

# **Documents For Vineyard Creek Estates Owners Association**

# **Articles of Incorporation**



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Vineyard Creek Estates Owners Association  
File Number: 802100668

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 11/12/2014

Effective: 11/12/2014



*NANDITA BERRY*

Nandita Berry  
Secretary of State



## Office of the Secretary of State

November 14, 2014

Sharon Reuler, P.C.  
5400 LBJ Frwy., Suite 1200  
Dallas, TX 75240 USA

RE: Vineyard Creek Estates Owners Association  
File Number: 802100668

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It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created nonprofit corporation.

Nonprofit corporations do not automatically qualify for an exemption from federal and state taxes. Shortly, the Comptroller of Public Accounts will be contacting the corporation at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the corporation. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at <http://window.state.tx.us/taxinfo/exempt/index.html>. Information on exemption from federal taxes is available from the Internal Revenue Service web site at [www.irs.gov](http://www.irs.gov).

Nonprofit corporations do not file annual reports with the Secretary of State, but do file a report not more often than once every four years as requested by the Secretary. It is important for the corporation to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a report when requested may result in the involuntary termination of the corporation. Additionally, a nonprofit corporation will file documents with the Secretary of State if the corporation needs to amend one of the provisions in its certificate of formation. If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555  
Enclosure



NOV 12 2014

Corporations Section

ARTICLES  
OF  
VINEYARD CREEK ESTATES OWNERS ASSOCIATION

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> TO BE FILED WITH TEXAS SECRETARY OF STATE AS A CERTIFICATE OF FORMATION FOR DOMESTIC NONPROFIT CORP.  
> TO BE FILED WITH TARRANT COUNTY CLERK AS A "DEDICATORY INSTRUMENT" PER §202.006 PROP. CODE

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**REAL PROPERTY**

Vineyard Creek Estates is a residential development and an addition to the City of Grapevine, Texas, according to the plat thereof recorded on August 12, 2014, as Document No. D214174403, Plat Records, Tarrant County, Texas. *(The property description is provided to enable recording in the Real Property Records of Tarrant County, Texas.)*

**DECLARATION**

These Articles pertain to all **Real Property** that is made subject to the Declaration of Covenants, Conditions & Restrictions for Vineyard Creek Estates, recorded on November 5, 2014, as Document No. D214242924, Real Property Records, Tarrant County, Texas, as it may be amended, supplemented, and restated from time to time (the "**Declaration**").

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**ARTICLE 1. NAME & TYPE.** The name of this domestic nonprofit entity is **Vineyard Creek Estates Owners Association** (hereafter, the "**Association**"). This entity is the mandatory nonprofit property owners association created by the publicly recorded Declaration to govern the above-referenced Real Property. The filing of these Articles with the Secretary of State as a certificate of formation creates nonprofit corporation status for the Association.

**ARTICLE 2. PRINCIPAL OFFICE ADDRESS OF ENTITY.** See Article 20.

**ARTICLE 3. REGISTERED AGENT & ADDRESS.** See Article 21.

**ARTICLE 4. MANAGEMENT BY BOARD.** The management and affairs of the Association are vested in the board of directors, except for those matters expressly reserved to others in the Governing Documents. The Declaration or Bylaws may determine the number and qualification of directors; the term of office of directors; the methods of electing, removing, and replacing directors; and the methods of holding a board meeting and obtaining consents. Directors may not vote by proxy at meetings of the board. See Article 22 for the names and addresses of the initial directors and initial officers.

**ARTICLE 5. MEMBERSHIP.** The Association is a nonstock membership organization. The Declaration or Bylaws will determine the number and qualifications of members of the Association; any classes of membership; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

**ARTICLE 6. PURPOSES.** The general purposes for which the Association is formed are (1) to exercise the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with the Governing Documents and applicable State law, as each may be amended from time to time, and (2) for any lawful purpose not expressly prohibited under Chapters 2 or 22 of the Texas Business Organizations Code (the "**TBOC**"), including any purpose described by Section 2.002 of the TBOC.

**ARTICLE 7. MANNER OF DISTRIBUTION.** If the Association is a tax exempt organization under Internal Revenue Code 501(c) at the time of its dissolution, the Association will distribute its assets according to the applicable requirements of the Internal Revenue Code, which may be codified in Texas as Section 22.304 of the TBOC. If the



Association is not a tax exempt organization, the Association is authorized on its winding up to distribute its assets in a manner other than as provided by Section 22.304 of the TBOC, as follows. The assets of the Association will belong to the members of the Association at the time of winding up and will be distributed, liquidated, or conveyed in accordance with the terms of a termination agreement approved by owners to whom 80 percent or more of the votes in the Association are allocated at the time of winding up.

**ARTICLE 8. DURATION.** The duration of the Association is perpetual.

**ARTICLE 9. POWERS.** In furtherance of its purposes, the Association has the following powers which, unless indicated otherwise by the Governing Documents or applicable State law, may be exercised by the board of directors: (1) all rights and powers conferred on nonprofit entities by applicable State law in effect from time to time; (2) all rights and powers conferred on property owners associations by applicable State law, in effect from time to time; and (3) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in the Governing Documents or applicable State law.

**ARTICLE 10. MEETING LOCATION.** Unless the Declaration or Bylaws provides otherwise, meetings of members of the Association will be held at a suitable place convenient to the members, as determined by the board.

**ARTICLE 11. LIMITATIONS ON LIABILITY.** A director of the Association is not liable to the Association or its members for monetary damages for acts or omissions that occur in the person's capacity as a director, except to the extent a person is found liable for (1) a breach of the director's duty of loyalty to the Association or its members; (2) an act or omission not in good faith that constitutes a breach of duty of the director to the Association; (3) an act or omission that involves intentional misconduct or a knowing violation of the law; (4) a transaction from which the director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office; or (5) an act or omission for which the liability of a director is expressly provided by an applicable statute. If the director is a member of the Association, this limitation on liability does not eliminate or modify that person's pro rata share of the Association's liability as a member of the Association.

**ARTICLE 12. INDEMNIFICATION.** As provided by the Bylaws, the Association will indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director, officer, committee chair, or committee member of the Association. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

**ARTICLE 13. IMMUNITY FOR VOLUNTEERS.** To preserve the protections for Association volunteers afforded by the Charitable Immunity and Liability Act of 1987 (Chapter 84, Texas Civil Practice & Remedies Code), the Association will operate in a manner that preserves the Association's status as a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986, as amended, or which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(4) of the code.

**ARTICLE 14. AMENDMENT OF ARTICLES.** These Articles may be amended or restated subject to the following:

**Section 14.1. General Provisions.** (1) An amendment may not conflict with the Declaration, the Bylaws, or applicable State law. (2) An amendment may not impair or dilute a right granted to a person by the Declaration, without that person's written consent. (3) If the Association is incorporated by the State of Texas at the time of amendment, an amendment must be in accordance with applicable provisions of the TBOC.

**Section 14.2. Amendment by Declarant.** During the Declarant Control Period, Declarant may unilaterally amend or restate these Articles for any purpose, without a vote of the board or of the owners.

**Section 14.3. Amendment by Board.** During the Declarant Control Period, the board of directors may unilaterally amend or restate these Articles for any purpose, without a vote of the owners, provided the amendment is approved in writing by Declarant. After the Declarant Control Period, the board of directors may unilaterally amend or restate these Articles, without a vote of the owners, for the following limited purposes: (1) to delete the names and addresses of the initial directors, (2) to delete the name and address of the initial registered agent or office, provided a statement of change is on file with the Secretary of State, (3) to change the name of the Association with the Secretary of State by adding, deleting, or changing a geographical attribute to the name, (4)



to qualify the Association or to maintain its eligibility for any status that is in the best interests of the Association, such as a tax exemption, and (5) to conform these Articles to changes in public law.

**Section 14.4. Amendment by Members.** For all other purposes, an amendment must be approved by the board and by owners representing at least two-thirds of the votes or voting interests present, in person or by proxy, at a properly called meeting of the Association for which a quorum is obtained.

**ARTICLE 15. AMENDMENT OF BYLAWS.** The Bylaws of the Association may be amended or repealed according to the amendment provision of the Bylaws, which reserve those powers to the members, with limited exceptions for the board acting alone and for the Declarant's reserved right of unilateral amendment.

**ARTICLE 16. ACTION WITHOUT MEETING.** Subject to the additional requirements of TBOC Section 6.202, any action required by the TBOC or by the Governing Documents to be taken at a meeting of members or owners may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members or owners as would be necessary to take that action at a meeting at which the required number of owners or members were present and voted.

**ARTICLE 17. DECLARANT CONTROL PERIOD.** The Declaration provides for a Declarant Control Period during which Declarant determines the number and qualification of officers and directors, who serve at the pleasure of Declarant, who is empowered by the Declaration to appoint, remove, and replace the officers and directors of the Association. The Declaration also determines the weight or numbers of votes allocated to lots owned by Declarant. Because Declarant has powers, rights, and duties in addition to those of other members, Declarant may constitute a membership "class" as described by the TBOC, the other lot owners constituting a different "class."

**ARTICLE 18. CHANGE OF STATUS.** The continuing existence of the Association as described in its Governing Documents is vested in its members - the owners of the Real Property - not in its corporate status, its name, or its filing number. During any period in which the Association is not incorporated, it will be subject to the Texas Unincorporated Nonprofit Association Act (Chapter 252 of the TBOC), and these Articles will continue to be effective as a Governing Document of the Association.

**ARTICLE 19. TERMINOLOGY.** Capitalized terms used in these Articles, such as Association, Declarant, Declarant Control Period, Declaration, and Governing Documents, have the same meanings as defined in Article 1 of the Declaration. "Articles" and "Articles of Association" have the same meaning as "Certificate of Formation" and "Articles of Incorporation," wherever used. As applied to this Association, the following terms which are defined or used in the TBOC are construed as follows:

**Section 19.1. "Governing Documents,"** as defined by the TBOC, is construed by the Association to mean the "Governing Documents," as defined by the Declaration, even though Governing Documents may have been initially adopted by the Declarant of the Real Property for the benefit and use of the members of the Association, rather than having been adopted by the Association, as indicated by the TBOC's definition of Governing Documents.

**Section 19.2. "each member entitled to vote at the meeting,"** as used in the TBOC, is construed by the Association to mean that if a lot is co-owned, even though all the co-owners are members of the Association, the co-owners share one membership per lot for notification and voting purposes. Therefore, votes and memberships are tabulated on a lot basis, rather than on a headcount of owners and co-owners.

**ARTICLE 20. PRINCIPAL OFFICE ADDRESS OF ENTITY.** The Association's initial principal office address (place of business) is c/o FirstService Residential, 3102 Oak Lawn Avenue, Suite 202, Dallas, Texas 75219.

**ARTICLE 21. INITIAL REGISTERED AGENT & OFFICE.** The name of the Association's initial registered agent is CT Corporation System. The address of the Association's initial registered agent is 1999 Bryan Street, Suite 900, Dallas, Texas 75201. The named registered agent has agreed to serve in this capacity.

**ARTICLE 22. INITIAL DIRECTORS & OFFICERS.** The initial board consists of three directors who serve at the pleasure of Declarant during the Declarant Control Period, and who will serve as directors until the earlier of (1) their successors are appointed by Declarant, or (2) their successors are elected by the members of the Association after the Declarant Control Period. The number of directors after the Declarant Control Period is determined by the Bylaws, and



may be changed from time to time by amendment of the Bylaws. The name and address of each initial director and each initial officer are as follows:

<u>Director Name</u>	<u>Office</u>	<u>Address</u>
Don E. Allen	President	6751 North Freeway, Fort Worth, Texas 76131
Katie Sabin	Secretary/Treasurer	6751 North Freeway, Fort Worth, Texas 76131
Sandy L. Trenton	Vice-President	6751 North Freeway, Fort Worth, Texas 76131

**ARTICLE 23. ORGANIZER.** The name of the organizer is Sharon Reuler, PC. The organizer's address is PO Box 670401, Dallas, Texas 75367-0401.

**ARTICLE 24. EFFECTIVENESS OF FILING.** This document becomes effective as a certificate of filing for a nonprofit corporation when the document is filed by the Secretary of State of Texas. This document becomes effective as a dedicatory instrument for a property owners association when it is publicly recorded in the Real Property Records of Tarrant County, Texas.

#### **EXECUTION**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

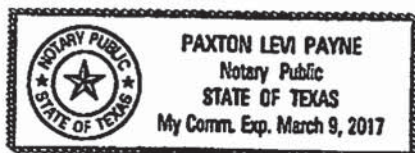
SIGNED this 10th day of November 2014.

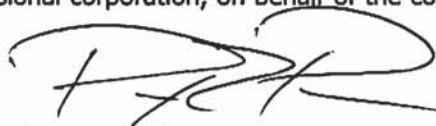
**SHARON REULER, P.C.,** a Texas professional corporation

By:   
Sharon Reuler, attorney and authorized representative

THE STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 10<sup>th</sup> day of November 2014 by Sharon Reuler, attorney and authorized representative of Sharon Reuler, P.C., a Texas professional corporation, on behalf of the corporation.



  
Notary Public, The State of Texas

# Bylaws



**Electronically Recorded**

Official Public Records

*Mary Louise Garcia*

Mary Louise Garcia

**Tarrant County**

11/5/2014 3:32 PM

PGS 36 \$156.00

Submitter: SIMPLIFILE

**D214242915**

**BYLAWS  
OF  
VINEYARD CREEK ESTATES  
OWNERS ASSOCIATION**

(A Texas Property Owners Association)

**GRAPEVINE, TEXAS  
(TARRANT COUNTY)**

Declarant

D. R. Horton - Texas, Ltd.

**INTRODUCTORY BYLAWS NOTICES  
FOR  
VINEYARD CREEK ESTATES**

**LAW RULES**

In the era in which these Bylaws are drafted, Texas laws that pertain to the governance of mandatory membership property owners associations are becoming more numerous and more regulatory. In previous eras, state laws generally painted with broad strokes and deferred to an entity's organizational documents for specifics. In those eras, the corporation laws of Texas were the primary source of statutory requirements. In this era, the Property Code is becoming the source of governing requirements, some of which are also addressed in the Business Organizations Code. Users of these Bylaws must continually be aware of all statutes that pertain to the topics addressed in these Bylaws, and must be aware that - from time to time - one or more State laws may override a provision of these Bylaws, or may supplement these Bylaws with additional requirements or limitations.

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***These Bylaws don't exist in a vacuum.***

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**5 KEY NOTES ABOUT GOVERNANCE  
IN VINEYARD CREEK ESTATES  
DURING THE DECLARANT CONTROL PERIOD**

Each owner of a home in Vineyard Creek Estates, by the act of accepting an interest in or title to a lot prior to Build-Out and Sell-Out, particularly during the Declarant Control Period, acknowledges, understands, covenants, and agrees to each of the following statements:

1. Vineyard Creek Estates is a planned community, the development and marketing of which may extend over many years. Declarant has reserved for itself the right to control the Association until Vineyard Creek Estates is fully developed, substantially complete, and close to being "sold out" and closed to homebuyers.
2. Because the Declarant Control Period is a short span of time in the potentially perpetual life of the Property and the Association, Declarant intentionally adopted Governing Documents designed for the long era in which homeowners will control the Association, instead of tailoring the Governing Documents for the relatively brief Declarant Control Period.
3. Written for a homeowner-controlled Association, some provisions in these Bylaws are inapplicable or inappropriate for the Declarant Control Period, or during Build-Out and Sell-Out. For example, Association directors appointed by Declarant are likely to be Declarant's employees or officers, who make decisions for the Association in the ordinary course of their daily work - without formality of called meetings, notices, and minutes.
4. Appendix C of the Declaration of Covenants, Conditions & Restrictions for Vineyard Creek Estates, which contains important information about how the Association will be governed during the Declarant Control Period, controls over any provision in these Bylaws that addresses the same topic, subject to a superior provision (if any) in State law.
5. Homeowners will not have a voice in the operation and governance of the Association during the Declarant Control Period, except to the extent (if any) granted by Declarant or required by State law.

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***Homeowners will govern the Association, in time.***

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**BYLAWS  
OF  
VINEYARD CREEK ESTATES OWNERS ASSOCIATION**  
(A Texas Property Owners Association)

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*During the Declarant Control Period, Appendix C of the Declaration has priority over these Bylaws.*



# BYLAWS OF VINEYARD CREEK ESTATES OWNERS ASSOCIATION

(A Texas Property Owners Association)

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## ARTICLE 1 INTRODUCTION

1.1. **PROPERTY.** These Bylaws provide for the governance of Vineyard Creek Estates (the "**Property**"), a planned community located in the City of Grapevine, Texas, according to the plat or plats thereof, such as the plat recorded on August 12, 2014, as Document No. D214174403, Plat Records, Tarrant County, Texas.

1.2. **DECLARATION.** The Property is subject to a number of publicly recorded documents, including the Declaration of Covenants, Conditions & Restrictions for Vineyard Creek Estates, recorded or to be recorded in the Real Property Records of Tarrant County, Texas, as it may be amended, supplemented, or restated from time to time (the "**Declaration**").

1.3. **ASSOCIATION.** These Bylaws are one of the governing documents for Vineyard Creek Estates Owners Association (the "**Association**"), the mandatory association of owners established by the Declaration for the Property.

1.4. **DEFINITIONS.** Words and phrases defined in the Declaration have the same meanings when used in these Bylaws.

1.5. **DECLARANT RIGHTS.** The "Declarant Provisions" article of these Bylaws and the rights of Declarant in the Declaration, particularly in Appendix C of the Declaration, override and supercede every provision of these Bylaws during the Declarant Control Period. Accordingly, many sections of these Bylaws do not apply during the Declarant Control Period.

1.6. **PARTIES TO BYLAWS.** All present or future lot owners and all other persons who use or occupy the Property in any manner are subject to these Bylaws, the Declaration, and the other Governing Documents as defined in the Declaration. The mere acquisition of a lot or occupancy of a dwelling will signify that these Bylaws are accepted, ratified, and will be strictly followed.

## ARTICLE 2 STATUTORY COMPLIANCE

The Association intends to comply with the requirements of public law, and does not intend to evade the requirements of local, State, or federal law. The purpose of this Article is to address the effect of changing laws on the Association's operations.

2.1. **APPLICABLE LAW.** Any reference in these Bylaws to "applicable law" means the law then in effect for the Association, the Property, the parties, and the circumstances. These Bylaws are written in an era of increasing State regulation of governance by property owners associations in Texas. Because members and leaders of homeowner associations have historically relied on their association's bylaws, rather than State statutes, for guidance in governance, it is customary for bylaws to be written with enough specificity to serve as a helpful roadmap for operating the association and protecting the rights of members. However, in an era of legislative activism, governing documents with detailed requirements that are legally compliant when written may create a trap for associations that are unaware of law changes that modify, override, or supplement their governing documents. As initially drafted, these Bylaws do not recite all of the detailed statutory requirements of applicable law, which may change with every biennial session of the Texas Legislature. Instead, these Bylaws anticipate that the Association will supplement these Bylaws with resolutions, policies, and procedures adopted by the board from time to time to implement or comply with the requirements of applicable law or the Governing Documents.

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2.2. **INSTRUCTIONS & SUGGESTIONS.** Also pertaining to applicable law:

- a. **Do not use any provision of these Bylaws "as is"** without knowing whether and how the provision is affected by applicable law.
- b. **Follow the law, not these Bylaws,** unless applicable law defers to these Bylaws.
- c. **Embrace change.** As applicable laws and standards of practice change, go with the flow and give change a chance. This suggestion applies to members as well as leaders of the Association.
- d. **Supplement these Bylaws,** as appropriate, from time to time, with resolutions, policies, and procedures adopted by the board to comply with the requirements of applicable law and what evolve as the conventional wisdom and customary practice for homeowner associations.
- e. **Don't be limited by applicable law.** The board may adopt policies and procedures that go further than the minimum statutory requirements or the requirements of these Bylaws towards making the Association more responsive to its members. This is a suggestion, not a requirement.

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***STATE LAW MAY CHANGE MORE OFTEN THAN THESE BYLAWS.***

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2.3. **GENERAL PROVISIONS.**

2.3.1. **Conflicts.** If a law is enacted that contravenes a policy, procedure, rule, or guideline of the Association, the new law is superior. The Association intends to refrain from implementing or enforcing any provision of a Governing Document, or any policy, procedure, protocol, rule, or guideline that is made unenforceable or void by changes in public law.

2.3.2. **Mistakes.** In the future, as the Association learns about and adapts to law changes, it is possible that the Association will inadvertently and unintentionally use forms, practices, procedures, or terminology that were rendered obsolete by the law changes. The Association will try to correct such errors as the Association becomes aware of them.

2.3.3. **Professionals.** Because provisions of State law and the Governing Documents are capable of more than one interpretation, the officers and directors of the Association ~ not being students of the law ~ may rely on professionals for guidance in understanding and applying new laws. From time to time, as the Association acquires more experience or information, the Association may change its method of complying with a particular law, or its method of applying a provision in a Governing Document.

2.3.4. **Costs of Complying.** From time to time it may be necessary for the Association to adjust its annual budget to pay the costs of complying with law changes, such as for increased use of legal and management services, which may result in an increase in regular assessments paid by its members, a special assessment, or a reduction of other services provided by the Association.

2.3.5. **Cooperation.** The Association values the patience of its members while the Association learns about its duties and limitations under new or changed laws. Further, the Association may solicit the cooperation of its members in guiding the Association towards full compliance with law changes as they occur.

**ARTICLE 3  
THE ASSOCIATION**

3.1. **TYPE OF ORGANIZATION.** As an organization of lot owners, the Association is created by the Declaration and these Bylaws. The Association is a nonprofit legal entity governed by the Texas Business Organizations Code (the "Code"), and may be incorporated or unincorporated. During any period in which the Association is not incorporated, it is an unincorporated nonprofit association subject to Chapter 252 of Title 6 of the Code, the Texas Unincorporated Nonprofit Association Act. During any period in which the Association is incorporated, it is a domestic nonprofit corporation subject to Chapter 22 of Title 2 of the Code, the Texas Nonprofit Corporation Law. If not incorporated, the

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Association, at its discretion, may use the Texas Nonprofit Corporation Law for guidance in governing itself. Sections of the Code that are cited in these Bylaws are incorporated herein by reference, whether or not the Association is incorporated.

3.2. **TAX STATUS.** The Association is a taxable entity in different contexts. For example, the Association may have income tax liability to the federal government, property tax liability to local governments, sales tax liability to local and state governments for goods and services purchased, and franchise tax liability when incorporated. From time to time, the Association may be eligible for an exemption from one or more tax liabilities. The sole purpose of this Section is to support any future application by the Association for tax-exempt status from the federal or state government. The Association may, but is not required to, apply for a continuing exemption from federal income tax under Section 501(c)(4) of the Internal Revenue Code, and from State sales tax under Section 171.082 Texas Tax Code. The nonprofit Association promotes social welfare as it operates for the benefit of all residents of Vineyard Creek Estates. Independently and in cooperation with local government, the Association may perform functions for the benefit of all Vineyard Creek Estates residents that - in a different location - might be performed by local government. Some of its activities may also benefit the general public, such as the beautification and preservation of public rights-of-way. The Declaration does not require the Association to engage in exterior maintenance of private homes, but does permit the Association to perform limited maintenance when necessary at the expense of the lot owner in event of neglect. Common areas and easements maintained by the Association may be open to the general public, as well as to residents of Vineyard Creek Estates. During any period in which the Association deems it to be in the best interests of its members to qualify for tax-exempt status under federal and/or state law, the Association will not engage in any activity that would disqualify the Association as a tax exempt organization, and will affirmatively perform functions that are required. The sole purpose of this Section is to assist the Association in qualifying for tax exemptions. This Section may not be construed to create obligations or liabilities for the Association, or to grant rights to the public or local government.

3.3. **GENERAL POWERS AND DUTIES.** The Association, acting through the board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property as may be required or permitted by the Governing Documents and applicable law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its members, subject only to limitations upon the exercise of such powers as may be contained in applicable law or the Governing Documents.

#### **ARTICLE 4** **BOARD OF DIRECTORS**

4.1. **APPLICABILITY.** Rather than preface each section with "after the Declarant Control Period," this Section is a reminder that ~ as with other portions of these Bylaws ~ many of the following sections are not effective during the Declarant Control Period. The governance rights reserved by Declarant in the Declaration, especially in its Appendix C, are superior to the requirements of this Article to the full extent permitted, or not prohibited, by applicable law.

4.2. **NUMBER.** The board will consist of five persons. The number of directors may be changed by amendment of these Bylaws, but may not be less than three.

4.3. **ELECTION.** Directors will be elected by the members of the Association. The election of directors will be conducted at the annual meeting of the Association, at any special meeting called for that purpose, or by any method permitted by applicable law.

#### **OWNERS ELECT DIRECTORS**

4.4. **QUALIFICATION.** No owner may be disqualified by the Association from running for the board because of a delinquent account or rules violation. The following qualifications apply to the election or appointment of persons to the board to the extent candidates are available and qualified. The following qualifications may be waived or modified on an election by election basis only if an insufficient number of qualified candidates are available.

4.4.1. **Owners.** A director need not be a member of the Association.

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4.4.2. Criminal Conviction. A person who has been convicted of a felony or crime involving moral turpitude may not serve on the board, unless the person's criminal record was disclosed to the members within 30 days before the date of election or appointment to the board in a manner that is calculated to get the attention of the members.

4.4.3. Entity Member. If a lot is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity member is eligible to serve as a director and is deemed to be a member for the purposes of this Section. If the relationship between the entity member and the director representing it terminates, that directorship will be deemed vacant.

4.4.4. Additional Qualifications. The following qualifications apply to candidates who are not owners (and apply to owners only if and when a particular qualification is not prohibited by applicable law for owners who are candidates for the board):

- a. Affiliates. An affiliate of an owner may not serve on the board at the same time as the owner to whom affiliated. As used in this Section, affiliation refers to persons having legal or economic relationships, such as family members, housemates, and business partners, and does not apply to merely social relationships, such as friends and golfing buddies.
- b. Litigation. A person who is a party adverse to the Association, the board, or a committee of the Association in pending litigation to which the Association, board, or committee is a party, may not serve on the board.
- c. Term Limits. A person may not serve more than six consecutive years on the board. A person who has served more than two consecutive terms is not eligible to serve again for three years.

4.5. TERM OF OFFICE. Upon election, each director will serve a term of 2 years, subject to the following provisions. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed. Absent death, ineligibility, resignation, or removal, a director holds office until his successor is elected or appointed.

4.5.1. Exceptions. The following are exceptions to the 2-year term:

- a. A person elected by the members to complete the 2-year term of a director who has resigned or been removed will serve the remainder of the original 2-year term.
- b. A person elected by the board to fill a vacancy will serve until the next Association meeting at which directors may be elected.
- c. A person elected to the initial board or at an election to remove and replace the entire board or to re-establish staggered terms may serve a term that is shorter or longer than 2 years.
- d. An annual election may occur sooner or later than the exact 2-year mark.
- e. If the meeting at which a director is elected occurs at a time that does not coincide with the Association's annual meeting, the term of the elected director will overlap the next annual meeting, although it may result in a longer term, unless the meeting notice states otherwise.

4.5.2. Staggered Terms. To maintain staggered terms, two directors will be elected in even-numbered years, and three directors will be elected in odd-numbered years. *(If the number of directors is increased or decreased, an even number will be elected in even numbered years, and an odd number in odd numbered years.)*

4.5.3. Initial Owner-Elected Board. As provided in Appendix C of the Declaration, Declarant will convene a transition meeting of owners for the purpose of electing a board of directors. *(Prior to that meeting, the board is appointed by Declarant.)* To establish staggered terms, the candidates receiving the most votes will serve 2-year terms, and the candidates receiving the next-highest votes will serve initial terms of one year. *(The number of 2-year terms and 1-year terms depends on whether the term starts in an even-numbered year or an odd-numbered year.)*

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year.) Thereafter, their successors will serve 2-year terms. If the board is ever elected en masse, the same methods will be used to re-establish staggered terms.

4.6. **VACANCIES.** Subject to the exceptions below, vacancies on the board caused by any reason are filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the board. Each director so elected by the board serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder (if any) of the term that was vacated. The exceptions to board-elected replacements are (1) the removal of a director by a vote of the Association's members, who will elect a replacement, and (2) a vacancy occurring because of an increase in the number of directors, which also will be filled by election of the members.

#### 4.7. **REMOVAL OF DIRECTORS.**

4.7.1. **Removal by Members.** At any annual meeting of the Association or at any special meeting of the Association called for the purpose of removing a director, any one or more of the directors may be removed with or without cause by members representing at least two-thirds of the votes present in person or by proxy at the meeting, and a successor may then and there be elected by members to fill the vacancy thus created. Any director whose removal has been proposed must be given an opportunity to be heard at the meeting.

4.7.2. **Removal by Directors.** A director may not be removed by the remaining directors, except for the following limited reasons for which a director may be removed by at least a majority of the other directors at a meeting of the board called for that purpose:

- a. **Criminal Conviction.** The board receives documented evidence from a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude.
- b. **Additional Reasons.** The following reasons for removal apply to directors who are not owners (and apply to owners only if and when a particular reason is not prohibited by applicable law for owners who serve on boards of property owners associations):
  - (1) The director is a party adverse to the Association, the board, or a committee of the Association in pending litigation to which the Association, board, or committee is a party, provided the Association did not file suit to effect removal of the director.
  - (2) The director has refused or failed to attend 3 or more meetings of the board during the preceding 12 months, provided he was given proper notice of the meetings.

4.7.3. **No Removal by Officers.** A director may not be removed by officers of the Association, acting in their capacity of officers of the Association, under any circumstance.

#### 4.8. **MEETINGS OF THE BOARD.**

4.8.1. **Open Meetings.** Regular and special meetings of the board are open to members. The Association must make notice of regular and special board meetings available to the members. Under certain limited circumstances permitted by applicable law, the board may act without a meeting, or in a closed executive session, or without giving prior notice to the members. However, the general rule is open meetings and prior notice.

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### **OWNERS MAY ATTEND BOARD MEETINGS**

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4.8.2. **Types of Board Meetings.** Regular meetings of the board may be held at a time and place that the board determines, from time to time, but at least one such meeting must be held each calendar quarter. Special meetings of the board may be called by the president or, if he is absent or refuses to act, by the secretary, or by any 2 directors. In case of emergency, as described below, the board may convene an emergency meeting for the purpose of dealing with the emergency after making a diligent attempt to notify each director by any practical method.

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4.8.3. Board Meeting to Elect Officers. As soon as possible after the annual meeting, the directors will convene a special meeting for the purpose of electing officers. If the election of officers will occur upon adjournment of the annual meeting at the site of the annual meeting, notice of that possibility must be given to the members with the notice of annual meeting. If the time and place for the election of officers is announced to the members at the annual meeting, no further notice is required for that special meeting.

4.8.4. Place of Board Meetings. The board will conduct its meetings at a location that is reasonably convenient for the greatest number of directors, and at a place or facility that is sufficiently large to accommodate the number of owners who typically attend board meetings as observers. The decision of where to meet may be made on a meeting by meeting basis by the officer or director who calls the meeting, by board resolution, or by any other practice that is customary for property owners associations. The board is not required (1) to conduct its meetings at the Property, (2) to maintain a fixed place for its meetings, (3) to select a location that is convenient to owners, or (4) to select a facility that accommodates a larger number of spectator members than is customary. If required by applicable law, meetings of the board must be held in Tarrant County, Texas, or in any adjacent county.

4.8.5. Notice to Directors of Board Meetings. Notice to directors is not required for regular meetings of the board, provided all directors have actual or constructive knowledge of the meeting date, time, and place. Notice of a special meeting must be given to all directors. If notice is given to directors, it may be given by any method or combination of methods that is likely to impart the information to the directors.

4.8.6. Notice to Members of Board Meetings. The content, timing, and method of delivery of notice to members must comply with the requirements of applicable law. The board will inform Association members of the date, time, place, and general purpose of each board meeting. The information may be imparted by any method or combination of methods that is likely to be available or communicated to most if not all members in a timely manner, such as by posting on a website, by broadcast email, by signs posted at the Property, or by hand-delivered fliers. On the written request of an owner, the Association will provide the owner with the date, time, place, and general purpose of the next regular or special meeting of the board. The failure of the Association to disseminate and the failure of an owner to receive timely or accurate information about the date, time, place, and general purpose of a meeting does not invalidate the meeting.

4.8.7. Conduct of Meetings. The president presides over meetings of the board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the board and a record of transactions and proceedings occurring at meetings. When not in conflict with applicable law or the Governing Documents, the then current edition of Robert's Rules of Order governs the conduct of the meetings of the board.

4.8.8. Board Quorum. This section applies to meetings of the board, not to meetings of Association members. At meetings of the board, a majority of directors constitutes a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum of directors is present are the acts of the board. If less than a quorum of directors is present at a meeting of the board, the majority of those present may adjourn the meeting from time to time until a quorum of directors is attained.

4.8.9. Continuation. A meeting of the board may be recessed and reconvened in compliance with applicable law.

4.8.10. Minutes. The written report of a board meeting is not the minutes of the meeting until approved by the directors at a future meeting. The minutes must report actions taken by the board, but need not report the substance of discussion. An audio recording or transcription of a meeting does not constitute minutes of the meeting and should not be retained by the Association for longer than required to produce written minutes for the board's approval. On an owner's written request, the board will make available to the owner the approved minutes of a meeting and any other meeting records required by applicable law.

4.8.11. Voting. A director who is also an officer of the Association, even the presiding officer, is expected to participate and to vote in the manner of every other director. The president of the Association is not prohibited from voting and is not limited to tie-breaking votes. Directors may not participate by proxy at meetings of the board.

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**4.8.12. Meeting Conduct.** Regular and special meetings of the board are open to members of the Association, subject to the following provisions to the extent permitted or required by applicable law:

- a. No audio or video recording of the meeting may be made, except by the board or with the board's prior express consent.
- b. Members who are not directors may not participate in board deliberations under any circumstances, and may not participate in board discussions unless the board expressly so authorizes at the meeting.
- c. Executive sessions are not open to members who are not directors, except by invitation of the board.
- d. The board may prohibit attendance by non-owners.
- e. The board may eject any member in attendance who disrupts the meeting or interferes with the conduct of board business.

**4.8.13. Executive Session.** The board may adjourn any regular or special meeting of the board and reconvene in executive session, subject to the following conditions. The nature of business to be considered in executive session will first be announced in open session. The limited purposes for which the board may convene in executive session must comply with applicable law. At the end of the executive session, the board must return to the open meeting and orally summarize any decision made in the executive session, including a general explanation of any expenditure approved in the executive session. The oral summary must be reported in the meeting minutes, and should be worded to avoid violating any privilege or privacy that may be protected by applicable law.

**4.9. ACTION WITHOUT MEETING OR NOTICE.** As permitted by applicable law, certain actions that could be taken by the board at a meeting for which owners have notice may be taken by the board without a meeting, as provided by this Section. Any action taken by the board pursuant to the following subsections must be orally summarized at the next meeting of the board for which the owners have notice. The oral summary must include an explanation of any known expenditures - actual or estimated - that were approved by the board, and must be reported in the meeting minutes.

**4.9.1. Prohibited Actions.** The decision-making methods permitted by this Section may not be used for decisions for which applicable law requires that owners be given prior notice.

**4.9.2. Electronic Conferencing.** Without giving prior notice to the owners, the directors may participate in and hold board meetings by any method - or combination of methods - that allows all directors participating in the meeting to hear and be heard by each other, but only for the limited purposes permitted by applicable law, such as to consider administrative matters and to deal with emergencies. Participation in such meeting constitutes presence in person at the meeting, except where a director participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**4.9.3. Unanimous Consents.** Without giving prior notice to the owners, director may act by unanimous written consent, but only for the limited purposes permitted by applicable law, such as to consider administrative matters and to deal with emergencies.

**4.10. POWERS AND DUTIES.** The board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Property. The board may do all acts and things except those which, by applicable law or the Governing Documents, are reserved to the members exclusively.

**4.11. EMERGENCIES.** In the throes of a dire emergency, leaders of the Association may find themselves responding to the emergency without benefit of consulting these Bylaws. One purpose of this Section is to encourage directors to do what is necessary under certain circumstances to protect health, life, and property within Vineyard Creek Estates. Another purpose is to insulate responsive directors from later claims that they failed to adhere to the formalities for board meetings and notices that are fundamental to decision-making within the Association.

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4.11.1. Types. For purposes of these Bylaws, there are two categories of emergencies - public emergencies, and private emergencies. As a general rule, if the directors are divided or uncertain as to whether a circumstance arises to the level of an emergency, as defined below, the situation is not an emergency. The board may not declare an emergency for the purpose of evading the meeting and notice requirements of these Bylaws.

- a. A "**public emergency**" is when a local, state, or national government or governmental entity declares a disaster, catastrophe, state of emergency, or state of war in the area in which the Property is located, or if imminent or actual conditions in the area in which the Property is located are of a type and magnitude for which a local, state, or national government or governmental entity may be expected to declare a disaster, catastrophe, or state of emergency, whether or not the declaration is made. To illustrate, an earthquake that ruptures utility lines, makes roads impassable, and causes buildings to collapse is a public emergency.
- b. A "**private emergency**" is when a condition within or around the Property or a situation to which the Association is a party presents an imminent and substantial threat to health, life, or property of a magnitude that warrants immediate action, although the condition or situation does not rise to the level of a public emergency. Examples of private emergencies are (1) an overturned truck carrying toxic waste, or (2) a Vineyard Creek Estates resident or worker diagnosed with a lethal and highly contagious disease.

