2.2. **Owner Acknowledgment.** Each Owner is subject to this Declaration and the Governing Documents and all covenants, conditions and restrictions contained therein. By acceptance of a deed or other instrument establishing title, ownership, or the right of use and occupancy in any portion of the Property, including any Lot or any portion of a Lot, each Owner and Occupant acknowledges that it has been given notice of this Declaration and the other Governing Documents; that use of any portion of the Property and Lot is limited and governed by the provisions of the Governing Documents; that the Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents; that the use, enjoyment and marketability of the Property and the Lots can be affected by this Declaration; and that the Governing Documents may be amended and can change from time to time.

Section 2.3. **Governing Documents.** The Property's Governing Documents consist of the following documents, and in the event of any conflict arising between the provisions of the Governing Documents, the Governing Documents shall control in the following order: (a) the Act; (b) TNCL; (c) Restrictive Covenants; (d) the Plat (if current and accurate in connection with the Property and Lots); (e) this Declaration, as amended by any Supplemental Declaration or amendment; (f) the Bylaws; (g) the Articles; (h) the Rules; and (i) other rules, guidelines, policies and dedicatory instruments adopted by the Board of Directors and recorded in the Official Public Records of the County, including, without limitation, the Delinquent Assessments Policy, Fine Policy and Records Policy, as each of the documents listed may be amended from time to time. Any conflict between the provisions of multiple Supplemental Declarations applying to the same portion of Property or Annexed Property shall be resolved by granting control to the Supplemental Declaration with the latest date of filing in the Official Public Records, which shall control over any prior Supplemental Declarations filed for the same portion of Property. **It is the Association's intention for the Governing Documents to comply with the Act and applicable Legal Requirements at all times.** Unless expressly prohibited by the Act, the Board of Directors, acting in good faith and serving the best interest of the Association, may amend this Declaration without the prior approval of or joinder of any other Person for the limited purpose of bringing this Declaration into compliance with the Act or such Legal Requirements.

Section 2.4. **Supplemental Declarations.** According to Article XI, in limited circumstances, and only after obtaining the requisite vote and approvals described in such article and according to applicable Legal Requirements, the Association may annex certain real property into the Property for a period of ten years from and after the recordation date of this Declaration, and a Supplemental Declaration must be recorded to effectuate any such annexation. Every Supplemental Declaration for the Property recorded in the Official Public Records must include the following: (a) an adequate legal description covering the Annexed Property being made subject to a Supplemental Declaration; (b) a signature page duly executed by the owner(s) of the Annexed Property, as applicable; (c) a signature page executed by the President of the Association, or such other officer of the Association duly authorized to execute such document; (d) a description of any conditions or restrictions, if any, that apply to the Annexed Property other than those set forth in this Declaration; and (e) a reference to this Declaration, stating the date of its recordation and its recording information in the Official Public Records.

### ARTICLE III USES, RESERVATIONS AND RESTRICTIONS

Section 3.1. **Permitted and Prohibited Uses of Lots.** Subject to the terms of this Declaration, the permitted and prohibited uses set forth on Exhibit B to this Declaration, and the Rules, if any, Lots and Improvements thereon shall be used for single-family residential purposes only. No Lots or Improvements thereon may be used, occupied, operated, advertised or marketed for short-term rental, hotel, vacation, corporate or transient purposes, including, without limitation, short-term rental, use or occupancy similar to or the same as offered by Vacation Rentals by Owner (VRBO), Airbnb or similar website companies. No professional, business or commercial activity to which the general public is invited shall be conducted in, on or from any Lot or Improvement thereon, excluding those permitted business activities as may be described in the Rules. Nothing in this Section 3.1 shall prevent an Owner from leasing such Owner's Lot, together with all Improvements thereon, for single-family residential purposes for a lease term of at least 12 consecutive months together with any other lease requirements set forth in the Rules and Legal Requirements.

Section 3.2. **No Obstruction or Storage.** No Owner shall obstruct or interfere with the use by other Owners, the Association or other permitted Persons of the Common Areas or Improvements owned or controlled by the Association, and no Owner may keep or store anything on any part of the Property.

Section 3.3. **Signage Rights.** Lot Owners shall only be allowed to erect Signage in strict accordance with Legal Requirements and according to those provisions as may be established in the Rules.

Section 3.4. **Landscaping Requirements.** All portions of a Lot not improved by Improvements and which are visible from any street on the Property shall be landscaped and maintained by the Owner in an attractive manner and as otherwise set forth in the Architectural Guidelines and Rules. If any Owner fails to maintain and upkeep landscaping and any related irrigation and drainage systems on its Lot in accordance with the applicable Governing Documents, the Association may, but shall not be obligated to, perform such maintenance obligations instead of such Owner according to Section 8.2 of this Declaration, and such Owner shall be responsible for paying all costs and expenses incurred by the Association in its exercise of such rights.

Section 3.5. **Environmental.**

(a) **No Hazardous Substances.** No Owner, Occupant or Designee shall handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous Substances from, on, in, under or in the air above any part of the Property, including into any surface waters or groundwater located on the Property or into sanitary or storm sewer Systems serving the Property.

(b) **Costs and Expenses.** Each Owner and its Designees shall be responsible for and shall pay all costs and expenses related to the disposal, release, cleanup and remediation of any Hazardous Substances caused by such parties in, on, under or above the Property and as required by any Governmental Authority.

Section 3.6. **Right of Board Regarding Rules and Policies.** In furtherance of the purposes of this Declaration and to comply with the Act and any other Legal Requirements, the Board, from time to time, may adopt, amend or repeal Rules concerning and governing the Property, Common Areas, Lots and any portion thereof, including the establishment and enforcement of policies, procedures and penalties for any infraction of the Rules or other Governing Documents.

Section 3.7. **No Lot Subdivision.** Except as provided in this Section 3.7, no Lot shall be further divided or subdivided. No Lot Owner is entitled to combine Lots, subdivide Lots which have been previously

combined pursuant to a recorded amendment to the Plat, or grant Easements or other interests in and to a Lot owned by such Owner without the prior written consent of the Board. Any Owner desiring to combine contiguous Lots owned by such Owner or subdivide Lots which have previously been combined pursuant to a recorded amendment to the Plat shall, after receiving written consent from the Board, cause an amendment to the Plat, which satisfies all applicable Legal Requirements, to be recorded in the Official Public Records to reflect such combination or division of Lots in the Property.

Section 3.8. **Water District.** The Property is located within the Tarrant Regional Water District, a Water Control and Improvement District, a political subdivision of the State of Texas created under the authority of Article XVI, Section 59 of the Texas Constitution and operating under the powers and provisions of Chapter 31 of the Texas Parks and Wildlife Code, Chapter 340 of the General and Special Laws enacted by the 44<sup>th</sup> Legislature of Texas at its Regular Session, now appearing as Section 51.127, et seq., of the Texas Water Code, as amended, and under the powers and provisions of Chapter 49, Chapter 50 and Chapter 51 of the Texas Water Code, as may be amended (the "Water District"). The Water District is granted broad authority over water supply and storage and serves certain purposes which include, but are not limited to (a) to afford protection of the lands, physical properties and improvements of the Water District; (b) to protect the public against indiscreet acts and improper entries upon said properties; (c) to safeguard the quality of the water stored in the reservoirs owned and controlled by the Water District; (d) to regulate the use of lands forming the margins of said waters to preserve the quality of the water stored by the Water District; (e) to prevent waste or unauthorized use of water controlled by the District; (f) to regulate camping, residence, hunting, fishing, swimming, skiing, boating, and all recreational and business privileges when occurring upon the waters stored or impounded by dams owned by the District; and (g) to provide regulations for lands owned or controlled by the District. The Water District has the authority, according to the Texas Water Code, to adopt certain rules and regulations relating to the operation and use of Cedar Creek Lake and to regulate the use of and construction of improvements in and around the easement area owned by the Water District, as may be further described in that certain General Ordinance Regulations for Wetlands and Land under the Jurisdiction of Tarrant County Regional Water District, a Water Control and Improvement District as adopted by the Board of Directors on March 19, 2002, as revised by the Board of Directors on November 15, 2011, as may be further revised (the "Water District Rules"). Installation, construction, removal and use of certain Improvements, and boat docks and piers, are subject to application, permitting and other requirements of the Water District per the Water District Rules. Every Owner is required and responsible for reviewing and complying with, and for ensuring compliance of such Owner's guests, visitors and Occupants with, the Water District Rules. The Association is not required or responsible for providing any copy of the Water District Rules to, or to enforce or ensure compliance therewith by, Owners or any other Persons, and the Association has no duty, power or authority whatsoever to act on behalf of any Owner or other Person in connection with the Water District. The Association may, but is not obligated to, establish additional rules concerning the construction of Improvements subject to Water District application and permitting processes, which rules, if adopted, will be set forth in the Rules or Architectural Guidelines. As of the date of this Declaration, the Water District is not subject to the Notice to Purchaser requirements of Section 49.452 of the Texas Water Code for real estate transactions within its boundaries.

#### ARTICLE IV THE ASSOCIATION

Section 4.1. **General Purposes and Powers of the Association.** The Association is incorporated as a nonprofit corporation under the TNCL. In addition to the powers conferred on the Association under the TNCL, the Association may take all actions authorized by the Governing Documents. Any and all actions taken by the Association according to the Governing Documents are binding on all Owners. The Association shall be governed by the Act, TNCL, Governing Documents and applicable Legal Requirements.

Section 4.2. **Deemed Assent Ratification and Approval.** All Owners and Occupants of the Property shall be deemed to have assented to, ratified and approved this Declaration and its purposes; the other Governing Documents, and the power, authority and management rights of the Association acting through the Board as permitted in and authorized by this Declaration and other Governing Documents.

Section 4.3. **Manager.** The Association may, but is not obligated to, contract with a residential property management company for the day-to-day management and administration of either or both of the Property and the Association as further described in the Bylaws.

Section 4.4. **Election of the Board of the Association.** The Board shall be elected by the Owners pursuant to the provisions of the Bylaws.

Section 4.5. **Rights of the Board.** The Association acts solely through the Board as provided in the Governing Documents or through the ACC pursuant to Article XII hereof. Notwithstanding anything to the contrary in the Articles or the Bylaws, whenever the Governing Documents contain a reference to an action by the Association, such reference means the Association acting through and based on decisions and direction of the Board.

## **ARTICLE V MEMBERSHIP AND VOTING ALLOCATIONS**

Section 5.1. **Membership and Allocation of Votes in the Association.** Each Owner shall automatically be a Member of the Association and must remain a Member for as long as that Person is an Owner. Where there are multiple Owners of a Lot, each such Owner is a Member; provided, however, only one of such Owners is entitled to cast the vote granted according to this Article V, as further described in Section 5.2. Membership is appurtenant to, and cannot be separated from, ownership of a Lot. Any transfer of title to a Lot shall operate automatically to transfer the Membership appurtenant to such Lot to the new Lot Owner. All Owners shall notify the Association in writing of any transfer of ownership of such Owner's Lot, including the name of the new Owner. **Each Member shall have one vote for each Lot such Member owns; provided, however,**

(a) if multiple contiguous Lots are combined into one Lot per an amendment to the Plat, the Owner of the combined Lots, upon recordation of such amendment in the Official Public Records, will have only one vote; and

(b) if an Owner owns multiple contiguous Lots and has constructed a Residence and other Improvements on one or more of such contiguous Lots, then such contiguous Lots will be collectively considered one Lot for voting purposes regardless of whether or not such Owner has formally combined the contiguous Lots through a recorded amendment to the Plat.

Section 5.2. **Proxies of Owners.** Votes allocated to Members according to this Article V may be cast pursuant to a proxy duly executed by an Owner in the form required by the Association pursuant to the Bylaws. If a Lot is owned by more than one Person, any one co-Owner of the Lot may cast the vote of that Lot or register a protest to the casting of the vote of that Lot by the other co-Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section 5.2 except in accordance with the Bylaws.



## ARTICLE VI ASSESSMENTS

Section 6.1. **Reserve Contributions and Regular and Special Assessments of the Association.** The Association shall possess the right, power, authority and obligation to establish a Regular Assessment for the payment of Common Expenses and Special Assessments as provided for in this Article VI of the Declaration.

(a) **Reserve Contribution.** Each new purchasing Owner will pay a one-time reserve contribution (the "Reserve Contribution") to the Association upon the closing of a sale of a Lot in the amount of Fifty and No/100 Dollars (\$50.00), or such other amount as the Board may adopt and establish. The Reserve Contribution will be deposited into the Association's operating account or a separate reserve fund account which may be established by the Association, and such contribution shall not be considered an advance payment of any Assessments and is not refundable. Reserve Contributions may be used by the Association for purposes which include, but are not limited to, payment of operating expenses, community programs or events, or other recurring or nonrecurring costs and expenses of the Association.

(b) **Regular Assessments.** The Association shall establish, by and through the Budget, the amount sufficient in the judgment of the Association to pay all Common Expenses when due. This amount established to pay Common Expenses shall be allocated equally and levied against Lots (the "Regular Assessments"); provided, however, as to multiple contiguous Lots, the Association shall use the same methods used for allocating votes to Owners of contiguous Lots set forth in Section 5.1 of this Declaration as follows:

(i) if multiple contiguous Lots are combined into one Lot per an amendment to the Plat, the Owner of such re-platted and combined Lots, upon recordation of such Plat amendment in the Official Public Records, will pay Regular Assessments for one Lot; and,

(ii) if an Owner owns multiple contiguous Lots and has constructed a Residence and other Improvements on one or more of such contiguous Lots, then such contiguous Lots will be collectively considered one Lot for the purpose of allocating Regular Assessments, regardless of whether or not such Owner has formally combined the contiguous Lots through a recorded amendment to the Plat.

Regular Assessments shall be due and payable annually or on such dates as otherwise determined by the Board, but in no event shall Regular Assessments be paid more frequently than monthly. In the event the Association approves the annexation of Annexed Property according to Article XI, then, from and after the date the Supplemental Declaration is recorded in the Official Public Records, Regular Assessments shall apply to and be allocated and levied against the Lots in such Annexed Property according to this Article VI.

(c) **Budget for Common Expenses.** Prior to the commencement of each calendar year of the Association, the Association shall establish and adopt a Budget for Common Expenses for the next following calendar year, which shall be adopted at an open meeting of the Board according to the Bylaws and the Act, and thereafter notify Owners of such Budget and make the Budget available for review by all Owners. The Budget will be in sufficient detail to inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred in the upcoming year, and each Owner will receive a statement setting forth its amount of Regular Assessments. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Regular Assessments payable according to this Declaration, and the failure of the Association to timely notify and make available for review by Owners any Budget shall not excuse or relieve an Owner from the payment of the Regular Assessments contemplated thereby. The Board shall have

the right to amend any Budget at any time, in which event the portion of the Regular Assessments assessed against each Lot and the corresponding payment obligation of each Owner shall be adjusted accordingly, if applicable. If any Budget for a year, or amendment thereof, may increase Regular Assessments allocated to a Lot and payable by an Owner by more than 30% from the immediately preceding year (the "Increased Budget"), such Increased Budget must be approved by the affirmative vote of at least 50% of the Members entitled to vote at such time. Until the Increased Budget is duly approved by the requisite vote or the Increased Budget is replaced with another Budget duly established and adopted by the Board for the same year, the Budget and the Regular Assessments established for the calendar year preceding the calendar year for which the Increased Budget applies will continue in full force and effect.

(d) Special Assessments by Association. In addition to the Regular Assessments, the Association shall establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Association to pay (i) nonrecurring Common Expenses relating to the maintenance, care, alteration, improvement, repair, replacement, operation and management of the Property and the administration of the Association; (ii) capital expenditures necessary to replace Improvements on or within the Common Areas; (iii) additional recurring Common Expenses if the Regular Assessments collected are insufficient to cover all Common Expenses incurred; and (iv) contractual and other liabilities and expenses of the Association. Special Assessments so established shall be allocated to Lots in the same manner as Regular Assessments and shall be due and payable to the Association in the amounts and per the terms established by the Association for such Special Assessment, which shall be included in a notice to each Owner for the Special Assessment.

Section 6.2. Individual Assessments. In addition to the Regular Assessments and the Special Assessments contemplated in this Article VI, the Association shall possess the right, power and authority to establish or levy Individual Assessments following the provisions of this Declaration against an individual Owner and its Lot for Charges properly borne solely by one or more but fewer than all Owners, including Charges for additional services, damages, fees, interest, collection costs, attorneys' fees or any other amount owed to the Association by an Owner. The Individual Assessments shall be the personal obligation of the Owner against whom the Individual Assessment is assessed and shall constitute a lien against the Lot in the same manner and with the same consequences as Regular Assessments and Special Assessments; provided, however, per Section 209.009 of the Act, no lien comprised solely of fines, attorneys' fees associated with fines, or costs arising under Section 209.005(i) or Section 209.0057(b-4) of the Act shall be foreclosed.