4.11.2. Emergency Board Meetings. For the sole purpose of responding to a public or private emergency, the board may convene an emergency board meeting after making a diligent attempt to notify each director and officer by any practical method, without formal notice to the directors or members. At such emergency board meeting, the directors participating constitute a quorum of directors. The directors who participate in the emergency board meeting must orally summarize their decisions at the next meeting of the board for which the owners have notice. The oral summary must include an explanation of any known expenditures - actual or estimated - that were approved by the board, and must be reported in the meeting minutes.

4.11.3. Emergency Powers. In anticipation of, during, or in the aftermath of a public or private emergency, the officers, directors, employees, and agents of the Association - collectively or individually - may take or authorize any action they deem necessary to protect health, lives, and property within Vineyard Creek Estates for so long as emergency conditions exist. A decision or action made in good faith under emergency conditions and for the sole purpose of dealing with the emergency may not be used to impose liability on an officer, director, employee, or agent of the Association.

4.11.4. Emergency Plan. This Section may not be construed to prevent the Association from implementing policies and procedures previously approved by the Association for use in emergencies, such as an evacuation plan.

4.12. FIDELITY BONDS. Any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds. The premiums on the bonds may be a common expense of the Association.

4.13. COMMITTEES OF THE BOARD. Whether referred to as a committee of the board, or a committee of the Association, or an advisory committee or advisory board, each committee derives its authority solely from the board, and serves at the pleasure of the board. This Section may not be construed to require the board to work with or through committees.

4.13.1. Advisory Committees During Declarant Control. During the Declarant Control Period, the board may adopt a policy of delegating to the Association's manager the responsibility for appointing and working with one or more groups of members who are organized as an advisory committee or an advisory board. For such committees, the board's duties under this Article are construed to mean "the board or the Association's manager pursuant to a policy adopted by the board."

4.13.2. Authority. By resolution, the board may create, combine, divide, and disband one or more standing or ad hoc committees, from time to time, to assist the board with its functions. By resolution, the board names each committee and identifies its responsibilities. The board's delegation of authority to a committee does not

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relieve the board, or any director or officer, of a responsibility imposed by law or by the Governing Documents. All actions and decisions of a committee are subject to approval, disapproval, or modification by the board, to whom the committee must report on a periodic basis and as requested by the board. In event of conflict between the board and its committees, the decision of the board controls. The board may not appoint a committee to act in its place in managing the affairs of the Association.

4.13.3. Composition. Each committee consists of a chairperson and two or more committee members, each of whom must be appointed by the board. A vacancy on a committee may be filled only with a board appointee. The board may determine or limit each committee's size, and may appoint an officer or director as a liaison to a committee. The president of the Association is an ex officio member of all committees.

4.13.4. Chair. The chair of each committee must be a member of the Association. The chair is appointed by the board, unless the board delegates selection of the chair to the committee from among its members, in which case the board will ratify the committee's selection. The chair serves as spokesperson for the committee and represents the committee at meetings of the board and at meetings of the Association.

4.13.5. Term. For a standing or continuing committee, each committee member and chair continues to serve until removed by the board, or until the member resigns. The board may establish term limits for all committees, or for certain committees, and may require that a committee be re-appointed annually.

4.13.6. Removal. A committee member or chair may be removed, with or without cause, by the board. A majority of committee members may recommend to the board that a chair or committee member be removed. A committee chair or member whose removal has been proposed must be given an opportunity to be heard. A removed committee member must return any property or records belonging to the Association.

4.13.7. Budget. The board may approve funds for a committee to use in the performance of its duties, and may impose conditions on the committee's use of the funds. No committee may incur liabilities for the Association without the board's prior approval.

4.13.8. Action. An action by the committee must be approved by a majority of the committee's members who are present at a committee meeting attended by at least a majority of committee members. The chair must seek prior approval by the board for the actions of the committee. Each committee may adopt rules for its own governance not inconsistent with the Governing Documents, rules adopted by the board for committees, or the resolution by which the committee was authorized.

## **ARTICLE 5** **OFFICERS**

5.1. DESIGNATION. The principal officers of the Association are the president, the vice-president, the secretary, and the treasurer. The board may appoint one or more vice-presidents and other officers and assistant officers as it deems necessary. The president and secretary must be directors. Other officers may, but need not, be members or directors. Any two offices may be held by the same person, except the offices of president and secretary. If an officer is absent or unable to act, the board may appoint a director or a committee to perform the duties of that officer and to act in place of that officer, on an interim basis.

5.2. ELECTION OF OFFICERS. The officers are elected no less than annually by the directors at the organizational meeting of the board and hold office at the pleasure of the board. Except for resignation or removal, officers hold office until their respective successors have been designated by the board.

5.3. REMOVAL AND RESIGNATION OF OFFICERS. A majority of directors may remove any officer, with or without cause, at any regular meeting of the board or at any special meeting of the board called for that purpose. A successor may be elected at any regular or special meeting of the board called for that purpose. An officer may resign at any time by giving written notice to the board. Unless the notice of resignation states otherwise, it is effective when received by the board and does not require acceptance by the board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the board.

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#### 5.4. DESCRIPTION OF PRINCIPAL OFFICES.

5.4.1. President. As the chief executive officer of the Association, the president: (1) presides at all meetings of the Association and of the board; (2) has all the general powers and duties which are usually vested in the office of president of an organization; (3) has general supervision, direction, and control of the business of the Association, subject to the control of the board; and (4) sees that all orders and resolutions of the board are carried into effect.

5.4.2. Vice-President. The vice-president acts in place of the president in event of the president's absence, inability, or refusal to act. The vice-president also exercises and discharges any duty required of the vice-president by the board.

5.4.3. Secretary. The secretary is responsible for ensuring that the duties incident to the office of secretary are performed, such as (without limitation): (1) keeping the minutes of all meetings of the board and of the Association; (2) having charge of such books, papers, and records as the board may direct; and (3) maintaining a record of the names and addresses of the members for the delivery of notices.

5.4.4. Treasurer. The treasurer is responsible for ensuring that the duties incident to the office of treasurer are performed, such as (without limitation): (1) being responsible for Association funds; (2) keeping full and accurate financial records and books of account showing all receipts and disbursements; (3) preparing all required financial data and tax returns; (4) depositing all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the board; (5) preparing the annual and supplemental budgets of the Association; and (6) reviewing the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds.

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### **DIRECTORS ELECT & REMOVE OFFICERS**

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5.5. AUTHORIZED AGENTS. Except when the Governing Documents require execution of certain instruments by certain individuals, the board may authorize any person to execute instruments on behalf of the Association. In the absence of board designation, the president and the secretary are the only persons authorized to execute instruments on behalf of the Association.

## **ARTICLE 6 STANDARDS**

6.1. SEPARATE LIABILITY. The Association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort. Members, directors, and officers of the Association are not personally and individually liable for the Association's breach of a contract or for the Association's tort or omission merely because they are members, directors, or officers of the Association. A member has the right to assert a claim against the Association, and the Association has the right to assert a claim against a member.

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### **GOOD FAITH, ORDINARY CARE, BEST INTEREST**

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6.2. GENERAL STANDARDS. The general standards of duty for an officer or director of the Association are the State's standards for officers and directors of a nonprofit corporation, as stated in the Code as it may be amended. On the date of this document, under Texas law, the officers and directors of a non-condominium property owners association are not fiduciaries of the Association or its members. On the date of this document, Sections 22.221 and 22.235 of the Code provide the following standards:

- a. A director will discharge the director's duties: (1) in good faith, (2) with ordinary care, and (3) in a manner the director reasonably believes to be in the best interest of the Association.
- b. An officer or director is not liable to the Association, its members, or another person for an action taken or not taken as a director if the director acted in compliance with the above-stated standard for discharging

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duties. A person seeking to establish liability of an officer or director must prove that the officer or director did not act (1) in good faith, (2) with ordinary care, and (3) in a manner the officer or director reasonably believed to be in the best interests of the Association.

6.3. **RELIANCE.** An officer or director may rely on information prepared or presented by (1) an officer or employee of the Association, (2) an attorney licensed by the State of Texas, (3) a certified public accountant, (4) an investment banker, (5) a person whom the officer or director reasonably believes to possess professional expertise in the matter, or (6) a committee of the Association of which the officer or director is not a member. Such reliance must be exercised in good faith and with ordinary care. An officer or director may not rely on such information if he has actual knowledge that makes the reliance unwarranted.

6.4. **COMPENSATION.** Except as permitted below, a director, officer, member, or resident is not entitled to receive financial or monetary profit from the operation of the Association, and no funds or assets of the Association may be paid as salary or compensation to, or be distributed to, or inure to the benefit of a director, officer, member, or resident. Nevertheless,

- a. Reasonable compensation may be paid to a director, officer, member, or resident for services rendered to the Association in other capacities.
- b. A director, officer, member, or resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the board.
- c. The board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities.
- d. This Section does not apply to distributions to lot owners permitted or required by the Declaration, applicable law, or a court order.

6.5. **LOANS.** The Association may not loan money to or guaranty a loan for an officer or director of the Association.

6.6. **CONFLICT OF INTERESTS.** If a contract or transaction is fair to the Association, it is not disallowed merely because an officer, director, or member of the Association has a financial interest in the transaction, provided (1) the "interested" officer, director, or member fully and accurately discloses the nature of his interest to the board in a manner that is timely for the board's consideration of the contract or transaction, and (2) the "interested" officer or director does not participate in the vote to approve the contract or transaction, although the "interested" director may be counted toward a quorum of directors at the meeting. Under applicable law on the date of these Bylaws, an officer, director or member is "interested" if he or his affiliate (1) is affiliated with the transacting party, (2) has a financial interest in the transaction or the transacting party, or (3) has a managerial position with the transacting party. Nothing in this Section may be construed to prevent the board from adopting policies and procedures that are more stringent than the requirements of this Section, or of applicable law, such as Sections 1.003, 1.004, and 22.230 of the Code. Bottom line - the transaction should be fair to the Association and the "interested" officer, director, or member must fully and timely disclose the nature of his relationship.

## **ARTICLE 7**

### **MEETINGS OF THE ASSOCIATION**

7.1. **ANNUAL MEETING.** At least once each calendar year, the board must convene a business meeting of the Association for the purpose of electing directors in accordance with these Bylaws and to transact such other business of the Association as may properly come before the members. Absent special circumstances, the Association's annual meeting will be held during the first quarter of each calendar year. If a special meeting of the Association is being or will be called for a different quarter of the calendar year, the annual meeting may be combined with the special meeting if (1) the board deems it to be in the best interest of the Association (such as to economize on the costs of holding and noticing multiple meetings in a one year period), (2) at least 8 months have lapsed since the previous annual meeting, and (3) the notice of meeting identifies the dual or multiple purposes of the meeting and identifies the reason why the annual meeting is being rescheduled for that year only. A properly called annual meeting that is held at a different time

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is not invalid merely because of the timing. Lack of the customary term "annual meeting" in the meeting notice, by itself, does not disqualify the meeting as the annual meeting required by State law and these Bylaws.

7.2. **SPECIAL MEETINGS.** It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the board or by one or more petitions signed by owners of at least 20 percent of the lots in the Property. If the petition process is used, petitions may be in any form that is customary for the time. The board may not require a specific form of petition, nor require that the petition be offered to every member of the Association. Signatures on petitions need not be notarized or witnessed. An electronic or faxed petition is acceptable if the "signer's" identity is reasonably discernible.

7.3. **PLACE OF MEETINGS.** Meetings of the Association may be held at the Property or at a suitable place convenient to the members, as determined by the board.

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***An owner of each lot is entitled to meeting notices.***

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7.4. **NOTICE OF MEETINGS.** The content, timing, and method of delivery of notice to members must comply with the requirements of applicable law. The terms of this Section apply only to the extent not contrary to applicable law. Subject to the provisions below, at the direction of the board, written notice of meetings of the Association will be given to an owner of each lot at least 10 days but not more than 60 days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices must state any additional requirements of applicable law, and may also set forth any other items of information deemed appropriate by the board.

7.4.1. **Notice Exception.** Individual notice of the regular annual meeting of the Association is not required if (1) the time and place of the meeting is largely unchanged from year to year and (2) information about the time and place is routinely available to all members, such as by year-long posting on the Association's official website or repetitive announcements in the Association's newsletter. This exception does not apply to special meetings of the Association, or to changes in the time and place of the regular annual meeting. If the board fails or refuses to call the annual meeting in a timely manner, an ad hoc committee of owners may call the annual meeting or an election meeting pursuant to applicable law.

7.4.2. **Special Meeting Notice.** Within 30 days after the board resolution or receipt of petition, the board must give all members notice of the special meeting. If the board fails or refuses to call the special meeting in a timely manner, an ad hoc committee of owners may do so provided the notice of meeting names the ad hoc committee and its individual members, and further provided that the notice is delivered to an owner of every lot in accordance with these Bylaws. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

7.5. **RECORD DATE.** Because the ownership of lots may change during a year, the ownership as of the Record Date is used to produce the membership list for use in connection with the meeting. Before each meeting or balloting of the Association, the board will establish a list of all members for purposes of receiving a meeting notice. These membership lists are described in the Association Records Article below. The "cut off" date on which these lists are based is referred to in the Code as the "Record Date." The Record Date for an Association meeting for which notice is given is 10 calendar days before the date the notice is distributed or published to the members. The Record Date for an Association meeting for which no notice is given is 45 calendar days before the meeting. The Record Date determination of members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than 30 days after the original meeting.

7.6. **ELIGIBILITY.** Every member is entitled to receive notice of Association meetings (one notice per lot), to attend Association meetings, to be counted towards a quorum of members (one tally per lot), to vote on matters coming before the membership (one vote per lot), and to stand for election to the board, with few exceptions.

7.7. **MEMBERS' QUORUM.** For a meeting of Association members to be valid, a quorum of members must be present ~ in person or by proxy ~ at the start of the meeting. As stated below, the size of the quorum varies by the type of Association meeting. If Association meetings with different quorum requirements are called for the same date, time,

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and place, the applicable quorum of members must be present at the start of each of the called meetings. Members present at an Association meeting at which a quorum of members is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of members constituting a quorum of members for that type of meeting. This Section does not apply to a board meeting, which has its own quorum requirement.

7.7.1. General Quorum. Except for the below-stated Specific Quorums which apply to certain circumstances, the presence in person or by proxy of owners of at least 20 percent of the lots in the Property constitutes a quorum of members for meetings of the Association.

7.7.2. Specific Quorums. The following specific quorums apply under the certain circumstances described below. In case of uncertainty about which members' quorum requirement pertains to a particular Association meeting, the higher quorum requirement controls.

- a. Election Meetings Called by Board. At a meeting of the Association called by the board (or persons acting at the board's direction) for the sole purpose of electing one or more directors, whatever number of members are present ~ in person or by proxy ~ constitutes a quorum of members for the election meeting only.
- b. Election & Recall Meetings Called by Owners. At a meeting of the Association called by persons other than the board (or persons acting at the board's direction) for the purpose of electing and/or removing one or more directors, such as pursuant to Property Code Sec. 209.014, the presence in person or by proxy of owners of more than 50 percent of the lots in the Property constitutes a quorum of members for the election or recall meeting.

7.7.3. Lack of Quorum. If a quorum of members is not present at a meeting of the Association for which proper notice was given, members representing at least a majority of the votes present at the meeting, although not constituting a quorum of members, may vote to recess the meeting for not more than 24 hours in order to attain a quorum of members, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum of members, notice of a new meeting for the same purposes within 15 to 30 days may be given to an owner of each lot, at which re-called meeting the quorum requirement is lowered to two-thirds of the number of lots required for the first call of the meeting.

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***An owner of every lot gets to vote - no disqualifications.***

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7.8. VOTES. The vote of members representing at least a majority of the votes cast at any meeting at which a quorum is present binds all members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by applicable law. Cumulative voting is prohibited. Access to the ballots must comply with the requirements of applicable law.

7.8.1. Co-Owned Lots. If a lot is owned by more than one member, the vote appurtenant to that lot is cast as follows. If only one of the multiple owners of a lot is present at a meeting of the Association, that person may cast the vote allocated to that lot. If more than one of the multiple owners is present, the vote allocated to that lot may be cast only in accordance with the owners' unanimous agreement. Multiple owners are in unanimous agreement if one of the multiple owners casts the vote allocated to a lot and none of the other owners makes prompt protest to the person presiding over the meeting.

7.8.2. Entity-Owned Lots. If a lot is owned by an entity, such as a corporation or partnership, the vote appurtenant to that lot may be cast by any officer, manager, or partner of the entity in the absence of the entity's written appointment of a specific person to exercise its vote. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of an entity is qualified to vote.

7.8.3. Association-Owned Lots. The vote allocated to a lot owned by the Association may be counted towards a quorum of members only, and may not be voted.

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7.8.4. Lots Owned by Declarant or Builders. The Declaration may establish different voting rights for Builder Class Members and Declarant Class Members.

7.8.5. Tabulation and Recounts. The methods used by the Association to tabulate votes of owners must comply with the requirements of applicable law, and with any additional requirements established by board resolution. Any owner may compel a recount of votes pursuant to applicable law.

7.9. PARTICIPATION. Members may participate in person or by proxy at meetings of the Association. A member who participates is deemed "present" and may be counted towards a quorum unless the member participates for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

7.10. PROXIES. A member may participate in the affairs of the Association through a power of attorney or through a proxy. To be valid, each proxy must (1) be signed and dated by a member or his attorney-in-fact; (2) identify the lot to which the vote is appurtenant; (3) designate the person or position (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (4) identify the meeting for which the proxy is given; (5) not purport to be revocable without notice; and (6) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the board. Unless the proxy specifies a shorter or longer time, it terminates 11 months after the date of its execution. Perpetual or self-renewing proxies are permitted, provided they are revocable. To revoke a proxy, the granting member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy delivered by email or by fax may be counted if any of the following occurs: (1) the proxy's authenticity can be confirmed to the reasonable satisfaction of the board, (2) the proxy has been acknowledged or sworn to by the member, before and certified by an officer authorized to take acknowledgments and oaths, or (3) the Association also receives the original proxy within 5 days after the vote.

7.11. CONDUCT OF MEETINGS. The president, or any person designated by the board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order governs the conduct of meetings of the Association when not in conflict with the Governing Documents. Votes should be tallied by tellers appointed by the person presiding over the meeting.

7.12. ORDER OF BUSINESS. Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the Association is as follows:

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Approval of minutes of preceding meeting
- Reports
- Election of directors (when required)
- Unfinished or old business
- New business

7.13. ADJOURNMENT OF MEETING. At any meeting of the Association, a majority of the members present at that meeting, either in person or by proxy, may adjourn the meeting to another time and place.

7.14. ACTION WITHOUT MEETING. Subject to board approval and the requirements of applicable law for absentee or electronic ballots, any action which may be taken by a vote of the members at a meeting of the Association may also be taken without a meeting by written consents. The board may permit members to vote by ballots delivered by any method allowed by applicable law, which may include hand delivery, mail, fax, email, electronic balloting, or any combination of these. Written consents by members representing at least a majority of votes in the Association, or such higher percentage as may be required by the Governing Documents, constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting.

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**7.15. MEETINGS BY REMOTE COMMUNICATIONS.** Members of the Association may participate in and hold meetings of the Association by means of electronic town halls, conference telephone or similar communications equipment by means of which all persons participating in the meeting can communicate concurrently. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. By acquiring an interest in a lot, each owner automatically consents to the use of communication technology to effect meetings of the Association, provided the owners of at least 85 percent of the lots in the Property have access to the form of technology chosen by the board, and further provided that the Association arranges a place or method of participation for those who do not have the technology.

## **ARTICLE 8** **COMMUNICATIONS**

**8.1. WEBSITES & SOCIAL MEDIA.** These Bylaws cannot anticipate every mode of communication for all times future. The Association may take advantage of evolving technologies in order to communicate effectively with its members by methods that are commonly used by property owners associations in a given era. The use of "social media" and "electronic" technology in this Section is not intended to limit this Section's applicability in the event those terms become dated or narrowed in applicability. This Section may not be construed to require the Association to maintain a website or to employ social media.

**8.1.1. Board Authorization.** In connection with preserving property values and the quality of life for owners and residents of the Property, the Association may do all of the following to the extent permitted by applicable law:

- (1) Employ social media in the name of the Property or the Association.
- (2) Monitor, promote, and defend (if necessary) the image of the Association and the Property in publicly accessible media.
- (3) Control use of the name of the Property and the Association, and any image that is closely associated with the Property or the Association, to the extent permitted by applicable law.
- (4) Challenge or prohibit unauthorized social media that appears to be authorized by the Association.
- (5) Adopt and amend policies and standards for use of websites and social media authorized by the Association.
- (6) Take any action that the board considers reasonable and necessary or desirable to protect and promote the electronic image and reputation of the Property and the Association for the benefit of owners and residents.

**8.1.2. Unauthorized Websites & Social Media.** No person may create or contribute to an impression that a website or form of social media is authorized by the Association or is the official (board or membership authorized) voice of the Property, the Association, or its members, unless the person has written authorization from the board to provide such a service for the Association. An unauthorized website or form of social media that appears to be related to the Association or the Property must be prominently branded as "not official" or "not approved by Vineyard Creek Estates Owners Association." If the board determines that an authorized website or form of social media ceases to meet the standards established by the board, the board may direct that the website or social media be terminated or branded as "not official." The prohibition on unauthorized websites and forms of social media applies even during periods when the Association does not maintain an official equivalent.

**8.2. EFFECTIVE COMMUNICATIONS.** These Bylaws are drafted in an era of expanding and distracting modes of communication - written, voice, visual, and electronic - with emerging security and screening technologies that impede some transmissions without the sender's knowledge. In such an era, the burden may be on the sender (1) to bring important pieces of information to the attention of the recipient in a manner that helps the recipient recognize the importance and purpose of the communication, and (2) to confirm that the message was received and its importance recognized. For example, a change of address that is buried in the fifth paragraph of an owner's letter about a potpourri of issues may be overlooked by the Association. Similarly, a notice of assessment increase that is buried in a chatty

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Association newsletter or website may be overlooked by the owner. Although there is no way to guaranty what will be noticed by another person, each sender should try to communicate effectively. If the Association specifies a mode of communications for a certain purpose, it benefits the owner to use the specified mode for the intended purpose.

**8.3. CONTACT INFORMATION.** The owner or the several co-owners of a lot must register and maintain current and effective contact information with the Association to be used by the Association for notices, demands, and all other communications. The contact information must include the owner's name, e-mail address, mailing address, and phone number. If requested by the Association, an owner must also provide the Association with the name and telephone number of any resident other than the owner, and the name, address, and telephone number of any person managing the lot as agent of the lot owner. An owner must notify the Association within 30 days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time. If an owner fails to maintain current and effective contact information with the Association, the address of the owner's lot is deemed to be the owner's address for all purposes, even if the Association knows the property to be vacant or occupied by persons other than the owner. Additionally, but not in lieu of the lot's address, the Association may (but not required) try to contact the owner at any different "owner's address" for the lot published on the public access website maintained by the Central Appraisal District.

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### **STAY IN TOUCH, PLEASE.**

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**8.4. ELECTRONIC CONTACT REGISTRATION.** In the era in which these Bylaws are written, laws applicable to property owners associations and to corporations are beginning to encourage the use of electronic communications, which are considered to be effective and affordable methods for communicating, voting, and transacting business. Owners can help contain common expenses of the Association, which translate into the regular assessments they pay, by enabling the Association to communicate with the owner by one or more forms of electronic communication. Owners must formally register with the Association one current electronic contact per lot in the mode requested by the Association, which the Association is hereby authorized to use to communicate with the owner. Each owner is responsible for ensuring that the registered electronic contact information remains effective, and that the Association is properly notified of any changes in contact information. The Association is not required to seek out an owner's electronic contact information, to investigate its accuracy, or to notify the owner if the owner's registered contact information ceases to be effective. If an owner does not have the technology or device used by the Association, the owner must so notify the Association in writing. From time to time, the Association may adopt and amend policies and procedures for any aspect of electronic contact information.

## **ARTICLE 9 RULES & POLICIES**

**9.1. GENERAL.** In addition to the core Governing Documents ~ plat, Declaration, Owners Manual, these Bylaws, and Articles of Association ~ the Association has other Governing Documents that are typically referred to by names such as rules, regulations, standards, guidelines, specifications, policies, procedures, and resolutions - terms which may be used interchangeably in this context. Some are required by statute, some are customary for residential associations, and some arise over time as a result of unique circumstances and experiences. They are likely to require change over time in response to innumerable influences, such as changes in public policy, fashions, and community expectations, changes of technology or materials, aging infrastructure and organizational structure, and evolving demographics of the resident population.

**9.2. EXEMPT RULES.** The general requirement is that all board-made rules and anything an owner or resident is expected to comply with must be in a publicly recorded Governing Document. The following exceptions to the general requirement are not in the nature of Governing Documents that require public recording and are therefore exempt from the requirements of this Article in the absence of an express statutory requirement.

**9.2.1. Administrative Policies and Procedures.** This Article does not pertain to policies and procedures that are entirely administrative in nature, and which do not arise to the level of a provision that may be enforced against a lot or a member of the Association. Examples of administrative policies include (1) a board resolution to change the Association's registered agent, (2) procedures adopted by the board for annually reviewing the manager's performance, and (3) a policy adopted by the board for investing the Association's funds.

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9.2.2. Posted or Temporary Rules. The Association has the right to require compliance by owners and residents with rules on signs posted by the Association on the Property by the Association, such as hours of use of a common area. The Association also has the right to require compliance by owners and residents with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of a common area (such as "pool closed for cleaning"). Temporary rules and rules on signs are not of a nature that requires a publicly recorded Governing Document as a prerequisite to enforcement, absent a statutory requirement. Therefore, this Article does not pertain to posted or temporary rules.

9.3. OTHER POLICIES & RULES. From time to time, the board may adopt, amend, restate, and repeal as many other policies and resolutions as the board deems necessary or desirable to more fully comply with applicable law, to improve the transparency of Association functions that directly affect owners and residents, or to better guide owners and residents in navigating the Association's operations. The board also has the right to adopt, amend, restate, and repeal, from time to time, reasonable rules and regulations for any activity, function, or purpose for which the board has express regulatory authority under a Governing Document or applicable law.

9.4. ADOPTION AND AMENDMENT. A policy or rule may be adopted, corrected, amended, supplemented, restated, or repealed by the board, subject to the requirements of this Article and any additional requirements of applicable law.

9.4.1. Preliminary Approval. The board's approval of the concept, if not exact wording, of the proposed policy or rule must be reported as a resolution in the minutes of the meeting of the board.

9.4.2. Notice and Comment. If the proposed policy or rule will require compliance by owners or residents, the board will provide owners with an opportunity of at least 10 days in which to comment orally or in writing to the board on the proposed action. The board may, but is not required to, give the same opportunity to residents who are not owners. An opportunity for notice and comment is not required for a rule or policy that is mandated by public law and which conforms closely to the statutory requirements.

9.4.3. No Conflict. A rule or policy adopted by the board may not conflict with applicable law or a superior Governing Document.

9.4.4. Final Approval. The board's final approval of a proposed policy or rule must be reported as such in the minutes of the board meeting at which the policy or rule is adopted, or the decision to adopt is ratified. The exact wording of the policy or rule must be made part of the meeting record.

9.4.5. Form of Instrument. The approved policy or rule must in a written instrument that is capable of being recorded in the Real Property Records of Tarrant, Texas. It should be prepared in a way that enables the County Clerk to index the instrument in the name of the platted subdivision and in the name of the Association. If the instrument corrects, amends, supplements, restates, or repeals a previously recorded policy or rule, it must state the title and complete recording data for that instrument.

9.4.6. Notification to Owners. Within 30 days after publicly recording a policy or rule, the board must communicate the existence and effective date of the policy or rule to the owners by any community-wide method or combination of methods, and must make the policy or rule available to the owners, such as by posting on a website.

## **ARTICLE 10** **ENFORCEMENT**

10.1. ACTIONS REQUIRING NOTICE AND HEARING. Before taking any of the below-described actions, the Association must give written notice and an opportunity for a hearing according to the requirements of this Article and the notice and hearing requirements of applicable law, such as Chapter 209 Texas Property Code. The contents of the written notice and the method by which it is delivered must comply with the requirements of applicable law. An owner's request for a hearing and the Association's conduct of the hearing must comply with the requirements of applicable law. The following actions by or with the approval of the board, the Association, or the Architectural Reviewer, require notice and hearing as provided by this Article:

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- a. Suspension of use of a common area.
- b. Imposition of a fine for violation of any provision of the Governing Documents, other than fines, interest, or collection fees charged for delinquent accounts.
- c. Charging an owner or a lot for property damage.
- d. Filing suit against an owner other than a suit related to the collection of assessments or foreclosure of the Association's assessment lien.

10.2. **ACTIONS EXEMPT FROM NOTICE AND HEARING REQUIREMENTS.** As a general rule, every action other than the above-described actions requiring notice and hearing are impliedly exempt from the requirements of this Article. As permitted by applicable law, such as Section 209.007 of Texas Property Code, the following actions are expressly exempt:

- a. A temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the Property. The temporary suspension is effective until the board makes a final determination on the suspension action after following the notice and hearing procedures prescribed by this Article.
- b. A lawsuit in which the Association seeks a temporary restraining order or temporary injunctive relief.
- c. A lawsuit filed by the Association that includes foreclosure as a cause of action.
- d. The collection of delinquent assessments.

10.3. **IMPOSITION OF FINE.** Within 30 days after levying the fine or authorizing the abatement, the board must give the owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

10.3.1. **Amount.** The board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

10.3.2. **Type of Fine.** If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

10.3.3. **Other Fine-Related.** The Association is not entitled to collect a fine from an owner to whom it has not given notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines.

10.4. **REIMBURSEMENT OF EXPENSES AND LEGAL FEES.** This Section is subject to any applicable law that limits or conditions the amount or types of legal fees or collection costs that the Association is entitled to recover against an owner or a lot, with which the Association must comply. In addition to any other rights set forth in the Governing Documents for violation of a provision of the Governing Documents, the board may levy and collect individual assessments for reimbursement of reasonable fees and expenses, including without limitation legal fees, incurred by the Association to enforce the Governing Documents, including the collection of delinquent assessments, subject to the following conditions:

10.4.1. **Notice.** The Association must give the owner written notice that the owner will be liable for reimbursement of any such fees and expenses incurred by the Association if the delinquency or violation continues after a date certain that is stated in the notice. This notice requirement does not apply to legal fees incurred by the Association in connection with the Association's counterclaim in a lawsuit to which an owner is a plaintiff.

*During the Declarant Control Period, Appendix C of the Declaration has priority over these Bylaws.*



10.4.2. Hearing. If legal fees are incurred by the Association for an action requiring notice and hearing, the owner is not liable for reimbursement of legal fees incurred (1) before the date by which the owner must request a hearing, if the owner does not request a hearing, or (2) before conclusion of the hearing, if the owner does request a hearing.

10.4.3. Records. By written request, an owner may obtain from the Association copies of any invoice for expenses, including legal fees, for which the Association seeks reimbursement from the owner.

10.5. ADDITIONAL ENFORCEMENT RIGHTS. Notwithstanding the notice and hearing requirement, the board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Governing Documents which, in the board's opinion, are (1) self-evident, such as vehicles parked illegally or in violation of posted signs; (2) threatening to life or property; or (3) repeat violations of the same provision by the same owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Governing Documents for certain violations, such as nonpayment of assessments.

## **ARTICLE 11**

### **OBLIGATIONS OF THE OWNERS**

11.1. NOTICE OF SALE. Any owner intending to sell or convey his lot or any interest therein must give written notice to the board of his intention, together with (1) the address or legal description of the lot being conveyed, (2) the name and address of the intended purchaser, (3) the name, address, and phone number of the title company or attorney designated to close the transaction, (4) names and phone numbers of real estate agents, if any, representing seller and purchaser, and (5) scheduled date of closing. An owner will furnish this information to the board at least 10 business days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the owner's request to the Association for a resale certificate.

11.2. PROOF OF OWNERSHIP. If requested by the Association, an owner must furnish to the board evidence of ownership in the lot, which copy will remain in the files of the Association. A copy of the recorded deed is the customary evidence. If the Association is unsure about the ownership of a lot, the Association may refuse to recognize a person as a member unless this requirement is first met. This requirement may be satisfied by receipt of a board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the lot or any interest therein.

11.3. REGISTRATION OF SENIOR AND JUNIOR LIEN HOLDERS. Because applicable law requires the Association to communicate with other lienholders for the ultimate benefit and protection of the owner, the Association requires the owner to report to the Association about deed of trust liens against the owner's lot. Within 30 days after granting a lien against his lot, the owner must provide the Association with a copy of the recorded deed of trust against his lot. The owner must notify the Association within 30 days after he has notice of a change in the information required by this Section. Also, the owner will provide the information on request by the Association from time to time.

11.4. COMPLIANCE. By acquiring an interest in a lot, each owner agrees to comply with the provisions and terms of the Governing Documents, as adopted or amended from time to time, and with any applicable laws that impose duties on owners. Each owner also agrees to comply with the terms of any agreement negotiated by the owner with the Association. Further, each owner agrees to endeavor to observe and promote the cooperative purposes for which the Property and the Association were established.

11.5. ASSESSMENT ASSISTANCE. From time to time, an owner may be financially unable to fulfill his assessment obligations to the Association, either because the owner's circumstances have deteriorated or because the increasing size of the assessment obligation has outpaced the owner's resources. Although the Association may be aware of the affect of assessment increases on the pocket books of its members, and sensitive to an individual owner's plight, the Association is not a social service agency. The Association's budgetary decisions should not be based on the financial limitations of the least able of the Association's members. Solely at the discretion of the Association's board, on a case-by-case basis, without a duty to do so, the Association may be creative in finding ways to work with owners who are deemed by the board to be "worthy" of assistance. Assistance may not take the form of waiver or reduction of a regular or special assessment. If the Association does volunteer to assist a financially strapped member with the member's assessment

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obligation, the board may discriminate among delinquent members in determining that one owner is more "worthy" than another based on the board's subjective evaluation of the owner's circumstances. Because the Association has no duty to facilitate financial assistance, it may terminate its support at will, with or without notice. The following types of members, no matter how "worthy," are not eligible for Association-facilitated assistance: (1) Association officers and directors, and their relatives by blood or marriage, (2) former officers and directors who served within two years of requesting assistance, and (3) owners who do not reside at the Property. A decision to provide assessment assistance must be approved by at least a majority of all directors, every director having registered his vote in the minutes of a meeting (as for, against, or abstaining), and every director having disclosed the nature of his relationships with the assistance candidate. Sponsoring a fund-raising event is an example of creative assistance. Allowing a delinquent owner to earn money from the Association by performing services or providing goods which the Association would customarily purchase from a third party, is another example of creative assistance.

## **ARTICLE 12**

### **ASSOCIATION RECORDS**

12.1. **OPEN BOOKS AND RECORDS.** To the full extent required by applicable law, the books and records of the Association are open to and reasonably available for examination by an owner or by a person designated by the owner in writing. The Association will provide an owner with copies of requested documents to the full extent required by applicable law. The Association hereby expressly reserves for itself every constraint against or limitation on the owner's right of access that is permitted to the Association by applicable law.

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***Members may inspect Association records.***

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12.2. **AUDIT.** The Association will obtain - annually - an independent audit of the Association's financial records. Copies of the audit must be made available to the owners for inspection and copying. The audit need not be performed by a certified public accountant unless so required by the board.

12.3. **RESALE CERTIFICATES.** Any officer may prepare, or cause to be prepared, assessment estoppel certificates or resale certificates pursuant to applicable law, such as Chapter 207 of the Texas Property Code, titled Disclosure of Information by Property Owners Association. The Association may charge a reasonable fee for preparing such certificates, and may refuse to furnish such certificates until the fee is paid. Any unpaid fees may be assessed against the lot for which the certificate is furnished. The Association may delegate the responsibility for a resale certificate to its managing agent, if any.

12.4. **MANAGEMENT CERTIFICATE.** As required by applicable law, such as Section 209.004 of the Texas Property Code, the Association will maintain a current management certificate in the county's public records. When the Association has notice of a change in any information in the recorded certificate, the Association will prepare a restated or amended certificate and deliver it to the county clerk for filing. Absent gross negligence, the Association is not liable for a delay or failure to record a certificate. The Association may delegate the responsibility for a management certificate to its managing agent, if any.

12.5. **MEMBERSHIP LIST.** The board must maintain a comprehensive list of Association members for compliance with the Code as well as the Governing Documents. The Association must make the membership list available to any owner on written request, and may charge a reasonable fee for cost of copying and delivering the owners list.

12.5.1. **Types of Information.** At a minimum, the Association must maintain for each lot the name and mailing address of at least one owner, and a description of the lot owned (if different from the mailing address). The Association may also maintain, as an Association record, additional contact information for owners, such as phone numbers, fax numbers, email addresses, places of employment, emergency contact information, mortgage information, and any other items of information provided by owners or obtained by the Association.

12.5.2. **Source of Ownership Information.** In compiling the ownership or membership list, the Association may rely on any combination of (1) public records, such as tax rolls, (2) documentation provided by title insurance companies, (3) self-reporting by owners and residents, and (4) any other reasonably reliable and customary source of ownership information. The requirement of maintaining ownership records may not be construed to require the Association to affirmatively investigate or research title to a lot.