Section 6.3. Obligation to Pay Assessments. Each Owner shall be personally obligated to pay Assessments to the Association in the amounts and on the dates established pursuant to this Declaration. Unpaid Assessments due as of the date of the conveyance or transfer of a Lot shall not constitute a personal or entity obligation, as applicable, of the new Owner (other than the new Owner's pro rata share of any portion thereof as set forth in Section 6.5); however, the former Owner shall continue to have personal or entity liability for such unpaid Assessments. No Owner shall be entitled to exemption from liability for the Owner's obligation to pay Assessments for any reason, including claims of (a) waiver of the use and enjoyment of the Common Areas; (b) an abandonment of the Lot or Improvements thereon; (c) offsets or reductions; and (d) failure by the Association, the Board or any other Person to properly exercise its duties, rights, powers and obligations under any of the Governing Documents. The Delinquent Assessments Policy adopted by the Association sets forth the guidelines for an alternative payment schedule, referred to as the Payment Plan, by which an Owner may be eligible to make partial payments to the Association for delinquent Assessments per the terms of the Delinquent Assessments Policy. Any Assessment not paid on the date which such Assessment is due shall bear interest at the Past Due Rate as further described in the Delinquent Assessments Policy and shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of administering a Payment Plan, and other collection methods, including reasonable attorneys' fees, by suit in a court of competent jurisdiction or in a mediation or arbitration in the County according to the provisions of Article XIV of this

Declaration. It shall be the responsibility of the Association to collect delinquent Assessments, the existence of which shall be made known by written notice to the Owner and, if requested, the Owner's Mortgagee, according to the Delinquent Assessments Policy.

Section 6.4. **Lien to Secure Payment of Assessments.** The Association hereby reserves and assigns to the Association a lien against each Lot to secure payment of all Assessments, which lien is established by this Declaration and shall be, continue and constitute a lien and encumbrance in favor of the Association upon each Lot owned by the Owner of such Lot. Except for the lien described in Section 6.9 of this Declaration, the Assessment lien established in and by this Declaration shall be prior and superior to all other liens and encumbrances *subsequently* created upon Lots regardless of how created, evidenced or perfected, other than liens for Governmental Impositions. So long as the Association satisfies the requirements set forth in the Act and any other applicable Legal Requirement with regard to delinquent Assessments and foreclosure of assessment liens, the assessment liens created in this Declaration may be foreclosed on or enforced by any means available at law or in equity; provided however, foreclosure will be thoughtfully considered by the Board before it is pursued and the Association's foreclosure of a Lot will be considered, in the Board's absolute and sole discretion, a last resort action to take in the collection of delinquent Assessments. The Assessment lien established for each Lot by this Declaration to secure payment of Assessments shall not be enforceable against a purchaser at a foreclosure sale of a lien encumbering a Lot in order to satisfy the indebtedness for a Mortgagee (or against the grantee by deed in lieu of any such foreclosure) for any Assessments which became payable prior to the date of such foreclosure sale (or conveyance in lieu thereof); provided, however, in no event shall a defaulting Owner be relieved from liability incurred for unpaid Assessments owed by such Owner to the Association. *Owners of Lots that have been foreclosed on by the Association have certain rights to redeem their Lots as further described under Section 209.011 of the Act.*

Section 6.5. **Commencement of Obligation to Pay Assessments.** Each Owner shall be obligated to pay Assessments, and such obligation shall commence for Owners on the date the Lot is conveyed to such Owner. If the date on which a Lot is conveyed to an Owner is on a day other than the first day of a month, the new Owner shall be obligated to pay only a pro rata share of the Assessments against the Lot based upon the remaining days in such month.

Section 6.6. **Notice of Default.** If an Owner defaults in the Owner's monetary obligations to the Association, the Association shall notify the Owner per the Delinquent Assessments Policy or Fine Policy, or as otherwise provided in the other Governing Documents, as applicable.

Section 6.7. **Alternative Actions.** Nothing contained in this Declaration prohibits the Association from filing suit to recover a money judgment for unpaid sums owed to the Association that may be secured by the Association's lien.

Section 6.8. **Statement of Expenses and Access to Records.** Upon proper delivery of a written request from an Owner to the Board containing the requisite information as outlined in the Records Policy, the Association shall provide current copies of or make reasonably available for examination the books, records, financial statements and any other requested information maintained by the Association following the Records Policy. The costs associated with the compilation, production and reproduction of information contemplated in this Section 6.8 are outlined in the Records Policy.

Section 6.9. **Subordination of Lien for Assessments.** The Assessment lien established in Section 6.4 of this Declaration shall be subordinate to the lien of any valid mortgage or deed of trust that secures lien indebtedness from an Owner for a Lot that was recorded prior to the date any Assessment becomes delinquent under the provisions of this Declaration or the Delinquent Assessments Policy.

## ARTICLE VII EASEMENTS

Section 7.1. **Plat Easements, Dedications and Restrictive Covenants.** As of the date of this Declaration and in addition to the Easements and restrictions set forth or reserved in this Declaration, the Property is subject to the Restrictive Covenants, the Utility Easement and those dedications, easements, restrictions and reservations shown or cited on the Plat or in separate documents in the Official Public Records, all of which are incorporated herein by reference. Each Owner accepts a deed conveying title to a Lot subject to such Restrictive Covenants, existing dedications, Easements, restrictions and reservations, and any other Easements for Systems and Improvements, or for other purposes over, on and across the Property and the Common Areas that may be established in the future pursuant to the provisions of this Declaration, or as granted by authority reserved in any recorded document, if approved by the Association.

Section 7.2. **Easements.** Each Owner accepts a deed conveying title to a Lot, subject to the Easements granted and reserved, as applicable, in this Section 7.2, which Easements (and all rights and obligations related to such Easements arising on or after the date of any transfer) shall run with the Property.

(a) **Access Easement.** The Association hereby reserves and grants a perpetual, assignable and nonexclusive Access Easement over, on and across each Lot, the Common Areas and other portions of the Property as may reasonably be necessary for its own benefit and for the benefit of each Lot and the Property, as applicable, for (i) the maintenance (including ingress and egress therefrom), repair or replacement of any of the Common Areas or Improvements thereon or accessible therefrom; (ii) the use of, and the ingress and egress to, a Lot, provided no other reasonable means of access exists; (iii) the performance of any obligations under the Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Common Areas and Improvements thereon; (v) the evacuation of all or any part of the Property in the event of an emergency; and (vi) such other reasonable purposes over any portion of the Property as are deemed by the Association to be necessary for the exercise of rights granted to and the performance of the duties and obligations of the Association as described in this Declaration or any other Governing Document.

(b) **Common Area Easement.** The Association hereby reserves and grants a perpetual, assignable and nonexclusive Common Area Easement over, on and across the Common Areas and the Improvements thereon for its own benefit and for the benefit of each Lot (that is an intended beneficiary of such Common Areas) and the Owners for ingress and egress from each Lot and for the use of the Common Areas and Improvements thereon.

(c) **Drainage Easement.** The Association hereby reserves and grants a perpetual, assignable and nonexclusive Drainage Easement over, on and across the Property and any Drainage Facilities for its own benefit and for the benefit of each Lot (that is an intended beneficiary of any Drainage Facilities) and Owners for (i) the use of any Drainage Facilities, and the ingress and egress to a Lot to access Drainage Facilities, provided no other reasonable means of access exists; and (ii) maintenance, repair and replacement of Drainage Facilities and removal of obstructions or other matter adversely affecting the Drainage Facilities (including ingress and egress therefrom). Neither the Association nor its Board, nor the ACC, nor their members, officers, agents or employees shall be liable for any damage done to landscaping, including any shrubbery, trees, flowers or other personal property of an Owner situated on the portion of the Lots covered by the Drainage Easement.

(d) **Systems and Services Easement.** In addition to and to support the Utility Easement referenced in Section 7.1 above, the Association hereby reserves and grants a perpetual, assignable and nonexclusive Systems and Services Easement over, on and across the Property (i) for its own benefit and the benefit of public and private utility companies operating in the County and supplying, or which will supply Systems and services

to the Property for supplying such Systems and services, including for the construction, repair, maintenance and operation of such Systems; and (ii) for its own benefit for the right to grant additional Systems and Services Easements. The Association may record an Easement agreement or Easement relocation agreement in the Official Public Records, specifically locating or relocating any Systems and Services Easement after the recordation of this Declaration, and each Owner, by acceptance of a deed to a Lot, hereby grants the Association an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Systems and Services Easement. Neither the Association nor its Board, or ACC, or their members, officers, agents or employees, shall be liable for any damage done to landscaping, including any shrubbery, trees, flowers or other personal property of an Owner situated on the portion of the Lots covered by Systems and Services Easement.