*During the Declarant Control Period, Appendix C of the Declaration has priority over these Bylaws.*

12.5.3. Information Available to Members. Membership information to be maintained by the Association is similar to what is typically available to the public on the website of the appraisal district, and may not be considered confidential, private, or protected information as between the Association and its members. Neither the Association nor a member of the Association may sell or otherwise market the Association's membership information without the express prior consent of the owners. Each owner, by acquiring an ownership interest in a lot, acknowledges that the owner's contact information is a record of the Association that is available to all members of the Association.

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***Membership information is available to members.***

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12.5.4. Inspection List. In accordance with applicable law, the Association will prepare a list of owners of all lots in the Property for inspection by the members prior to the meeting. The purpose of the list is to enable members to communicate with each other about the meeting. The inspection list must be available for inspection by the members from the second business day after the date notice of the meeting is given until adjournment of the meeting for which it was prepared. The list may be inspected or copied by an owner or the owner's attorney or agent. The inspection list must have the following characteristics:

- a. The list must be in alphabetical order of owners' surnames, or in numerical order of street addresses.
- b. The list must contain the name of at least one owner of each lot, or an indication that the current ownership cannot be determined and the identify of the last known owner.
- c. The list must contain an address for each member.
- d. The list must identify how many lots are owned by each owner, if that cannot otherwise be determined from the list.
- e. If all lots do not have uniform votes, such as lots owned by Declarant during the Declarant Control Period, the list must identify the number or weight of votes attached to each lot.

**ARTICLE 13**  
**NOTICES**

13.1. CO-OWNERS. If a lot is owned by more than one person, notice to one co-owner is deemed notice to all co-owners. Similarly, notice to one resident of a lot is deemed notice to all residents of the lot.

13.2. DELIVERY OF NOTICES. Unless a specific method of delivery is required by applicable law or by a Governing Document, any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, by email, or by any other method permitted by applicable law. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent (1) to the address of the owner's lot and/or (2) to the owner's address for the lot as published on the public access website maintained by the Central Appraisal District. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

13.3. WAIVER OF NOTICE. Whenever a notice is required to be given to an owner, member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a member or director at any meeting of the Association or board, respectively, constitutes a waiver of notice by the member or director of the time, place, and purpose of the meeting. If all members or directors are present at any meeting of the Association or board, respectively, no notice is required and any business may be transacted at the meeting.

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## **ARTICLE 14**

### **INDEMNIFICATION**

14.1. **GENERAL.** The purpose of this Article is to mandate some of the permissive provisions of Chapter 8 of the Code, and to indemnify Association Leaders whether or not the Association is incorporated at the time indemnification is needed. The definitions of Chapter 8 of the Code are hereby incorporated by reference, without regard to the corporate status of the Association. As used in this Article, "**Association Leader**" means a person who is a current or former officer or director of the Association, or a current or former committee chair or committee member of the Association.

14.2. **MANDATORY INDEMNIFICATION.** The Association will indemnify an Association Leader who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was an Association Leader, if the following determinations are made.

14.2.1. **Determinations.** It must be determined that the person acted in good faith, and that:

- a. the person reasonably believed (1) in the case of conduct in the person's official capacity, that the person's conduct was in the Association's best interest, or (2) in any other case, that the person's conduct was not opposed to the Association's best interests;
- b. in the case of a criminal proceeding, the person did not have a reasonable cause to believe the person's conduct was unlawful;
- c. with respect to expenses, the amount of expenses other than a judgment is reasonable; and
- d. indemnification should be paid.

14.2.2. **Effect of Proceeding Termination.** A person does not fail to meet the determination standard solely because of the termination of a proceeding by judgment, order, settlement, conviction, or a plea of nolo contendere or its equivalent.

14.2.3. **How Determinations Are Made.** If all of the directors are disinterested and independent, as defined in the Code, the determinations required under this Section will be made by a special legal counsel selected by the board. Otherwise, the determinations will be made by the owners of a majority of lots in the Property, other than lots owned by persons who are not disinterested and independent as defined in the Code, or by a special legal counsel selected by those owners.

14.3. **EXCEPTIONS TO MANDATORY INDEMNIFICATION.** A person who is found liable to the Association or is found liable because the person improperly received a personal benefit is not entitled to indemnification under this Article if, in a legal proceeding, the person has been found liable for (1) wilful or intentional misconduct in the performance of the person's duty to the Association, (2) breach of the person's duty of loyalty owed to the Association, or (3) an act or omission not committed in good faith that constitutes a breach of a duty owed by the person to the Association. In all other instances, indemnification of a person who is found liable to the Association is limited to reasonable expenses actually incurred by the person in connection with the proceeding, excluding a judgment, a penalty, a fine, or any other type of sanction. A person indemnified by the Association is considered to have been found liable in relation to a claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by applicable law.

14.4. **EXPENSES.** The indemnification provided by this Article covers reasonable expenses and costs, such as legal fees, actually and necessarily incurred by the indemnified person in connection with a qualified claim.

14.4.1. **Advancement of Expenses.** The Association may pay or reimburse reasonable expenses incurred by an indemnified person who was, is, or is threatened to be made a respondent in a proceeding in advance of the final disposition of the proceeding without making the determinations required under the Section above titled "Mandatory Indemnification," after the Association receives a written affirmation by the person of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this Article, and a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if the final determination is that the person has not met that standard or that indemnification is prohibited by this Article.

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The required written undertaking must be an unlimited general obligation of the person but need not be secured and may be accepted by the Association without regard to the person's ability to make repayment.

**14.4.2. Witness Expenses.** The Association may pay or reimburse reasonable expenses incurred by an Association Leader, member, employee, agent, or other person in connection with that person's appearance as a witness or other participation in a proceeding at a time when the person is not a respondent in the proceeding.

**14.5. INDEMNIFICATION OF OTHER PERSONS.** Subject to the same limitations, determinations, and exceptions for Association Leaders, the Association may indemnify and advance expenses to a person ~ who is not otherwise covered by this Article's indemnification ~ pursuant to (1) a provision in a Governing Document, (2) a contract to which the Association is a party, (3) common law, (4) a board resolution, or (5) a resolution approved by the Association's members. A person indemnified under this Section may seek indemnification or advancement of expenses from the Association to the same extent that an Association Leader may seek indemnification or advancement of expenses under this Article.

## **ARTICLE 15 DECLARANT PROVISIONS**

**15.1. GENERAL.** The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws. This Article may not be amended by the Association without the express consent of Declarant on the instrument of amendment.

**15.2. GOVERNANCE RIGHTS.** Many sections of these Bylaws do not apply during the Declarant Control Period, during which time the requirements of these Bylaws will be construed as permissive (not mandatory), aspirational, and within the sole discretion of the board, to the extent permitted or not prohibited by applicable law. Declarant wants these Bylaws to be useful to the Association after the Declarant's role in Vineyard Creek Estates is complete. As a courtesy to future users of these Bylaws, Declarant compiled most of the Declarant-related provisions in Appendix C of the Declaration. Notwithstanding anything to the contrary in these Bylaws, a number of provisions in these Bylaws are modified by Declarant's rights and reservations under the Declaration during the Declarant Control Period, such as the number, qualification, appointment, removal, and replacement of directors; classes of members; and the weight of votes allocated to lots owned by Declarant and Builders. If a provision in Appendix C of the Declaration overrides a provision of these Bylaws, the Bylaws provision will be construed to apply after the Declarant Control Period.

**15.3. BOARD OF DIRECTORS.** During the Declarant Control Period, Appendix C of the Declaration governs the number, qualification, and appointment of directors. The initial directors will be appointed by Declarant and need not be owners or residents. Directors appointed by Declarant may not be removed by the owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

**15.4. TRANSITION MEETING.** As provided by Appendix C of the Declaration, within 120 days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call a meeting of the members of the Association for the purpose of electing directors, by ballot of members. Notice of the transition meeting will be given as if it were notice of an annual meeting. The transition meeting may be combined with the annual meeting of the Association, in which case the date of the annual meeting may be dictated by the date of the transition meeting.

## **ARTICLE 16 AMENDMENTS TO BYLAWS**

**16.1. AUTHORITY.** Although the general authority for amending the Bylaws resides with the members of the Association, certain amendments may be made by the board or by Declarant, without a vote of the members.

**16.1.1. Amendments by Board.** During the Declarant Control Period, the board may amend these Bylaws unilaterally - without member approval - for any purpose, subject only to Declarant's written consent. Thereafter, the board may not unilaterally amend these Bylaws, except for the following limited purposes, which must be clearly identified in the instrument of amendment, and then only to the extent necessary to achieve the permitted goal, and only with the unanimous written consents of all directors, there being no vacancy on the board:

*During the Declarant Control Period, Appendix C of the Declaration has priority over these Bylaws.*



- a. To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any governmental or quasi-governmental program or benefit, if doing so is in the best interests of the Association and its members.
- b. To correct an obvious error that affects the validity or enforceability of the document, if doing so is in the best interests of the Association and its members.
- c. To conform the Bylaws to changes in controlling law applicable to any topic addressed in these Bylaws.
- d. To change the name of the Association.
- e. To restate previously amended Bylaws for the sole purpose of incorporating the amendments into the body of the Bylaws.

16.1.2. Amendments by Declarant. As provided by Appendix B of the Declaration, until Sell-Out Declarant may amend these Bylaws or adopt new Bylaws with or without approval by the board or the members, for any purpose.

16.1.3. Amendments by Members. All other amendments of these Bylaws must be approved by the members according to the terms of this Article.

16.2. AMENDMENTS BY MEMBERS. Because this Section protects a fundamental membership right, this Section may not be amended without the approval of owners representing at least a majority of the total lots in the Property. Other aspects of these Bylaws may be amended by the members as follows:

16.2.1. Proposal. The Association will provide or make available to an owner of each lot a description, if not exact wording, of any proposed amendment. The proposed amendment, description of the proposed amendment, or instructions for obtaining a copy of the proposed amendment at no cost will be included in the notice of the meeting or balloting by which the proposed amendment is to be considered.

16.2.2. Consents. If considered at a meeting of the Association at which discussion of the amendment is permitted, the amendment must be approved by members representing at least a majority of the votes present (in person or by proxy) at a properly called meeting of the Association for which a quorum is obtained. In other words, if a quorum is present (in person or by proxy) at an Association meeting, owners who collectively represent a majority of the votes present at the meeting (in person or by proxy) -- even if less than a majority of the total lots -- may approve an amendment to these Bylaws. If balloting is done without a meeting, such as by mail or electronic means, the amendment must be approved by members representing at least a majority of the total votes in the Association.

16.3. EFFECTIVE. To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, the name of the platted subdivision, and the recording data of these Bylaws and any amendments hereto; (2) signed and acknowledged by at least one officer of the Association, certifying the requisite authority and/or approvals; and (3) recorded in the Real Property Records of Tarrant County, Texas. An amendment may be effective immediately if adopted at an Association meeting at which owners of two-thirds of the lots are represented, but is not enforceable until it is publicly recorded. Otherwise, an amendment is not effective until it is publicly recorded and notice of the recorded amendment is made available to the owners, with instructions for obtaining a copy at no charge to the owner.

16.4. MORTGAGEE PROTECTION. If a provision in a Governing Document or applicable law requires notices to and consent of mortgagees for certain actions and amendments, the Association must give the required notices to and obtain the required approvals from applicable mortgagees.

16.5. DECLARANT PROTECTION. A provision of these Bylaws that pertains in any way - directly or indirectly - to Declarant or Builders, or to their rights and reservations under the Declaration or these Bylaws, may not be amended without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Nor may these Bylaws be amended to increase the liabilities or responsibilities of Declarant or Builders, without Declarant's

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written and acknowledged consent, which must be part of the recorded amendment instrument. Declarant has an exclusive right to unilaterally amend these Bylaws for any purpose, as stated in Appendix B of the Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

## **ARTICLE 17**

### **GOVERNING PROTOCOLS REQUIRED BY STATE LAW**

17.1. **GENERAL.** The below-listed Governing Protocols are attached to these Bylaws as exhibits. They relate to State laws that either require or suggest that such policies and guidelines be adopted and recorded. Intended to meet the minimum requirements of the statutes, the Governing Protocols are published outside the main body of these Bylaws for the purpose of keeping the Association mindful that the Protocols are statutory in origin, and may not be changed in ways that are contrary to applicable law. Additionally, the Protocols may be amended and supplemented without a vote of the members, as described below.

PROTOCOL 1 - ALTERNATIVE PAYMENT SCHEDULE GUIDELINES - Prop. Code §209.0062  
PROTOCOL 2 - HOA DOCUMENT RETENTION POLICY - Prop. Code §209.005(m)  
PROTOCOL 3 - HOA OPEN RECORDS PRODUCTION & COPYING POLICY - Prop. Code §209.005(i)

17.2. **CONSTRUCTION.** The terms and provisions of each Protocol must be liberally construed to give effect to the purposes and intent of the underlying statutes, and may not be construed as a way to evade the protections, permissions, or requirements of applicable law. Public recording of the Protocols may not be construed to require that other internal administrative policies and procedures of the Association be publicly recorded. Nor may they be construed to prevent the board from adopting, amending, and restating, from time to time, one or more additional policies, procedures, guidelines, and notices pertaining to the same subject matter. For example, from time to time the board may adopt internal administrative policies or procedures for record retention or record destruction that are more extensive than the minimum requirements of applicable law.

17.3. **AMENDMENT.** As used in this Section, the term "amendment" includes any type of change, including supplements and restatements. The Governing Protocols may be amended from time to time to respond to future legislative initiatives that require the Association to adopt and record policies, procedures, rules, or guidelines pertaining to governance of the Association. To amend or add one Protocol, it is not necessary to restate and re-record the entire compilation of Governing Protocols. Each Protocol may be amended, supplemented, and restated individually. In addition to Declarant's reservations in Appendix B of the Declaration, Declarant hereby reserves the exclusive right to unilaterally amend and adopt Protocols during the Declarant Control Period. The board, by majority vote, may unilaterally amend and adopt Protocols to comply with the minimum requirements of applicable law. Amendment of a Protocol for any other purpose must have the unanimous written consents of all directors, there being no vacancy on the board.

17.4. **CONFLICT.** If any Protocol inaccurately paraphrases applicable law, or inadvertently omits an aspect of applicable law, the applicable law controls. If a provision in a Protocol appears to conflict with a provision in a Governing Document, an effort must be made to construe the provisions so as to give effect to both, if such construction is reasonable. Otherwise, the provision in the Protocol is the higher authority for the limited purpose for which the Protocol is adopted, superceded only by public law. Invalidation of any provision of a Protocol by judgment or court order or subsequent statutory enactment does not affect any other provision of the Protocol, which remains in full force and effect.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

18.1. **BY REFERENCE.** The sections of the Declaration's "General Provisions" article that apply to all Governing Documents are incorporated herein by reference.

18.2. **DRAFTER'S INTENT.** Because Declarant intends these Bylaws to serve the Association for many years beyond the initial development, construction, and marketing of the Property, Declarant purposefully did not draft these Bylaws from its own perspective. Instead, as a courtesy to future users of these Bylaws, Declarant compiled most of the Declarant-related provisions in Appendix B and Appendix C of the Declaration. Although Declarant is initially an owner and a member of the Association, Declarant is intentionally exempt from a number of obligations that apply to other owners, and has a number of rights that other owners do not have. These Bylaws are to be construed liberally to give effect to the drafter's intent of favorable and preferential treatment of Declarant.

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18.3. **LAW CHANGES.** Users of these Bylaws should periodically review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by these Bylaws.

18.4. **CONFLICTING PROVISIONS.** If any aspect of these Bylaws conflicts with applicable law, the applicable law controls. If a provision of the Association's certificate of formation or Articles of Association conflicts with these Bylaws, the certificate of formation or Articles controls. In the case of a conflict between the Declaration and these Bylaws, the Declaration controls. In the case of a conflict between these Bylaws and community rules or policies adopted by the board, these Bylaws control.

18.5. **SEVERABILITY.** Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidity of any provision of these Bylaws, by statute or court order, does not affect any other provision which remains in full force and effect.

18.6. **CONSTRUCTION.** The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

18.7. **FISCAL YEAR.** The fiscal year of the Association is any 12-month period (such as July 1 through June 30 of each year) that is set by resolution of the board, and is subject to change from time to time as the board determines to be in the best interest of the Association. In the absence of a board resolution establishing a different fiscal year, the calendar year is the fiscal year.

18.8. **WAIVER.** No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

#### **CERTIFICATION & ACKNOWLEDGMENT**

As the Declarant of Vineyard Creek Estates, I certify that the foregoing Bylaws of Vineyard Creek Estates Owners Association were adopted for the benefit of Vineyard Creek Estates Owners Association by Declarant, and that these Bylaws are one of the initial Governing Documents of Vineyard Creek Estates.

SIGNED on the dated stated in the acknowledgment below.

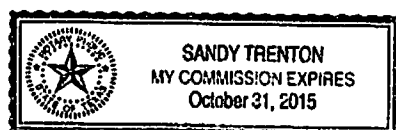
**D. R. HORTON - TEXAS, LTD.,** a Texas limited partnership

By: **D. R. HORTON, INC.,** a Delaware corporation, its authorized agent

By:   
Don E. Allen, Assistant Secretary

THE STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

This instrument was acknowledged before me on this 4th day of November 2014 by Don E. Allen, Assistant Secretary of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.



  
Notary Public, The State of Texas

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## EXHIBITS

### PROTOCOL 1

#### ALTERNATIVE PAYMENT SCHEDULE GUIDELINES OF VINEYARD CREEK ESTATES OWNERS ASSOCIATION

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The owner of a lot for which the assessment account is in arrears is entitled to make partial payments to cure the arrearage, provided the partial payments are made pursuant to a payment plan agreement approved by the Association consistent with these Guidelines, and further provided the **EXCEPTION** below does not apply.

1. **Purpose & Conflict.** The purpose of these Alternative Payment Schedule Guidelines is to comply with the requirements of State law ~ specifically, Section 209.0062 Texas Property Code. In event of conflict between these Guidelines and applicable State law, State law controls. In event of conflict between a provision of these Guidelines and a provision of any Governing Document, these Guidelines control.
2. **Form of Agreement.** A payment plan is an agreement between an owner and the Association. It must be in writing and signed or otherwise accepted by both the owner and the Association. The Association may require use of a particular form. *(The Association's acceptance of a payment plan may be deemed if an owner accepts "as is" - without substantive change - a standard form of payment plan issued by the Association.)*
3. **Consideration.** As consideration for a payment plan agreement, the Association must receive the full amount of the initial installment required by the payment plan. The payment plan is not valid and enforceable between an owner and the Association until the consideration is paid in full.
4. **Effective.** The payment plan agreement is not effective until both of the following two conditions are met. First, both the owner and the Association must agree in writing to the terms of a payment plan consistent with these Guidelines. Second, the Association must receive the full amount of the initial installment required by the payment plan. When both conditions are satisfied, contemporaneously with each other, the payment plan is effective and in good standing.
5. **Co-Owners.** If a lot is owned by more than one person, all co-owners are treated as "the owner" under these Guidelines, regardless of which co-owner requests and performs the payment plan, or defaults.
6. **Term.** A payment plan is for a term of six months, unless the owner and Association agree to a different term, which may not be less than three months, nor more than 18 months.
7. **Amount.** The total amount to be paid under the payment plan is the full amount of the arrearage on the date of the payment plan, plus (if any) administrative fees and interest that accrue during the term of the payment plan.
8. **Installments.** Unless the owner and the Association agree to a different installment schedule, the first installment (the required consideration) will be at least 25 percent of the total amount to be paid under the payment plan, with the balance paid in equal consecutive monthly installments over the remainder of the term, the second installment being due not less than 28 days after the first installment.
9. **Due Dates.** Unless the owner and the Association agree to a different schedule of dates, installments must be received by the Association on or before the first day of each month, except that if the first installment is received mid-month, the second installment is not due until the first day of the month following the next month. (Example, if the first installment is paid January 20, the second installment is due March 1, and the remaining installments on the first day of each month thereafter until paid in full.)
10. **Form of Payment.** Payments may be made by check (personal, business, or cashiers), debit card or credit card (if the Association has such capacity), or direct deposit/electronic transfer (if the Association has such capacity). If the form of payment incurs a cost to the Association, the Association may require the owner to reimburse the cost. Payment must be delivered to the account, lock box, or office designated by the Association for each type of permitted payment.

11. Communications. An owner who wishes to communicate with the Association about any aspect of the payment plan must deliver to the Association a communication for which the purpose is clearly identified. Further, the communication should be delivered to the Association in a manner that brings attention to its purpose.
12. Costs of Delinquency. As permitted by State law, the Association may charge the owner interest and the reasonable costs associated with administering the payment plan, which charges will be included in the payment plan. Any other monetary penalty associated with the assessment delinquency to be paid through the payment plan will be held in abeyance during the term of the payment plan, and will only become due and payable in event of default and termination of the payment plan.
13. Default. A default of the payment plan occurs when any of the following occurs:
  - (1) a scheduled installment is not received by the Association on or before the installment's due date.
  - (2) the Association does not receive at least the full amount of the scheduled installment.
  - (3) the assessment account of the owner and the owner's lot becomes delinquent for amounts not covered by the payment plan.
14. Waiver. On a case-by-case basis, the Association may ~ but is not required to ~ waive an act of default if the owner makes up the missed or short payment no later than the date on which the next payment under the payment plan would be due, provided the next payment is also paid timely and in full.
15. Prepayment. The owner may pay off the balance of the payment plan at any time during the payment plan, or may shorten the term of the payment plan, such as by increasing the amount paid with each installment. The Association's acceptance of payment in amounts or at times that are different from the approved payment plan may not be construed as a waiver of the terms of the payment plan.
16. Notice. The owner must monitor the payment plan to insure that the Association receives the owner's payments in the full amount and on time. The Association may, but is not required to, give the owner a courtesy notice of a missed or short payment.
17. Termination. If an owner defaults on the terms of a payment plan, the Association may, but is not required to, terminate the payment plan. To terminate, the Association must give the owner written notice of termination, with a statement of the full amount immediately due and payable to the Association.
18. Reinstatement. The Association may, but is not required to, reinstate a terminated payment plan for an owner who submits a written request for reinstatement together with an amount sufficient to cure defaults under the previously approved payment plan.
19. Good Faith. By entering into a payment plan agreement with the Association, the owner is certifying to the Association that the owner is acting in good faith to retire an obligation and is not trying to secure an advantage over the Association, such as for use in litigation, bankruptcy, transfer of title, or refinancing of a mortgage.
20. Void Transfer. A transfer of title to a lot during the term of a payment plan pertaining to the lot is not valid without the prior written approval of the Association, so that its interests may be protected in connection with the change of ownership.
21. EXCEPTION. The Association may refuse to negotiate or accept a payment plan from an owner who ~ within the previous 24 months ~ defaulted on the terms of a payment plan that had been approved by the Association, even if the payment plan was reinstated or renegotiated following termination.
22. Amendment. These Guidelines may be amended and restated from time to time by the Association, acting through its Board of Directors, such as may be needed to comply with changing requirements of State law or to conform to emerging practices and technologies. As long as State law requires these Guidelines to be publicly recorded, all amendments and restatements must also be publicly recorded.

*(End of Protocol 1)*



## PROTOCOL 2

### HOA DOCUMENT RETENTION POLICY OF VINEYARD CREEK ESTATES OWNERS ASSOCIATION

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1. **Purpose & Conflict.** The purpose of this HOA Document Retention Policy is to comply with the minimal requirements of Prop. Code Sec. 209.005(m), which requires a property owners' association that governs more than 14 lots to adopt and comply with a document retention policy. In event of conflict between this Policy and applicable State law, State law controls. In event of conflict between a provision of this Policy and a provision of any other Governing Document, this Policy controls.
2. **Document Retention Requirements.** At a minimum, the Association will retain the following documents required by Prop. Code Sec. 209.005(m), for the prescribed periods of time:
  - (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
  - (2) financial books and records shall be retained for at least seven years;
  - (3) account records of current owners shall be retained for at least five years;
  - (4) contracts with a term of one year or more shall be retained for at least four years after the expiration of the contract term;
  - (5) minutes of meetings of the owners and the board shall be retained for at least seven years; and
  - (6) tax returns and audit records shall be retained for at least seven years.
3. **Construction.** The Policy may not be construed to prevent the Board of Directors from adopting, amending, and restating, from time to time, one or more additional administrative policies pertaining to the retention of documents, records, and information of the Association, including ~ without limitation ~ policies relating to the storage and destruction of the items listed above, and policies pertaining to the retention, storage, and destruction of other types of documents, records, and information of the Association. This provision may not be construed as a duty of the Board of Directors to adopt such additional administrative policies.
4. **Public Recording.** This Policy is being publicly recorded because of the possibility that it may be construed as a "dedicatory instrument" within the meaning of Prop. Code Sec. 202.001(1). The act of recording may not be construed as an assertion that this Policy, which is administrative in nature, is a "dedicatory instrument."
5. **Amendment.** This Policy may be amended and restated from time to time by the Association, acting through its Board of Directors, such as may be needed to comply with the changing requirements of State law, to conform to emerging practices and technologies, or to reflect court decisions interpreting State law or policies such as this. As long as State law requires this Policy to be publicly recorded, all amendments and restatements must also be publicly recorded.

*(End of Protocol 2)*

PROTOCOL 3

**HOA OPEN RECORDS  
PRODUCTION & COPYING POLICY  
OF VINEYARD CREEK ESTATES OWNERS ASSOCIATION**

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1. **Purpose & Conflict.** The purpose of this HOA Open Records Production & Copying Policy is to comply with the requirements of Prop. Code Sec. 209.005(i), which requires a property owners' association to adopt a records production and copying policy that prescribes the costs the Association may charge for the compilation, production, and reproduction of information requested pursuant to Prop. Code Sec. 209.005. In event of conflict between this Policy and applicable State law, State law controls. In event of conflict between a provision of this Policy and a provision of any Governing Document, this Policy controls.
2. **Authority.** If an Open Records request is made to the Association, the Association may charge the requestor all reasonable costs of materials, labor, and overhead for compiling, producing, and reproducing the requested information, subject to the limitations of this Policy.
3. **Prescribed Charges.** The rates which the Association may charge an owner are the same as the maximum permitted rates published in Section 70.3 of the Texas Administrative Code (Title 1, Part 3, Chapter 70). The charges shown on Exhibit 1 hereto are some of the T.A.C. rates in effect on the date this Policy is adopted and will be deemed to change automatically with changes in the State's maximum permitted rates for Public Information requests.
4. **Savings Clause.** Notwithstanding anything to the contrary in any writing or communication made by the Association, the Association will not in any event be entitled to receive or collect Open Records charges from an owner in amounts greater than the maximum amounts permitted by applicable law. If from any circumstances whatsoever the Association charges or receives an amount in excess of the maximum charges permitted by law, the excess amount will be reimbursed to the owner.
5. **Waiver.** The Association may reduce or waive some or all of the charges addressed by this Policy on a request-by-request basis, without waiving the right to charge such fees on future requests.
6. **Payment.** The Association may require advance payment of the estimated charges addressed by this Policy. Within 30 business days after delivering the requested information, the Association will provide the owner with an invoice of the actual costs. If the actual costs are less than the prepaid estimated charges, the Association will refund the difference to the owner within 30 business days after sending the invoice. If the actual costs are greater than the prepaid estimated charges, the difference is due and payable to the Association by the owner within 30 business days after the invoice is sent to the owner, after which time the Association may add the unpaid amount to the owner's assessment account.
7. **Amendment.** This Policy may be amended and restated from time to time by the Association, acting through its Board of Directors, such as may be needed to comply with changing requirements of State law, to conform to emerging practices and technologies, or to reflect court decisions interpreting State law or policies such as this. As long as State law requires this Policy to be publicly recorded, all amendments and restatements must also be publicly recorded.

[Examples of Prescribed Costs to Owner on next page.]

Exhibit A to Protocol 3  
HOA Open Records Production & Copying Policy  
of Vineyard Creek Estates Owners Association

**EXAMPLES OF  
PRESCRIBED COSTS TO OWNER**

The rates which the Association may charge an owner are the same as the maximum permitted rates published in Section 70.3 of the Texas Administrative Code (Title 1, Part 3, Chapter 70). The following are some of the T.A.C. rates in effect on the date this Policy is adopted, and are published here as a courtesy to members of the Association. For any task or methodology that is not listed below, consult the T.A.C. for the applicable rate. The absence below of a type of charge may not be construed as the absence of a statutory limit on the type of charge. The amounts published below will be deemed to change automatically with changes in the State's maximum permitted rates for Public Information requests.

**Copy Charges:**

- Electronic image transmitted by email - no copy charge
- Electronic image downloaded to USB drive - actual cost of drive
- Standard paper copy or scan (letter or legal size) - \$0.10 per page (double sided is 2 pages)
- Oversize paper copy or scan (such as 11x17) - \$0.50 per page
- Diskette or CD - \$1.00
- DVD - \$3.00

**Labor Charge:**

No labor charge if the request is for 50 or fewer pages of information, unless the records must be retrieved from a storage facility that is remote from the processor's office.

\$15.00 per hour, in 1/4 hour increments, for actual time to locate, compile, manipulate data, reproduce information, and (if necessary) redact confidential information, for requests of more than 50 pages and for records in remote storage.

No labor charge for time spent to review the requested information to determine if the information qualifies for an exemption from Open Records

**Overhead Charge:**

No overhead charge if the request is for 50 or fewer pages of information. Otherwise, the overhead charge is 20 percent of the labor charge.

**Remote Document Retrieval Charge:**

If the requested information is stored with a commercial records storage company that charges a fee to deliver and return stored records, the Association may seek reimbursement of the third-party fee from the owner if the request otherwise qualifies for a labor charge.

**Other Charges:**

Actual postage and shipping charges if necessary to transmit the reproduced information to the owner.

Actual cost of miscellaneous supplies, such as boxes, if used to produce the requested information.

If the Association accepts payment by credit card, the Association may recoup the amount of any actual transaction fee charged by the credit card company for the privilege.

No sales tax.

*(End of Protocol 3)*

# **Declaration of CC&R's**

**Electronically Recorded**

Official Public Records

*Mary Louise Garcia*

Mary Louise Garcia

**Tarrant County**

11/5/2014 3:40 PM

**D214242924**

PGS 64 \$268.00

Submitter: SIMPLIFILE

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
VINEYARD CREEK ESTATES**

**GRAPEVINE, TEXAS  
(TARRANT COUNTY)**

**Declarant**

**D. R. Horton - Texas, Ltd.**



**~ 11 KEY NOTES ABOUT HOMEBUYING ~**  
**IN VINEYARD CREEK ESTATES**  
**BEFORE BUILD-OUT & SELL-OUT**

---

Our common goal ~ a subdivision of completed homes in the hands of owners who control the destiny of their HOA.

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1. **Mandatory Membership.** From the date this Declaration is recorded, the land described in Appendix A will be subject to this Declaration, which establishes a mandatory membership association. Current and future owners of the land, and any land added to the development, will automatically be members of the property owners association.
2. **Obligation for Assessments.** A home buyer is obligated to the owners association for assessments from the first day of owning the home. Depending on date of closing, part or all of an annual assessment may be collected at time of purchase. New owners are advised to calendar the due date for the next assessment or installment.
3. **Restricted Environment.** A homeowner in Vineyard Creek Estates cannot do "anything he wants" with his yard and the outside of his home. Even the color of his fence stain must conform to certain requirements.
4. **Evolving Community.** Vineyard Creek Estates is a planned community for which the build-out and sell-out may last for many years, during which time the initial concept plan for Vineyard Creek Estates may be significantly modified to respond to perceived or actual changes and opportunities in the marketplace.
5. **Declarant's Role.** Declarant's active role with Vineyard Creek Estates is not forever - it ends when the last homebuyer purchases the last home on the last lot in the community. Until then, Declarant reserves many significant rights to oversee the complete build-out and sell-out of homes in the development.
6. **Declarant Control.** One of Declarant's roles is "controlling" the owners association by appointing its officers and directors during the build-out of Vineyard Creek Estates. Declarant intends to control the owners association for the maximum length of time permitted by Texas law.
7. **Declaration Concepts.** This form of declaration employs some concepts and terms that are not traditional ~ primarily in Appendixes B and C. Why? To do a better job of communicating the elements of land development and home building that must be respected - even protected - to create successful neighborhoods and governing associations that contribute to the economy and well-being of our cities, State, and nation.
8. **Separation of Powers.** The for-profit business of creating and marketing the Property is distinct from the non-profit operation of the Association for the benefit of homeowners and residents. Although homeowners will, in time, control the governance and destiny of Vineyard Creek Estates, homeowners do not have a voice, role, or influence on any aspect of how the Property is created, constructed, built-out, and sold-out by Declarant and Builders.
9. **Marketing Advantage.** Declarant and Builders have rights and opportunities for marketing new homes that are not available to individual homeowners who desire to market their homes for resale. A homeowner who tries to resell his home before Vineyard Creek Estates is sold-out will be competing against Declarant or Builders with new houses and a marketing advantage.
10. **Organization of Declaration.** To make this Declaration more readable for the generations of homeowners that will own homes in Vineyard Creek Estates, its main body does not preface every provision with a statement of Declarant's reserved rights. Instead, most of Declarant's rights and reservations are compiled in Appendix B and Appendix C of this Declaration, which are in every way superior to and controlling over the main body of this Declaration.
11. **Speaking of Appendixes.** Until Vineyard Creek Estates is built-out and sold-out, the appendixes of this Declaration are the most important parts of all the Governing Documents.
  - APPENDIXES A & D are perpetual.
  - APPENDIXES B & C control through Build-Out & Sell-Out.

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
VINEYARD CREEK ESTATES**

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*Appendix B and Appendix C have priority over the main body of this Declaration.*



# DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR VINEYARD CREEK ESTATES

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This Declaration of Covenants, Conditions & Restrictions for Vineyard Creek Estates is made by D. R. Horton - Texas, Ltd., a Texas limited partnership ("**Declarant**"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Vineyard Creek Estates. Declarant also desires to provide a reasonable and flexible procedure by which Declarant may maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for the preservation, administration, and maintenance of portions of Vineyard Creek Estates, and to protect the value, desirability, and attractiveness of Vineyard Creek Estates. As an integral part of the development plan, Declarant deems it advisable to create a property owners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Declarant DECLARES that the property described in Appendix A, and any additional property made subject to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's rights and reservations in Appendix B and Appendix C attached hereto, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the property, their heirs, successors, and assigns, and inure to the benefit of each owner of any part of the property. Declarant intends for the encumbrance and subjugation of Vineyard Creek Estates by this Declaration to be in accordance with the common law doctrines of restrictive covenant and implied equitable servitudes.

## **ARTICLE 1** **DEFINITIONS**

1.1. **DEFINED TERMS.** The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used. Terms pertaining to development of the Property are identified in the following Section.

1.1.1. **"Applicable Law"** means the statutes and public laws, codes, ordinances, and regulations in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "applicable law" on the date of the Governing Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superceded by one or more other statutes or ordinances.

1.1.2. **"ARC" or "Architectural Review Committee"** means the committee appointed by the Association with jurisdiction over architectural matters pertaining to existing homes on improved lots in the Property.

1.1.3. **"Architectural Reviewer"** means the entity having jurisdiction over a particular application for architectural approval. The exclusive Architectural Reviewer for new homes on vacant lots is Declarant or Declarant's designee. The ARC is the Architectural Reviewer for existing homes on improved lots.

1.1.4. **"Area of Common Responsibility"** means certain portions of real property and improvements thereon that are maintained by the Association as required by this Declaration. The initial Area of Common Responsibility is described in Section 12.3 below.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

1.1.5. **"Assessment"** means any charge levied against a lot or owner by the Association, pursuant to the Governing Documents or applicable law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in the Covenant for Assessments Article of this Declaration.

1.1.6. **"Association"** means the association of owners of lots in the Property, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The initial name of the Association is Vineyard Creek Estates Owners Association.

1.1.7. **"Board"** means the board of directors of the Association.

1.1.8. **"City"** means the City of Grapevine, Texas, in which the Property is located.

1.1.9. **"Class"** means a class of membership in the Association, as described in Appendix C of this Declaration.

1.1.10. **"Common Area"** means a portion of the Property that is not a "Lot" and which is identified on a plat or in this Declaration as intended, reserved, or dedicated for use, maintenance, or ownership by the Association, and any real property that is maintained or owned by the Association for the use or benefit of owners and residents, regardless of how it is platted. In most contexts, "common area" may be used interchangeably with "common property."

1.1.11. **"Common Property"** means real property, improvements to real property, and personal property that is used, maintained, or owned by the Association for the use or benefit of owners and residents, including common areas. In most contexts, "common property" may be used interchangeably with "common area."

1.1.12. **"Declarant"** means D. R. Horton - Texas, Ltd., a Texas limited partnership, or the successors and assigns of D. R. Horton - Texas, Ltd., which acquire the status of Successor Declarant according to the terms of the Successor Declarant section of Appendix B of this Declaration.

1.1.13. **"Declaration"** means this document, as it may be amended, supplemented, and restated from time to time.

1.1.14. **"Governing Documents"** means, singly or collectively as the case may be, the Plat, this Declaration, the Owners Manual, the Bylaws of the Association, the Articles of Association, and (if any) the Rules of the Association, as any of these may be adopted, amended, supplemented, restated, or repealed from time to time. Although Governing Documents reference each other and may be recorded contemporaneously, each instrument is independent and may be amended pursuant to its own terms or applicable law. Declarant may adopt and amend the initial Governing Documents.