(e) Easements Strictly Limited. The Easements are for the benefit of the Association, the ACC, Owners and certain Designees only. No Owner is required to allow any Person other than a Designee the benefit of such Easements, and, further, all Owners are obligated to undertake all reasonable efforts to prohibit Persons other than Designees from benefiting from or using such Easements in relation to their respective Lot. If an Owner finds that Persons other than Designees are attempting to benefit from or use such Easements in relation to their respective Lot, and such Owner, despite diligent efforts, is unable to cause such Persons to cease and desist from so doing, then the Owner shall notify the Association in writing of the problem, stating with specificity the problems that have occurred and such Owner's efforts to combat the problems, and the Association shall have the right (but not the obligation) to attempt to cause the offending Persons to cease and desist from benefiting from (or attempting to benefit from) or using (or attempting to use) such Easements.

(f) Certain Exceptions. None of the Easements reserved or granted in this Section 7.2 shall be used in a manner that materially adversely affects the structural integrity of any Improvements. Use and availability of any Improvements, Property, or other facilities or areas covered by the Easements are subject to the Governing Documents.

Section 7.3. Power to Grant Easements. The Association (to the extent permitted by the Act) shall have the power to grant access, utility, drainage, water facility and any other Easements in, on, over or under the Common Areas or other portions of the Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities and services not covered by the Systems and Services Easement, and other uses or services to one or more of the Owners. If an Owner requires an Easement across any portion of the Common Areas from the Association and has obtained prior written approval from the Association for such Easement, the requesting Owner shall be responsible for all costs and expenses incurred by the Association regarding the creation of such Easement and shall promptly reimburse the Association all of such amounts upon receipt of any demand or request therefore made by the Association.

## ARTICLE VIII MAINTENANCE RESPONSIBILITIES

### Section 8.1. Maintenance.

(a) Maintenance of Lots. All maintenance, repairs, and replacements of, in or to any Lot or Improvements thereon, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Owner to the Maintenance Standard and following the Maintenance Responsibility Chart attached to this Declaration as Exhibit C, the Rules, Architectural Guidelines, and any other applicable Governing Document. Every Owner shall be responsible for the prompt performance and payment of costs to repair any damage caused to another Lot resulting from such Owner's maintenance, repair, replacement, or any other kind of work performed on such Owner's Lot.

(b) Maintenance of Common Areas. Except as may be provided in the other Governing Documents to the contrary, Common Areas and Improvements thereon shall be maintained by the Association in accordance with this Declaration and the Maintenance Responsibility Chart, the cost and expense of which shall constitute and be payable as a Common Expense. Nothing in this Declaration shall be deemed or construed as relieving any Owner of liability or responsibility for damage to Common Areas and Improvements thereon caused by the negligence or misconduct of an Owner, Occupant, or Owner Designee.

(c) Maintenance of Easements. Except as expressly provided in Section 7.2 of this Declaration or the Maintenance Responsibility Chart to the contrary, all maintenance, repairs, and replacements of, in or to any Easement Area, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Owner of each Lot on which the Easement Area is located and in accordance with the Maintenance Standard. If the Easement Area is located in a Common Area or other portion of the Property outside of the Lots, then all maintenance, repairs, and replacements of, in or to such Easement Area, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Association and shall be payable as a Common Expense.

Section 8.2. Owner Failure to Maintain. If any Owner fails or neglects to maintain, repair, upkeep or clean any portion of its Lot or Improvements thereon, as required to be maintained by such Owner pursuant to this Article VIII, the Maintenance Responsibility Chart or such other applicable Governing Document, and such failure or neglect continues for an unreasonable time period in light of the surrounding circumstances as may be determined in the sole discretion of the Association on a case-by-case basis, after the Owner's receipt of written notice of such neglect or failure from the Association, as required by the Governing Documents, then the Association may, but shall not be obligated to, enter the Lot and take appropriate steps to perform, or cause to be performed, the Owner-required maintenance obligations. The defaulting Owner shall, upon demand by the Association, reimburse the Association for costs and expenses it incurs in performing such required maintenance and in the exercise of its rights granted under this Section 8.2.

Section 8.3. Disputes. Any Dispute arising among any or all of the Owners or the Association as to the proper Person to bear a maintenance cost or expense shall be resolved per the provisions of Article XIV of this Declaration.

Section 8.4. Mechanic's Liens. No labor or services performed or materials furnished and incorporated in a Lot or the Improvements thereon shall be the basis for the filing of a lien against any Lot not expressly approved in writing by the Owner of such Lot. All contracts for labor, services and/or materials with respect to any of the Lots shall comply with all applicable provisions of the Governing Documents.

## **ARTICLE IX INSURANCE**

Each Owner shall be responsible for obtaining and maintaining, at such Owner's sole cost and expense, insurance policies covering (a) 100% of the replacement cost of all Improvements upon such Owner's Lot, (b) any other insurance required by any Mortgagee or other lender in relation to such Owner's Lot, and (c) all of the Owner's personal property kept, stored or located on a Lot or any other portion of the Property and in any Improvements on a Lot or any other portion of the Property. Nothing in this Declaration shall be deemed or construed as prohibiting or limiting an Owner, at their sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Owner may deem necessary or appropriate. Nothing in this Article IX shall be construed to require the Association to monitor the existence or adequacy of any insurance carried by Owners.

## ARTICLE X CASUALTY AND CONDEMNATION

Section 10.1. **Casualty.** If any Improvements located on any Lot are damaged or destroyed by fire or other casualties, the Owner of such Lot must, within a reasonable period of time, either (a) repair, restore and rebuild such Improvements (and any damage to Improvements not on the Lot caused by such fire or other casualties) per Plans approved by the ACC according to Article XII and as otherwise provided in the Governing Documents; or (b) raze all of the damaged Improvements on the Lot, clear the Lot of all debris resulting from such razing, and seed or sod the Lot with grass.

Section 10.2. **General Condemnation Provisions.** If all or any part of the Common Areas are subject to a Taking, the Association will be the exclusive representative of the Owners. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association is specifically authorized to obtain and pay for assistance from attorneys, appraisers, architects, engineers, expert witnesses and other Persons as the Association, at its discretion, deems necessary or advisable to aid or advise it in matters relating to condemnation proceedings. The cost of any restoration or repair of the Common Areas and Improvements thereon following a partial Taking shall be Common Expense.

## ARTICLE XI OTHER RIGHTS

Section 11.1. **Annexation of Adjacent Residential Community.** The Original Declaration includes content that infers that real property located in a residential subdivision adjacent to the Property called "Rock & Roll" may be or may have been subject to annexation in the Property when the Property was originally established; however, it does not appear as of the date of this Declaration that any of such lots were annexed into the Property. In order to maintain any intent of the Original Declaration in connection with same, the Association reserves the right, subject to the requisite approvals hereinafter described, for a period of no more than 10 consecutive years from and after the recordation date of this Declaration, to annex either all or no less than a majority of the platted lots located in the Rock & Roll residential subdivision after, and only after, the Association (a) obtains the written and signed approval of all or a majority of the lot owners in the Rock & Roll residential subdivision; and (b) obtains the vote of at least a majority of the Lot Owners in the Property in favor of annexing such property, at a duly called meeting at which a Member quorum is present according to the Bylaws. If the foregoing approvals and vote are both obtained, then the Association shall be authorized, without the approval of any other Person, to proceed with the annexation of all or at least a majority of lots in the Rock & Roll residential subdivision pursuant to this Article XI, which includes recording a Supplemental Declaration, which shall be signed by each owner whose lot is subject to annexation, and such other content required and described in Section 2.4 of this Declaration. This Section 11.1 is not intended to create a new right, restriction, or requirement and shall not be construed as creating a new right, restriction, or requirement that the Association annex lots located in Rock & Roll residential subdivision into the Property or that lot owners in Rock & Roll residential subdivision annex their lots into the Property. Upon recordation of the Supplemental Declaration, the Annexed Property will be subject to this Declaration in all respects.

Section 11.2. **Manner of Annexation.** A Supplemental Declaration is effective upon its recording in the Official Public Records or as otherwise stated in such Supplemental Declaration. Upon recordation of the Supplemental Declaration, (i) the covenants and restrictions contained in this Declaration and the Governing Documents shall automatically, and without further action by any Person, apply to Annexed Property in the same manner that such covenants and restrictions apply to all other portions of the Property; and (ii) any lien arising from ownership or construction upon Annexed Property shall affect only such Annexed Property and Improvements located thereon.

Section 11.3. **Zoning**. No Owner may apply for any change in the zoning of any portion of the Property.