1.1.15. **"Lot"** means a portion of the Property, as shown on the Plat, intended for independent ownership and construction of a dwelling. As a defined term, a "lot" is not a common area, even if a common area is platted and numbered as a lot, and does not become a common area if acquired by the Association. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot. For certain purposes, the Governing Documents may distinguish between vacant lots and improved lots. As used in the Governing Documents, a **"vacant lot"** is a lot on which a dwelling has never been built or a lot on which the initial dwelling is under construction, and an **"improved lot"** is a lot on which the initial dwelling is or was substantially complete or completed. An improved lot retains its status even if the initial improvements are removed or destroyed.

1.1.16. **"Member"** means a member of the Association, unless the context indicates that member means a member of the board or a member of a committee of the Association.

1.1.17. **"Oncor Easement"** means that certain easement granted to Oncor Electric Delivery Company, LLC, and its successors and assigns by the instrument recorded on December 17, 2012, as Document No. D212307203, Real Property Records, Tarrant County, Texas, and as shown on the plat of the Property.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

1.1.18. **"Oncor Lot"** means each lot burdened with the Oncor Easement, being Lots 4A - 21A in Block 1 of Vineyard Creek Estates, as shown on the plat of the Property, being most of the lots on the east side of Vineyard Creek Drive.

1.1.19. **"Owner"** means a holder of recorded fee simple title to a lot. Declarant is an owner for each lot owned by Declarant. A Builder who acquires title to a lot for the purpose of constructing a house for sale to homebuyers is an owner. Mortgagees and creditors who acquire title to a lot through foreclosure or a deed in lieu of foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners. Every owner is a member of the Association.

1.1.20. **"Owners Manual"** refers to the Owners Manual of Rules & Regs for Vineyard Creek Estates, that certain Governing Document consisting of chapters that contain covenants, conditions, restrictions, specifications, rules, and regulations pertaining to many aspects of the lots and the improvements thereon, such as the appearance, maintenance, improvement, use, and occupancy of the improved lots and Areas of Common Responsibility. "Owners Manual" refers collectively to the compilation of chapters, and also refers to each constituent chapter, whether recorded separately or as part of the compilation.

1.1.21. **"Plat"** means that certain Amended Final Plat of Vineyard Creek Estates, recorded on August 12, 2014, as Document No. D214174403, Plat Records, Tarrant County, Texas, as it may be amended, corrected, or replatted from time to time, in whole or in part, and the plat of any other real property that is made subject to this Declaration, including all dedications, covenants, limitations, restrictions, easements, notes, and reservations shown thereon.

1.1.22. **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Vineyard Creek Estates. The Property includes the land described in Appendix A of this Declaration, as it may be amended or supplemented from time to time, and the land described in a supplemental declaration (if any) executed by Declarant pursuant to this Declaration, and includes every lot and any common area thereon.

1.1.23. **"Resident"** means an occupant of a dwelling, regardless of whether the person owns the lot.

1.1.24. **"Rules"** means the rules ~ singly and collectively ~ of the Association adopted by the Association in accordance with the Governing Documents or applicable law, and which are contained in one or more writings which may be referred to by a variety of names, such as (without limitation) rules, regulations, guidelines, procedures, manuals, policies, standards, and resolutions, all of which are Governing Documents. If customary, rules may be "published" on signs posted or painted on the Property, or communicated to owners as temporary or seasonal rules that are circumstance-based. Rules may properly be used to refer to an instrument, sign, or communicate that contains rules, and may also be used to refer to the individual rules within an instrument, sign, or communicate.

1.2. **DEVELOPMENT TERMS.** The following defined terms pertaining to development of the Property are contained in Appendix B and Appendix C of this Declaration, and hereby incorporated by reference: (1) **Builder**, (2) **Build-Out**, (3) **Declarant Control Period**, (4) **Development Period**, (5) **Sell-Out**, (6) **Shortfall**, and (7) **Unilaterally**.

## **ARTICLE 2**

### **SUBJECT TO DOCUMENTS**

2.1. **SUBJECT TO DOCUMENTS OF RECORD.** All real property subject to this Declaration, including the property described in Appendix A, and any other real property that is made subject to this Declaration, is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms of all publicly recorded Governing Documents, and all other publicly recorded instruments that touch and concern the land, run with the Property, and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns. This Declaration may contain certain disclosures about publicly recorded or publicly accessible documents that do or may affect the Property. Such disclosures are not intended to identify every publicly recorded or publicly accessible document affecting the Property. Neither the Association nor Declarant makes any representation that these are the only

*Appendix B and Appendix C have priority over the main body of this Declaration.*

noteworthy documents affecting the Property. Every prospective owner and resident must make an independent investigation of documents affecting the Property, and make inquiries of anything that concerns him.

2.2. **AVIGATION RELEASE.** Pursuant to Grapevine City Ordinance No. 78-2, enacted on January 17, 1978, the plat of Vineyard Creek Estates contains the required "Avigation Release" as a covenant running with the land.

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***Even the subdivision plat speaks to your use of your lot. Check it out.***

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2.3. **COVENANTS IN PLAT.** In addition to the Avigation Release and the Oncor Easement, all dedications, covenants, limitations, restrictions, easements, notes, and reservations shown on the plat are hereby incorporated by reference as covenants running with the land. Each owner must inform himself about the plat's covenants on his lot and those affecting his use or enjoyment of the lot and common areas. Similarly, the Association is bound by platted covenants, if any, pertaining to common areas and Areas of Common Responsibility.

2.4. **DECLARANT RIGHTS.** The rights of Declarant in the Declaration, particularly in Appendixes B and C attached hereto, override and supercede every provision of this Declaration and the other Governing Documents for the applicable periods of time. Accordingly, some provisions in this Declaration do not apply during Build-Out or Sell-Out, or during the Declarant Control or Development Periods.

2.5. **ADDITIONAL RESTRICTIONS.** Portions of the Property may be subjected to additional or different restrictions, such as restrictions on recorded plats or replats of certain lots, or construction, fence, or use restrictions that are specific to a portion of the Property. Subjecting a portion of the Property to additional or different restrictions is accomplished by recording the restrictions in the Real Property Records of Tarrant County, Texas, typically as an amendment or supplement of this Declaration or the Owners Manual.

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***When you buy a home in Vineyard Creek Estates,  
you also buy into the Governing Documents.***

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2.6. **OWNER AGREES TO BE BOUND.** Each owner, by impliedly or expressly accepting or acquiring an ownership interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Declaration, the plat, and the other Governing Documents. By acquiring the ownership interest before the Property is fully developed, Built-Out, and Sold-Out, each owner covenants, agrees, and acknowledges that Appendixes B and C of this Declaration are controlling over anything to the contrary in the main body of this Declaration. Further, each owner acknowledges that the Governing Documents may be amended, supplemented, or restated from time to time. Each owner also agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

### **ARTICLE 3 PROPERTY FEATURES**

3.1. **LIMITED DISCLOSURES.** The plat, this Declaration, the other Governing Documents, future websites maintained by or for the Association, print or electronic materials used in marketing or describing the Property, and any other type of document or resource related to the Property, may contain certain limited disclosures about the Property and its location to make prospective and current owners and residents aware of the existence of select features or attributes of the Property. Such limited disclosures are not intended to identify every feature, attribute, condition, or unusual aspect of the Property that may affect property values or the quality of life within the Property. Such limited disclosures are not intended to, and do not, constitute a full disclosure of the disclosed feature, attribute, or condition. Providing a disclosure does not create a duty for Declarant or the Association to make additional disclosures. Neither the Association nor Declarant makes any representation that published disclosures are the only noteworthy or most significant features of the Property. Every prospective owner and resident has a duty to make an independent inspection and investigation of the lot and the Property, adjoining and nearby land uses, and publicly accessible documents and resources affecting the lot and the Property, and a duty to make inquiries of anything that concerns him.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

3.2. **COMMERCIAL NEIGHBORS.** On the date of this Declaration, land in the vicinity of the Property is currently used or zoned for non-residential purposes, such as retail, commercial, church, hospital, school, and restaurant. Prospective owners and residents are encouraged to inform themselves about every aspect of the nearby nonresidential land uses. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have no control over the zoning, development, or use of adjacent and nearby land.

3.3. **AIRPORT DISCLOSURE.** Because of its proximity to Dallas/Fort Worth International Airport, Vineyard Creek Estates is within the land area that is subject to the Airport Zoning Ordinance of the DFW Regional Airport, Ordinance No. 71-100, recorded on September 1, 1982, under Volume 7349, Page 1106, Real Property Records, Tarrant County, Texas. Prospective owners and residents are encouraged to inform themselves about the Airport Zoning Ordinance and to draw their own conclusions.

3.4. **HIGHWAY DISCLOSURE.** On the date of this Declaration, a section of State Highway 121 is near Vineyard Creek Estates. Prospective owners and residents are encouraged to inform themselves about every aspect of the adjoining section of State Highway 121, such as current and prospective levels of sound, artificial light, and pollutants. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have no control over uses of adjacent and nearby land, including without limitation, State Highway 121.

3.5. **LAND USE.** By acquiring an ownership interest in a lot, each owner acknowledges that the ownership, uses, platting, and development of land within, adjacent to, or near the Property may change over time, and from time to time, and that such a change may affect the value of owner's lot. Whether an owner is consulted about a proposed change to real property within the vicinity of the owner's lot is a function of local government, and not a function of the Association. Nothing in this Declaration or the other Governing Documents may be construed as a representation of any kind by the Association, Builders, or Declarant as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the plat shows as potential uses of adjoining land. The Association, Builders, and Declarant can not and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air. Words, acronyms, labels, and legends used on a plat to describe land uses are imprecise terms which may be modified by subsequent acts and decisions by public or quasi-public authorities without the formality of amending the plat.

3.6. **DIRT DISCLOSURE.** No representation is made that any lot or common area in Vineyard Creek Estates is on native virgin soil or that the soil has a particular nutritional value for plants. This disclosure is made to give inquiry notice to prospective owners, who may make their own determinations about the composition and nutriments of the material on and beneath the surface of any lot in the Property.

3.7. **ENVIRONMENTAL CONDITIONS.** In the era in which this Declaration is written, the public is increasingly aware of environmental conditions affecting health and quality of life. The Association has no duty to intervene on behalf of an owner or resident who complains of adverse environmental conditions. If a resident is or becomes sensitive to environmental conditions that now exist or that come into existence at a future time on or near the Property, the resident - at the resident's sole expense - may mitigate those conditions in his home and on his lot, provided the method of mitigation does not damage or interfere with the use of another lot or common area, and does not change the appearance of the Property, without approval of the ARC.

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***These are only SOME of the unique attributes of Vineyard Creek Estates.***

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3.8. **CITY ORDINANCES.** No amendment of the Governing Documents nor any act or decision of the Association may violate the requirements of City ordinances pertaining to the Property. The Association should stay informed about the City's requirements for the Property, which may change from time to time.

3.9. **STREETS WITHIN PROPERTY.** Because streets within the Property may be capable of being converted from publicly dedicated to privately owned, and vice versa, this Section addresses both conditions. Public streets are part of the common area only to the extent a public or quasi-public body, such as the city, county, or a special district, authorizes

*Appendix B and Appendix C have priority over the main body of this Declaration.*

or delegates to the Association. As to public streets, the Association is specifically authorized to accept from a public or quasi-public body any delegation of street-related duties, and to act as attorney in fact for the owners in executing instruments required by applicable law to impose, modify, enforce, or remove restrictions or traffic devices (such as speed bumps) on public streets in the Property. Private streets, if any, are part of the common area which is governed by the Association. If the Property has private streets or if State law or local ordinance authorizes the Association to regulate public streets within the Property, the Association is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the Property's streets, such as (1) establishing and enforcing speed limits, (2) regulating the location, use, and appearance of traffic control devices, such as signs and speed humps, (3) designating parking or no-parking areas, (4) establishing limitations or prohibitions on curbside parking, (5) removing or prohibiting vehicles that violate applicable rules and regulations, (6) fining violations of applicable rules and regulations, and (7) implementing programs for controlling access through entrance and emergency access gates, if any.

#### **ARTICLE 4**

#### **PROPERTY EASEMENTS AND RIGHTS**

4.1. **GENERAL.** The easements and rights contained in this Article are in addition to, and not in place of, easements and rights established by other publicly recorded documents, such as the plat and the other Governing Documents. Neither the Association nor Declarant makes any representation that these are the only noteworthy easements and rights affecting the Property. Every prospective owner and resident must make an independent investigation of easements and rights affecting the Property, and make inquiries of anything that concerns him.

4.2. **SURFACE WATER EASEMENT.** By acquiring an ownership interest in a lot, each owner acknowledges that surface water does not respect property lines and that, from time to time, water may flow through and over portions of the lot from adjacent and nearby property. Each lot is hereby burdened with a perpetual easement (the "**Surface Water Easement**") over, across, under, and through the lot for continuous positive drainage of surface or storm water from adjacent and nearby property for the mutual benefit of all lot owners and the Association, regardless of whether or how the Surface Water Easement is shown on a plat or referenced in an instrument of conveyance. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board. Specifically, no person may do anything to a lot or to adjacent property to change the positive drainage pattern for Vineyard Creek Estates.

4.3. **ONCOR EASEMENT ON LOTS 4A-21A, BLOCK 1.** As shown on the plat, the east side of the Property is subject to the 100-foot wide Oncor Easement that crosses Lots 4A - 21A of Block 1. Created before the Property was developed, the easement imposes certain limits on what can be done on and to the land that is burdened by the easement. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have no control over public utility easements on the Property, including the Oncor Easement. By acquiring an ownership or occupancy interest in an Oncor Lot, each owner and resident agrees to be informed about the restrictions and limitations on use imposed by the Oncor Easement on each Oncor Lot, and to comply with the restrictions.

4.4. **EMF DISCLOSURE.** As referenced in the previous Section, portions of the Property are subject to the Oncor Easement with rights to install and operate electric transmission lines, transformers, and related facilities and equipment, which may be expected to give off electric and magnetic fields ("**EMF**") and may also give off audible sounds as by-products of the use of electricity. On the date of this Declaration, the effects of exposure to EMF continue to be studied by the National Institute of Environmental Health Sciences, which maintains a public information website describing the potential risks of EMF. Prospective owners and residents are encouraged to investigate the potential health risks associated with EMF and to draw their own conclusions. By acquiring an ownership or occupancy interest in the Property, each owner and resident accepts the impact and potential risk that EMF may present, and acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have no control over the EMF produced by the transmission lines.

4.5. **EASEMENT FOR ENTRY & SCREENING FEATURES.** The Association is hereby granted a perpetual easement (the "**Screening Feature Easement**") over each lot that abuts or contains a portion of the Property's formal entrances, the Property's private streets or alleys, or the Property's screening features, for the purposes stated in this Section, regardless of whether or how the plat shows the easement, entry features, or screening features.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

4.5.1. Entrance Lots. On recording this Declaration, Declarant burdens Lot 21A, Block 1 and Lot 28A, Block 2 of Vineyard Creek Estates, on which the Hughes Road screening and entry features are located, with the Screening Feature Easement.

4.5.2. Purpose of Easement. The purpose of the Screening Feature Easement is to provide for the existence, repair, improvement, and replacement of the Property's formal entrances, entry gates, private streets and alleys, and screening features, to be maintained by the Association as a common area. In exercising this Screening Feature Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to the streets and alleys, screening, or entrance of a residential subdivision, including: entry gates, street monuments, traffic control signs and devices; screening walls, fences and/or berms; planter beds, landscaping, and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage relating to the Property.

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**NOTICE  
THE LOTS AT THE HUGHES ROAD ENTRANCE ARE  
SUBJECT TO A SCREENING FEATURE EASEMENT.**

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4.5.3. Rights Reserved. The owners of the lots burdened with the Screening Feature Easement will have the continual use and enjoyment of their lots for any purpose that does not interfere with and prevent the Association's use of the Screening Feature Easement.

4.5.4. Temporary Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of a burdened lot as may be reasonably necessary for the Association to perform its contemplated work on the Screening Feature Easement.

4.5.5. Duration, Termination & Assignment of Easement. This easement is perpetual. The Screening Feature Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to the City if the City agrees to accept the assignment.

4.6. OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Governing Documents. An owner who does not occupy a lot delegates this right of enjoyment to the residents of his lot. Notwithstanding the foregoing, if a portion of the common area, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

4.7. WARRANTY CLAIMS. If the owner is the beneficiary of a warranty against major structural defects of the Area of Common Responsibility, the owner may NOT appoint the Association or its officers and directors as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of a claim against a warranty that pertains to the Area of Common Responsibility. This prohibition is warranted by the possibility that the Association may become a party to the dispute because of its duty to maintain the Area of Common Responsibility.

4.8. OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

4.9. OWNER'S RIGHT TO BUILD. That a lot remains vacant and unimproved for a period of years, even decades, does not diminish the right of the lot owner to construct a dwelling on the lot. Nor does a vacant lot enlarge the rights of owners of neighboring lots, who may have become so accustomed to the open space that they expect it to remain unimproved forever.

4.10. RIGHTS OF CITY. The City, including its agents and employees, has the right of immediate access to the common property at all times if necessary for the welfare or protection of the public, to enforce City ordinances, or to improve the appearance of or to preserve public property, public easements, or public rights of way. If the Association fails to maintain common property to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of

*Appendix B and Appendix C have priority over the main body of this Declaration.*



time after receiving the City's written demand (at least 90 days), the City may maintain the common property at the expense of the Association after giving written notice of its intent to do so to the Association. The City may give its notices and demands to any officer, director, or agent of the Association, or alternatively, to each owner of a lot as shown on the City's tax rolls. To fund the City's cost of maintaining common property, the City may levy assessments against the lots and owners in the same manner as if the Association levied a special assessment. The rights of the City under this Section are in addition to other rights and remedies provided by law.

4.11. **ASSOCIATION'S ACCESS EASEMENT.** Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all common areas and the owner's lot and all improvements thereon for the below-described purposes. **Access provided by an owner must allow a person to work on the lot without interruption, interference, harassment, or fear, and may not create additional duties for the worker.** If the exercise of this easement requires entry onto an owner's lot, the Association will try to limit its entry according to a schedule that is available to owners, or during reasonable hours and after notice to the owner, unless entry is a response to a situation that - at time of entry - is deemed by the Association to be an emergency that may result in imminent damage to or loss of life or property. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass. The Association may exercise this easement of access and entry for the following express purposes:

- (1) To maintain the Area of Common Responsibility, as required by this Declaration.
- (2) To inspect the lot for compliance with maintenance and architectural standards.
- (3) To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.
- (4) To perform maintenance that is permitted or required of the owner by the Governing Documents or by applicable law, if the owner fails or refuses to perform such maintenance.
- (5) To enforce architectural standards.
- (6) To enforce use restrictions.
- (7) To exercise any self-help remedy permitted by the Governing Documents or by applicable law.
- (8) To enforce any other provision of the Governing Documents.
- (9) To respond to emergencies.
- (10) To assist utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (11) To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

4.12. **UTILITY EASEMENT.** As used in this Declaration, "**utility**" means every utility and utility-type of function, service, or equipment, whether the provider is public or private, such as (without limitation) water, storm drainage, sewer, trash removal, electricity, fuel, natural gas, telephone, cable television, internet service, fiber optic cable, security, and other telecommunication receiving and distribution systems. This Section may not be construed as a representation that any particular utility will be provided. The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is hereby granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property. The Association may enter into contracts for utility equipment and services for all or portions of the Property, including bulk rate service agreements. Such contract may provide for installation, operation, management, maintenance, and upgrades or modifications to the utility as the

*Appendix B and Appendix C have priority over the main body of this Declaration.*

Association determines appropriate. Until Build-Out, Declarant must approve any contract for utility service to a vacant lot. If a particular service or benefit is provided to fewer than all of the lots, or is requested by owners of fewer than all of the lots, the Association may require an owner to pay the service provider directly, or may levy individual assessments against the served lots to fund the expense.

4.13. **MINERAL INTERESTS.** On the date of this Declaration, it is expected that all mineral interests and water rights will have been reserved by a prior owner of the Property or conveyed pursuant to one or more deeds or other instruments recorded in the Real Property Records of Tarrant County, Texas, including but not limited to rights to all oil, gas, or other minerals and water lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests and water rights were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a lot, every owner acknowledges the existence of the mineral and water rights or reservations referenced in this Section and the attendant rights in favor of the owner or owners of the mineral interests.

4.14. **OIL & GAS ACTIVITY.** In the era in which this Declaration is written, there is renewed interest in oil and gas exploration. Owners and occupiers of real property located anywhere in Texas must be aware that activities related to the exploration, drilling, storage, and transportation of oil, gas, and other minerals may occur, from time to time, within, adjacent to, or in the vicinity of the real property that is owned or occupied, typically pursuant to prior-recorded easements, rights, reservations, and mineral deeds. Prospective owners and residents of Vineyard Creek Estates are encouraged to inform themselves about past, current, or potential future oil and gas activity within, adjacent to, or in the vicinity of the Property, and to evaluate the potential effects of such activity on ownership or occupancy of a lot. The Notice of Possible Oil & Gas Activity Affecting the Subdivision attached hereto as Appendix D is incorporated by reference.

4.15. **NOTICE OF LIMITATION ON LIABILITY.** The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of plat approval, a governmental entity may require a plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit association of lot owners. Notwithstanding plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or wilful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by a governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising waters.

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**PLEASE PAY HEED TO THE SECURITY SECTION**

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4.16. **SECURITY.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety or the perception of safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each owner and resident further acknowledges that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each owner and resident acknowledges and agrees that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

## **ARTICLE 5**

### **COMMON PROPERTY**

5.1. **OWNERSHIP.** The designation of real or personal property as common property may be determined by the plat, this Declaration, the Appraisal District, a taxing authority, a recorded deed into the Association, or any combination of these. Mere ownership of the property is not determinative. All costs attributable to common property, such as (if applicable) maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the common property, unless this Declaration elsewhere provides for a different allocation for a specific common area.

5.2. **USE.** On the date of this Declaration, the Property's common areas are intended for the exclusive use of the Property's owners and residents and their guests and are not intended to be a public accommodation or a public facility within the meaning of the Americans with Disabilities Act. This provision may not be construed to prevent the Association from enlarging the use of a common area if such expansion is deemed to be in the best interest of the Association, or from opening a common area to use by the public if public use is a condition of a status or benefit that is deemed to be in the best interest of the Association.

5.3. **CHANGE OF USE.** From time to time, the Association may modify common property on a temporary or long-term basis to respond to changing lifestyles, economies, environmental conditions, public policies, or recreational values, provided (1) the board deems the modification to be in the best interest of the Association, and (2) the modification does not affect an agreement with or requirement of a public or quasi-public entity without the entity's written approval of the modification. Modification may include (without limitation) a change of use, or the removal, addition, re-location, or change of improvements on a common area or improvements that are common property. Unless required by a public or quasi-public entity, a modification does not require an amendment of this Declaration or of the plat, even if a common area was platted or improved for a particular use.

5.4. **CONVEYANCE BY OR TO ASSOCIATION.** The Association, acting through its board, must accept or convey a real property interest in a common area from or to, as the case may be, Declarant, a special district, a local government, or any other public or quasi-public entity, if the conveyance is required by the Declarant, district, government, or entity, or if the conveyance is necessary to fulfill the original development plan for the Property or to adjust to a change in the original development plan. The Association, acting through its board, may accept or convey a real property interest in a common area from any other person or entity if the board deems such conveyance to be in the best interest of the Association and if the conveyance does not result in a significant or adverse change of land use for residents of the Property. Any other conveyance of a common area, except to and from Declarant, or with Declarant's approval, must be approved by the board and by owners of at least a majority of the lots. Property interests capable of conveyance include, without limitation, fee title to all or part of a common area, an easement across real property, and a lease or license of real property. Notwithstanding anything to the contrary in this Declaration, if the Property is subject to a special district, the special district may acquire responsibility for, control of, or ownership of what has been designated a common area. The authority of the special district is superior to that of the Association.

5.5. **ACCEPTANCE.** By accepting an interest in or title to a lot, each owner is deemed (1) to accept the Property's common property and common areas, and any improvement thereon, in its then-existing "as is" condition; (2) to acknowledge the authority of the Association for decisions pertaining to common property; (3) to acknowledge that transfer of a common area's title to the Association by or through the Declarant or by a third party with Declarant's approval is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the common property, regardless of changes in the Association's board of directors or management.

5.6. **COMPONENTS.** Common property may be improved or unimproved, and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. The common property of the Property consists of the following components on, within, or adjacent to the Property, even if located on a lot or a public right-of-way:

- (1) All of the Property, save and except the house lots.
- (2) Any land described as common area in Appendix A of this Declaration, or in a supplemental declaration, and all improvements thereon.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

- (3) Any area shown on the plat as common area or an area to be maintained by the Association.
- (4) The formal entrances to the Property.
- (5) Screening features (if any) along Hughes Road and Hall Johnson Road, to the extent that the Association has a right or duty to maintain a screening feature.
- (6) The right-of-way of Hughes Road and Hall Johnson Road, to the extent the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- (7) Any modification, replacement, or addition to any of the above-described areas and improvements.
- (8) Personal property owned by the Association, such as books and records, office equipment, and supplies.

5.7. **AREA OF COMMON RESPONSIBILITY.** The Association is charged by this Declaration with perpetual maintenance responsibility for the Area of Common Responsibility on the Oncor Lots.

5.8. **LIMITED COMMON AREA.** If it is in the best interest of the Association, a portion of the common area may be licensed, leased, or allocated to one or more lots for their sole and exclusive use, as a limited common area, whether or not the area is so designated on the plat. Inherent in the limiting of a common area, maintenance of the limited common area becomes the responsibility of the lot owner to whom use is limited. For example, a common area that is difficult to access and maintain except via the adjoining house lot might be a candidate for limited common area.

## **ARTICLE 6**

### **ARCHITECTURAL COVENANTS & USE RESTRICTIONS FOR IMPROVED LOTS**

6.1. **GENERAL PROVISIONS.** Because the lots are part of a single community, this Declaration creates rights to regulate the improvement, design, use, and appearance of the lots in order to preserve and enhance the Property's value and Declarant's architectural vision for the Property, as the vision evolves.

6.1.1. **Applicability.** This Article purposefully distinguishes between vacant and improved lots because of the separation of approval authorities ~ the ARC has authority over improved lots, the Declarant or its appointed Architectural Reviewer has authority over vacant lots. If a provision of this Article is not clear as to its applicability, it will be construed to apply to improved lots only.

6.1.2. **Purposes.** One purpose of this Article is to require that all proposed improvements on a lot ~ vacant or improved ~ be subject to review, approval, and disapproval. Another purpose is to promote and ensure the level of taste, design, and quality by which improved lots in the Property are maintained, modified, and further improved over time. A third purpose is to prevent modifications on improved lots that may be considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements or the evolving architectural vision for the Property. A fourth purpose is to regulate the appearance of every aspect of proposed or existing improvements on an improved lot, including but not limited to replacement dwellings, additions, fences, landscaping, retaining walls, yard art, sidewalks and driveways.

6.2. **OWNER'S DUTY.** By accepting an interest in or title to a vacant or improved lot in Vineyard Creek Estates, **each owner covenants to make no changes or additions to the owner's lot or to improvements on the lot without the Architectural Reviewer's prior written approval** ~ the ARC being the Architectural Reviewer for improved lots. Also, each owner of a vacant or improved lot in Vineyard Creek Estates, and each resident of Vineyard Creek Estates, by occupying a home in the Property, acknowledges that the improvement, modification, appearance, maintenance, and use of the lot and home are regulated by the Governing Documents, in particular this Declaration and the Owners Manual. Each owner and resident further covenants to comply with and conform to the applicable rules and restrictions of each chapter of the Owners Manual. Also, each owner and resident will follow the customary procedures for applying for an approval, waiver, or variance by the board or the ARC, as applicable, and will abide by the outcome. Each owner of a vacant lot will follow the customary procedures of the Architectural Reviewer for vacant lots.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

6.3. **SPECIFICATION SOURCES.** Specifications for the construction of initial improvements on vacant lots are not published in this Declaration or in the Owners Manual, and may be part of a private agreement between Declarant and a Builder. The specifications contained in the Owners Manual were selected from the multitudes because of their potential applicability to the daily use of the improved lots and the expectation that owners may try to modify their houses, fences, and yards. Additional specifications or variations of the requirements in the Owners Manual may be included in lot-specific restrictions. This Section serves as notice of multiple sources of specifications pertaining to the initial construction or subsequent modification of improvements in Vineyard Creek Estates.

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***"DOs and DON'Ts" ARE IN THE OWNERS MANUAL OF RULES & REGS***

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6.4. **ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee (the "ARC") is a committee of the Association. The ARC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ARC serve at the pleasure of the board and may be removed and replaced at the board's discretion. Members of the ARC need not be owners or residents. The Association may hire professionals - such as architects, engineers, and design consultants - to serve on or to advise the ARC at a compensation determined by the board.

6.4.1. **Limits on Liability.** The ARC and each of its members has no liability for decisions made in good faith by the ARC, and which are not arbitrary or capricious. The ARC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ARC, (2) supervising construction for the owner's compliance with approved plans and specifications, or (3) the compliance of the owner's plans and specifications with governmental codes and ordinances, and public laws.

6.4.2. **Discretion.** The ARC may exercise discretion with respect to taste, design, and all standards specified by this Declaration or by the Owners Manual.

6.4.3. **Variations.** All lots are not similarly situated. One lot may be more visible than others because of its location, size, or elevation. For example, a corner lot or a lot at the Property's entrance is typically more visible than an interior lot. The ARC may vary its interpretation and enforcement of construction specifications and use restrictions based, in part, on a lot's location or visibility - provided the ARC tries to treat similarly-situated lots or circumstances in like manner.

6.4.4. **Appeal of ARC Decision.** An owner may appeal to the board any decision by the ARC to deny the owner's application or to approve the owner's application only if certain changes are made. The owner must submit a written application for appeal to the board, with a copy to the ARC, within 60 days after the ARC's decision. The board may affirm, overrule, or modify the ARC's decision.

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**BEFORE CHANGING THE APPEARANCE OF YOUR LOT OR THE OUTSIDE OF YOUR HOME, APPLY FOR WRITTEN APPROVAL OF THE ARC.**

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6.5. **ARC APPROVAL REQUIRED.** Without ARC approval, a person may not re-construct a dwelling on an improved lot or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to an improved lot, or to a vacant lot owned by a person other than Declarant or a Builder, if it will be visible from a street or common area, or if it may have an adverse impact on neighboring homes. The ARC has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Without the ARC's prior written approval for a variance, alterations and additions to an improved lot, or to a vacant lot owned by a person other than Declarant or a Builder, must have the characteristics described in the Owners Manual. In case of conflict between the terms of this Article or the Owners Manual, and a restriction or guideline that pertains directly to the portion of the Property in which a lot is located, the more lot-specific restriction controls. The ARC may supplement this Article and the Owners Manual with interpretations, explanations, and adaptations. An owner should review the Association's architectural restrictions and requirements before planning or initiating changes, repairs, or replacements to his lot and dwelling.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

6.6. **APPLICATION FOR APPROVAL.** To request architectural approval, an owner must make written application to the applicable Architectural Reviewer and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the owner of an improved lot may but is not required to submit letters of support or non-opposition from owners of lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration or the Owners Manual for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. Verbal approval by an Association director or officer, a member of the ARC, the Association's manager, or Declarant does not constitute architectural approval by the appropriate Architectural Reviewer, which must be in writing.

6.6.1. **Deemed Approval.** Under both of the limited conditions identified below, the applicant may presume that his request has been approved by the ARC. If both of those conditions are satisfied, the owner may proceed, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the applied-for work in a timely manner. In exercising deemed approval, the burden is on the owner to document the ARC's actual receipt of the owner's complete application. Under no circumstance may approval of the ARC be deemed, implied, or presumed for an addition or modification that would require a variance from the requirements and construction specifications contained in this Declaration or the Owners Manual, and in any design guidelines for the Property in effect at the time of application. The limited conditions that must be met for deemed approval are:

- (1) If the applicant or a person affiliated with the applicant has not received the ARC's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the ARC.
- (2) If the proposed addition or modification strictly conforms to requirements and specifications contained in this Declaration or the Owners Manual, and in any design guidelines for the Property in effect at the time of application.

6.6.2. **No Approval Required.** No approval is required to repaint exteriors in accordance with the color scheme approved by the ARC, or to rebuild a dwelling in accordance with its original plans and specifications. Nor is approval required for an owner to remodel or repaint the interior of a dwelling.

6.6.3. **Building Permit.** If the application is for work that requires a building permit from a governmental body, the ARC's approval is automatically and implicitly conditioned on the issuance of the appropriate permit. The ARC's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, issuance of a building permit does not ensure ARC approval.

6.6.4. **Neighbor Input.** The ARC may solicit comments on the application, such as from owners or residents of lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant are solely at the discretion of the ARC. The ARC is not required to respond to the commenters in ruling on the application.

6.6.5. **Initial Variances for Vacant Lots.** A lot does not come within the jurisdiction of the ARC until the initial improvements on a vacant lot have been completed. An aspect of an initial improvement that is contrary to this Declaration or the Owners Manual may have been granted a variance by the Architectural Reviewer for vacant lots.

6.7. **TIME LIMITS.** In approving an application, the Architectural Reviewer may specify maximum dates for starting and completing the proposed work, which dates may be tailored to the circumstances of the application and the nature of the proposed work. If the work has not commenced by the specified start date, the approval is void and the owner must re-apply for approval. Once started, the work must be completed with due diligence. In the absence of time periods specified in the Architectural Reviewer's approval, the work must be started within 60 days from the date of application approval, and must be completed within 90 days from the date the work commences. In most cases, the

*Appendix B and Appendix C have priority over the main body of this Declaration.*

commencement of work must be apparent at a site inspection and does not pertain to planning. The deadlines of this Section are subject to force majeure and may be extended if the approved work cannot be started or completed due to causes that are outside the control of the owner and its contractors and which could not be evaded through the exercise of due care, such as natural disasters. An approval automatically expires on the earlier of completion of the work for which approval was granted, or one year after date of approval. This Section does not apply to improvements made by Declarant or to the construction of new homes.

6.8. **CO-ADJACENT LOT.** This Section applies to Vineyard Creek Estates as long as applicable law defines "adjacent lot" and "residential purpose" as it does in Property Code Sec. 209.015 in effect on the date of this Declaration. This Declaration, the Owners Manual, and the other Governing Documents are drafted with the expectation that every platted residential lot owned by a person other than Declarant will be improved with a dwelling, unless the lot is conveyed to the Association or to a Public Agency. This Section pertains to the atypical situation of a vacant lot (the "**Co-Adjacent Lot**") that is adjacent to a lot with a dwelling (the "**Dwelling Lot**"), and is used in conjunction with the Dwelling Lot, both lots having the same owner ~ a situation which is addressed by State law. Because there may be no Co-Adjacent Lot in the Property, this Declaration, the Owners Manual, and the other Governing Documents do not specifically address how provisions intended for lots improved with dwellings are to be applied to Co-Adjacent Lots. Therefore, notwithstanding anything to the contrary in a Governing Document, the following provisions apply. A Co-Adjacent Lot may be used by the owner of the Dwelling Lot only for "residential purposes" as defined by applicable law, or for any additional purpose permitted by the Architectural Reviewer. Notwithstanding provisions (if any) specific to vacant lots in the Property, a Co-Adjacent Lot is subject to the same assessment liability, at the same rate, as the Dwelling Lot with which it is paired. On a case-by-case basis and to the full extent permitted by applicable law, the Architectural Reviewer may establish and enforce additional or different criteria and specifications for every aspect of the use, maintenance, appearance, and improvement of the Co-Adjacent Lot, including (without limitation) screening, landscaping, and construction specifications. By owning a Dwelling Lot and a Co-Adjacent Lot, the owner acknowledges that (to the full extent permitted by applicable law) (1) this Section applies to the Co-Adjacent Lot and controls over any provision to the contrary elsewhere in the Governing Documents; (2) a Co-Adjacent Lot may not be used or improved without the prior written approval of the Architectural Reviewer; (3) in reviewing an application for uses or improvements on the Co-Adjacent Lot, the Architectural Reviewer may require additional information specific to the proposed use or improvement; (4) the Architectural Reviewer may establish lot-specific criteria and specifications that are different from or in addition to requirements for lots improved with dwellings, and tailored to the location and visibility of the Co-Adjacent Lot; and (5) the conditioned approval for the Co-Adjacent Lot may be in the form of a covenant agreement to be signed and acknowledged by the owner and by the Architectural Reviewer or the Association, and publicly recorded in Tarrant County, Texas.

6.9. **VARIANCE.** The use of the Property is subject to the restrictions contained in this Declaration and in the Owners Manual, as each may be amended from time to time, and subject to rules adopted pursuant to this Article. The board or the ARC, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance, other than the limited exceptions authorized by this Declaration or the Owners Manual.

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**VINEYARD CREEK ESTATES HAS RULES**

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6.10. **ASSOCIATION'S RIGHT TO PROMULGATE RULES.** The Association has the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The right to make Rules, or to regulate, includes the right to prohibit or to restrict. In addition to the restrictions contained in this Article and the Owners Manual, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

- (1) Use of common areas.
- (2) Hazardous, illegal, or annoying materials or activities on the Property.
- (3) The use of Property-wide services provided through the Association.
- (4) The consumption of utilities billed to the Association.
- (5) The use, maintenance, and appearance of exteriors of dwellings and lots.

*Appendix B and Appendix C have priority over the main body of this Declaration.*



- (6) Landscaping and maintenance of yards.
- (7) The occupancy and leasing of dwellings.
- (8) Animals.
- (9) Vehicles.
- (10) Disposition of trash and control of vermin, termites, and pests.
- (11) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for residents.

6.11. **ASSOCIATION'S RIGHT TO POST SIGNS.** The Association may post signs on the Property. If customary and if done or authorized by the Association, rules may be published on signs posted or painted on the Property, or communicated to owners as temporary or seasonal rules that are circumstance-based. Each resident must comply with any rules and signs posted from time to time on the Property by the Association, such as those regulating use of common areas. Also, each resident must comply with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of the Property. The Association may, but is not required to, recite the text of a sign in a publicly record document. In the event of a discrepancy or conflict between a rule that is posted on the Property by the Association and a rule that is in a publicly recorded Governing Document, the posted rule controls if it is posted in a place and manner that is appropriate for the conduct to which it relates.

6.12. **SUBJECTIVE STANDARDS.** Standards for some rules and restrictions are inherently subjective, such as what is unattractive or offensive. The Association is not required to honor every resident's individual tolerances. The Use Restrictions, in particular, are not intended to shield a hypersensitive resident from actions or circumstances that would be tolerable to a typical resident of the Property. The Association may refrain from acting on a perceived violation unless the board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one resident to enforce rules and restrictions against another resident. Residents are expected to deal directly and peaceably with each other about their differences.

6.13. **LIMITS TO OWNER'S RIGHTS.** No right granted to an owner by this Article, the Owners Manual, or any provision of any Governing Document is absolute. The Governing Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary for the neighborhood. This Article, the Owners Manual, and the other Governing Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. For example, an owner's right to have a sign advertising the home for sale is not the right to mount the sign on the chimney and illuminate it with pulsating neon lights. The rights granted by this Article, the Owners Manual, and the other Governing Documents are at all times subject to the board's determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Governing Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

6.14. **LIMITED ROLE OF DECLARANT.** Prior to Build-Out, Declarant may identify to the ARC certain locations, uses, or modifications that must not be approved by the ARC without the prior written approval of Declarant or Declarant's designee to prevent a potentially adverse affect on the value or marketing of vacant lots and new homes in the Property. To illustrate, Declarant may require heightened scrutiny for improved lots near a subdivision entrance, along a main thoroughfare, near common areas, or across the street from a model home.

## **ARTICLE 7**

### **ASSOCIATION OPERATIONS**

7.1. **MANDATORY MEMBERSHIP.** By acquiring an ownership interest in a lot, a person automatically becomes a member of the Association ~ a mandatory membership Texas property owners association. Membership in the Association is not optional, and may not be severed from ownership of a lot. Conveyance of a lot automatically conveys the Association membership that is appurtenant to the lot, subject to the right of the Association to require satisfactory proof of conveyance as a condition for changing its membership records. This Section is modified by the Declarant Class Member provision of Appendix C.

7.2. **THE ASSOCIATION.** The existence and legitimacy of the Association are derived from this Declaration and the Bylaws of the Association.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

7.2.1. Type. The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association is incorporated, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

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**MEMBERSHIP IN THE ASSOCIATION IS NOT OPTIONAL.**

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7.2.2. Applicability. The Association is subject to the Texas Business Organizations Code ("TBOC"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. When incorporated, the Association is subject to TBOC Chapter 22 - the Nonprofit Corporation Law. When unincorporated, the Association is subject to TBOC Chapter 252 - the Unincorporated Nonprofit Association Act.

7.2.3. Name. A name is not the defining feature of the Association. Although the initial name of the Association is Vineyard Creek Estates Owners Association, the Association may operate under any name that is approved by the board and (1) registered by the board with the County Clerk of Tarrant County, Texas, as an assumed name, or (2) filed by the Association with the Secretary of State as the name of the filing entity. The Association may also change its name by amending the Governing Documents. Another legal entity with the same name as the Association, or with a name based on the name of the Property is not the Association, which derives its authority from this Declaration.

7.2.4. Duties. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and, as applicable, an unincorporated nonprofit association or a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

7.2.5. Duration. The Association comes into existence on the later to occur of the two following events: (1) the date on which this Declaration is recorded in the Real Property Records of Tarrant County, Texas, or (2) the date on which a deed is recorded in the Real Property Records of Tarrant County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

7.3. BOARD. The Association is governed by a board of directors. Unless the Governing Documents expressly reserve a right, action, or decision to another party, such as the owners or Declarant, the board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its board of directors." The board of directors may authorize or direct officers of the Association, who serve at the pleasure of the board, to implement its decisions.

7.4. MEMBERS & VOTING. Prior to Sell-Out, the Sections of Appendix C titled "Classes of Members" and "Voting" control in lieu of applicable portions of this Section. The Association will have one class of members - the Homeowner Class. Membership is automatic, mandatory, appurtenant to ownership of a lot, and terminates when the member is divested of his ownership interest in the lot to which it is tied and from which it may not be separated. If a lot is owned by more than one person, the co-owners share the membership and decide for themselves how it will be exercised. The board may require satisfactory evidence of transfer of ownership before a purported owner is recognized by the Association as a member. The one vote appurtenant to each lot is indivisible. All votes are uniform in weight, regardless of the value, size, or location of the lot or its improvements. Cumulative voting is not allowed.

7.5. HEAD COUNTS. A reference in a Governing Document or applicable law to a percentage or share of owners or members means owners of at least that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots. In a different context, to make a point, a representative of the Association who appears before a tribunal on behalf of the Association may properly refer to members of the Association as "citizens" and "voters" in the jurisdiction in which the Property is located, without

*Appendix B and Appendix C have priority over the main body of this Declaration.*

evidence of citizenship or voter registrations to substantiate the reference. In that context, the actual number of individual owners may be used.

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***THE ASSOCIATION ACTS THROUGH ITS BOARD OF DIRECTORS.***

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7.6. **DECISION-MAKING.** Any decision or act of the Association may be made by or at the direction of the board, unless the Governing Documents reserve the decision or act to the members, the Declarant, or any other person or group. Unless the Governing Documents or applicable law provide otherwise, any action requiring approval of the members may be approved (1) at a meeting by owners of at least a majority of the lots that are represented at the meeting, provided notice of the meeting was given to an owner of each lot, or (2) in writing by owners of at least a majority of all lots, provided the opportunity to approve or disapprove was given to an owner of each lot. As long as the Declarant Class exists, Declarant has the right to veto any decision made by the Association which Declarant reasonably expects to have an adverse affect on the rights and interests of Declarant or Builders in completing the development, construction, and marketing of the Property.

7.7. **MANAGER.** The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding a delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

7.8. **ARRANGEMENTS WITH OTHER ASSOCIATIONS.** If deemed by the board to be in the best interest of the Association, the Association may participate in contractual arrangements with other property owners associations or with owners or operators of nearby property in order to consolidate similar maintenance programs while providing consistency and economy of scale. Common funds of the Association may be used to pay the Association's pro rata share of the contractual arrangement.

7.9. **COMMUNICATIONS.** Drafted in an era of rapidly changing communication technologies, this Declaration does not intend to limit the methods by which the Association, owners, and residents communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Governing Documents or applicable law to make information available to owners of all lots, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted via technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is used by owners of at least 85 percent of the lots. Also, the Association may employ multiple methods of communicating with owners and residents.

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***YOU AUTHORIZE THE HOA TO REPRESENT YOU, but only in a few situations.***

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7.10. **OWNERS APPOINT ATTORNEY-IN-FACT.** Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, automatically appoints the Association, acting through its board, to act as the owner's attorney-in-fact, agent, trustee, or proxy in certain circumstances, in strict accordance with the limited purposes and powers given below with respect to Vineyard Creek Estates.

7.10.1. **Limited Purposes & Powers.** The appointment of the Association as the attorney-in-fact of the owners is limited to the following purposes and powers:

- (1) To act as trustee for the owner, to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.
- (2) To act as the official representative of the collective interests of lot owners before administrative and governing bodies, such as taxation, condemnation, and zoning boards.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

- (3) To serve as attorney-in-fact for the owner in signing instruments that local governments or public laws require to be signed by a certain percentage of owners in Vineyard Creek Estates.

7.10.2. Requirements for Association. At least 10 days before exercising the power of attorney or appointment of agency or trustee created by this Section, the Association must notify the membership of (1) the circumstances that give rise to the exercise, (2) which of the foregoing criteria applies to the exercise, (3) how the Association intends to exercise the power created herein, (4) why the exercise is deemed to be in the best interests of the Association, and (5) the time, date, and place of a forum in which the members can share communications about the proposed exercise.

7.10.3. Duration as to Property. The Association's authority as attorney in fact for the collective community of owners begins on the date this Declaration is recorded and is perpetual as to the Property unless revoked, in writing, by the Association, as evidenced by an instrument of revocation recorded in the Real Property Records of Tarrant County, Texas. This power of attorney will not lapse because of a passage of time.

7.10.4. Duration as to Owner. As to a particular owner, the Association's authority as attorney in fact begins on the date the owner acquires an interest in or title to a lot, and ends when the owner ceases to hold an interest in or title to a lot. Each owner ratifies all acts done under this appointment during the owner's membership in the Association. This power of attorney is not affected by the disability or incapacity of an owner.

7.10.5. Hold Harmless. Each owner binds himself and his heirs and personal representatives to hold the Association harmless from all claims, demands, losses, damages, actions, and expenses that the Association may sustain or incur in connection with carrying out the authority granted to the Association in this power of attorney.

7.10.6. Abuse. This Section may not be used to avoid the requirements of the Dispute Resolution Article or to allow the Association to represent owners individually or collectively in a court of law or equity. This Subsection may not be amended, repealed, or otherwise terminated without the prior written and acknowledged consent of Declarant and, after the Development Period, owners of two-thirds of the lots in the Property.

7.11. BOOKS & RECORDS. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. The Association will make its books and records available to members, on request, for inspection and copying pursuant to the requirements of applicable law.

7.12. INDEMNIFICATION. The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

7.13. INSURANCE. All insurance affecting the Property is governed by the provisions of this Section, with which the board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each owner irrevocably appoints the Association as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

7.13.1. General Features. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be

*Appendix B and Appendix C have priority over the main body of this Declaration.*

canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

7.13.2. Property. To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any lot owned by the Association.

7.13.3. General Liability. To the extent it is reasonably available, the Association will maintain a commercial general liability insurance policy over the common areas - expressly excluding the liability of each owner and resident within his lot - for bodily injury and property damage resulting from the operation, maintenance, or use of the common areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an owner's claim because of negligent acts of the Association or other owners.

7.13.4. Directors & Officers Liability. To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

7.13.5. Other Coverages. The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by a national institutional underwriting lender for planned unit developments as long as the underwriting lender is a mortgagee or an owner.

7.14. OBLIGATIONS OF OWNERS. This Section supplements and does not replace the duties, responsibilities, and obligations of owners in Vineyard Creek Estates that are communicated throughout the Governing Documents.

7.14.1. General Obligations. Without limiting the obligations of owners under the Governing Documents and pursuant to applicable law, each owner will:

- (1) Refrain from interfering with the Association's performance of its responsibilities, such as maintenance of the common areas and the Area of Common Responsibility.
- (2) Maintain effective contact information with the Association, and promptly notify the Association of changes in the owner's contact information in a manner that brings attention to the changed information.
- (3) Pay assessments properly levied by the Association against the owner or his lot, and will pay regular assessments without demand by the Association.
- (4) Pay the applicable transfer-related fees and contributions at time of closing.
- (5) Comply with the Governing Documents as amended and published from time to time.
- (6) Pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, contractors, agents, or invitees.
- (7) Be liable to the Association for violations of the Governing Documents by the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance.

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7.14.2. **Owner's Responsibility for Insurance.** Each owner will obtain and maintain property insurance on all insurable improvements on his lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each owner will obtain and maintain general liability insurance on his lot. Each owner and resident is solely responsible for insuring his personal property in his dwelling and on the lot, including furnishings and vehicles. If circumstances warrant, the board may establish additional minimum insurance requirements for owners if the insurance is deemed necessary or desirable by the board to reduce potential risks to the Association or other owners. Each owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. This Subsection may not be construed to create a duty for the Association to inquire about an owner's insurance coverage or to enforce this Subsection.

## **ARTICLE 8**

### **COVENANT FOR ASSESSMENTS**

8.1. **GENERAL.** The words and concepts used in the Sections of this Declaration that pertain to assessments, reserves, and the financial affairs of the Association ("**money-related**") are intended to have their ordinary meanings, and are not intended to be "terms of art" that have meanings specific to fields such as taxation, accounting, and finance. Any aspect of the money-related Sections of this Declaration that conflicts with an applicable regulation or ruling from the Internal Revenue Commission is unenforceable or must be construed in a way that does not conflict.

8.2. **BOARD DISCRETION.** By acquiring an ownership interest in a lot, **each owner acknowledges that the board may use its sole discretion** in exercising the rights of the Association and of the board under this Article, such as decisions regarding reserve funds, and including without limitation the interpretation and implementation of every provision of this Article. If made in good faith, a board decision regarding any money-related matter is final. Because reasonable people may disagree about the intent, scope, and effect of certain provisions of this Article, the board is hereby authorized to adopt one or more resolutions or policies to interpret or implement any provision or right contained in this Article, and also has the right to amend or restate, from time to time, any such resolution or policy. To make informed money-related decisions that are mindful of potential tax consequences to the Association, the board may, from time to time, obtain the counsel of accounting, legal, banking, and investment professionals (as appropriate).

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### **IF YOU OWN A HOME IN VINEYARD CREEK ESTATES, YOU MUST PAY ASSESSMENTS TO THE ASSOCIATION.**

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8.3. **PERSONAL OBLIGATION.** **Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association.** An owner is obligated to pay assessments levied by the board against the owner or his lot. An owner makes payment to the Association at its principal office or at any other place the board directs. Payments must be made in full regardless of whether an owner has a dispute with the Association, another owner, or any other person or entity regarding any matter to which this Declaration pertains. No owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the common area or by abandonment of his lot. An owner's obligation is not subject to offset by the owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the owner and a continuing covenant running with the lot.

8.4. **USES OF ASSESSMENTS.** The Association will use its common funds (typically assessment income and reserves) **for the general purposes of preserving and enhancing the Property, and for the common benefit of owners and residents,** including but not limited to maintenance of real and personal property, management and operation of the Association, any expense reasonably related to the purposes for which the Property was developed, and any expense permitted or required by the Governing Documents or by applicable laws and governmental regulations. If made in good faith, the board's decision with respect to the use of common funds is final. This Section does not attempt to identify every possible use of common funds, nor to create a duty for the Association to provide the illustrated uses. The Association's common funds may be used for any expense which, in the opinion of the board, is **necessary or desirable for the operation, maintenance, preservation, enhancement, and beautification of the Property, or for the general benefit of owners and residents,** such as (by way of illustration but not limitation) the following:

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- (1) Maintenance, repair, and replacement, as necessary, of the common property.
- (2) Maintenance, repair, and replacement, as necessary, of the Area of Common Responsibility, but only to the extent required by this Declaration.
- (3) Utilities billed to the Association.
- (4) Services billed to the Association and available to all lots.
- (5) Taxes on property owned by the Association, franchise taxes, and the Association's income taxes.
- (6) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (7) Costs of operating the Association, such as website, internet, telephone, postage, office supplies, printing, meeting expenses.
- (8) Activities that promote the Property and the Association to the community at large, as well as activities that contribute to communications between the Association and its members and among the members, such as social and recreational functions, websites, and social media services and subscriptions.
- (9) Educational opportunities of benefit to the Association.
- (10) Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.
- (11) Contributions to reserve funds, savings accounts, and other permitted accounts of the Association.
- (12) Performance of a written contract, if any, between the Association and a special district, local government, or neighboring property owner or owners association.
- (13) Costs of performing the Association's required and discretionary functions under this Declaration, the other Governing Documents, and applicable law, and any expense which the Association is required to pay by law or the Governing Documents.
- (14) Costs of enforcing the Governing Documents.
- (15) Acquisition and construction of common property, consistent with applicable sections of the Internal Revenue Code, and subject to the Betterments Section below.

8.5. **ANNUAL BUDGET.** The board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, estimated contributions to reserve funds, and a projection for uncollected receivables. Estimated expenses for the year typically include common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association. The board will make the budget or its summary available to an owner of each lot, although failure to receive a budget or summary does not affect an owner's liability for assessments. The board will make the detailed budget available to an owner upon request.

8.6. **SURPLUS & SHORTFALL.** The annual budget being an estimate of income and expenses, almost every year will result in either a shortage or surplus of income over expenses. The purpose of this Section is to clarify that the board is authorized to deal with budget surpluses and shortfalls. Words used in this Section are not intended to have meanings specific to fields such as taxation, accounting, and insurance.

8.6.1. **Shortfall.** If during the course of a year the board determines that the Association's actual income may be insufficient to cover the actual amount of budgeted common expenses for the remainder of the year, the board may increase regular assessments for the remainder of the fiscal year in an amount that covers

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the estimated deficiency. The Association is not prohibited by this Declaration from transferring money from its reserve accounts to cover an operating shortfall or to respond to an emergency.

8.6.2. Surplus. Being a nonprofit entity does not prohibit the Association from acquiring a surplus of income over expenses. If during the course of a year the board determines that the Association's income is expected to exceed the common expenses that are budgeted for the remainder of the year, the board may determine one or more uses for the excess income by any means that benefits the Property, owners, and residents.

8.7. BETTERMENTS. The purpose of this Section is to distinguish between improvements to the Property that may be authorized unilaterally by the board in its sole discretion, and improvements that must have the prior approval of owners in addition to the board. Words used in this Section are not intended to have meanings specific to fields such as taxation, accounting, and insurance.

8.7.1. Maintenance Improvements. The board has sole authority and discretion for "**Maintenance Improvements**," being improvements of real and personal property that are within the scope of maintenance, repair, and replacement, regardless of the cost of the improvement. As used in this Section, "**maintenance, repair, and replacement**" of real and personal common property means substitutions, upgrades, additions, improvements, enhancements, and even removal which are required or recommended (1) to reduce future maintenance duties or costs, (2) to reduce liability, (3) to respond to an emergency or to prevent additional damage, (4) to take advantage of advancements in technology, systems, or materials, (5) to preserve the condition of common property, (6) to improve the appearance of common property, (7) to comply with laws and ordinances, or (8) to conform to changes in community standards.

8.7.2. Betterment Improvements. A **Betterment Improvement** is an improvement of real or personal property that is not a Maintenance Improvement. Subject to the exception below for Nominal Betterments, common funds from any source (such as assessment, budget surplus, reserves, or bank loan) may not be spent on a Betterment Improvement without the prior approval of both the board and owners representing at least two-thirds of the lots represented in person or by proxy at a meeting of the Association (at which a quorum is attained) called for the purpose of approving the Betterment Improvement. If the requisite approvals were obtained for a proposed Betterment Improvement in connection with establishing a discretionary reserve fund or special assessment dedicated to the Betterment Improvement, the prior approval also pertains to expending the discretionary reserve fund or special assessment on the dedicated Betterment Improvement.

8.7.3. Nominal Betterments. The board has sole authority and discretion for **Nominal Betterments**, being Betterment Improvements of real and personal property that, in the sole discretion of the board, meet all of the three below-listed criteria. A determination of "significant increase" by the board is a proper exercise of its discretionary authority and is presumed to be reasonable. The board may develop guidelines for such determinations. Adding a grove of trees to an open space is an example of a Nominal Betterment. The criteria for a Nominal Betterment are:

- (1) The cost of the Betterment Improvement is less than five percent of the Association's annual operating budget.
- (2) The Betterment Improvement is not expected to significantly increase the Association's liability.
- (3) The Betterment Improvement is not expected to significantly increase the Association's responsibility and financial obligation for operation, insurance, maintenance, repairs, or replacement.

8.8. OWNERS' CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of owners of at least two-thirds of the lots. In addition to other rights granted to owners by this Declaration, owners have the following powers and controls over the Association's budget:

8.8.1. Veto Increased Dues. At least 30 days prior to the effective date of an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective

*Appendix B and Appendix C have priority over the main body of this Declaration.*

date of the increase. The increase will automatically become effective unless owners of at least a majority of the lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

8.8.2. Veto Special Assessment. At least 30 days prior to the effective date of a special assessment, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the special assessment. The special assessment will automatically become effective unless owners of at least majority of the lots disapprove the special assessment by petition or at a meeting of the Association.

8.9. TYPES OF ASSESSMENTS. There are 4 types of assessments: Regular, Special, Individual, and Deficiency.

8.9.1. Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. If the board does not approve an annual budget or fails to determine new regular assessments for any year, or delays in doing so, owners will continue to pay the regular assessment as last determined

8.9.2. Special Assessments. The board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the owners, unless this Declaration so stipulates.

8.9.3. Individual Assessments. In addition to regular and special assessments, the board may levy an individual assessment against a lot and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his lot into compliance with the Governing Documents; fines for violations of the Governing Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-lot basis; and "pass through" expenses for services to lots provided through the Association and which are equitably paid by each lot according to benefit received.

8.9.4. Deficiency Assessments. The board may levy a deficiency assessment against all lots for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.

8.10. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or dwelling, subject to the exemption for Declarant provided below and in Appendix C. Unplatted portions of the Property, if any, are not subject to assessment.

8.11. DUE DATE. The board may levy regular assessments on any periodic basis - annually, semi-annually, quarterly, or monthly. Regular assessments are due on the first day of the period for which levied. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

8.12. DECLARANT EXEMPTION. Declarant's obligation for common expenses and exemption from assessments is described in Appendix C attached hereto. Unless Appendix C creates an affirmative assessment obligation for Declarant, every vacant lot and every improved lot owned by Declarant, by an affiliate of Declarant, or by an owner who is under contract to sell the lot to Declarant, is exempt from assessment by the Association.

8.13. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association has the right to borrow money, subject to (1) the ability of the Association to repay the borrowed funds from assessments, (2) approval by the board, and (3) the approval or consent of either (a) owners of at least a majority of the lots, or (b) if a meeting of the Association is called for the purpose of approving the loan, and if a quorum is attained, then owners of at least two-thirds of the lots which are represented (in person or by proxy) at the meeting may approve the loan, even though they may comprise less than the number of owners required for the quorum. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to

*Appendix B and Appendix C have priority over the main body of this Declaration.*

future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder. This Section does not apply to loans between accounts of the Association, or between the Association and Declarant.

8.14. **LIMITATIONS OF INTEREST.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

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**TO AVOID PENALTIES, PLEASE PAY ASSESSMENTS TIMELY AND IN FULL.**

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8.15. **EFFECT OF NONPAYMENT OF ASSESSMENTS.** An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

8.15.1. **Interest.** Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the board from time to time, not to exceed 10 percent per annum. If the board fails to establish a rate, the rate is 10 percent per annum. On a delinquent account, the Association may charge interest or late fees, but not both.

8.15.2. **Late Fees.** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time. On any delinquent account, the Association may charge interest or late fees, but not both.

8.15.3. **Costs of Collection.** The owner of a lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

8.15.4. **Acceleration.** If an owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

8.15.5. **Suspension of Use.** If an owner's account has been delinquent for at least 30 days, the Association may suspend the right of the owner and residents of the owner's lot to use common areas and common services during the period of delinquency. Suspension does not constitute a waiver or discharge of the owner's obligation to pay assessments.

8.15.6. **Money Judgment.** The Association may file suit seeking a money judgment against an owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

8.15.7. **Notice to Mortgagee.** The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

8.15.8. **Foreclosure of Assessment Lien.** As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or nonjudicial means.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

8.15.9. Application of Payments. The Association will accept partial payments, but may adopt a policy for returning partial payments with words of limitation to which the Association has not agreed. Payments received for the lot's account will be applied according to the requirements of applicable law.

## **ARTICLE 9 RESERVE FUNDS**

9.1. GENERAL. Generally, the funds of the Association are in either operating funds or reserve funds. From time to time, and as needed, the Association may establish any number of reserve funds for different purposes, provided each purpose benefits the Property and its owners and residents. Duties imposed on the Association or the board by this Section are voluntary during the Declarant Control Period, and do not become obligatory until the first fiscal year after the end of the Declarant Control Period. **Because the common areas are small in size and function, the application of this Article is discretionary with the board.**

9.1.1. Authority. The Association's reserve funds may not be placed in accounts other than no-risk fully-insured accounts, except pursuant to - and in close adherence with - an investment policy adopted by the board. To be effective, an investment policy must be approved and signed by all the directors, or by a majority of the directors and all three members of an advisory committee of disinterested owners appointed by the board for the purpose of considering and approving the investment policy. Although not required, review of the investment policy at least once every three years by the board and the above-referenced advisory committee is recommended.

9.1.2. Sources. Typically, reserve accounts are funded by monies paid by owners other than Declarant, who has no duty to contribute to reserves. Owners' contributions may be in the form of initial contributions at time of purchase, special assessments, budgetary surpluses, or set-asides from regular assessments.

9.1.3. Non-Reimbursable. By acquiring an ownership interest in a lot, each owner acknowledges that the Association's reserve accounts are not subject to partition and are not a source of reimbursement to the owner for monies contributed by the owner during the period of lot ownership. This may not be construed to prevent the buyer and seller of a lot from negotiating reserve contributions between themselves.

9.2. REPAIR & REPLACEMENT RESERVES. Within one year after the end of the Declarant Control Period, the Association will establish, maintain, and accumulate Repair & Replacement Reserves ("**R&R Reserves**") for repair and replacement of some (if not all) improvements in the common area and components of common property. Within one year after the end of the Declarant Control Period, and periodically thereafter, the board elected by the owners will adopt a replacement reserve schedule as the basis for the Association's R&R Reserves.

9.3. OPERATIONS RESERVES. The Association may establish, maintain, and accumulate operations reserves, at a level determined by the board, to cover expenses such as the cost of operational or maintenance emergencies or contingencies. Also, operations reserves may be used by the Association to cover fluctuations and shortages in operating income.

9.4. DISCRETIONARY RESERVES. The board may establish, maintain, and accumulate as many additional types of reserve funds as it desires, such as "Special Future Projects." As a general rule, the Association should endeavor to adequately fund the R&R Reserve fund before funding one or more discretionary reserve accounts.

9.5. DECLARANT EXEMPTION. Declarant's exemption from reserve contributions is described in Appendix C attached hereto. By acquiring an ownership interest in a lot, each owner acknowledges that Declarant is not obligated to contribute to the Association's reserve funds, and that during the Declarant Control Period the Association is not obligated to fund reserves, even if shown on a build-out budget as a category of future expense.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

**ARTICLE 10**  
**ASSESSMENT LIEN**

10.1. **CREATION & PERFECTION OF LIEN.** The recording of this Declaration creates the Association's assessment lien on every part of the Property to secure the payment of assessments to be levied by the Association. This publicly recorded Declaration constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. Each assessment is a charge on the lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his lot.

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**Yes, the HOA *can* foreclose!**

If you fail to pay assessments to the Association, you may lose title to your home  
if the Association forecloses its assessment lien against your lot.

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10.2. **LIEN SUPERIOR TO HOMESTEAD.** Because this Declaration is recorded before the instrument by which an owner takes title to a lot, the assessment lien hereby created is superior to any homestead right acquired in the future by a lot owner. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, acknowledges that the Association's assessment lien is superior to the owner's claim of homestead, if applicable.

10.3. **OTHER SUPERIORITIES.** In addition to a claim of homestead, the assessment lien hereby created is also superior to all other liens and encumbrances on a lot, except only for (1) real property taxes and assessments levied by governmental and quasi-governmental authorities, (2) a deed of trust or vendor's lien recorded against land before the land became subject to this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original improvements on a lot, and (4) a purchase money vendor's lien or purchase money deed of trust lien recorded before the date on which the delinquent assessment became due. The Association may voluntarily subordinate its assessment lien to an otherwise-inferior lien, from time to time. However, the lien created by this Declaration can not and may not be released as to a lot without withdrawing the lot from the effect of this Declaration. Any instrument that purports to "release" the Association's assessment lien, even if executed by the Association, will be construed, depending on the circumstances, as either a subordination of the assessment lien as to future assessments on the lot, or as a waiver of Association's superior claim against the lot for delinquent assessments.

10.4. **EFFECT OF MORTGAGEE'S FORECLOSURE.** Foreclosure of a superior lien extinguishes the Association's claim against the lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former owner, and does not extinguish the Association's lien for assessments that become due after the sale. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

10.5. **NOTICE AND RELEASE OF NOTICE.** Although this Declaration constitutes perfection of its lien, the Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of Tarrant County, Texas. If the debt is cured after a notice has been recorded, the Association will publicly record a release of the notice within 60 days after cure, or within 60 days after receiving the owner's written request. Although the owner is liable to the Association for reimbursement of release expenses incurred by the Association, the Association may not require prepayment as a condition of the release.

10.6. **POWER OF SALE.** By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.

10.7. **FORECLOSURE OF LIEN.** Foreclosure of the Association's assessment lien - and all prerequisite procedures - must comply with at least the minimum requirements of applicable law for foreclosures, in general, and for foreclosures by property owners associations, in particular. To the extent permitted by law, the assessment lien may be foreclosed by judicial or nonjudicial methods. A nonjudicial foreclosure requires a court order pursuant to the expedited foreclosure

*Appendix B and Appendix C have priority over the main body of this Declaration.*

process required by Chapter 209 of the Texas Property Code, and must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the assessment lien if the debt consists solely of interest, late fees, fines or a claim for reimbursement of attorney's fees incurred by the Association.

## **ARTICLE 11**

### **ENFORCING THE DOCUMENTS**

11.1. **RIGHT TO ENFORCE.** The Association and each owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed on the Property, on the owners, or on the Association by the Governing Documents or by applicable law. Failure by the Association or by any owner to enforce a provision of the Governing Documents or applicable public law is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Governing Documents at any future time. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Governing Documents at any time.

11.2. **BOARD DISCRETION.** The board may use its sole discretion in determining whether to pursue a violation of the Governing Documents, provided the board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

11.3. **CONSISTENCY BY CIRCUMSTANCE.** The board may vary its enforcement by circumstance, provided (1) the board establishes a rational and reasonable basis for circumstantial enforcement, and (2) the board diligently tries to be consistent in dealing with similar circumstances. To illustrate, the Association may decide that circumstances warrant different procedures for collecting delinquent assessments from owner occupants and investor owners, or from owners who are selling their lots, or are temporarily unemployed, or are in bankruptcy, or are deceased. Similarly, there may be a basis for enforcing a construction specification or use restriction against lots that are highly visible because of their prominent location, versus lots that have a less visible or less prominent location.

11.4. **TECHNICAL VIOLATION.** If an owner who takes or make an action, use, change, or addition that requires prior approval, without having applied for or obtained such prior approval, the action, use, change, or addition is deemed to have been approved if it (1) qualifies for approval, (2) is in substantial compliance with applicable regulations, and (3) would have been approved, in the reasonable exercise of the Approver's discretionary powers, if the application had been submitted timely. An owner who fails to obtain prior written approval may apply belatedly for written approval, in which case the board, ARC, Architectural Reviewer, or Association, as applicable, may not disapprove the application that otherwise complies with the foregoing criteria for deemed approval. A written approval issued "retroactively" ~ after the action, use, change, or addition is made ~ may not be construed as a waiver of the duty of owners to obtain prior written approval when required by a Governing Document, nor as an abdication of authority over actions, uses, changes, and additions to the Property that are regulated by the Governing Documents.

11.5. **COSTS OF ENFORCEMENT.** The Association may use common funds to exercise its rights and remedies for enforcing the Governing Documents, including funds contributed by the owner against whom enforcement is sought, subject to limitations for funding litigation in the Dispute Resolution Article. Costs incurred by the Association for curing or abating a violation are at the expense of the owner or other person responsible for the violation. If legal assistance is obtained to enforce a provision of a Governing Document, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of a Governing Document or the restraint of a violation of a Governing Document, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

11.6. **NOTICE AND HEARING.** Before the Association may exercise certain of its remedies for a violation of the Governing Documents or damage to the Property, the Association must give an owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices are also required before an owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

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**STATE LAW APPLIES  
to many of the Association's enforcement rights and remedies.**

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11.7. **REMEDIES.** The remedies provided in this Article for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by applicable law, the Association has the following right to enforce the Governing Documents, subject to applicable notice and hearing requirements (if any):

11.7.1. **Nuisance.** The result of every act or omission that violates any provision of a Governing Document is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

11.7.2. **Fine.** The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

11.7.3. **Suspension.** The Association may suspend the right of owners and residents to use common areas for any period during which the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate the Governing Documents. A suspension does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

11.7.4. **Self-Help.** The Association has the right to enter any part of the Property, including lots, to abate or remove, using force as may reasonably be necessary, any improvement, thing, animal, person, vehicle, or condition that violates a Governing Document. In exercising this right, the board is not trespassing and is not liable for damages related to the abatement. The board may levy its costs of abatement against the lot and owner as an individual assessment. The board will make reasonable efforts to give the violating owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the owner. Prior notice is not required (1) in the case of emergencies, (2) to remove violative signs, (3) to remove violative debris, or (4) to remove any other violative item or to abate any other violative condition that is easily removed or abated and that is considered a nuisance, dangerous, health hazard, or an eyesore to the neighborhood.

11.7.5. **Suit.** Failure to comply with the Governing Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

**ARTICLE 12  
MAINTENANCE AND REPAIR OBLIGATIONS**

12.1. **OVERVIEW.** Generally, the Association maintains the common areas, and the owner maintains his lot and dwelling. If an owner fails to maintain his lot, the Association may perform the work at the owner's expense. Interestingly, this Declaration permits owners to delegate some of their responsibilities to the Association. For example, during one 20-year span the owners may want the Association to handle the periodic repainting of exterior trim on all the dwellings, which otherwise is the responsibility of each lot owner. During the next 20 years, the owners may prefer to handle repainting on an individual basis. They have that option under this Declaration's concept of "areas of common responsibility," as described below.

*Appendix B and Appendix C have priority over the main body of this Declaration.*



12.2. ASSOCIATION MAINTAINS. The Association's maintenance obligations will be discharged when and how the board deems appropriate.

12.2.1. Required Maintenance. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on lots, in public rights of way, or in common areas.

- (1) The common areas.
- (2) The Area of Common Responsibility.
- (3) Any real and personal property owned by the Association but which is not a common area, such as a lot owned by the Association.
- (4) Any area, item, easement, or service, whether located within or outside the Property, the responsibility for which is assigned to the Association by law, ordinance, court order, a governmental entity, an agreement to which the Association is a party, this Declaration, the plat, or any other publicly recorded document to which the Property is subject.

12.2.2. Discretionary Maintenance. The Association may, but is not required to, use common funds to maintain property adjacent to or near Vineyard Creek Estates if maintenance of same is deemed by the board in its sole discretion to be in the best interests of the Association, and if not prohibited by the owner or operator of said property, such as periodic litter removal from an adjacent public right-of-way (by way of example only).

12.3. AREA OF COMMON RESPONSIBILITY. The Association, acting through its members only, has the right but not the duty to designate, from time to time, portions of lots or dwellings as Areas of Common Responsibility to be treated, maintained, repaired, or replaced by the Association as a common expense. A designation applies to every lot having the designated feature. The cost of maintaining components of lots or dwellings as Areas of Common Responsibility is added to the annual budget and assessed uniformly against all lots as a regular assessment, unless owners of at least a majority of the lots decide to assess the costs as individual assessments.

12.3.1. Designation. The initial designation of components of lots and dwellings as Areas of Common Responsibility is stated here. On the date of this Declaration, the Area of Common Responsibility consists of the area between the rear property line of each Oncor Lot and the east-facing side of the rear retaining wall or the fence installed on or near the top of the rear retaining wall on the Oncor Lot, and extends across the full width of the Oncor Lot, an area that is approximately the same as the Oncor Easement area.

12.3.2. Scope of Responsibility. The Association is solely responsible for (1) periodic mowing of the surface of the Area of Common Responsibility, (2) all aspects of the gate or gates that provide access to the Area of Common Responsibility, and (3) removal of any item or improvement on the Area of Common Responsibility that interferes with the Association's responsibility. The Association, in the sole discretion of the board, determines the frequency and standard of its performance of these responsibilities and may, from time to time, perform additional work in the Area of Common Responsibility. This Section may not be construed to impose any additional duties on the Association for any aspect of the Area of Common Responsibility, such as irrigating or illuminating the Area of Common Responsibility, or installing plant material.

12.3.3. Restrictions on Owners. No person, including owners and residents of Oncor Lots, may use the Area of Common Responsibility for any purpose without the prior written consent of the Association and, if appropriate, the beneficiary of the Oncor Easement, which consent may be withheld or denied without explanation.

12.4. OWNER RESPONSIBILITY. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the Owners Manual and the architectural control requirements and restrictions of this Declaration:

12.4.1. Maintenance. Each owner, at the owner's expense, must maintain all improvements on the lot, such as (if any, without limitation) the dwelling, fences, sidewalks, driveways, drainage features, grounds, and

*Appendix B and Appendix C have priority over the main body of this Declaration.*

landscaping, except any area designated as an Area of Common Responsibility. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each owner is expected to maintain his lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

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***You have a legal duty to maintain your home and yard.***

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12.4.2. **Avoid Damage.** An owner may not do any work or to fail to do any work which, in the reasonable opinion of the board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

12.4.3. **Responsible for Damage.** An owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the common areas, the Area of Common Responsibility, or the property of another owner.