## ARTICLE XII ARCHITECTURAL CONTROL

Section 12.1. **Required Approval; "Grandfathering" of Past Approvals**. Plans of an Owner, or an Owner's Builder or other Designee, for the construction of any Improvements on a Lot must first be submitted to and approved in writing by the Architectural Control Committee before the commencement of any work on such Improvements. Plans for alterations changes to the exterior of any Residence or other Improvement on a Lot (after initial installation or construction) that meet any of the following criteria must first be submitted in writing to and approved in writing by the Architectural Control Committee. Plans may also include (a) any addition to the exterior of an Improvement; (b) any addition of an accessory or additional structure to the Lot; (c) demolition or destruction by voluntary action of any Improvement; and (d) any grading, excavation, filling or similar disturbance to the surface of any portion of the Property, including change of grade, change of ground level and change of drainage pattern. Notwithstanding the foregoing, and only if not prohibited by the Act or any applicable Legal Requirement, approvals granted by the Board to an Owner prior to the recordation of this Declaration which approvals were granted in connection with the construction or alteration of Improvements on such Owner's Lot or such other matters that would otherwise be subject to this Article XII, shall not be subject to challenge or invalidation by the Association, the Board, or any Owner after the date this Declaration is recorded in the Official Public Records so long as such past approvals are evidenced by minutes of a past Board or Member meeting or by such other formal documentation produced or issued by the Board kept in the Association records; provided however, these past approvals shall be strictly limited and interpreted in the manner the past Board intended based upon the meeting minutes or other documentation kept by the Association. The Board shall have the right, but not the obligation, to request any Owner to whom a past approval was granted contemplated by this Section 12.1 to take such further action or produce or enter into such additional documentation as may be reasonable or necessary in furtherance of the intent of respective past approvals.

Section 12.2. **Establishment of the Architectural Control Committee**. Except as otherwise provided in this Section 12.2, the ACC shall consist of up to three members, and the Board shall have the right to appoint and remove members of the ACC. Subject to the below included exception, the Board shall not be entitled to serve also as the ACC according to the Act. Members of the ACC appointed by the Board shall serve for the term designated by the Board or until resignation or removal by the Board of the respective committee member. The Board may, at any time and from time to time, change the authorized number of members of the ACC, but at no time shall the number of members of the ACC be less than three or greater than five. A majority of the committee members serving at any given time shall constitute a quorum of the ACC, and a vote by the majority of the ACC members present at any meeting in person where a quorum is present shall be required for ACC actions. Neither the Board nor the ACC, in its review or approval of any matter or Plan, shall be deemed to be giving any opinion, warranty or representation as to compliance with any of the matters outlined in this Subsection 12.2, this Declaration or any other Governing Document.

Notwithstanding the foregoing, and only if not prohibited by the Act or any applicable Legal Requirement, for so long as the total number of Lots in the Property, as calculated for votes and Assessments per Section 5.1 and Subsection 6.1(b) of this Declaration, is 40 or fewer Lots, then the requirements of this Section 12.2 prohibiting the Board from serving as the ACC will be inapplicable. Accordingly, during such times the Board is serving as the ACC, all references to ACC in this Declaration and the other Governing Documents shall mean the Board.



Section 12.3. **Architectural Guidelines.** The Board may adopt new or amend any existing Architectural Guidelines, including those guidelines set forth on Exhibit B to this Declaration and incorporated herein, and any new guidelines or changes to the existing Architectural Guidelines shall not be inconsistent with the provisions of the Governing Documents. Architectural Guidelines may be included in the Rules or as a separate document. In the event conflicts or any inconsistencies exist between the Architectural Guidelines and provisions of other Governing Documents, then the documents shall control in the order that is set forth in Section 2.3 of this Declaration.

Section 12.4. **Reply and Communication.** The ACC will respond to applications made per this Article XII and the Architectural Guidelines within the time periods and in a manner according to the Architectural Guidelines or such other rules established for same. After the ACC has received all of the information and documentation requested or required in connection with an application, the ACC will have 45 days to review and respond. If the ACC fails to communicate a decision to applying Owner by 11:59 p.m. on the last day of such 45-day period, then the application will be deemed approved. All written communications and submittals shall be addressed to the ACC at the address the ACC may designate. Any approvals granted by the ACC shall be granted solely for the benefit of the Owner applicant with respect to the respective application and shall not be construed as approval for any other Person, Owner, Builder, or Occupant planning to perform the same or similar type construction, architectural change, modification or other Improvement to a Lot for which an application is required pursuant to this Declaration or the Architectural Guidelines.

Section 12.5. **Variances.** The ACC may grant variances or adjustments from the Architectural Guidelines or from any conditions and restrictions imposed by this Article XII pursuant to variance criteria established by the ACC and as may be outlined in the Architectural Guidelines.

Section 12.6. **Appeal Rights of Owners.** If any request by an Owner under the provisions of this Article XII or the Architectural Guidelines is disapproved by the ACC, then the applicant shall have the right of appeal to the Board per the Act.

Section 12.7. **No Deemed Waivers.** No action or failure to act by the ACC or by the Board shall constitute a waiver or estoppel concerning any future action by the ACC or the Board with respect to any Improvement to a Lot. Specifically, the approval by the ACC of any Improvement to a Lot shall not be deemed a waiver of any right or an estoppel to withholding approval for any similar Improvement to another Lot or any similar proposals, Plans, specifications or other materials submitted with respect to any other Improvement to another Lot.

Section 12.8. **Limitation on Liability.** The Board (and its Directors, Officers and members) and the ACC and its members shall not be liable for damages to any Owner or Person submitting requests for approval or to any approval granted, or failure to approve or disapprove regarding any matter within the jurisdiction of the ACC or the Board under the Governing Documents. The Board (and its Directors, Officers and members) and the ACC and its members shall not be responsible or liable for structural, engineering or any other defects to Improvements resulting from Plans approved by the ACC or for violations of any building or zoning codes or other land use regulations or Legal Requirements, and any Claim against an Indemnified Party in connection therewith shall be subject to indemnification under and according to the provisions of Section 15.12 of this Declaration.

Section 12.9. **Records.** The ACC shall or shall cause the Association or its Manager to maintain records, electronic or written, of all applications submitted to it and of all actions, including approvals and disapprovals, taken by it with respect thereto following the Records Policy. Such records shall be open and available for inspection by any Owner according to the Records Policy.

Section 12.10. **Enforcement of Article XII of this Declaration.**

(a) **Nonconforming Improvements; Inspection Rights.** Any Improvement to a Lot made in violation of Article XII of this Declaration, approved Plans, Legal Requirements or the Architectural Guidelines shall be deemed to be nonconforming. Should the ACC determine that any Improvement has been made without approval or was not made in substantial compliance with the approved Plans and description and materials described thereunder or any conditions imposed by the ACC therefore, or was not completed with due diligence, the ACC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such actions as may be necessary in the time period specified in the notice to remedy the noncompliance. Upon receipt of any notice which requires removal of a nonconforming Improvement, the Owner shall, at such Owner's own cost and expense, remove such Improvement in accordance with the notice and restore the Lot to substantially the same condition as existed prior to the installation or construction of the nonconforming Improvement. Should the Owner fail to take the actions set forth in the notice of noncompliance within the time frame required in the notice, the Association shall have the right to record a copy of such notice of noncompliance in the Official Public Records. Further, the Association shall have the right, but not the obligation, to enter the Lot, correct or remove the Improvement that constitutes the violation, and restore the Lot to substantially the same condition as the Lot previously existed before the installation or construction of the nonconforming Improvement. All costs, together with interest at the Past Due Rate, incurred by the Association for removal of the nonconforming Improvement and remediation of the Lot may be assessed against the benefited Lot and collected as an Individual Assessment. The provisions of this Subsection 12.10(a) are in addition to all other legal and equitable remedies available to the Association.

(b) **Additional Remedies.** In addition to the enforcement rights of the Association otherwise set forth in this Declaration and Subsection 12.10(a), the Association shall have the right, but not the obligation, to institute, maintain and prosecute proceedings at law or in equity against any Person violating or attempting to violate any of the terms and provisions of this Article XII of the Declaration. In any action instituted or maintained under Article XII of this Declaration, the Association shall be entitled to recover the costs and reasonable attorneys' fees it incurs, as well as any and all other sums awarded by a court. Failure of the Association or the ACC to enforce any covenant, condition or restriction contained in the Governing Documents shall not be deemed a waiver of the Association's or the ACC's right to enforcement of such covenant, condition or restriction at any later time.

Section 12.11. **Obtaining Governmental Approvals.** Prior to the commencement of construction of any Improvements, an Owner, and the Owner's Builder and contractors of any nature and kind, shall obtain all Governmental Approvals required of the Owner under their Plans and to construct, operate and maintain such Improvements in accordance with all applicable Legal Requirements.

**ARTICLE XIII  
PROPERTY ROADS**

The Property Road(s) are maintained and controlled by the County. **The Association and the Board and each of their members, managers, employees and agents shall not be liable to any extent whatsoever to any Person or Owner for any defect in or structural issue of the Property Roads or Improvements thereon or for any failure with respect to the performance of management, operations and other duties by a Governmental Authority obligated to maintain the Property Roads.** Any and all Claims against Indemnified Parties that may arise out of or in connection with Property Roads shall be subject to the indemnification and limitation of liability provisions included in Article XV of this Declaration for all intents and purposes. The Association has the right, but not the obligation, subject to applicable Legal Requirements

and upon the approval of Owners holding at least 50% of the votes in the Association entitled to be cast at a duly called meeting of the Members at which a quorum is present, to accept the conveyance of any Property Road from the County. Unless otherwise stated to the contrary in this Article XIII, Private Road(s) shall be maintained by the Association in accordance with the Maintenance Responsibility Chart. The Association shall have the right, but not the obligation, subject to applicable Legal Requirements, to convey Private Road(s) on the Property to the County or to enter into any agreements with the County under which the County assumes full responsibility for the maintenance of such Private Road(s) in the Property. Unless expressly prohibited by the Act or Legal Requirements, the Board shall have the authority according to the Bylaws, without a vote of the Owners, to effectuate any such conveyance of Private Road(s) to the County or to enter into any such maintenance agreements with the County for Private Road(s). At any time all Private Road(s) on the Property are conveyed to the County or the County possesses full responsibility to maintain them according to an agreement between the County and the Association, the Association will not be obligated to maintain Private Road(s) in the Property.

#### **ARTICLE XIV MATTERS FOR MEDIATION AND ARBITRATION**

Section 14.1. **Mediation.** All Disputes, except those relating to equitable remedies, which are not resolved within fifteen (15) days after same have arisen (unless such greater time is provided elsewhere in the Governing Documents) shall be submitted for or determined by nonbinding mediation as a condition precedent to arbitration. Mediation of any Dispute shall be initiated by any Owner making a written demand therefor to the other Owner or Owners involved in such Dispute and the Association. With respect to such mediation, the parties shall, within ten (10) days after delivery of such written notice to the Association, agree upon a mediator who is (a) a reputable Person who has been actively engaged in and knowledgeable about disputes concerning residential real estate developments for a continuous period of not less than ten (10) years, and (b) in no way affiliated, or has had material business dealings with, any Owner. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth in this Section 14.1 shall be appointed by the American Arbitration Association office in the County. Such mediation shall occur within thirty (30) days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location as determined by the parties. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Dispute is not resolved pursuant to such mediation, the provisions of Section 14.2 of this Declaration shall govern the payment of attorneys' fees and costs and expenses of mediation and arbitration.

Section 14.2. **Final Offer Arbitration.** If the parties reach an impasse at mediation, as determined by the mediator in the mediator's sole and absolute discretion, and are unable to resolve any Dispute, any party to the Dispute may initiate binding arbitration (as the exclusive remedy with respect to a Dispute under this Declaration) by making a written demand therefor to the other parties involved in such Dispute no later than thirty (30) days after the mediator declares that the parties have reached an impasse at mediation. The parties agree to select a single impartial arbitrator from a list taken from the American Arbitration Association within fifteen (15) days of submitting the Dispute to arbitration, and if they cannot agree on an arbitrator, each party shall select an individual, and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as the arbitrator with respect to the Dispute. The issues in dispute shall be submitted as "baseball" or final offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator, and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current rules applicable to such arbitration promulgated by the American Arbitration Association shall apply. The decision of the arbitrator shall be rendered no later than ten (10) days from the initiation of the arbitration

procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under Article XIV of this Declaration) of the party whose position is selected or awarded for the arbitration of the Dispute under Article XIV.

Section 14.3. **General.** With respect to any Dispute, it is agreed that the dispute resolution provisions of Article XIV of this Declaration shall be the sole remedy of the parties involved in such Dispute. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate and other agreements to arbitrate with an additional Person duly consented to by the parties shall be specifically enforceable under prevailing arbitration law in any court having jurisdiction thereof. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, Claim, controversy, or matter that does not constitute a Dispute, as applicable. The foregoing agreement to arbitrate any Dispute shall not constitute any agreement or consent to arbitration with any Person not named or described in this Declaration, provided that any arbitration proceeding initiated under the terms of Section 14.2 of this Declaration may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the parties involved in the Dispute, and such Mortgagees and non-appealable judgment thereon may be entered by any court having jurisdiction.

## ARTICLE XV GENERAL PROVISIONS

Section 15.1. **Remedies Cumulative.** Each remedy provided under the Governing Documents is cumulative and nonexclusive.

Section 15.2. **Severability.** Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or any other provision in the Governing Documents or the application thereof to any Person or circumstances is held invalid, unenforceable and not in compliance with the Legal Requirements, such invalidity, unenforceability or noncompliance shall not affect other provisions in or applications of this Declaration and the Governing Documents.

Section 15.3. **Term of Declaration.** The covenants and restrictions of this Declaration shall run with the land and bind the Property in perpetuity unless terminated in accordance with Section 15.4.

Section 15.4. **Amendment of Declaration by Owners.** This Declaration may be amended, added to or changed from time to time upon the vote of Owners holding at least fifty-one percent (51%) of the votes in the Association entitled to be cast at a duly called meeting of the Members at which a quorum is present. This Declaration may be repealed or terminated upon the vote of Owners holding at least 67% of the votes in the Association entitled to be cast at a duly called meeting of the Members at which a quorum is present. Any such amendment shall be effective upon the recording thereof in the Official Public Records, which shall contain a certification that the amendment has been approved by the requisite number of Owners according to this Section 15.4.

Section 15.5. **No Public Dedication.** Nothing in this Declaration shall be deemed to be a gift or dedication of any portion of the Property, or of any Lot to the general public or for any public use or purpose whatsoever, it being the intent that this Declaration is strictly limited to and for the purposes expressed in this Declaration for the maintenance and operation of private property solely for the benefit of the Owners, except

that certain Easements, Property Roads, facilities, utilities and Improvements of the Property which may be dedicated to a Governmental Authority for public use by Plat or by separate documents.

Section 15.6. **Notices.** All notices or other communications required or permitted to be given according to this Declaration shall be in writing and shall be considered properly given if (a) mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested to the addressee; (b) delivered in person to the addressee; or (c) delivered by an independent third-party commercial mail delivery service for same-day or next-day delivery which provides evidence of receipt of such delivery to the addressee. Notice mailed shall be effective upon its deposit with the United States Postal Service; notice sent by a commercial mail delivery service shall be effective upon delivery to such commercial mail delivery service; and notice given by personal delivery shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Association shall be as set forth below, and the address of each Owner shall be the address of the Lot unless an alternate mailing address is provided by an Owner to the Association according to any owner information registration process established by the Association. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' prior written notice to the Association in the manner set forth herein:

Association: Esquire II POA, Inc.  
Attn: Board of Directors  
P.O. Box 796  
Mabank, Texas 75147

Section 15.7. **Interpretation.** The Board shall have the right, power and authority to determine all questions arising under or in connection with the Governing Documents and to reasonably construe and interpret its provisions in accordance with the laws of the State and the laws of the United States applicable to transactions in the State. Any such determination, construction or interpretation made by the Board shall be binding on the Owners. In all cases, the provisions set forth or provided for in the Governing Documents shall be construed together and given that interpretation or construction which, in the reasonable opinion of the Board, shall best effect the general plan of development according to the laws of the State and the laws of the United States applicable to the Property and Association. The provisions of the Governing Documents shall be liberally interpreted and, if necessary, shall be so extended or enlarged by implication as to make them fully effective. All uses of the word "including" shall be deemed to be followed by the words "without limitation." If the due date of any response, notice, hearing, payment or required action arising under this Declaration or the other Governing Documents falls on a United States bank holiday or a weekend day, then such response, notice, hearing, payment or required action will be due the next following business day.

Section 15.8. **No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association in connection with any portion of the Property, its physical condition, the Legal Requirements, fitness for intended use, or in connection with the development, sale, operation, maintenance, cost of maintenance, taxes or regulation of any portion of the Property.

Section 15.9. **Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 15.10. **Captions.** All captions and titles used in this Declaration are intended solely for the convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article of this Declaration.

Section 15.11. **Governing Law; Venue.** This Declaration shall be construed and governed under the laws of the State. The venue for any lawsuit arising out of the Governing Documents, whether directly or indirectly, shall be in the County.