12.5. **OWNER'S DEFAULT IN MAINTENANCE.** If the board determines that an owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the owner is responsible, the board may give the owner written notice of the Association's intent to provide the necessary maintenance at owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the owner fails or refuses to timely perform the maintenance, the Association may do so at owner's expense, which is an individual assessment against the owner and his lot. In case of an emergency, however, the board's responsibility to give the owner written notice may be waived and the board may take any action it deems necessary to protect persons or property, the cost of the action being the owner's expense.

12.6. **FENCES BETWEEN LOTS.** The concept of shared fences is intended to be more space-efficient, material-efficient, and cost-efficient than each owner separately fencing his own lot, with two fences abutting. Sharing fences requires cooperation and flexibility by and between owners of adjoining lots. A fence or other type of partition located on or near the dividing line between two lots and intended to benefit both lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

12.6.1. **Encroachments & Easement.** If the Party Wall is on one lot or another due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

12.6.2. **Right to Repair.** If the Party Wall is damaged or destroyed from any cause, the owner of either lot may repair or rebuild the Party Wall to its previous condition, and the owners of both lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

12.6.3. **Right of Access.** The owner of the lot on each side of the Party Wall hereby grants to the owner of the lot on the other side of the Party Wall a reciprocal access easement for maintenance, repair, replacement, or reconstruction of the Party Wall, as appropriate and necessary to effect the purposes and provisions of this Section.

12.6.4. **Maintenance Costs.** The owners of the adjoining lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an owner is responsible for damage to or destruction of the Party Wall, that owner will bear the entire cost of repair, reconstruction, or replacement. If an owner fails or refuses to pay his share of costs of repair or replacement of

*Appendix B and Appendix C have priority over the main body of this Declaration.*

the Party Wall, the owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Tarrant County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

12.6.5. Alterations. The owner of a lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the other lot, without the prior written consent of the owner of the other lot. Unless both owners reach a mutual decision to the contrary, the Party Wall will always remain in the same location as where initially erected.

12.7. RETAINING WALLS. Retaining walls are used to stabilize soil, modify slopes, level sites, and adjust for grade or elevation differences. This Section applies to any lot in the Property, any portion of which supports or is supported by a retaining wall. To the extent not inconsistent with the provisions of this Section, a retaining wall is subject to the general rules of law regarding party walls, retaining walls, and liability for property damage due to negligence, willful acts, or omissions, as applicable. Responsibility for maintaining, repairing, and replacing a retaining wall depends partly on its location.

12.7.1. Within the Lot's Boundaries. The Subsection applies to a retaining wall that is entirely within the boundaries of the lot and which does not provide support for land owned by another person. The lot owner is solely responsible for all aspects of the retaining wall. To illustrate, the typical Oncor Lot has a retaining wall that separates the usable backyard portion of the lot from the Area of Common Responsibility portion of the lot. Because it crosses the Oncor Lot some distance from the rear property line, it is entirely within the boundaries of the Oncor Lot.

12.7.2. On the Perimeter of the Subdivision. This Subsection applies to a retaining wall on or along the boundary between a lot and a parcel of land that is not subject to the Declaration. The lot owner is solely responsible for all aspects of the retaining wall. To illustrate, at least some lots on the west side of the Property may be developed with retaining walls that elevate the lot above the adjacent tracts used for nonresidential purposes. Notice is hereby given that a lot with a perimeter retaining wall may have no lawful right to access the adjacent property for purposes of inspecting, maintaining, repairing, and reconstructing the perimeter retaining wall, if and when needed. If such access is needed, the lot owner is solely responsible for obtaining permission to lawfully access the adjacent property. By acquiring an ownership interest in a lot supported by a retaining wall on the perimeter of the Property, each owner acknowledges that if access to the adjacent property is not available, other options for repairing or replacing the perimeter retaining wall may result in excavation and removal of soil from the owner's lot, the practical loss of portions of the elevated and usable surface of the owner's lot, and substantially more expense than if the owner of the supported lot had unfettered access to the adjacent property to perform the required work.

12.7.3. Along or Near a Lot's Side Boundary. Two adjoining lots within the Property with significantly different elevations may have a retaining wall located on or near the dividing line between the two lots and intended to benefit both lots (thus, a "Party Wall"). The lot having the higher elevation is referred to in this Subsection as the "Higher Lot," and the lot having the lower elevation is referred to as the "Lower Lot." By acquiring an ownership interest in a lot that contains, abuts, or is supported by a retaining wall shared with another lot in the Property, the owner acknowledges and accepts responsibility for protecting the retaining wall from damage and for communicating with the owner of the adjoining lot about any condition that damages or threatens to damage the retaining wall. The owner of the Lower Lot is hereby granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Party Wall for use as a perimeter wall or fence of the Lower Lot. The owner of the Lower Lot is responsible for maintaining the grounds up to the Party Wall, even if the Party Wall is inside the boundaries of the Higher Lot. The owner of either the Higher Lot or the Lower Lot may construct a fence in connection with the retaining wall. The owner of the Higher Lot may construct or install a fence inside the Party Wall on the elevated surface of the Higher Lot, or, with the prior approval of the Lower Lot owner, on the Party Wall itself. The owner of the Lower Lot may construct or install a fence on his lot, provided the fence does not interfere with his duty to maintain the grounds up to the Party Wall. The fences permitted by this Subsection are not considered a part of the Party Wall for purposes of the remainder of this Section.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

## **ARTICLE 13**

### **MORTGAGEE PROTECTION**

13.1. **FIRST MORTGAGEE RIGHTS.** This Article establishes certain standards for the benefit of a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a lot, or any renewal, modification, or refinancing thereof ("**First Mortgagee**"). Each First Mortgagee has the following rights under this Declaration:

13.1.1. **Lien Superiority.** As stated in the Assessment Lien Article of this Declaration, the lien in a First Mortgagee's recorded deed of trust is superior to the Association's lien for assessments.

13.1.2. **Representation.** In dealing with the Association, a First Mortgagee may be represented by a mortgage servicer, agent, or representative.

13.1.3. **Termination.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by the First Mortgagees on at least a majority of the lots that are subject to an outstanding purchase money mortgage, in addition to the required consents of owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by the First Mortgagees on at least two-thirds of lots that are subject to an outstanding purchase money mortgage.

13.1.4. **Books & Meetings.** A First Mortgagee may inspect the Association's books and records, including the Governing Documents, by appointment, during normal business hours. A First Mortgagee may attend and address any meeting which an owner may attend.

13.1.5. **Financial Statements.** A First Mortgagee may have an audited statement of the Association's books and records prepared at its own expense. If the Association obtains an audited statement for its members, if a First Mortgagee so requests, the Association will give the First Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end.

13.1.6. **Right of First Refusal.** As initially written, this Declaration does not create a right of first refusal. Any right of first refusal imposed in the future by the Association with respect to a lease, sale, or transfer of a lot does not and may not apply to a lease, sale, or transfer by a First Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

13.1.7. **Amending Governing Documents.** If a First Mortgagee requests from the Association compliance with the mortgage underwriting guidelines of Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U. S. Department of Veterans Affairs (VA), singly or collectively, the board, without approval of owners or First Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the aforementioned national institutional underwriting lenders. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls.

13.2. **CONSENTS OF MORTGAGEES.** If the Governing Documents or applicable law require the consent of mortgagees for an act, decision, or amendment by the Association, the approval of a mortgagee is implied when the mortgagee fails to respond within 60 days after receiving the Association's written request for approval of the act, decision or amendment, provided the Association's request to the mortgagee was delivered by certified or registered mail, return receipt requested.

## **ARTICLE 14**

### **AMENDMENTS**

14.1. **AMENDMENT BY OR AFFECTING DECLARANT.** In this Declaration, particularly in the Article titled Covenants for Declarant's Benefit and the attached Appendix B, Declarant reserves certain superior rights to amend this Declaration and the other Governing Documents, and rights to approve certain amendments.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

14.2. **AMENDMENT BY BOARD.** The board may not unilaterally amend this Declaration or the Owners Manual, except for the following limited purposes, which must be clearly identified in the instrument of amendment, and then only to the extent necessary to achieve the permitted goal, and only with the unanimous written consents of all directors, there being no vacancy on the board:

- (1) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any public or quasi-public program or benefit, if doing so is in the best interests of the Association and its members.
- (2) To correct an obvious error that affects the validity or enforceability of the document, if doing so is in the best interests of the Association and its members.
- (3) To comply with a requirement of applicable law that requires a specific provision to be included in or removed from a document.

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**Like public laws, this Declaration can be changed ~  
and the change may apply to you even if you didn't vote for it.**

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14.3. **AMENDMENT BY MEMBERS.** Except for certain amendments of this Declaration that may be executed by Declarant alone, or by the board alone, amendments to this Declaration must be approved by owners of at least a majority of the lots. Approval of owners does not require that the amendment be signed by the consenting owners, or that consents be executed and acknowledged by the approving owners. For an amendment of this Declaration that requires the approval of owners, the consents may be solicited by any method selected by the board from time to time, pursuant to the Bylaws and applicable law, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

14.4. **EFFECTIVE.** To be effective, an amendment approved by the owners or by the board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors and, if required, First Mortgagees; and (3) recorded in the Real Property Records of Tarrant County, Texas, except as modified by the following section.

14.5. **ANNEXATION.** After Build-Out and Sell-Out, additional land may be annexed to the Property and subjected to this Declaration and the jurisdiction of the Association by the Association with the consent of owners representing at least two-thirds of the lots in the Property, and the consent of the owner of the real property being annexed. Annexation of additional property is accomplished by recording an amendment of annexation or a supplemental declaration in the Real Property Records of Tarrant County, Texas. *(Declarant may unilaterally subject additional land to this Declaration pursuant to Appendix B)*

14.6. **APPENDIXES.** To amend an Appendix of this Declaration, it is not necessary to restate and re-record this entire Declaration. Each Appendix of this Declaration may be amended, restated, and supplemented individually as an amendment of this Declaration.

14.7. **ORDINANCE COMPLIANCE.** When amending a Governing Document, the Association must consider the validity and enforceability of the amendment in light of applicable law, such as (if any) subdivision ordinances of a local government.

14.8. **MERGER.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners of at least a majority of the lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving association pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established upon any other

*Appendix B and Appendix C have priority over the main body of this Declaration.*

property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

14.9. **TERMINATION.** Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners. In all other circumstances, an amendment to terminate must be approved by owners of at least 80 percent of the lots. If a local government requires its prior approval of a change of status for the Property or to terminate the Association, the amendment must also be executed by the local government.

14.10. **CONDEMNATION.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of a common area, the Association will be the exclusive representative of the owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the common area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

## **ARTICLE 15**

### **INDEMNIFICATION & RELEASE AGAINST SELF-INTEREST**

15.1. **CONSIDERATION.** Each owner and resident grants the releases from liability contained in this Article as consideration for, and as a condition to, the owner and resident's use and enjoyment of the common areas of Vineyard Creek Estates. Each owner and resident acknowledges and agrees that the releases from liability contained in this Article are a material inducement to Declarant and to the Builders to sell, convey, lease, or allow the use of lots and homes in Vineyard Creek Estates.

15.2. **INDEMNITY FOR ASSOCIATION OPERATIONS.** The Association indemnifies, defends, and holds harmless Declarant against any loss, claim, demand, damage, cost, and expense relating to or arising out of the management and operation of the Association, including without limitation, the collection of assessments, the enforcement of the Governing Documents, and the operation and maintenance of the common areas and Area of Common Responsibility. Indemnified expenses include, without limitation, reasonable attorneys fees, whether or not a lawsuit is filed, and costs at all court levels, including expenses incurred by Declarant in establishing the right to be indemnified, defended, and held harmless pursuant to this Declaration.

15.3. **RELEASE FOR INJURY OR LOSS.** Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, and each resident of any portion of the Property, covenants and agrees that the Association, the ARC, Declarant, and their respective directors, officers, committees, members, agents, and employees (individually and collectively, the "Indemnitees") may not be held liable to any person claiming any loss or damage including, without limitation, indirect, special, or consequential loss or damage arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the design, construction, maintenance, or use of any common area or Area of Common Responsibility, expressly including every item of equipment used in connection therewith, including, without limitation, any claim arising in whole or in part from the negligence of an Indemnitee.

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### **IMPORTANT TO READ AND UNDERSTAND THESE RELEASES**

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15.4. **INTENT TO RELEASE FROM NEGLIGENCE.** Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, and each resident of any portion of the Property by the act of occupancy, acknowledges that the releases and indemnities contained in this Article are intended to release and indemnify the Indemnitees from liability for their own negligence or carelessness.

15.5. **AGAINST SELF-INTEREST OF OWNER OR OCCUPANT.** Each owner and resident acknowledges that the releases and indemnities in this Article are contrary to the self-interest of the owner or resident. In other words, the releases and indemnities are not in the owner or resident's best interest.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

**ARTICLE 16**  
**DISPUTE RESOLUTION**

16.1. **INTRODUCTION & DEFINITIONS.** The Association, owners, residents, Declarant, Builders, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

16.1.1. "**Claim**" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- (1) Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
- (2) Claims relating to the rights or duties of Declarant as Declarant under the Governing Documents.
- (3) Claims relating to the design, construction, or maintenance of the Property.

16.1.2. "**Claimant**" means any Party having a Claim against any other Party.

16.1.3. "**Exempt Claims**" means the following claims or actions, which are exempt from this Article:

- (1) The Association's claim for assessments, and any action by the Association to collect assessments.
- (2) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- (3) Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- (4) A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

16.1.4. "**Respondent**" means the Party against whom the Claimant has a Claim.

16.2. **MANDATORY PROCEDURES.** **Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.**

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☺ **LET'S WORK IT OUT** ☺

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16.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

16.4. **NEGOTIATION.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

16.5. **MEDIATION.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

16.6. **TERMINATION OF MEDIATION.** If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

16.7. **ALLOCATION OF COSTS.** Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

16.8. **ENFORCEMENT OF RESOLUTION.** Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

16.9. **GENERAL PROVISIONS.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

16.10. **LITIGATION APPROVAL & SETTLEMENT.** To encourage the use of alternative dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of owners of at least 75 percent of the lots.

16.10.1. **Owner Approval.** The Association may not initiate any judicial or administrative proceeding without the prior approval of owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo.

16.10.2. **Higher Approval of Certain Suits.** Except to obtain a temporary restraining order when circumstances warrant, the Association may not initiate any judicial or administrative proceeding against a current or former officer or director of the Association, the ARC, Declarant, or a Builder without the approval of owners

*Appendix B and Appendix C have priority over the main body of this Declaration.*



representing at least 75 percent of the lots because of the potential for counterclaims and the costs and liabilities appurtenant thereto.

**16.10.3. Funding Litigation.** Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income, reserve funds, or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

**16.10.4. Settlement.** The board, on behalf of the Association and without the consent of owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

**16.11. CONSTRUCTION-RELATED DISPUTES.** In addition to the above procedures, a claim relating to an alleged construction defect may be governed by Texas statutes relating to residential construction, such as Chapter 27 of the Texas Property Code, the Residential Construction Liability Act.

## **ARTICLE 17**

### **HOME SALES & REALES**

**17.1. GENERAL.** In the era in which this Declaration is written, the law pertaining to the sale and resale of residential lots governed by a mandatory property owners association is evolving. The purpose of this Article is to formalize the process by which Association-related fees are imposed on lot sales. An obligation to the Association or its managing agent for transfer-related fees on a lot conveyance varies by whether the lot is vacant or improved with a home, and whether the home is new or a resale. Lot sales in the Property are not subject to a right of first refusal in favor of the Association or its individual members. An owner who sells his lot under an executory contract (contract for deed) may delegate his membership rights to the contract purchaser, provided a written assignment signed by the contract seller and purchaser is delivered to the board. However, the contract seller remains liable for all assessments attributable to his lot until fee title to the lot is transferred.

**17.2. HOA SALE FEES.** "HOA Sale Fee" means a non-refundable expense, fee, charge, or contribution that is charged by the Association or its manager in connection with the sale or purchase of a lot, pursuant to the Governing Documents, applicable law, or a management contract to which the Association is a party. A buyer's prepaid or pro-rata assessments are not HOA Sale Fees. HOA Sale Fees are generally of two types - budget enhancing fees (also known as "cap fees"), such as contributions to the reserve or operating funds of the Association, and administrative fees (also known as "transfer fees"), such as fees for resale certificates and ownership record changes. The Association and its manager may waive some or all HOA Sale Fees on a transfer by transfer basis, without waiving the right to charge such fees on future transfers.

**17.3. ADMINISTRATIVE TRANSFER FEES.** Transfer-related administrative fees may be charged and collected only pursuant to a contract, policy, or resolution adopted by the board identifying the type, purpose, amount, and beneficiary of each administrative transfer fee charged to an owner or prospective owner by the Association or its managing agent. The number, amounts, and types of administrative transfer fees may not exceed what is customary for the local marketplace. To be effective, the contract, policy, or resolution must be signed by an officer of the Association, certifying approval by the board. This Article does not require the Association or its manager to levy administrative HOA Sale Fees.

**17.4. NEW HOME SALES.** HOA Sale Fees pertaining to sales of vacant lots to Builders and New Home Sales are addressed at the end of Appendix C of this Declaration. The Association may not determine or change any aspect of HOA Sale Fees pertaining to the conveyance of New Homes and vacant lots or land without Declarant's prior consent in a publicly recorded writing that is dated, signed, and acknowledged by Declarant, which consent may not be deemed from any act, omission, or other writing. This Section will cease to apply to the Property upon Sell-Out.

**17.5. HOME REALES.** This Section applies to every "Home Resale", being the sale or conveyance of a residential lot that is improved with a completed dwelling, and for which the selling owner is a person other than

*Appendix B and Appendix C have priority over the main body of this Declaration.*

Declarant or a Builder. This Section does not apply to the sale of vacant lots and New Home Sales by Declarant or Builders.

17.5.1. Resale Certificate. An owner intending to sell his home will notify the Association and will request a resale certificate from the Association. The resale certificate provided by the Association or its manager must state the amount, type, and payee of each HOA Sale Fee, which must conform to the Association's contract, policy, or resolution then in effect.

17.5.2. Amounts. At time of closing a Home Resale, the following amounts are due and payable by buyer or seller of a Home Resale, subject to the limited exclusions below.

- (1) To the Association, a one-time contribution to the Association's reserve funds, in the amount of one-half the annual assessment for each lot purchased.
- (2) If any, the customary administrative HOA Sale Fees, payable to the Association or its manager, as directed at time of closing.

17.5.3. Notice of Obligation. HOA Sale Fees on a Home Resale may be paid by either the seller or the buyer, per their negotiations, and are typically collected at closing. If HOA Sale Fees are not collected at closing, the buyer remains liable to the Association or to the manager, as applicable, for the fee until the fee is received. HOA Sales Fees may not be avoided by effecting the transfer without the services of a title company.

17.5.4. Information. Within 30 days after acquiring an interest in an improved lot, an owner will provide the Association with the following information: a copy of the settlement statement or deed by which owner has title to the lot; the owner's email address (if any), U. S. postal address, and phone number; any mortgagee's name, address, and loan number; the name and phone number of any resident other than the owner; the name, address, and phone number of owner's managing agent, if any.

17.6. CHANGES IN AMOUNTS. Notwithstanding the Amendments Article of this Declaration, the board, without a vote of the owners, may amend this Article for the following two purposes only: (1) to change the amount or formula stated for HOA Sale Fees on Home Resales, or (2) to conform this Article with applicable law regarding HOA Sale Fees on Home Resales. The change of amount or formula is not effective unless stated in a writing that is publicly recorded in the Real Property Records of Tarrant County, Texas, signed and acknowledged by an officer of the Association. If the change of amount results in an overall reduction of HOA Sale Fees for a conveyance that is pending at the time of the change, the lower rate is effective immediately for any closing that occurs after the date the notice of change is publicly recorded. If the change of amount results in an overall increase of HOA Sale Fees for the lot being conveyed at the time of the change, the increased amount is not effective until the 90th day after the date on which the notice of change is publicly recorded.

17.7. EXCLUSIONS. Except for the above duty to provide the Association with information at time of transfer, the requirements of this Article, including the obligation for HOA Sale Fees, do not apply to the following transfers: (1) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (2) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (3) transfer to, from, or by the Association; (4) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent; (5) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (6) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; (7) a disposition by a government or governmental agency; or (8) a transfer from Declarant to a successor Declarant or to an affiliate of Declarant.

## **ARTICLE 18**

### **COVENANTS FOR DECLARANT'S BENEFIT**

This Article highlights, emphasizes, and reasserts certain rights reserved elsewhere in this Declaration for the benefit of Declarant. By acquiring an ownership interest before the Property during the Development Period, each owner agrees to be bound by the terms of this Declaration, including without limitation the terms of this Article.

*Appendix B and Appendix C have priority over the main body of this Declaration.*

18.1. OWNERSHIP NOT REQUIRED. As stated in Appendix B, Declarant's rights and reservations under this Declaration are not contingent on Declarant's ownership of a lot. However, if it becomes necessary or desirable for Declarant to own land subject to this Declaration in order to exercise a Declarant right or reservation, Declarant hereby reserves the right to acquire or re-acquire an ownership interest in one or more lots or unplatted parcels in the Property for that purpose, in addition to Declarant's right to unilaterally subject additional land to this Declaration.

18.2. ASSOCIATION FINANCES. Declarant and property owned by Declarant or its affiliates are exempt from assessment by the Association. During the Declarant Control Period, the Association may apply all monies received from owners to the operating expenses of the Association, and is not required by this Declaration to fund reserve accounts, even if a projected build-out budget for the Association shows contributions to reserves. During the Declarant Control Period only, Declarant may contribute or loan money to the Association if monies received from owners are not sufficient to cover the Association's operating expenses. After the Declarant Control Period, the Association must adopt a budget that can be funded fully by owners other than Declarant or its affiliates.

18.3. AMENDING GOVERNING DOCUMENTS. Declarant has an exclusive right to unilaterally amend this Declaration and every other Governing Document for any purpose, as stated in Appendix B. A provision of this Declaration or any other Governing Document that pertains in any way - directly or indirectly - to Declarant or Builders, or to their rights and reservations under this Declaration, such as this Article and Appendices B and C (without limitation), may not be amended without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Nor may this Declaration or any other Governing Document be amended to increase the liabilities or responsibilities of Declarant or Builders, without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association.

18.4. APPENDICES B AND C. The provisions of Appendices B and C of this Declaration control over anything to the contrary in the main body of this Declaration or in any other Governing Document. This Declaration may not be published, amended, or restated without Appendices B and C, without Declarant's written and acknowledged consent on the amendment, restatement, or publication of this Declaration.

## **ARTICLE 19**

### **GENERAL PROVISIONS FOR ALL GOVERNING DOCUMENTS**

19.1. HIGHER AUTHORITY. The Governing Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance. In the event of a conflict between the Governing Documents, the hierarchy of authority is as follows: the Plat (highest), this Declaration, Owners Manual, Articles of Association (certificate of formation), Bylaws, Rules, and (lowest) policies, procedures, and guidelines. In the event of a conflict within this Declaration, Appendix B has the highest authority, followed by Appendix C, and lastly by the main body of this Declaration.

19.2. COMPLIANCE. The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, as same may be amended from time to time, of any public or quasi-public entity having jurisdiction over the Association or Property. Users of this Declaration and the other Governing Documents should periodically review statutes and court rulings that may modify or nullify a provision or its enforcement, or may create rights or duties not anticipated by a Governing Document.

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***Laws are superior to the HOA Docs, and laws change.***

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19.3. CHANGE OF APPLICABLE LAW. This Section applies to a provision of a Governing Document that is modified, rendered void, or becomes obsolete because of a change of applicable law. If the board of directors determines that the significance of the provision that is changed by operation of law should be brought to the attention of owners and the public, the board of directors, without a vote of the owners, may issue a Notice of Change that references the provision of a Governing Document and how it is affected by applicable law. The Notice may be recorded in the Real Property Records of Tarrant County, Texas, and does not constitute an amendment of the Governing Document. If such a Notice is issued, the Association will notify owners of its existence and will make it available to owners as a record of

*Appendix B and Appendix C have priority over the main body of this Declaration.*

the Association. This provision may not be construed to give the board unilateral amendment powers, nor to prevent an amendment of a Governing Document to achieve the same purpose.

19.4. **NOTICE.** Any demand or written notice required or permitted by a Governing Document may be sent by electronic, ordinary, or certified mail, postage prepaid, or by any other method or combination of methods permitted or required by applicable law. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent to the address of the owner's lot. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

19.5. **CHANGING TECHNOLOGY.** The Governing Documents are drafted at the end of an era that uses ink on paper to communicate, to give notice, and to memorialize decisions. The next era of communications may be paperless, relying on electronic communications for many activities that are customarily papered on the date of this Declaration. As technology changes, the terms of the Governing Documents that pertain to communications, notices, and documentation of decisions may be interpreted and applied in ways that are consistent with and customary for the then-current technology for standard business practices, without necessity of amending the Governing Document.

19.6. **LIBERAL CONSTRUCTION.** The terms and provisions of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Document. All doubts regarding a provision in any Governing Document or applicable law, including restrictions on the use or alienability of property, will be resolved in the follow order of preferences: first to give effect to Declarant's intent to protect Declarant's interests in the Property, second to give effect to Declarant's intent to direct the Build-Out and Sell-Out of the Property, third to give effect to Declarant's intent to control governance of the Association for the maximum permitted period, then in favor of the operation of the Association and its enforcement of the Governing Documents for the benefit of owners collectively, and finally to protect the rights of individual owners, regardless which party seeks enforcement.

19.7. **SEVERABILITY.** Invalidity of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

19.8. **CAPTIONS.** In all Governing Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

19.9. **INTERPRETATION.** Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate. The use of "or" in a series as inclusive or exclusive depends on the context.

19.10. **DURATION.** Unless terminated or amended by owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

19.11. **APPENDIXES.** The following appendixes are attached to this Declaration and incorporated herein by reference:

- A - Description of Subject Land
- B - Declarant's Rights & Reservations for Build-Out & Sell-Out
- C - Declarant's Rights & Reservations for Association Governance
- D - Notice of Possible Oil & Gas Activity Affecting the Subdivision

*(Executed on next page.)*

*Appendix B and Appendix C have priority over the main body of this Declaration.*

**SIGNED AND ACKNOWLEDGED**

SIGNED on the dated stated in the acknowledgment below.

**D. R. HORTON - TEXAS, LTD.**, a Texas limited partnership

By: D. R. HORTON, INC., a Delaware corporation, its  
authorized agent

By:   
Don E. Allen, Assistant Secretary

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on this 14th day of November 2014 by Don E. Allen, Assistant Secretary of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.

  
Notary Public, The State of Texas



*Appendix B and Appendix C have priority over the main body of this Declaration.*

**APPENDIX A  
TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR VINEYARD CREEK ESTATES**

**DESCRIPTION OF SUBJECT LAND**

The 16.708-acre tract described by metes and bounds in the Owner Acknowledgment & Dedication on the Amended Final Plat of Vineyard Creek Estates, recorded on August 12, 2014, as Document No. D214174403, Plat Records, Tarrant County, Texas, including the following common areas and 49 house lots:

**HOUSE LOTS**

LOTS 1A - 21A, BLOCK 1

LOTS 1A - 28A, BLOCK 2

**COMMON AREAS**

TRACT 1A, BLOCK 1

TRACT 2A, BLOCK 2

*(End of Appendix A)*

**APPENDIX B**  
**DECLARANT'S RIGHTS & RESERVATIONS FOR BUILD-OUT & SELL-OUT**

B.1. **GENERAL PROVISIONS.** Declarant intends for this Declaration to be perpetual and understands that provisions that are warranted for the complete and orderly development, Build-Out, and Sell-Out of the Property will eventually become obsolete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, most of the provisions relating to the roles of Declarant and Builders (if any) are compiled in this Appendix and Appendix C. The terms and provisions of this Appendix are superior to the terms and provisions of the Owners Manual, Bylaws, Articles, and the main body of the Declaration.

B.1.1. **General Reservation & Construction.** Declarant hereby reserves exclusively unto itself and its successors, assigns, and designees, the rights and reservations contained in this Appendix. No other provision in a Governing Document may be construed to prevent or interfere with Declarant's exercise of its rights and reservations. Nor may any mortgagee, other owner, or the Association, prevent or interfere with Declarant's exercise of its rights and reservations. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to ensure the complete and orderly development, Build-Out, and Sell-Out of the Property, which is ultimately for the benefit and protection of homeowners and mortgagees, as well as to protect the interests and investments of Declarant and Builders (if any), and Declarant's reputation as a community developer.

**Declarant's rights are not tied to land ownership.**

B.1.2. **Ownership Not Required.** This Appendix intends for Declarant's rights and reservations to be extant until certain statuses are attained, such as Sell-Out or the end of the Development Period, whether or not Declarant owns any part of the Property. In other words, Declarant need not be an owner to exercise the rights and reservations of Declarant. If the laws of Texas are amended or interpreted retroactively to predicate all or any of Declarant's rights on an interest in real property subject to the Declaration, for the purpose of satisfying such a requirement, Declarant hereby reserves an independent right to acquire or reacquire real property already subject to the Declaration, or to subject additional real property to this Declaration by means of a supplemental declaration.

B.1.3. **Statutory Reservation.** Declarant hereby reserves for itself each and every right, reservation, privilege, and exception available or permissible under applicable law for declarants and developers of residential subdivisions, if and to the full extent that such right, privilege, or exception is beneficial to or protective of Declarant or Builders. If the benefit or protection of applicable law is predicated on an express provision being in this Declaration or other Governing Document, such provision is hereby incorporated by reference unless Declarant executes an instrument to disavow such benefit or protection.

B.1.4. **Amendment.** An amendment, restatement, supplement, or termination of this Appendix or any of its provisions is void and unenforceable without Declarant's prior written approval of the instrument, as evidenced by Declarant's acknowledged signature on the instrument that is publicly recorded.

B.1.5. **Reserved Periods.** This Appendix creates a number of periods of time for the exercise of certain reserved rights, such as Development Period, Build-Out, and Sell-Out. Each reservation period is independent of the others. Each reservation period is for a term of years or until a stated status is attained, and does not require that Declarant own a lot or any other land. No act, statement, or omission by the Association, a Builder, or any other party may effect a change or termination of any reservation period. Declarant, however, may unilaterally change any reservation period by amending this Appendix. To document the end of a reservation period, Declarant may (but is not required to) execute and publicly record a notice of termination of the period.

B.2. **DEFINITIONS.** Words and phrases defined in Article 1 of the Declaration and in Appendix C have the same meanings when used in this Appendix. As used in this Appendix and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings, subject to Declarant's right to amend or supplement this Section:

B.2.1. **"Builder"** means a person or entity which owns or contracts to purchase a vacant lot for the purpose of constructing or completing a new dwelling for speculative sale or pursuant to a construction contract with a prospective owner. As used in this Declaration, Builder does not refer to Declarant or to a home building or home marketing company that is an affiliate of Declarant.

B.2.3.3. **"Development Period"** means the period of time that runs continuously from the date this Declaration is recorded, during which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape, and composition of the Property, pursuant to the rights and reservations contained in this Declaration, particularly in this Appendix and Appendix C, to the full extent permitted by applicable law. **Declarant hereby states the length of the reserved Development Period as 15 years, and reserves the right to increase or decrease the length by amendment of this Declaration.** The Development Period is for a term of years and does not require that Declarant own land or lots in the Property. If applicable law requires an event of termination as an alternative to a stated number of years, the Development Period runs continuously from the date this Declaration is recorded until three years after the date on which every lot that may be created in the Property is (1) made subject to this Declaration, (2) improved with a completed dwelling, and (3) conveyed to an owner other than a Builder, Declarant, or their respective affiliates.

**B.3.3. Reinstated Rights, if Necessary.** In case events and circumstances, applicable law, or a Governing Document are interpreted to limit or terminate Declarant's rights and reservations prior to their maximum durations, Declarant hereby **DECLARES** that all rights and reservations of Declarant for Build-Out and Sell-Out are in effect or reinstated anew for every unplatted part of the Property that is platted and every piece of additional land that is made subject to this Declaration.



B.3.4. Withdrawal. Until Build-Out, Declarant may withdraw real property from the Property and the effect of this Declaration (1) if the owner of the withdrawn property consents to the withdrawal, and (2) if the withdrawal does not significantly and detrimentally change the overall appearance, character, operation, or use of the Property.

B.3.5. Re-Acquired Interest, if Necessary. If applicable law requires that Declarant own an interest in the Property as a condition of exercising the rights reserved by Declarant in this Declaration, Declarant hereby reserves the right to acquire or re-acquire the required interest.

B.3.6. Neighborhoods. Declarant may impose additional or different restrictions on a "neighborhood" within the Property, which may be subject to an additional "neighborhood assessment," and which may have exclusive use of "neighborhood common areas." If a portion of the Property were gated, for example, the gated portion could be a "neighborhood" within the Property, with the private street as its "neighborhood common area."

B.3.7. Utility Easements. Until Build-Out, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities (as described in the Utilities Easement Section above), roads, and other purposes necessary for the proper development and operation of the Property. Declarant hereby reserves an easement across every utility, drainage, access, firelane, or other easement shown on a recorded plat (the "platted easements") for the installation, operation maintenance, repair or removal of a utility serving any portion of the Property, together with a full right of ingress and egress at all times over the burdened lot for the stated purposes, and the right to remove any obstruction that interferes with the use or exercise of the easement. Declarant reserves the right to make changes in and additions to the easements on common areas and vacant lots to more efficiently or economically install utilities or other improvements. To exercise this right on a lot that is not owned by Declarant, Declarant must have the prior consent of the lot owner, which may not be unreasonably withheld. Declarant may assign and convey the easements and easement rights reserved by this Section, in whole or in part, to one or more public or private utilities, the Association, a public or quasi-public entity, or any other person.

B.3.8. Utility Contracts. Declarant, in its name or in the name of the Association, may enter into contracts for utility equipment and services for all or portions of the Property, including bulk rate service agreements. Such contract may provide for installation, operation, management, maintenance, and upgrades or modifications to the utility as Declarant determines appropriate. After the Declarant Control Period, Declarant's right to contract for utilities is limited to vacant lots. Until Build-Out, Declarant must approve any contract for utility service to a vacant lot.

B.3.9. Completion. Until Sell-Out, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in lots owned or leased by Declarant, the Area of Common Responsibility, and the common area, whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

B.3.10. Easement to Inspect & Right to Correct. For five years after Build-Out, Declarant reserves for itself and Builders, and their respective architects, engineers, other design professionals, materials manufacturer, and general contractors, the right, but not the duty, to inspect, monitor, test, redesign, correct, relocate, and replace any structure, improvement, material, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant or Builder, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, a Builder, or the Association. **This Subsection survives Sell-Out if Sell-Out occurs within five years after Build-Out.**

B.3.11. Termination. Declarant may voluntarily and affirmatively terminate the Development Period at any earlier time by signing and acknowledging a notice of voluntary termination that is recorded in the Real Property Records of Tarrant County, Texas. A writing by Declarant may not be construed to be a notice of termination unless that purpose is clearly stated in the writing.

B.4. RIGHTS & RESERVATIONS TO MAKE CHANGES. Until Build-Out, Declarant reserves the following exclusive rights which Declarant may exercise unilaterally from time to time when circumstances warrant.

B.4.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a public or quasi-public entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum or maximum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

B.4.2. Change of Architectural Styles. Declarant reserves the right to periodically change the types of architectural styles, building materials, and elevations that are eligible for architectural approval.

B.4.3. Change of Construction Specifications. Declarant has the right to establish specifications for the construction of all initial improvements in the Property, to establish different specifications for each category of lots within the Property, and to grant variances or waivers for certain lots within the Property.

B.4.4. Change of Community Features. The initial plans for use and development of the Property may change in response to a number of circumstances, influences, and opportunities that may not be apparent or applicable at the inception of the development. An owner who acquires a lot while the Property is being developed is hereby given notice that a common area improvement or community feature that is not installed at the time an owner contracts is subject to change. Representations given to a prospective purchaser about a proposed community feature are based on a development plan that makes assumptions that are subject to change.

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**Declarant is THE architectural authority for new homes**

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B.5. ARCHITECTURAL COVENANTS FOR VACANT LOTS. Until Build-Out, Declarant has the absolute unilateral right of architectural control over vacant lots and lots owned by Builders, and is the exclusive Architectural Reviewer for vacant lots and lots owned by Builders. Neither the Association, the board of directors, the ARC, nor any other committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant lots.

B.5.1. Declarant's Rights Reserved. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property or the ability of Builders to sell homes in the Property. Accordingly, each owner agrees that - during the Development Period - no improvements will be started or progressed on owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

B.5.2. Delegation by Declarant. Declarant may from time to time, but is not obligated to, delegate all or a portion of its rights and authority as Architectural Reviewer, subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

B.5.3. Improvements by Declarant. Notwithstanding anything to the contrary in this Declaration or the Owners Manual, any improvement to a vacant lot made by Declarant or an affiliate of Declarant is deemed to have been approved by the Architectural Reviewer. If the Improvement is of a nature that would require a variance or waiver by the Architectural Reviewer, such variance or waiver is deemed to have been granted.

B.5.4. Improvements by Builder. Without the Architectural Reviewer's prior written approval, a Builder or other person may not construct a dwelling or any appurtenant improvement on a vacant lot. An application to the Architectural Reviewer will follow the same procedures and adhere to the same time frames as required by the Declaration for submissions to the ARC for modifications on improved lots, which procedures are hereby incorporated by reference. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Without the Architectural Reviewer's prior written approval for a variance, improvements to a vacant lot must have the characteristics described in construction and landscape specifications provided by Declarant or, otherwise, the Owners Manual.