Section 15.12. **INDEMNIFICATION.**

(a) **GENERAL.** EACH OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE ASSOCIATION, THE ACC, THE BOARD AND EACH OF THEIR RESPECTIVE MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (EACH AN "**INDEMNIFIED PARTY**") FROM AND AGAINST ANY AND ALL CLAIMS, AS DEFINED IN **SECTION 1.1** OF THE DECLARATION, THAT ARISE OUT OF (DIRECTLY OR INDIRECTLY), ARE THE RESULT OF, OR ARE CAUSED BY (i) SUCH OWNER'S (OR THE OCCUPANT OF SUCH OWNER'S LOT OR IMPROVEMENTS THEREON) NONCOMPLIANCE WITH ANY OF THE PROVISIONS OF THE GOVERNING DOCUMENTS OR LEGAL REQUIREMENTS; (ii) ANY ACT OR OMISSION OF SUCH OWNER (OR THE OCCUPANT OF SUCH OWNER'S LOT OR IMPROVEMENTS THEREON), (iii) THE PROPERTY ROADS AND ANY OTHER PORTION OF THE PROPERTY WHICH IS MAINTAINED, REPAIRED OR OPERATED BY A GOVERNMENTAL AUTHORITY, CONVEYED OR DEDICATED TO THE COUNTY, AND/OR OPEN TO MEMBERS OF THE GENERAL PUBLIC.

(b) **PLAN REVIEW.** NO OWNER, OR ANY BUILDER OR DESIGNEE OF AN OWNER, SUBMITTING PLANS TO AN INDEMNIFIED PARTY PURSUANT TO ARTICLE XII OR ANY GOVERNING DOCUMENT, BY DISSEMINATION OF THE SAME, AND NO OWNER, BY ACQUIRING TITLE TO A LOT, SHALL MAKE ANY CLAIMS AGAINST ANY INDEMNIFIED PARTY RELATING TO OR ARISING OUT OF ANY INDEMNIFIED PARTY'S REVIEW OR APPROVAL OF SUCH SUBMITTED PLANS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO INDEMNIFIED PARTY REVIEWING PLANS SHALL BE RESPONSIBLE FOR OR SHALL HAVE OBLIGATIONS TO COMMENT ON OR ASSURE COMPLIANCE OF SUCH PLANS FOR STRUCTURAL INTEGRITY AND SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODE REQUIREMENTS OR INDUSTRY STANDARDS, OR COMPLIANCE WITH ANY LEGAL REQUIREMENTS OR THE GOVERNING DOCUMENTS, INCLUDING THE ARCHITECTURAL GUIDELINES, THIS DECLARATION OR THE RULES. FURTHER, EACH OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD EACH INDEMNIFIED PARTY HARMLESS FROM ANY APPROVAL GRANTED FOR (i) PLANS OF AN OWNER, OR ANY BUILDER OR DESIGNEE OF AN OWNER, SUBMITTED UNDER THE GOVERNING DOCUMENTS; (ii) ITEMS OR MATTERS ARISING OUT OF OR IN CONNECTION WITH APPROVED PLANS; OR (iii) THE CONSTRUCTION OF IMPROVEMENTS ON SUCH OWNER'S LOT.

Section 15.13. **Limitation of Liability.** Neither the Association, the ACC, the Board or the Manager, nor any of their respective members, managers, partners, officers, directors, employees, agents or representatives, shall be, individually or in combination, liable for Claims of (a) any Owner or any other Person submitting Plans, proposed uses or variance(s) for approval, by reason of mistake in judgment, negligence, gross negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Plans, proposed use or variance submitted for approval; (b) an Owner, in connection with any design, engineering or construction defect associated

with any Improvement constructed on the Property, including, without limitation, Property Roads; (c) an Owner, in connection with the breach or violation of any provision of the Governing Documents by an Owner, including the Restrictive Covenants and Legal Requirements covering the use of such Owner's Lot; (d) an Owner, in connection with (i) Property Roads, or any portion of the Property which may be open to members of the general public, and any injury, loss, theft or damage to any Person, Owner, Lot or property which may arise out of the presence upon the Property of or use of any such facilities on the Property by one or more members of the general public; (ii) injury or damage to any Person or property caused by the elements or by such Owner or any other Person, or resulting from any utility, rain, snow, ice, water or lake overflow which may leak or flow from or over any portion of the Common Areas or from any pipe, drain, Drainage Facility, conduit, appliance or equipment which the Association is responsible to maintain hereunder; (iii) loss by damage, theft or otherwise of any property that may be stored in or upon any of the Common Areas; or (iv) damage or injury caused in whole or in part by the failure of the Association or any officer, director, employee, manager or agent of the Association to discharge its or their responsibilities under this Section 15.13 of this Declaration (collectively, "Common Area Damage"); or (e) breach of representation or warranty, express or implied, by an Owner or any other Person in connection with any portion of the Property, its physical condition, the Legal Requirements and its fitness for intended use, or in connection with the development, sale, operation, maintenance, taxes or regulation thereof ("Breach of Representation or Warranty"), unless and except specifically set forth in writing and executed by the Person against whom the Claim is asserted. No Designee of the Association, the ACC or the Board shall be liable to any Owner or any of its Designees for any Claims, except as otherwise expressly set forth in the Governing Documents, and such Designee shall be indemnified in accordance with the provisions of the Governing Documents.

EACH OWNER, BY ACCEPTANCE OF A DEED TO SUCH OWNER'S LOT, RELEASES AND FOREVER DISCHARGES THE ASSOCIATION, THE BOARD AND THE ACC, AND EACH OF THEIR RESPECTIVE AFFILIATES, MEMBERS, MANAGERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS, FROM ALL CLAIMS IN CONNECTION WITH OR ARISING OUT OF (WHETHER DIRECTLY OR INDIRECTLY) (A) ANY DESIGN, ENGINEERING OR CONSTRUCTION DEFECT ASSOCIATED WITH ANY IMPROVEMENT CONSTRUCTED ON THE PROPERTY, INCLUDING PROPERTY ROADS; (B) THE BREACH OF ANY PROVISION OF THE GOVERNING DOCUMENTS BY AN OWNER, INCLUDING BREACHES OF THE RESTRICTIVE COVENANTS AND THE USE RESTRICTIONS APPLICABLE TO SUCH OWNER'S LOT; (C) PERFORMANCE OF CONSTRUCTION, REPAIRS, MAINTENANCE, OPERATIONS OR ANY OTHER TYPE OF WORK OR ACTIVITY ON OR TO ANY PROPERTY ROADS, OR ANY OTHER PORTION OF THE PROPERTY AND IMPROVEMENTS THEREON DEDICATED TO OR FOR WHICH A GOVERNMENTAL AUTHORITY HAS MAINTENANCE, REPAIR OR OPERATION OBLIGATIONS, OR WHICH ARE OPEN TO MEMBERS OF THE PUBLIC; (D) THE PRESENCE OF ANY MEMBER OF THE GENERAL PUBLIC OR GOVERNMENTAL AUTHORITY EMPLOYEE, AGENT OR REPRESENTATIVE ON THE PROPERTY IN CONNECTION WITH PROPERTY ROADS, OR ANY OTHER PORTION OF THE PROPERTY DEDICATED TO THE COUNTY OR WHICH MAY BE OPEN TO OR USED BY MEMBERS OF THE GENERAL PUBLIC; (D) ANY BREACH OF REPRESENTATION OR WARRANTY; AND/OR (E) COMMON AREA DAMAGE.

Section 15.14. Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to the Common Areas or Improvements thereon or for any expense or liability incurred by the Association that may be sustained by reason of any act or omission of such Owner or its Occupants or its Builders or Designees, and for any violation of the Governing Documents by such Owner or its Occupants or its Builders or Designees. The Association shall have the power to levy and collect Charges and Individual

Assessments against an Owner to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Governing Documents, including interest and reasonable attorneys' fees, and for any increase in insurance premiums directly attributable to any such damage or violation.

Section 15.15. **Reimbursement of Expenses.** Except as otherwise expressly stated in this Declaration or the other Governing Documents, whenever a sum is due and payable by an Owner to the Association or ACC, such sum shall be paid within 30 days of an Owner's receipt of notice of such payment. If an Owner fails to make such payment within such 30-day time period, such outstanding amount shall accrue interest at the Past Due Rate. Additionally, such outstanding payment is subject to the rights of the Association contained in Section 6.4 of this Declaration.

Section 15.16. **Exculpation.** It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against the Association or any of its Members, managers, directors, officers, agents or attorneys, or any of its or their heirs, executors, legal representatives, successors or assigns (collectively, the "Association Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Association Related Parties.

*[Remainder of Page Intentionally Left Blank – Signature Page to Follow.]*



IN WITNESS WHEREOF, the undersigned Officer and Director of the Association has duly executed this Declaration on the day and year first above written, and this Declaration will be effective upon its recordation in the Official Public Records of the County.

**ASSOCIATION:**

ESQUIRE II, POA, INC.,  
a Texas nonprofit corporation

By: \_\_\_\_\_  
Marc Marrocco, President

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2024, by Marc Marrocco, the President of Esquire II, POA, Inc., a Texas nonprofit corporation, on behalf of said corporation.

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

List of Exhibits:

- Exhibit A – Legal Description of the Property
- Exhibit B – Permitted and Prohibited Uses and Architectural Guidelines
- Exhibit C – Maintenance Responsibility Chart

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE PROPERTY**

Lots 14 through 95 as more particularly described on that certain Plat of Esquire Estates Unit No. 2 recorded on October 30, 1972 in Volume 8, Page 64 in Cabinet C, Slide 209, Plat Records of Henderson County, Texas, as amended by that certain Replat of Lots 41, 42, 43, 44 and 45 to Lot 41-R, Lot 42-R, Lot 43-R, and Lot 44-R of Esquire Estates Unit No. 2 recorded on August 10, 2006 in Cabinet E, Slide 330, Plat Records of Henderson County, Texas, as amended by that certain Replat of Lot 49 and the Southern part of Lot 48 to Lot 49-R of Esquire Estates Unit No. 2 recorded on June 26, 2007 in Cabinet E, Slide 379, Plat Records of Henderson County, Texas, as amended by that certain Replat of Lots 85, 86, 87, 88, 89, 90 and a portion of Esquire Estates Drive to Lots 89R, 90R1 and 90R2 of Esquire Estates Unit No. 2 recorded on September 18, 2018 as Document No. 2018-00013342, Cabinet G, Slide 078, Plat Records of Henderson County, Texas, may be further amended.

**EXHIBIT B**  
**PERMITTED AND PROHIBITED USES ON LOTS**  
**AND**  
**ARCHITECTURAL GUIDELINES**

Capitalized terms used in this Exhibit B to the Declaration which are not defined shall have the meaning given to such terms in Section 1.1 of the Declaration.

**A. Permitted and Prohibited Uses:**

1. No Lots or Improvements thereon may be used, operated, advertised or marketed for short-term rental use as more particularly described in Section 3.1 of the Declaration.
2. No Lot shall be used or maintained as a dumping ground for garbage or other refuse. Trash, garbage or other waste shall not be kept except in sanitary containers.
3. Incinerators or other equipment allowed on Lots for the storage or disposal of such waste shall be kept in a clean and sanitary condition.
4. No noxious or offensive trade or activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Property.
5. No portion of any Lot may be used for the placement of a permanent or temporary outdoor toilet; provided, however, the Board may approve the temporary placement of an outdoor toilet on a Lot in connection with the construction of Improvements on a Lot for which plans have been submitted for approval by the Board per Article XII of the Declaration. In the event the Board grants any such approval for the temporary placement of an outdoor toilet on a Lot, the Owner of such Lot must (a) maintain or cause the temporary facility to be maintained in a manner to ensure it does not create nuisance odor; and (b) cause the prompt removal of such outdoor toilet on the earlier to occur of (i) the expiration of the time frame allowed by the Board in its approval for the placement of the toilet on the Lot or (ii) completion of construction activities on the Lot. During the performance of construction activities on Lots, Owners shall ensure such Lots and construction materials thereon will be maintained in a clean and tidy manner, and no trash will be strewn about or piled openly on the Lot.
6. Only domesticated household pets for noncommercial use shall be allowed on Lots and other portions of the Property, and such pets must be leashed at all times when not in fenced areas on a Lot or when present on any other portion of the Property. "Dangerous dogs" which are reported to the County or other Governmental Authority for attacks or dangerous behavior, or dogs that are of, or partially of, an inherently dangerous breed are prohibited.
7. Lots or any portion thereof shall not be used for major automobile or motorcycle maintenance such as engine, transmission, differential or brake overhaul, which requires dismounting. Routine maintenance to personal automobiles or motorcycles may be conducted by an Owner on a Lot so long as such maintenance does not exceed thirty (30) days for any such repair. Inoperative motor vehicles are prohibited and shall be removed from the Property within thirty (30) days of becoming

inoperable or during the time period required by the Association pursuant to a notice delivered to the Owner concerning same, as may be further described in the Declaration and Rules.

**B. Architectural Guidelines:**

1. No more than one single-family Residence, not to exceed two stories, shall be erected, placed or permitted to remain on any Lot.
2. No structure of a temporary character, trailer, bus, tent, shack, garage not attached to the Residence, barn or other outbuilding shall be used as a Residence, either temporarily or permanently.
3. Mobile homes and manufactured homes are prohibited on any Lot except for the mobile home(s) and manufactured home(s) permitted for certain Lots before January 1, 2023, which remain on such Lots on the date the Declaration is recorded in the Official Public Records; provided however, no additional mobile homes or manufactured homes are permitted on such Lots at any time, and when existing mobile home(s) or manufactured home(s) are removed from these Lots, no replacement mobile or manufactured homes are permitted.
4. Each and every Residence must be connected to water and sewer lines.
5. No Residence shall be located on any Lot nearer than 25 feet to the front lot line or nearer than five feet to the side or back lot line.
6. Improvements shall be neat in appearance and subject to the Maintenance Standard, and maintenance, repair, and replacement of any such Improvements shall be subject to Article XIII of the Declaration and the Maintenance Responsibility Chart.
7. Exterior wood portions of Residences and other Improvements on Lots will be periodically painted or stained by the Owners of such Residences and Lots, as applicable, to comply with the Maintenance Standard and according to the Maintenance Responsibility Chart. New construction Residences must be completed within 18 months from the date such construction commences.
8. Except for chain link fencing existing on a Lot prior to the recordation of the Amended and Restated Declaration of Restrictive Covenants for Esquire Estates Unit No. 2 to which these Architectural Guidelines are attached ("Existing Chain Link Fencing"), chain link fencing, *including replacement* of Existing Chain Link Fencing, is strictly prohibited on all portions of Lots.

Metal picket panel fencing of quality construction with a maximum height of four feet is permitted on Lots.

9. The Association and ACC shall not prohibit the installation, maintenance or use of antennas, including dish antennas, used to receive video programming or fixed wireless services, which include cable and satellite services, subject to the Over-the-Air Reception Device Rule ("OTARD") adopted by the Federal Communications Commission, as may be amended,. An Owner is permitted to install and maintain OTARD permitted antennas within those areas of such Owner's Lot that are in Owner's exclusive use and control (which exclude any Easement Areas); provided, however, that no such antenna or related structures shall be erected on or fastened to any Improvement other than a Residence, and antenna and related structures will be in a location which minimizes visual intrusion from any adjacent Lot or Property Roads or Private Road(s).

## EXHIBIT C

### MAINTENANCE RESPONSIBILITY CHART

Capitalized terms used in this Exhibit C to the Declaration which are not defined shall have the meaning given to such terms in Section 1.1 of the Declaration.

PORTION OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Common Areas and Improvements thereon, including Private Road(s) (and lighting facilities, if any, for same) but <u>excluding</u> Property Roads.	All aspects of the Common Areas and Improvements thereon unless expressly provided otherwise in <u>Article VIII</u> of the Declaration.	None.
Lightbulbs for Property Road lighting.	All aspects.	None.
Fencing on Lots.	None.	All aspects.
Entrance monument(s), facilities and gates, if any, serving the entire Property.	All aspects.	None.
Landscaping (planting, replacement, maintenance, irrigation and all other aspects of landscaping) on Lots.	None.	All aspects.
Trees and Shrubs (trimming, removal, replacements) on Lots.	None.	All aspects.
Retaining Walls on Lots.	None.	All aspects.
Driveways and walkways on Lots.	None.	All aspects.
Residences.	None.	All aspects.
Improvements on Lots.	None.	All aspects.
Improvements <u>subject to</u> Water District rules according to <u>Section 3.8</u> of the Declaration (including, without limitation, piers and boat docks).	None.	All aspects.
Drainage Facilities on Lots.	None.	All aspects.
Easements on Lots.	None.	All aspects.
Easements on the Property located outside of the Lots.	All aspects.	None.
Systems exclusively serving a Lot.	None.	All aspects.

**RECORDING INFORMATION PAGE**

TO

AMENDED AND RESTATED DECLARATION  
OF  
RESTRICTIVE COVENANTS  
FOR  
ESQUIRE ESTATES UNIT NO. 2