B.5.5. Approval of Builder Plans. If a Builder intends to construct a number of pre-designed homes in the Property, the Builder may submit the set of house plans and elevations to Declarant for approval by Declarant. Such plans may be submitted and approved prior to Builder's purchase of lots in the Property. House plans and elevations that are pre-approved by Declarant for use by Builder may be constructed by Builder without re-submitting plans on a lot by lot basis as the houses are constructed, unless the actual house plan or elevation deviates substantially from the pre-approved plan and elevation. Examples of substantial deviation include (1) reversing a garage from rear entry to front entry, (2) reducing the size of the dwelling by more than 15 percent, (3) reducing the amount of masonry exterior material by more than 15 percent, (4) changing the style of the front elevation, such as from Cape Cod to Spanish, and (5) replacing a garage with a porte cochere. Builder must apply to Declarant for approval of any substantial modifications or variations from or additions to the pre-approved plans for the Property, as well as the plot plan for each house.

B.6. GOVERNING DOCUMENTS RIGHTS & RESERVATIONS. Declarant reserves the following rights and reservations, exercisable at Declarant's sole discretion, from time to time, and at any time prior to the later of Sell-Out or the end of the Development Period, whichever event occurs last (unless a different period is specified), without requiring that Declarant own land described in Appendix A or in any supplemental declaration at the time or times Declarant exercises its right or reservation.

B.6.1. Adoption. Declarant has the right, but not the duty, to adopt one or more Governing Documents for the Property and for the benefit of the Association, either in its capacity as Declarant, or in the name of the Association. The exercise of this right by Declarant, in its capacity as Declarant, may not be construed as an act or decision of the Association or its board.

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**Declarant can amend and adopt Governing Documents UNILATERALLY.**

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B.6.2. Amendment. Declarant may amend or restate this Declaration and every other Governing Document, unilaterally, for any purpose. In addition to exercising this right on its own initiative, Declarant may exercise this right at the request of the Association to address a concern of the membership. The exercise of this right by Declarant, in its capacity as Declarant, may not be construed as an act or decision of the Association or its board. For illustration only, the following are examples of some of the purposes for which Declarant may amend the Governing Documents:

- (1) To add real property to the Property.
- (2) To withdraw real property from the Property.
- (3) To create lots, easements, and common areas within the Property.
- (4) To subdivide, combine, or reconfigure lots.
- (5) To convert lots into common areas, and common areas into lots.
- (6) To change the maximum number of lots that may be made subject to this Declaration.
- (7) To allocate the use of certain common areas to specified lots as limited common areas.
- (8) To designate Areas of Common Responsibility.
- (9) To change the designation of or restrictions on common areas.
- (10) To modify - even to increase - Declarant's rights and reservations.
- (11) To change any aspect of the Owners Manual.
- (12) To modify HOA Sale Fees.
- (13) To merge the Association with another property owners association.
- (14) To conform to applicable law.
- (15) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions.
- (16) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.
- (17) To enable a reputable company to issue title insurance coverage on the lots.
- (18) To change the name or entity of Declarant.
- (19) To change the name of the addition in which the Property is located.
- (20) To change the name of the Association.
- (21) For any other purpose.

B.7. MARKETING RIGHTS & RESERVATIONS. Declarant reserves the following rights, reservations, and easements, exercisable at Declarant's sole discretion, from time to time, and at any time prior to Sell-Out.

B.7.1. Promotion. Until Sell-Out, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window

treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing the Property or Declarant's houses, lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of lots. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

**B.7.2. Offices.** Until Sell-Out, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

**B.7.3. Access.** Until Sell-Out, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for construction-related traffic and the homebuying public through any existing or future gate that restricts vehicular access to or through the Property in connection with the active construction and marketing of lots and homes by Declarant or Builders, including (without limitation) the right to remove gates or to postpone the installation of gates to prevent damage from construction vehicles, and the right to require that the gate be kept open during certain hours or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

**B.7.4. Marketing Other Locations.** This Declaration grants to Declarant a number of significant rights to market the Property. Declarant hereby reserves for itself and its affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing off-site developments of Declarant or its affiliates. After Sell-Out, if Declarant desires to use or to authorize the use of one or more model homes in the Property to market homes to be built in other locations, Declarant may do so for up to three years after Sell-Out. **This Subsection survives Sell-Out.**

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***DIFFERENT RULES***

Declarant and Builders (if any) have rights and privileges to use the property in ways that are not available to other owners and residents.

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**B.7.5. Model Home Notice.** In connection with its development and marketing of the Property, Declarant may create or authorize one or more marketing centers in the Property, with homes that serve as models of what may be constructed in the Property. The designation of a lot or lots as models is entirely within the discretion of Declarant. The use of a model home does not require that the model be reproduced in the Property. The sizes, styles, appearances, materials, and construction specifications of model homes may differ significantly from other homes in the immediate vicinity. A model may be approved for construction in one part of the Property, although it markets homes in other parts of the Property. A model home may be substantially remodeled from time to time, or may be replaced by a different home on the same lot. All exterior aspects of a model home are deemed to have been approved by the Architectural Reviewer, with variances if necessary to allow the home to remain in a portion of the Property with different construction specifications. Neither the Association nor the ARC may enact rules, guidelines, or specifications that - by intent or effect - are disproportionately adverse to the homes that are or have been used as models. This Section may not be amended without the prior written consent of Declarant and the owner of any model home lot that would be affected by the amendment.

**B.8. RELATIONSHIP WITH BUILDERS.** Declarant, in its own name or through its affiliates, intends to construct dwellings on the lots in connection with the sale of the lots. However, Declarant may, without notice, sell some or all of the lots to one or more Builders to improve the lots with dwellings to be sold and occupied. This Section applies in the event Declarant sells lots to Builders. Until Sell-Out, Declarant may authorize Builders to exercise any or all of the promotional rights, reservations, and easements that Declarant reserves for itself in this Declaration. Without the prior written approval of Declarant, a Builder may not market its off-site products from its offices, models, or signs in the Property.

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**Declarant plays an important role in the life of Vineyard Creek Estates until Sell-Out.**

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B.9. **SUCCESSOR DECLARANT.** One role of Declarant may be to buffer the process of building-out and marketing the Property from the possible desire of the Association and homeowners to impose their views on Build-Out and Sell-Out. The intent of this Section is for the role of "Declarant" to be extant through Build-Out until Sell-Out, whether or not Declarant is the builder and seller of new homes in the Property, whether or not Declarant owns a lot. The rights, reservations, and roles of Declarant under this Declaration may be transferred, in whole or in part, pursuant to this Section. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants. This Section may not be construed to prevent Declarant from voluntarily designating the Association as a Successor Declarant. Absent a voluntary designation by Declarant, the Association has no basis, authority, or right to be or perform as a successor Declarant.

B.9.1. **Voluntary Designation.** Declarant may designate one or more Co-Declarants or Successor Declarants for specified designated purposes (such as architectural control over new homes) or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and by the Co- or Successor Declarant, and recorded in the Real Property Records of Tarrant County, Texas. The designation instrument may subject the Co- or Successor Declarant to limitations and restrictions.

B.9.2. **Involuntary Designation.** A person who acquires substantially all of Declarant's interest in the Property by an involuntary method, such as court order, deed in lieu of foreclosure, foreclosure, or bankruptcy proceeding, may - but is not required to - designate itself, or its successor or assign, as Declarant for all purposes, or for specified purposes (such as architectural control over new homes). To be effective, the designation must be in a writing that (1) describes the involuntary circumstance, (2) is signed and acknowledged by the designatee, and by the designator, if any, and (3) is recorded in the Real Property Records of Tarrant County, Texas. This Subsection is not invalidated by temporary interim ownership of the Property, such as by a trustee, beneficiary, or executor.

B.10. **COMMON AREAS.** Before Build-Out, title to the common areas will be conveyed to the Association or, if appropriate, to a public or quasi-public entity, by one or more deeds - with or without warranty of title, and with or without warranty of improvements. At the time of conveyance to the Association, the common areas will be free of encumbrance, except for unpaid or accruing property taxes which are a common expense of the Association. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of common areas requiring inspection, evaluation, acceptance, or approval of common area improvements by the owners.

B.11. **PARDON OUR DUST.** A person who occupies a home during Build-Out is living in a construction site that may experience periodic and temporary inconveniences during the Build-Out and Sell-Out of the Property. Declarant - for itself and the Builders - apologizes in advance for these disturbances, many of which cannot be avoided. The sooner the construction work is completed, the sooner residents will be able to enjoy the community of which they are a part. Declarant hopes Build-Out occurs swiftly and with minimal disruption of residents' lives and households. Declarant thanks residents in advance for their patience and tolerance of what may be a relatively short but challenging period for the Vineyard Creek Estates community.

*(End of Appendix B)*

## APPENDIX C

### **DECLARANT'S RIGHTS & RESERVATIONS FOR ASSOCIATION GOVERNANCE**

#### **C.1. GENERAL PROVISIONS.**

C.1.1. **Introduction.** Declarant intends the Declaration to be perpetual and understands that provisions that are warranted for Declarant's control of the Association's governing and budgetary functions will eventually become obsolete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, most of the provisions relating to Declarant's role, rights, and responsibilities towards the Association and governance of the Property are compiled in this Appendix.

C.1.2. **Superiority.** The terms and provisions of this Appendix are superior to the terms and provisions of the Bylaws, the Articles, and the main body of the Declaration. Except for a few provisions which expressly survive Sell-Out, most of the terms and provisions of this Appendix will cease to apply to the Property upon Sell-Out.

C.1.3. **General Reservation & Construction.** Declarant hereby reserves exclusively unto itself and its successors, assigns, and designees, the rights and reservations contained in this Appendix. No other provision in a Governing Document may be construed to prevent or interfere with Declarant's exercise of its rights and reservations. No mortgagee, other owner, or the Association may prevent or interfere with Declarant's exercise of its rights and reservations. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to control the governing and budgetary functions of the Association for the maximum period of time permitted by applicable law, which is ultimately for the benefit and protection of homeowners and mortgagees, as well as to protect the interests and investments of Declarant and Builders (if any), and Declarant's reputation as a community developer.

C.1.4. **Ownership Not Required.** This Appendix intends for Declarant's rights and reservations to be extant until certain statuses are attained, whether or not Declarant owns any part of the Property. In other words, **Declarant need not be an owner to exercise the rights and reservations of Declarant.** If the laws of Texas are amended or interpreted retroactively to predicate Declarant's rights on an interest in real property subject to the Declaration, Declarant hereby reserves the right to acquire or re-acquire a lot, or to annex additional real property in order to satisfy the requirement.

C.1.5. **Statutory Reservation.** Declarant hereby reserves for itself each and every right, reservation, privilege, and exception available or permissible under applicable law for declarants and developers of residential subdivisions, if and to the full extent that such right, privilege, or exception is beneficial to or protective of Declarant or Builders. If the benefit or protection of applicable law is predicated on an express provision being in this Declaration or other Governing Document, such provision is hereby incorporated by reference unless Declarant executes an instrument to disavow such benefit or protection.

C.1.6. **Amendment.** An amendment, restatement, supplement, or termination of this Appendix or any of its provisions is **void and unenforceable without Declarant's prior written approval** of the instrument, as evidenced by Declarant's acknowledged signature on the instrument that is publicly recorded.

C.2. **DEFINITIONS.** Words and phrases defined in Article 1 of the Declaration and in Appendix B have the same meanings when used in this Appendix. As used in this Appendix and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings, subject to Declarant's right to amend or supplement this Section:

C.2.1. **"Declarant Control Period"** means that period of time during which Declarant has the right to control the operation and management of the Association by appointing officers and directors of the Association, pursuant to the rights and reservations contained in this Appendix, to the full extent permitted by applicable law. If applicable law requires a stated term, the Declarant Control Period runs continuously from the date this Declaration is recorded until the earlier of the following events: (1) 12 years after the date on which this Declaration is publicly recorded, and (2) 120 days after 95 percent of the lots that may be created (included property subject to annexation) have been improved with dwellings and conveyed to owners other than Builders or Declarant (also referred to as "at 95 percent of Build-Out and Sell-Out"). To the fullest extent possible, the term "Declarant Control Period" as defined by this Declaration will be given effect for the purposes of this Declaration and the other Governing Documents. In event of conflict between this definition and a subsequently enacted statutory definition of "Declarant Control Period," the statutory definition controls for the limited purpose of compliance with the applicable statute.

C.2.2. **"Shortfall"** is used in this Appendix with the following terms and meanings. **"Actual Shortfall"** is the difference between actual and available cash in the Association's operating account having been contributed by owners other than Declarant, and the Association's actual cash outlays for operating expenses, whether budgeted or not. **"Expected Shortfall"** is the difference between the Association's actual cash outlays for budgeted operating expenses and the assessments payable - collectively - by owners other than Declarant, as if all of those owners paid their assessments in full and on time. **"Shortfall Loan"** is money paid by Declarant to the Association or for the Association's benefit to fund some or all of the difference between the actual shortfall and the expected shortfall.

C.3. **CLASSES OF MEMBERS.** From the date this Declaration is recorded through Sell-Out, the Association may have as many as three classes of members - Homeowner Class, Homebuilder Class, and Declarant Class, as described below. Each class exists to the extent it has qualified members. On the date this Declaration is recorded, there is one class of members - Declarant Class - which continues to exist until Sell-Out. On the date of recording the first improved lot deed to an owner, the Homeowner Class comes into existence. If a Builder acquires a vacant lot, the date of recording the first vacant lot deed to a Builder establishes the Homebuilder Class. Each lot has only one membership and one class of membership at a time. Except for the Declarant Class, membership is automatic, mandatory, appurtenant to ownership of a lot, and terminates when the member is divested of his ownership interest in the lot to which it is tied and from which it may not be separated. If a lot is owned by more than one person, the co-owners share the membership and decide for themselves how it will be exercised. The board may require satisfactory evidence of transfer of ownership before a purported owner is recognized by the Association as a member. One purpose of the membership classes is to allow (but not require) Declarant to maintain membership in the Association until Sell-Out, even during periods when Declarant does not own property subject to this Declaration. References to "members of the Association" in the Governing Documents and applicable law apply to Association members in each class.

C.3.1. **Homeowner Class.** A lot owner who is not a member of another class is a Homeowner Class member of the Association, ownership of a lot being the sole qualification for membership.

C.3.2. **Homebuilder Class.** Homebuilder Class members consist of owners (other than Declarant and its affiliates) who are Builders, owners of unplatted or unimproved land in the Property, and owners of lots with never-occupied dwellings that are being offered for sale or lease. If this class has members at Sell-Out, such as a Builder who occupies a house or who owns a house that is occupied, the Homebuilder Class membership automatically converts to Homeowner Class membership at Sell-Out. Declarant and its affiliates are not members of the Builder Class. During any period when no owner qualifies as a Builder, as defined above, the Homebuilder Class does not exist.

C.3.3. **Declarant Class.** Declarant Class members of the Association are (1) Declarant, whether or not Declarant owns land in the Property, and (2) any affiliate of Declarant who owns land in the Property. If there are co-Declarants, each co-Declarant is a member of the Declarant Class. The Declarant Class member enjoys the same membership rights as the Homeowner and Homebuilder Class members, except that Declarant's membership does not require ownership of a lot. If a Declarant Class member owns property subject to the Declaration, the member may cast votes for any lot it owns. If a Declarant Class member owns an occupied house at Sell-Out, the membership automatically converts to Homeowner Class membership for any lot with an occupied house owned by a Declarant Class member.

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Declarant is a voting member - with or without a lot.

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C.4. **VOTING.** This Section pertains to voting by owners and members of the Association between the date this Declaration is recorded and Sell-Out. The vote appurtenant to each lot is indivisible. Cumulative voting is not allowed.

C.4.1. **Number of Lots for Voting Purposes.** If the Property contains unplatted tracts of land, each fifteenth of an acre is treated as a lot for voting purposes. When unplatted tracts are platted, the number of voting lots will be automatically adjusted by the number of platted lots. Until a plat is recorded, the number of voting lots may be based on the most recent preliminary plat or unrecorded final plat. If additional property is made subject to this Declaration, the number of voting lots will be increased automatically by the number of additional lots. If the number of lots in the Property changes with final platting or replatting by Declarant or with Declarant's approval, the number of voting lots will be adjusted accordingly.

C.4.2. **Number or Weight of Votes Per Lot.** At Sell-Out, each lot will have one vote, and all votes will be uniform in weight. Prior to Sell-Out, the voting power of each lot is determined by its owner's membership class. For each lot owned by a Homeowner Class member, the vote is counted once, as one vote per lot with a weight of one. For each lot owned by a Homebuilder Class member prior to Sell-Out, the vote is counted twice or is tallied as two votes per lot, or is weighted twice that of a Homeowner Class member's vote. For each lot owned by a Declarant Class member

prior to Sell-Out, the vote is counted thrice or is tallied as three votes per lot, or is weighted three times that of a Homeowner Class member's vote.

C.4.3. Tallying Votes. Prior to Sell-Out, if applicable law or a Governing Document requires consent by a percentage or share of owners, members, or total votes, the percentage or share will be determined by the percentage of share of total number or weights of votes based on membership class.

C.4.4. Declarant Class Member. **The Declarant Class membership is a voting membership, even if the Declarant Class member does not own a lot in the Property.** Prior to Sell-Out, during any period in which no lot is owned by the Declarant Class member, the Declarant Class member may cast one vote, the weight of which is one.

C.5. **BOARD CONTROL RIGHTS & RESERVATIONS.** Declarant hereby reserves the Declarant Control Period by which Declarant may unilaterally appoint, remove, and replace officers and directors of the Association, subject to the following conditions and provisions. Declarant's reservation and right to control the Association by appointing officers and directors is independent of Declarant's reservations and rights to control the development, Build-Out, and Sell-Out of the Property.

C.5.1. Duration. Declarant intends for the Declarant Control Period, as defined above, to be the maximum amount of time permitted by this Declaration and applicable law. No act, statement, or omission by the Association may effect termination of the Declarant Control Period earlier than the term stated in this Appendix. Declarant, however, may terminate the Declarant Control Period at any earlier time by signing and acknowledging a notice of voluntary termination that is recorded in the Real Property Records of Tarrant County, Texas.

C.5.2. Independent Reservation. Notwithstanding badly written applicable laws that link a declarant's control of real property development with its control of the governing body, Declarant and this Declaration recognize the independence of those realms and functions. Declarant may terminate its reserved right to appoint officers and directors of the Association without affecting any of Declarant's other rights and reservations under this Declaration or applicable law.

C.5.3. Number of Lots. To satisfy a requirement of applicable law that the Declaration state the maximum number of lots that may be created and made subject to the Declaration, Declarant hereby states that maximum number as **70 house lots**, and reserves the right to increase or reduce that number by amendment of this Declaration.

C.5.4. Officers & Directors. During the Declarant Control Period, the board may consist of 3 persons, or any larger number chosen by Declarant. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation. To the extent required by applicable law [TX Prop Code Sec. 209.00591], within 120 days after the conveyance of 75 percent of the lots that may be created (including property subject to annexation, if any), at least one-third of the board must be elected by owners other than Declarant. Declarant construes the applicable law as only applying to improved lots that have been conveyed to owners other than Builders, and not applying to vacant lots conveyed to Builders or to affiliates of Declarant. However, because the statute does not so state, Declarant will exercise the votes of Builders, if any. Declarant's unilateral right to remove and replace officers and directors applies only to Declarant's appointees.

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Declarant appoints HOA leaders until almost all the homes are built and sold.

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C.6. **ASSOCIATION GOVERNANCE.**

C.6.1. Annual Meetings. During the Declarant Control Period, the board may use its discretion in setting the agenda for meetings of the Association, and is not bound by the order of business stated in the Bylaws. Annual meetings during the Declarant Control Period may be informational only. If the Association gives notice of one meeting of members during the year, the meeting will be deemed to be the annual meeting of the Association whether or not it is so designated in the notice.

C.6.2. Board Meetings. During the Declarant Control Period, to the extent not prohibited by applicable law, meetings of the board of directors are permitted but not required. The Bylaws provision that requires periodic board meetings becomes effective when the Declarant Control Period ends.



C.6.3. Bylaws. During the Declarant Control Period, the board may use its discretion in applying the provisions of the Bylaws, which ~ during the Declarant Control Period only ~ must be construed as permissive (not mandatory), aspirational, and within the sole discretion of the board, to the extent permitted or not prohibited by applicable law.

C.6.4. Power of Attorney or Proxy. In connection with its sale of lots to Builders, Declarant may obtain a specific power of attorney or a general appointment of proxy to exercise the voting rights of owners who are members of the Builder Class in order to retain Declarant's reserved right to control the appointment of all officers and directors of the Association for the maximum period permitted by applicable law.

C.6.5. Transition Meeting. Within 120 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a special meeting of the members of the Association for the purpose of transferring control of the Association's governance. At the transition meeting, the owners will elect directors to the board. Written notice of the transition meeting must be given to an owner of each lot at least 10 days before the meeting. For the transition meeting, owners present in person or by proxy constitute a quorum. Regardless of the timing specified in the Bylaws for the annual meeting, in the year of the transition meeting, the annual meeting may be scheduled to coincide with the transition meeting to avoid the cost of conducting two membership meetings in a one year period.

C.6.6. Notice and Quorum. During the Declarant Control Period, notice of each Association meeting must be given to Declarant, whether or not Declarant owns a lot in the Property. The presence of Declarant, in person or by proxy, is required to attain a quorum for any meeting of the Association during the Declarant Control Period. Declarant may waive this requirement in writing on a meeting-by-meeting basis. However, Declarant's waiver may not be assumed, deemed, or construed from circumstances, omissions, or verbal statements. A meeting of the Association called during the Declarant Control Period is not valid without Declarant's presence or a written waiver signed by Declarant prior to the start of the meeting.

C.7. VETO OVER CERTAIN BOARD DECISIONS. Certain decisions by the board, such as choice of management, adoption of an annual budget, and use of websites and social media, may affect the appearance and condition of the Property, the quality of life for residents, the costs of home acquisition and ownership, and marketability of homes in the Property. For itself and Builders, Declarant may have a vested interest in the way the Property is maintained and the Association managed until Sell-Out. Through Sell-Out, Declarant has the continuing unilateral right to veto, reverse, or modify decisions by the board which Declarant has reason to believe will adversely impact the Build-Out or Sell-Out of the Property. This Section applies during and after the Declarant Control Period, even if Declarant voluntarily terminates control of the Association earlier than the maximum period of Declarant control. The Association may not evade the effect of this Section by refusing to accept financial or other types of assistance from Declarant. Although this right of veto cannot be waived prior to Sell-Out, if requested by the Association, Declarant may waive its veto on a decision-by-decision basis.

C.8. DECLARANT AS EX-OFFICIO BOARD MEMBER. Declarant hereby reserves the right to serve on the board in an ex-officio capacity when the Declarant Control Period ends, for the remainder of the Declarant Class membership. Only Declarant may appoint the person who serves as the ex-officio director, with full power to remove and replace the appointee, who serves at the pleasure of Declarant. As an ex-officio member of the board, Declarant has the same rights and privileges as do all other directors, including the right to vote. As an ex-officio director, Declarant is not subject to recall, removal, or term limits.

C.9. ADVISORY & ARCHITECTURAL COMMITTEES. During the Declarant Control Period, the board may appoint any number of committees pursuant to the authority and procedures stated in the Bylaws. This Section pertains to two committees that may be of particular interest during the Declarant Control Period. Although committee appointments are made by the board, the board may invite nominations from owners, or may provide owners with a straw poll opportunity to recommend candidates.

C.9.1. Advisory Committees. During the Declarant Control Period, the board may appoint one or more committees comprised of owners or residents to assist the board in an advisory capacity by contributing the perspectives of residents and owners. The committee may be referred to as an "advisory committee," "advisory board," "shadow board," or by any other name that is commonly used by property owners associations. The board may adopt a policy of delegating to the Association's manager the responsibility for appointing and working with such committees. The policy may provide that all duties of the board under the Bylaws article titled "Committees" will be construed to mean "the board or the manager pursuant to a policy adopted by the board."

C.9.2. Architectural Review Committee. During the Declarant Control Period, the board appoints the ARC, which may consist of (1) Declarant only as a "committee of one," (2) principals or employees of Declarant, (3) independent design professionals, such as architects and engineers, (4) one or more Builders, (5) owners appointed by Declarant, (6) owners recommended by owners other than Declarant, or (7) any combination of the foregoing. At all

times, the chair and members of the ARC serve at the pleasure of the board, which may remove and replace appointees. Declarant may, from time to time, and solely at Declarant's discretion, appoint an ARC comprised solely of owners other than Declarant and Builders. Decisions by the ARC are at all times subject to review and veto by the board. The ARC has no authority over vacant lots and no authority over lots owned by Declarant or Builders. No authority granted to the ARC, even by the board, may ever be construed to give the ARC jurisdiction over new homes and related improvements on vacant lots.

C.10. **FINANCIAL RIGHTS & RESERVATIONS.** Declarant hereby reserves the following financial rights, reservations, and duties regarding the Association's budget and financial functions. The financial rights, reservations, and duties are independent of Declarant's reservation and right to control the appointment of officers and directors, and Declarant's reservation and right to control the development, build-out, and sell-out of improvements in the Property.

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During Build-Out, the HOA's budget may be based on projections and assumptions that may or may not be realized. So, rates of assessment may change during and after Build-Out.

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C.10.1. **Annual Budget.** Before the first lot closing to an owner other than a Builder, Declarant or the Declarant-appointed board will approve an estimated projected annual budget for the Association on which regular assessments are based. From time to time during the Declarant Control Period, as Declarant deems appropriate, Declarant may unilaterally revise and republish the Association's annual operating budget and the corresponding rate of assessment for the lots. Such a budget adopted by Declarant for the Association does not require approval by the board. Alternately, assessment and budget changes may be adopted by the board.

C.10.1.1. **Purposes.** During the Declarant Control Period, the annual budget has three primary purposes. First, to inform homebuyers about the types and relative sizes of expenses that the Association may be expected to incur in the future when their community is Built-Out, Sold-Out, and they control their Association. Second, to yield a rate of assessment that is more affordable for the initial homebuyers than if the Association's expenses were divided among only owners of completed homes prior to Build-Out. Third, to serve as a budget snapshot that can be used in the home marketing program for a relatively long period of time during the community's development.

C.10.1.2. **No Warranty.** For itself and the Association, Declarant hereby disclaims and disavows any warranty or representation that may be attributed to the annual budget adopted during the Declarant Control Period. The annual budget is not a warranty or representation by Declarant or by the Association that the types of budgeted expenses or their relative sizes are accurate or complete. Nor is it a warranty or representation that the Property or the Association will achieve the budget's assumptions. Nor is it a warranty or representation by Declarant or the Association that the Association will annually incur or fund every category of expense that is shown on the budget, or that the relative size of an expense category will be achieved. Neither the Association nor any owner has a right or expectation of being reimbursed by Declarant or by the Association for a budgeted line item that is not realized, or that is not realized at the projected level.

C.10.1.3. **Assumptions.** The annual budget may be based on any number of assumptions that are customary for Declarant-prepared budgets in the local marketplace, such as assumptions that (1) the Property is Built-Out, Sold-Out, and fully occupied, (2) owners of all lots subject to assessment pay assessments in full and on time, (3) the Property enjoys a level of service and maintenance that is typical for similar types of developments in the general area of the Property, and (4) no inflation or increase in the costs of goods and services from the date on which the budget is prepared. All such assumptions are presumed to be reasonable for this purpose.

C.10.2. **Declarant's Financial Responsibility.** A lot owned by Declarant or by an affiliate of Declarant is not subject to mandatory assessment by the Association and will not become subject to assessment by the Association until the date title is transferred to an owner other than Declarant or a Declarant affiliate. Because Declarant establishes the Association's budget and the rate of assessment during the Declarant Control Period, Declarant has an obligation to ensure that the Association's operating expenses are paid for that period. **During the Declarant Control Period only,** Declarant is responsible only for the Expected Shortfall. For any budget period during the Declarant Control Period in which the Actual Shortfall exceeds the Expected Shortfall, Declarant may (a) fund some or all of the difference, (b) direct the board to reduce the Association's expenses by reducing services, or (c) direct the board to fund the difference by raising the rate of assessment. **On termination of the Declarant Control Period,** Declarant ceases being responsible for shortfalls and the owner-elected board of directors will adopt a budget for the Association that is capable of being funded completely by owners without any contribution by Declarant. Under any circumstance, Declarant is not liable to

the Association for more than the amount that Declarant would pay if Declarant were liable for assessments on the unsold lots in the same manner as any other owner. This may not be construed to create a per lot assessment liability for Declarant.

C.10.3. Reserves. The annual budget may show an annual contribution to reserves or to a contingency fund to illustrate to homebuyers the types of expenses they may expect to fund after the Declarant Control Period. During the Declarant Control Period, a budgeted line item for reserves is not a guaranty that the Association's reserves will be funded from regular assessments or from any other source. Declarant has no duty to contribute to the Association's reserve accounts. If the Declarant-controlled Association does not collect initial reserve contributions from owners at time of purchase, after the Declarant Control Period the Association will levy a special assessment to establish initial reserve accounts, and will thereafter collect initial reserve contributions in connections with transfers of title.

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**Reserves aren't funded by Declarant.**

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C.10.4. Commencement of Assessments. Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. Prior to the first levy, Declarant is responsible for the operating expenses of the Association as they accrue.

C.10.5. Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

C.10.6. Enhancements. Until Sell-Out, Declarant - solely at Declarant's discretion - may voluntarily provide enhancements for the Property, such as higher levels of maintenance, management, insurance, seasonal color in landscaping, and recreational personnel. If such enhancements are included in the Association's annual operating budget they must be identified as voluntary contributions by Declarant.

C.10.7. Loans. Nothing in this Appendix may be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized in the books and records of the Association.

C.10.8. Declarant's Right to Inspect & Correct Accounts. For a period of five years after the end of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association's financial books, records, and accounts from the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Governing Documents or applicable law. This Section may not be construed to create a duty for Declarant or a right for the Association. In support of this reservation, each owner, by accepting an interest in or title to a lot, hereby grants to Declarant a right of access to the Association's books, records, and accounts that is independent of Declarant's rights during the Declarant Control and as the Declarant Class member of the Association, for the limited purpose of this Section and only to the extent necessary to enable Declarant to exercise its rights under this Section. **This Subsection survives Sell-Out, if Sell-Out occurs within five years after the end of the Declarant Control Period.**

C.11. RIGHT OF REIMBURSEMENT FOR SHORTFALL LOANS. While Declarant controls the Association, Declarant may provide financial assistance to the Association. The purpose of this Section is to describe the relationship between Declarant and the Association regarding Declarant's financial support and the duty of the Association to reimburse Declarant for some of Declarant's contributions under certain circumstances. In case of conflict between this Section and other provision of the Declaration, this Section controls.

C.11.1. Reservation. Declarant hereby reserves the right to be reimbursed by the Association for any shortfall loan and hereby creates an affirmative duty for the Association to fund the reimbursement if and when Declarant exercises this right. **The Association's duties under this Section do not terminate at the end of the Declarant Control Period.**

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***No deep pocket.***

**Declarant isn't required to fill holes in the budget created by owners who don't pay assessments.**

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C.11.2. Examples. Circumstances that are capable of resulting in shortfall loans include without limitation: (1) the failure of owners to pay assessments to the Association; (2) expenses pre-paid by the Association for which an owner or a third party is liable; and (3) any expense pre-paid by the Association for which a special assessment or increase in regular assessments is subsequently levied, or for which the Association obtains bank funding.

C.11.3. Shortfall Loan. A shortfall loan arises automatically, with or without formality. A shortfall loan may be evidenced by a promissory note executed by the Association in favor of Declarant or a person or entity designated by Declarant. A shortfall loan may be further secured by a lien against the common areas contained in a publicly recorded lien instrument executed by the Association. The Association will execute loan and security documents if so requested by Declarant. A shortfall loan incurs no interest and will be repaid - without demand - as the Association receives reimbursement of prepaid expenses, payment of delinquent assessments, or funding from loans or levied assessments. If a rate of interest on the shortfall loan will be imputed, the rate will be six percent per annum. Unless a promissory note specifies a different plan of payment, the Association will budget for shortfall loan repayment in a manner that retires 10 percent of the shortfall loan each year for 10 years.

C.11.4. Shortfall Monitoring. The Association is responsible for monitoring expected and actual shortfalls, identifying the differences that are eligible for reimbursement, and for reimbursing Declarant as targeted funds are received, without demand by Declarant.

C.12. HOA SALE FEES ON VACANT LOTS. This Section pertains to the sale and purchase of vacant lots or tracts of land prior to Build-Out. A request to the Association for a "payoff" or statement of assessments in connection with the purchase or closing of a vacant lot or tract may be satisfied with an assessment estoppel letter, and may not be treated as a request for "subdivision information" which triggers a resale certificate. On a bulk sale (multiple lots or tracts), a request to the Association for a resale certificate will be satisfied with a single resale certificate for the multi-lot or multi-tract transaction. In this Section, the term "Declarant" applies to its affiliates and successors.

C.12.1. Declarant Not Liable. The conveyance of a vacant lot or tract to Declarant is not subject to HOA Sale Fees unless so provided in the contract of sale to which Declarant is a party. This exemption applies to a successor Declarant who was a Builder prior to the assignment. Declarant is not liable for HOA Sales Fees that are not collected from a purchaser.

C.12.2. Builders. The conveyance of a vacant lot or tract by Declarant is treated as a "New Home Sale" for purposes of collecting HOA Sale Fees from the purchaser (typically a Builder), subject to the exclusive right of Declarant to modify or waive the obligation for HOA Sale Fees by contract with the purchaser. Declarant may negotiate different modifications or waivers with each Builder and for each contract. Conveyances of vacant lots or tracts between Builders are treated like New Home Sales for purposes of collecting HOA Sale Fees.

C.13. HOA SALE FEES ON NEW HOME SALES. This Section pertains to "New Home Sales", meaning the sale by Declarant or a Builder to a homeowner of a lot that is improved with a newly constructed dwelling, or a vacant lot with a contract for construction of the first dwelling. The request for or issuance of a "resale certificate" does not convert a New Home Sale into a Home Resale for purposes of this Declaration.

C.13.1. Amounts. On or before the closing of a New Home Sale to a purchaser other than Declarant, a Successor Declarant, or a Declarant-affiliate, the purchaser is liable for the below-stated HOA Sale Fees:

- (1) \$250.00 payable to the Association for its reserve funds.
- (2) \$250.00 payable to the Association for its operating funds.
- (3) If any, the customary administrative HOA Sale Fees, payable to the Association or its manager.

C.13.2. Operating Funds. The contribution to the Association's operating funds may be used to defray Declarant's obligation, if any, for the Association's operating expenses that are not funded by regular assessments received from other owners during the Declarant Control Period. After the Declarant Control Period, the Association will transfer to Declarant the initial operating fund contributions received from buyers of New Homes.

C.13.3. Liability. If HOA Sale Fees are not collected from a New Home purchaser at closing, Declarant is not thereafter liable for the contribution, and Declarant reserves the right (but not the duty) to waive the purchaser's liability for HOA Sale Fees on a case by case basis. Declarant acknowledges that this condition may create an inequity among the owners, but deems it a necessary response to the volume and diversification of closing New Home Sales.

*(End of Appendix C)*

**APPENDIX D  
TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR VINEYARD CREEK ESTATES**

**NOTICE OF POSSIBLE OIL & GAS ACTIVITY AFFECTING THE SUBDIVISION**

Oil and natural gas are found in most parts of Texas, making Texas one of the largest oil and gas producing regions on Earth in the era in which Vineyard Creek Estates (the "**Subdivision**") is developed. As exploration and development technologies evolve, new areas of the state become attractive sources for exploration, drilling, and production. No one can guaranty where the next promising oil or gas field will be located. Nor can anyone guaranty that a particular location will never be used for oil or gas production. Someday your home may be closer to an oil or gas well than you expect. Or the nearby well that has been dormant for years may be revived. The purpose of this Notice is to make you aware that Declarant, Builders, and the Association have no control over, nor liability for, past, present, or future oil and gas activities within or near the Subdivision.

As used in this Notice, the following terms have specific meanings:

"**Fixtures**" refers to existing, abandoned, or future pipelines, pipeline rights-of-way, pipeline easements (collectively "**pipeline**"), drill sites, wells, equipment, and facilities for the exploration, extraction, and transportation of oil, natural gas, petroleum products, or other gases or liquids located near or within a drill site or pipeline, whether now existing or created in the future.

"**Uses**" means rights, including easements, to access, operate, inspect, install, maintain, repair, and remove Fixtures, and the exercise of such rights from time to time and at any time, by an owner or operator of a drill site or pipeline.

"**We**" and "**Us**" means, individually and collectively, Declarant, Builders, the Association, and anyone affiliated with them, such as their respective officers, directors, employees, agents, parent company, subsidiaries, affiliates, heirs, personal representatives, successors, and assigns.

"**You**" and "**Your**" refers to any person acquiring, owning, or occupying a lot or any portion of the Subdivision, and the person's heirs, personal representatives, successors, and assigns.

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***By contracting to purchase a lot, and by acquiring an ownership or occupancy interest in a lot or any portion of the Subdivision:***

**YOU ACCEPT THE OBLIGATIONS AND CONSEQUENCES OF OWNERSHIP AND OCCUPANCY, INCLUDING THE RISK THAT FIXTURES AND USES MAY OR MAY NOT BE PRESENT WITHIN OR NEAR YOUR LOT OR THE SUBDIVISION, NOW OR IN THE FUTURE, AND THE RISK THAT THE FIXTURES AND USES MAY NOW OR AT ANY FUTURE TIME NEGATIVELY AFFECT YOUR LOT OR THE SUBDIVISION, SUCH AS (*by way of example, without limitation*)(1) YOUR HEALTH, SAFETY, OR WELFARE, (2) QUIET ENJOYMENT OF YOUR LOT, (3) USE OF A COMMON AREA FOR ITS INTENDED PURPOSE, (4) CONTAMINATION OF SOIL, AIR, OR GROUNDWATER ON YOUR LOT OR IN THE SUBDIVISION, AND (5) DIMINUTION OF VALUE OF YOUR LOT, OTHER PORTIONS OF THE SUBDIVISION, OR PROPERTY NEAR THE SUBDIVISION.**

**YOU ACKNOWLEDGE THAT WE ARE NOT LIABLE FOR DAMAGE TO PROPERTY, PERSONS, OR OTHER BEINGS CAUSED BY FIXTURES, USES, OR THE ACTIONS OR OMISSIONS OF ANY THIRD PARTY, SUCH AS THE OWNER OR OPERATOR OF A DRILL SITE OR PIPELINE.**

**YOU RELEASE EACH OF US FROM ANY AND ALL COMPLAINTS, DEMANDS, CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES, COSTS, INJURIES, OR OTHER LIABILITY THAT YOU HAVE OR MAY HAVE, AT ANY TIME, THAT RELATE IN ANY WAY TO ANY FIXTURE OR USE, PAST, PRESENT, OR FUTURE.**

*(End of Appendix)*

# **Rules and Regulations**

**Electronically Recorded**

Official Public Records

*Mary Louise Garcia*

Mary Louise Garcia

**Tarrant County**

11/5/2014 3:26 PM

PGS 34 \$148.00

Submitter: SIMPLIFILE

**D214242900**

# **OWNERS MANUAL OF RULES & REGS FOR VINEYARD CREEK ESTATES**

**GRAPEVINE, TEXAS  
(TARRANT COUNTY)**

**Declarant**

**D. R. Horton - Texas, Ltd.**

**OWNERS MANUAL OF RULES & REGS  
FOR  
VINEYARD CREEK ESTATES**

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# OWNERS MANUAL OF RULES & REGS FOR VINEYARD CREEK ESTATES

This Owners Manual of Rules & Regs for Vineyard Creek Estates is adopted by D. R. Horton - Texas, Ltd., a Texas limited partnership ("**Declarant**"), in connection with its development of Vineyard Creek Estates, a residential community in Grapevine, Texas, according to the plat or plats thereof recorded or to be recorded in the Plat Records of Tarrant County, Texas.

Declarant desires to use this Owners Manual to compile the covenants, conditions, and restrictions pertaining to the improvement, use, appearance, and maintenance of house lots (after construction of original improvements) in a format that is useful for the homebuying public, as well as for owners and residents of Vineyard Creek Estates.

Declarant **DECLARES** that all real property that is subject to the Declaration of Covenants, Conditions & Restrictions for Vineyard Creek Estates (the "**Declaration**"), recorded or to be recorded in the Real Property Records of Tarrant County, Texas, such as the real property described in Appendix A of the Declaration (the "**Property**"), will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Owners Manual of Rules & Regs for Vineyard Creek Estates, as it may be amended, restated, or supplemented from time to time, which do hereby touch, concern, and run with the real property that is subject to the Declaration and bind all parties having or acquiring any right, title, or interest in any part of the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of any part of the Property. The mere acquisition of an improved lot or occupancy of a dwelling in Vineyard Creek Estates will signify that this Owners Manual is accepted, ratified, and will be followed.

**By acquiring an ownership or occupancy interest in a home, each owner and resident acknowledges that this Owners Manual is a Governing Document of Vineyard Creek Estates, and accepts, ratifies, and agrees to comply with this Owners Manual, as it may be amended, supplemented, or restated from time to time.**

## ARTICLE 1 GENERAL PROVISIONS

1.1. **ORGANIZATION.** This Owners Manual organizes the rules and restrictions of Vineyard Creek Estates into a number of Chapters, which together with this Article 1 comprise the Owners Manual. **Each Chapter automatically incorporates the above recitals and this Article 1 in its entirety,** whether or not such incorporation is referenced in the Chapter or the Chapter is published independent of this Article 1. The placement of a restriction in a particular Chapter is not intended to limit the applicability of that restriction. Therefore, no person should rely on a single Chapter of this Owners Manual as the complete treatment of a topic. The entire Owners Manual, as amended or supplemented from time to time, including all the Chapters, must be consulted to determine whether and how a particular matter is addressed.

1.2. **APPLICABILITY.** Subject to the limited exception below, the provisions of this Owners Manual regulate every lot in the Property and specifically pertain to (1) modification of an existing home and other improvements on an improved lot, (2) reconstruction of an existing home and other improvements on an improved lot, (3) additions to an existing home and other improvements on an improved lot, and (4) the use and appearance of an improved lot. A lot may be subject to additional or different specifications in a publicly recorded instrument to which particular lots are subject.

### **NEW HOMES EXEMPT**

Lots owned by Declarant and the original improvements on a lot made by Declarant or by a Declarant-approved Builder in building-out the Property are exempt from this Owners Manual. "**Original improvements**" pertains to new home design and construction, and to appurtenances such as fencing, flatwork, and landscaping. Original improvements on a lot made by Declarant or by a Declarant-approved Builder in building-out the Property are deemed to have been approved by the Architectural Reviewer, and are deemed to have been

granted a waiver by the Architectural Reviewer for any aspect of an improvement that appears to be inconsistent with a provision of this Owners Manual.

1.3. **COMPLIANCE OF IMPROVEMENTS.** As used in this Owners Manual, "**local government**" refers to a special district, city, or county having jurisdiction over the Property, or to an agency of such local government. Additional improvements to an improved lot must (1) have the ARC's prior written approval, (2) comply with applicable public codes and ordinances, (3) have a building permit issued by the appropriate local government, if applicable and if the type of improvement requires a permit, and (4) comply with the specifications and restrictions of the Declaration and this Owners Manual, unless a waiver or variance has been granted. These four requirements are independent - one does not ensure or eliminate the need for another. The lot owner and/or owner's contractor must comply with all four requirements, as applicable. If different sources of specifications address the same improvement, the source with the more stringent specification controls. As a general rule, in maintaining and replacing an improvement that was approved or in compliance when originally installed or constructed, an owner may rely on the original approval or compliance as long as the maintenance or replacement is substantially similar to the original, subject to the right of the ARC to adopt new community-wide standards such as a change of fence stain color.

1.4. **LAW-BASED SECTIONS.** Some sections (the "**Law-Based Sections**") of the Owners Manual are written to address a referenced State law relating to an owner's use of his lot. Accordingly, the Law-Based Sections are to be liberally construed to give effect to the purposes and intent of the underlying statutes, and may not be construed as a way to evade the protections, permissions, or requirements of State law. The Association must remain mindful that certain actions are controlled by State law, that State law is subject to change, that State law should be consulted for applicability whenever enforcement issues arise, and that **the Law-Based Sections should not be changed or terminated without advice of legal counsel regarding applicable law then in effect.** As a convenience, pertinent parts of applicable laws are paraphrased in the Law-Based Sections. If any part of a Law-Based Section conflicts with State law, inaccurately paraphrases State law, or inadvertently omits an aspect of State law, the corresponding provision in State law controls. In the event of an apparent conflict between a Law-Based Section and another provision in a Governing Document, an effort must be made to construe the provisions so as to give effect to both, if such construction is reasonable. Otherwise, the Law-Based Section is the higher authority for the limited purpose for which it is adopted, superseded only by public law.

1.5. **COMMUNITY STANDARD.** As used in this Owners Manual, "**Community Standard**" is an evolving flexible measure of the use and appearance of the Property as a pleasant and visually harmonious residential neighborhood. It requires compatibility, but not uniformity - harmony, but not sameness. The community standard is expected to change over time as materials, technologies, tastes, lifestyles, and values change. Even though a community standard may be difficult to articulate, a violation of the community standard should be easy to identify as something unattractive, inappropriate, or otherwise unsuitable for the Property from the perspective of a reasonable person, taking into consideration prevailing public policy and community sensibilities. "Community standard" applies because - as a practical matter - the rules and restrictions contained in this Owners Manual can not anticipate or dictate every possible use of a lot or dwelling.

1.6. **ENFORCEMENT.** The authority of the Association to enforce or to refrain from enforcing the provisions of each Chapter of this Owners Manual is found in the Declaration, particularly in the Articles titled "Architectural Covenants & Use Restrictions" and "Enforcing the Documents." Such authorities are incorporated herein by reference. Because the value of consistency to the community may not be apparent when a small number of variances are granted or a small number of violations are tolerated, the Association and the Architectural Reviewer, as appropriate, have the continuing right to enforce the provisions of the Owners Manual against future violations, even though past violations were tolerated or affirmatively approved.

1.7. **AMENDMENT.** To amend or supplement a Chapter of this Owners Manual, or to adopt a new Chapter, it is not necessary to restate and re-record this entire Owners Manual. Each Chapter of this Owners Manual may be adopted, amended, supplemented, and restated individually. This Owners Manual may be amended, supplemented, and restated from time to time by the following parties and methods. As used in this Section, the term "amendment" includes any type of change, including supplements and restatements, and adoption of new Chapters.

1.7.1. **Amendment by Declarant.** In addition to Declarant's reservations in Appendix B of the Declaration, Declarant hereby reserves the exclusive right to unilaterally amend this Owners Manual for any purpose during the Development Period. This Section may not be amended without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Additionally, during the Development Period, this

Owners Manual may not be amended by the board or by the members without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument.

1.7.2. **Amendment by Board Majority.** The board, with the consent of a majority of directors, there being no vacancy on the board, may amend this Owners Manual for the following five limited purposes, which must be clearly identified in the amendment or supplement, and then only to the extent necessary to achieve the permitted goal:

- a. To adopt criteria for approval or denial of a use or improvement that is specifically authorized by public law.
- b. To conform this Owners Manual to a requirement or change of public law.
- c. To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any governmental or quasi-governmental program or benefit.
- d. To correct an obvious error or omission that affects the validity or enforceability of this Owners Manual.
- e. To restate this Owners Manual, or any of its Chapters, to incorporate previously adopted amendments and supplements, provided no other change of a substantive nature is made.

1.7.3. **Amendment by Board Unanimously.** The board, with the consent of all directors, there being no vacancy on the board, may amend this Owners Manual for any purpose, provided the amendment or supplement is signed by all directors.

1.7.4. **Amendment by Members.** This Owners Manual may be amended by the members, using any method selected by the board from time to time, provided the method gives an owner of each lot in Vineyard Creek Estates the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment. Approval of owners does not require that the amendment be signed or acknowledged by the consenting owners. The consents required for an amendment approved by owners must be one of the following:

- a. If owners of at least a majority of the lots participate in the decision, an amendment may be approved by owners of at least a majority of the lots voting, whether the vote is taken at a meeting or by a balloting process that does not require a meeting.
- b. If the vote is taken at a meeting of the Association called for the purpose of voting on the change, for which proper notice was given and a quorum attained, an amendment may be approved by owners of at least two-thirds of the lots voting at the meeting, even though the voting lots are less than a majority of the total number of lots in the Property.

1.8. **BACKSTORY.** The original Owners Manual is drafted when the Property is raw land ~ before buildings, before residents, before Vineyard Creek Estates becomes a neighborhood with a personality. Declarant imposes limits on what can be done with a home and yard to support the Build-Out and Sell-Out of new homes in the Property. Declarant also believes that the restrictions serve the long-term best interests of the community of owners.

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**FAIRNESS IS DESIRED BUT NOT GUARANTEED.**

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Neighborhood appearance and quality of life may affect the value of a home, which is often an owner's largest investment. At the same time, a home is where real people live. In applying these Rules & Regs, the board and the Architectural Reviewer are expected to balance the overall perspective of the Property and the collective needs of the community of owners with the rights of individual owners to use and enjoy their homes and yards with a degree of autonomy.

**The owner who expects the Association to continually enforce every restriction against all lots to the nth degree will be disappointed. The owner who thinks he can do whatever he wants with his home and yard without suffering consequences is wrong.**

The original Governing Documents contain provisions that authorize the board, under certain circumstances, to tolerate violations, to grant variances, and to be flexible in its enforcement of the restrictions. That authority belongs to the board, in its sole discretion, acting in what it considers to be the best interests of the community of owners. Individual owners do not have corresponding rights under the Governing Documents to demand a waiver from the Association or to demand enforcement by the Association. Each owner is expected to honor the authority of the Association to enforce any restriction to which the owner and his lot are subject, and to accept that the board may use its discretion in enforcing the restrictions against owners and lots.

Over time, the Association will have reason to modify the restrictions or to change its interpretation or enforcement of the restrictions. Why? To keep pace with changes in the values and lifestyles of residents, to address new technologies and materials, to reflect the Property's maturity, to eliminate restrictions that are more burdensome than beneficial, to respond to environmental or economic conditions, and to embrace changes of public policy and applicable law.

Accordingly, some of the restrictions contained in this Owners Manual will need to be changed from time to time. In the meantime, every provision of this Owners Manual is **aspirational as well as enforceable**. This Backstory may not be invoked by an owner as a justification for the owner's noncompliance.

1.9. **GENERAL**. In addition to the General Provisions of the Declaration that pertain to all Governing Documents, of which this Owners Manual is one, the following provisions apply.

1.9.1. **Definitions**. Words and phrases defined in the Declaration have the same meanings when used in this Owners Manual.

1.9.2. **Declarant Rights**. Notwithstanding anything to the contrary in this Owners Manual, a number of provisions in this Owners Manual are modified by Declarant's rights and reservations under the Declaration during the Declarant Control and Development Periods, and until Build-Out and Sell-Out, as described in Appendix B of the Declaration.

1.9.5. **Severability**. Invalidation of any provision of this Owners Manual by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

1.9.6. **Duration**. Unless amended as permitted herein, the provisions of this Owners Manual run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

1.10. **CHAPTERS**. The following Chapters, and any additional Chapter adopted in the future, as amended, supplemented, or restated from time to time, are incorporated herein by reference, and each is subject to the foregoing recitals and this Article 1.

Chapter A - Use Restrictions  
Chapter B - Pet Rules  
Chapter C - Sign & Flag Rules  
Chapter D - Appearance & Architectural Restrictions  
Chapter E - Construction Specifications  
Chapter F - Fence Specifications  
Chapter G - Landscape Specifications

*(Signed on next page.)*

As the Declarant of Vineyard Creek Estates, I execute this Owners Manual of Rules & Regs for Vineyard Creek Estates as one of the initial Governing Documents of Vineyard Creek Estates.

By: D. R. HORTON, INC., a Delaware corporation, its  
authorized agent

**CHAPTER A**  
**USE RESTRICTIONS**  
**FOR VINEYARD CREEK ESTATES**

7

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**NOTE:** Every use restriction is subject to the right of the Association's board or the ARC, as applicable, to grant a variance on a case-by-case basis.

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A.1. **ARTICLE 1, BY REFERENCE.** Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

A.2. **AIR CONDITIONERS.** Please refer to this provision in the "Construction Specifications" Chapter of this Manual.

A.3. **ANNOYANCE.** No lot may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may damage the reputation of the Property or of the Association; (4) may endanger the health or safety of residents of other lots; (5) may result in the cancellation of insurance on the Property; or (6) is unlawful. The board has the sole authority to determine what constitutes an annoyance. This Section may not be construed to create a duty for the Association to monitor, identify, and pursue violations of public law or other acts that may be considered annoyances.

A.4. **BUSINESS USE.** A resident may use a dwelling for business uses, such as telecommuting, personal business, and professional pursuits, provided that: (1) the uses are incidental to the primary use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no visible evidence of a business use; (4) the uses do not entail visits to the lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (5) the uses do not interfere with the residential use and enjoyment of neighboring lots by other residents. Beauty and barber shops, and automotive repair are examples of prohibited uses.

A.5. **CIVILITY.** The purpose of this Section is to encourage a harmonious community environment to enhance the quality of life for Vineyard Creek Estates residents and to prevent diminution of property values. By the act of owning or occupying a lot, a person agrees to be civil in verbal, written, and face-to-face communications and encounters within or related to Vineyard Creek Estates. "To be civil" means adherence to social etiquette and business conventions that are appropriate to the situation, implying courtesy, cooperation, responsiveness, politeness, reasonableness, tolerance, moderation, good manners, respectfulness, tactfulness, appropriateness, thoughtfulness, and decorum in a manner calculated to respect the rights, responsibilities, privacy, and privileges of other people. Without limitation, this duty applies to communications among Association leaders, between Association leaders and owners, between Association representatives and owners, as well as among owners and residents. No provision of any Governing Document may be interpreted as authority for one person to be less than civil towards another person in relation to Vineyard Creek Estates.

A.6. **DECLARANT PRIVILEGES.** Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other owners and residents, as provided in Appendix B of the Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association as applied to owners other than Declarant.

A.7. **DIGGING.** Texas has laws protecting certain underground lines, wires, cables, and pipes, such as for utility services, and makes owners of real property responsible for locating and protecting them. Each owner is solely responsible for being informed about the State's requirements and for knowing how and when to take appropriate action when planning a subsurface disturbance on the owner's lot, such as (without limitation) planting or removing trees, excavating for a driveway, digging holes for fence posts, installing a sprinkler system, or driving stakes into the ground.

A.8. **DRAINAGE.** Vineyard Creek Estates is developed with a surface water drainage system that, for some lots, requires surface water to run from lot to lot, as described in the Surface Water Easement Section of the Declaration. When a home is first constructed, the lot may be graded with slopes, elevations, berms, swales, and depressions that are part of the established Property-wide surface water drainage pattern that must be preserved. **Each owner and resident is responsible for maintaining the positive drainage features of the lot** in their original condition at the time of home construction, unless the ARC has approved a change of the drainage pattern. Accordingly, a person



may not re-grade the surface of the lot, construct improvements, place obstructions, allow debris which interfere with or adversely affect the positive drainage features of the lot or the established surface water drainage pattern for the Property. If the fenced portion of a lot contains a drainage swale or channel, the owner must ensure that nothing obstructs or restricts the free flow of surface water through the swale.

A.9. **DRILLING.** Activity pertaining to the exploration, extraction, or transportation of oil, gas, water, minerals, or geothermal gasses is prohibited everywhere on the Property, unless expressly permitted by a document that was publicly recorded before the Declaration.

A.10. **DRIVEWAYS.** The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage.

A.11. **FIREARMS & FIREWORKS.** The discharge of firearms or hunting equipment within or from the Property, except in self-defense, is prohibited. The Association is not required to enforce this provision by confronting an armed person. Fireworks of any type are not permitted.

A.12. **FIRES.** Fires - such as bonfires, campfires, and trash burning - are prohibited on the Property. If allowed - or not prohibited - by the applicable local fire code, residents are permitted to have outdoor properly supervised flames used in connection with customary residential features that are designed for backyard use, such as grills, fireplaces, and fire pits.

A.13. **GARAGES.** Garage doors visible from a street or common area are to be kept closed at all times except for limited periods when the resident is actively using the garage or when a vehicle is entering or leaving. Without the board's prior written approval, the garage may not be used in a manner that regularly prevents cars from being parked in the garage.

A.14. **"GARAGE SALES".** Holding garage sales is not an inalienable right. No lot may be a site for a marketing activity that may be expected to attract the public to the Property, such as (by way of example) garage sales, yard sales, estate sales, rummage sales, and sample sales. The board has the right, but not the duty, to designate one or two "garage sale" weekends per year, during which residents may conduct garage sales on their lots, subject to reasonable limitations adopted by the board, such as rules about the visibility, timing, signage, and promotion of such sales. The Association's rules may be more stringent than those of the local government. This Section does not apply to the sale of real estate.

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***NO "GARAGE SALES", sorry.***

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A.15. **HOOPS.** Portable basketball goals may be used in unfenced yards and on private driveways in Vineyard Creek Estates during seasons of active play. Except for the temporary use of portable basketball goals, recreational or sporting equipment may not be placed, attached, mounted, or installed in a front yard, on a front driveway, in an unfenced portion of a side yard, or on the street side exterior portion of a dwelling, without the ARC's prior written approval. If the ARC grants approval for such equipment, the approval may be revoked if the equipment is not maintained or used, or if it becomes unsightly. Recreational or sporting equipment, including portable goals, found on a street or cul-de-sac, or in the right-of-way of a street or cul-de-sac, is subject to removal without notice by the Association without liability for damage to said equipment.

A.16. **LEASING OF HOMES.** An owner has an affirmative but restricted right to lease the dwelling on his lot, subject to the Governing Documents, including ~ without limitation ~ the provisions of this Section, the prohibition on Lease Signs in the Sign & Flag Rules, and the ongoing right of the board to make rules governing the occupancy and leasing of dwellings, pursuant to the "Association's Right to Promulgate Rules" Section of the Declaration. **This Section pertains to any dwelling that is not occupied by its owner, whether or not the owner and occupant have a "landlord-tenant" relationship.**

A.16.1. **General Rules.** No dwelling may be used for transient or hotel purposes. No dwelling may be subdivided for rent purposes. Not less than an entire house may be leased (i.e., no boarding house use). Whether or not it is so stated in a lease, every lease is subject to the Governing Documents. An owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto.

A.16.2. Inspections by Owner. The owner of a leased dwelling is responsible to the Association for periodic inspection and supervision of the appearance, condition, and maintenance of the yards and the exteriors of all improvements to ensure that the improvements and lot are maintained to a level that is at least commensurate with the community standard and in compliance with the Declaration and the Owners Manual. An owner may not delegate to the occupants of the leased dwelling the owner's responsibility for inspection and supervision.

A.16.3. Violations by Tenant. Failure by the tenant or his invitees to comply with the Governing Documents, federal or state law, or local ordinance is hereby deemed to be a default under the lease, whether or not it is so stated in the lease. When the Association notifies an owner of his tenant's violation, the owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The owner of a leased dwelling is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Governing Documents against his tenant. The Association is not liable to the owner for any damages, including lost rents, suffered by the owner in relation to the Association's enforcement of the Governing Documents against the owner's tenant.

A.16.4. Applicability. This Section applies to every owner of every lot, and to agents of owners, except that this Section does not apply to a house used for a purpose that is expressly protected by public ordinance or law, such as qualified community homes for disabled persons, for only so long as a house is used for the protected purpose.

A.17. MAINTENANCE. All portions of the lot and all improvements on the lot must be maintained by the owner in a manner that is consistent with the Community Standard defined in Article 1 of this Owners Manual, and so as not to be unsightly when viewed from the street, common areas, neighboring lots, or adjacent property. The ARC is the arbitrator of acceptable appearance standards.

A.18. NOISE & ODOR. A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are continuous or repetitive, and likely to disturb or annoy residents of neighboring homes who have common sensibilities. This restriction is not intended to protect a hypersensitive resident from noises or odors that would be tolerable to a typical resident of the Property. The Rules may prohibit the use of noise-producing security devices and windchimes.

A.19. NUISANCE. In addition to any other remedy and cause of action that may be available to the Association or to an owner for violation of a Governing Document, a violation of a Use Restriction may also constitute a nuisance under Texas law.

A.20. OCCUPANCY. Other than the completed principal house, no other portion of the lot or item thereon may be used as a dwelling, either temporarily or permanently. This provision applies, without limitation, to garages, tents, mobile homes, campers, playhouses, and storage sheds. The board may adopt Rules regarding the maximum number and the relationships of people who may occupy a house at one time. The Association's occupancy standard for residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (i.e., the fewest people per unit) permitted by the U. S. Department of Housing and Urban Development. The maximum number of people permitted per dwelling is 2 persons per bedroom per dwelling, which is the HUD threshold for familial status protection in the era in which these Use Restrictions are drafted.

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**YES, THERE ARE LOTS OF RULES!**

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A.21. PUBLIC RELATIONS. This Section strives to balance (1) the rights of owners and residents to communicate with each other and with the general public, (2) the Association's interest in maintaining a public image for the community that enhances property values and contributes positively to a sense of community for all residents and owners, and (3) the desire of owners to be free of uninvited solicitations, misleading communications, and tit-for-tat diatribes. The Association's board of directors, as a body, and Declarant during the Development Period, are the only parties authorized to issue or endorse communications in the name of Vineyard Creek Estates or in the name of the Association. Owners

and residents may not communicate with others in a manner that gives the impression of having been approved or sanctioned by the Association. In communicating with residents, owners, or the public about matters pertaining to Vineyard Creek Estates or the Association, the issuer must conspicuously state that the communication is not sanctioned by the Association. This applies to any website, blog, or other electronic communication device that uses the name or the Property or the name of the Association.

A.22. **RESIDENTIAL USE.** The use of a house lot is limited exclusively to residential purposes or any other use permitted by the Declaration, including limited business uses described above.

A.23. **SCREENING.** The ARC may require that the following items be substantially screened from the view of the public and neighboring lots and dwellings, if any of these items exists on the lot: (1) satellite reception equipment; (2) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (3) yard maintenance equipment; (4) wood piles and compost piles; (5) accessory structures that do not have prior approval of ARC; and (6) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach maturity as an effective screen.

A.24. **SIGNALS.** Each resident will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property.

A.25. **SWIMMING POOLS.** Other than small portable toddler pools, above-ground swimming pools are prohibited.

A.26. **TEMPORARY STRUCTURES.** Unless accessory sheds are permitted elsewhere in this Owners Manual,, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a lot if visible from a street. However, a portable toilet or construction trailer is permitted on a lot during construction of the dwelling.

A.27. **TRASH.** Each resident will endeavor to keep the Property clean and will dispose of all refuse in receptacles designated specifically for that purpose by the Association or by the local government or contract service providing trash removal for the Property. Trash must be placed entirely within the designated receptacle. No lot may be used as a dumping ground or as a site for the accumulation of waste or unsightly materials. Garbage, trash, and other waste must be disposed of or kept in sanitary containers designed for that purpose. The board may adopt Rules regulating the visibility of trash receptacles and the disposal and removal of bulk trash from the Property.

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**CLASSICS, YES. CLUNKERS, NO.**

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A.28. **VEHICLES.** All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section. Vehicles that are not prohibited below may park on the streets if the Association or local government allows curbside parking, subject to the continuing right of the Association to adopt reasonable rules if circumstances warrant. The Association may effect the removal of any vehicle in violation of this Section without liability to the owner or operator of the vehicle.

A.28.1. **Compliance with Laws.** Any ordinance or rule of the local government relating to vehicles and which may be applicable to the Property is incorporated herein by reference. Any vehicle on the Property that violates such an ordinance is deemed to also violate these Use Restrictions.

A.28.2. **Parking on Lot.** Residents are encouraged to park their vehicles in their garages, and use their driveways for overflow parking.

A.28.3. **Reasons for Removal.** No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. No vehicle may be parked in a manner that is likely to impede access to any part of the Property by an emergency vehicle. The Association may effect the removal of any vehicle in violation of this Subsection without liability to the owner or operator of the vehicle.

A.28.4. Repairs & Storage. A driveway, street, or unfenced portion of a lot may not be used for repair, maintenance, restoration, or storage of vehicles, except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility.

A.28.5. Prohibited Vehicles. Without prior written board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not be kept, parked, or stored anywhere on the Property - including overnight parking on streets and driveways - if the vehicle is visible from a street or from another lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times.

*(End of Chapter)*

**CHAPTER B**  
**PET RULES**  
**FOR VINEYARD CREEK ESTATES**

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**NOTE:** Every pet rule is subject to the right of the Association's board to grant a variance on a case-by-case basis.

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As used in the Pet Rules, "**animal**" means any animal, mammal, bird, fish, reptile, or insect of any kind. The board may adopt, amend, supplement, and repeal these Pet Rules regulating the types, sizes, numbers, locations, and behavior of animals on the Property, including animals inside the homes. Additionally, the board may approve animals that are not in strict compliance with these Pet Rules.

B.1. **ARTICLE 1, BY REFERENCE.** Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

B.2. **PROHIBITED ANIMALS.** No animal may be kept, maintained, raised, or bred anywhere on the Property for a commercial purpose or for food. No resident may keep an animal deemed by the board to be a potential threat to the well-being of people or other animals on the Property. Also, without the board's prior written approval, no animal other than a customary domesticated housepet may be kept on a lot or in a home.



B.3. **PERMITTED ANIMALS.** Customary domesticated household pets ~ such as dogs, cats, caged birds, and aquarium fish ~ may be kept for personal companionship subject to compliance with these Pet Rules.

B.3.1. **Number.** No more than 4 cats and/or dogs may be maintained in each home ~ a maximum of 16 paws. Other types of pets may be kept in numbers that do not exceed what is customary for an urban dwelling of comparable size. Permission to maintain additional numbers of household pets must be obtained in writing from the board.

B.3.2. **Customary Service Animals.** In compliance with the Fair Housing Act, the Association may not prevent residents with disabilities from keeping domesticated animals that assist, support, or provide service to the disabled resident. If the service animal is not also a customary domesticated household pet, the resident must apply to the board for any additional or modified rules that pertain to the non-customary service animal. In keeping with the Fair Housing Act, the board must make reasonable accommodation of its rules for the service animal. The board should consult recent guidelines and rulings of the federal agency that oversees the Fair Housing Act.

B.3.3. **Non-Customary Animals.** In the era in which these rules are written, some animals are being newly domesticated, miniaturized, and bred as domesticated household pets and service animals. Therefore, the distinction between a domesticated pet and a farm animal, wild animal, or exotic animal, may be blurred. In reviewing an application, the board may balance the applicant's desire with the best interests of the community. Every approval or denial of an application for a non-customary animal is on a case-by-case basis and is within the sole and exclusive discretion of the board.

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***WE LOVE WELL-MANNERED PETS***

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B.4. **ANIMAL BEHAVIOR.** Pets must be kept in a manner that does not regularly disturb the peaceful enjoyment of residents of other homes inside their dwellings or in their yards. No pet may be permitted to bark, howl, whine, screech, squawk, or make other loud or irritating noises for extended or repeated periods of time. Neighbors are expected to deal directly with each other about animal-related disturbances. The board is the sole arbiter of what constitutes a

disturbance or annoyance of sufficient magnitude to warrant intervention by the Association on behalf of owners of two or more lots.

B.5. PETS OUTSIDE. No pet is allowed on the common area unless carried or leashed. No pet may be leashed to a stationary object on unfenced grounds of the Property. Every pet must be maintained inside the home, and may not be kept in an outdoor area, such as a fenced yard, except for the following limited privilege.

B.5.1. Limited Yard Privilege. Dogs are permitted to be in fenced yards only if they do not repeatedly disturb or annoy residents of other homes or their guests. The board may permanently revoke the yard privilege for a disturbing or annoying dog by requiring that the dog be maintained inside the home, except when being walked on a leash or when accompanied by the resident in the fenced yard. The limited yard privilege may be extended to a cat that is physically incapable of climbing the fence or leaving the fenced yard.

B.5.2. Pet Identification. The subsection applies only to an animal that, from time to time, is outdoors in the Property (such as being "walked"), and does not apply to animals that are maintained entirely within the home and fenced yard. The privilege of being with an animal outdoors in the Property obligates the owner of the animal and the owner of the lot to provide the Association with information and data sufficient for the Association to identify the animal with a particular address and owner. If the Association incurs a fee for adding an owner's pet to the Association's animal data base, the owner is liable for the fee, provided it is reasonable and customary.

B.5.3. Pooper Scooper. Resident is responsible for the removal of his pet's wastes from the Property, including from resident's lot.

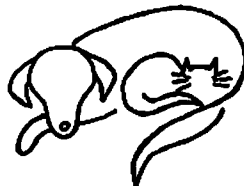


B.6. WILDLIFE. Residents must not feed or shelter stray animals or wildlife on the Property, nor try to attract stray animals or wildlife to the Property. Customary bird feeders may be permitted in fenced yards.

B.7. LIABILITY. The owner of the home and the owner of the animal are jointly and severally liable for any property damage, injury, or disturbance caused or inflicted by an animal maintained by or visiting the resident. The owner of the home in which an animal is kept (or visiting) is deemed to indemnify and to hold harmless the board, the Association, and other owners and residents, from any loss, claim, or liability of any kind or character whatever resulting from any action of the animal or arising by reason of the animal being on the Property.

B.8. REMOVAL. If a resident or his pet violates these Rules, the resident or person having control of the animal may be given a written notice by the board to correct the problem. If the problem is not corrected within the time specified in the notice (not less than 10 days), the resident, upon written notice from the board, may be required to remove the animal. Each resident agrees to permanently remove his violating animal from the Property within 10 days after receipt of a removal notice from the board.

*(End of Chapter)*



**CHAPTER C**  
**SIGN & FLAG RULES**  
**FOR VINEYARD CREEK ESTATES**

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**NOTE:** Every rule is subject to the right of the Association's board to grant a variance on a case-by-case basis.

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C.1. ARTICLE 1, BY REFERENCE. Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

C.2. GENERAL. As used in this Chapter, "sign" means any representation or medium that conveys a message or information, such as (without limitation), lettering, images, symbols, pictures, shapes, lights, and the object or item containing the representation, such as (without limitation) yard signs, flags, banners, and pennants. **Except as permitted below, no sign may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the board's prior written approval.**

C.2.1. Board Discretion. It is within the sole discretion of the board to approve and disapprove, from time to time, categories of signs that are not expressly permitted in this Chapter, such as college banners or flags of professional sports teams. In granting approval of an individual sign or a category of signs that is otherwise prohibited, the board may specify all aspects of the signs, such as location, nature, appearance, dimensions, condition, number, and time of display. Also, a category of board-approved signs may be drawn as narrowly or widely as the board deems appropriate for the Property.

C.2.2. Delegation Permitted. Because signs affect the appearance of the Property, the board - within its sole discretion - may, from time to time, designate the ARC as Association's authority for approvals, disapprovals, and conditions pertaining to signs. In that event, an owner may appeal an ARC determination to the board.

C.2.3. Removal. Without liability for trespass or any other liability connected with the removal, the board may effect the immediate removal of any sign (1) that violates this Chapter, (2) which the board considers unsightly, (3) which the board deems inconsistent with community standards, or (4) which the board deems an abuse of the below-permitted sign uses.

C.3. PERMITTED SIGNS. In addition to certain flags and political signs that are protected by State or federal law, as addressed in Sections below, the following limited categories of signs are permitted.

C.3.1. Sale Signs. An owner who is actively marketing his house for sale may place in the front yard one professionally-made traditional yard sign of not more than 5 square feet advertising the house for sale. Only one such sign is allowed per lot, and only on the lot that is being actively marketed. All aspects of the sign, including the height, shape, color, material, wording, and placement must conform to the community standard.

C.3.2. Security Signs. One professionally made security service sign of not more than one square foot is permitted per lot that actively contracts for the advertised service.

C.3.3. Spirit Signs. A resident may erect or install temporary yard signs celebrating a family event, such as a baby's arrival or a child's school achievement. A spirit sign must be tasteful, modest in size, maintained in good condition, and removed by resident after a reasonable period.

C.4. PROHIBITED SIGNS. Any sign that is not expressly permitted by this Chapter, is prohibited, such as (without limitation) the below-listed types of signs.

C.4.1. Inflammatory Signs Prohibited. Even among the categories of permitted signs, the board may disallow, prohibit, and remove a particular sign that the Association directors unanimously consider to be (1) provocative, vulgar, or profane for the sensitivities of the Property's residents, (2) likely to incite violence, fear, or disruptive counter-activity, (3) denigrating of a resident or owner, or category of residents or owners, (4) likely to negatively affect the image of the Property as a desirable place to live and invest, or (5) otherwise inconsistent with the community standard.

C.4.2. Lease Signs Prohibited. The right to lease a house is not the right to post a "for lease" sign in the yard. Without the board's prior written permission, which may be withheld, no person may post or maintain a sign anywhere on the Property that advertises a house for rent, for lease, or available for any type of non-ownership occupancy. This blanket prohibition includes, without limitation, yard signs, signs in or on windows, and signs on vehicles. If the board grants permission, it may establish criteria for every aspect or any aspect of the sign, such as size, number, location, appearance, and quality. (See "Leasing of Homes" in Use Rules)

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**NO "FOR LEASE" OR "FOR RENT" SIGNS (please)**

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C.4.3. Window Signs Prohibited. Except for one customary "neighborhood watch" sign per house, a sign in a window, on a window, or visible through a window is prohibited if the sign is visible from the street or from a neighboring home. "Window" includes a door, lite, or pane that is transparent.

C.5. FLAG REGULATIONS. [LAW-BASED SECTION] Flags may be flown every day at Vineyard Creek Estates to the full extent protected by applicable law (such as TX Prop Code Sec. 202.011 and the federal "Freedom to Display the American Flag Act of 2005"), subject only to the requirements of this Section. At Vineyard Creek Estates, these Flag Regulations will be construed liberally to protect the right of residents to fly permitted flags. Some of these Regulations apply to permanent installations of flagpoles (including flagstuffs), and are not intended to prevent traditional short-term use of temporary portable flag displays on official flag days or when proclaimed by the President of the United States or the Governor of Texas.



C.5.1. Permitted Flags. The United States flag ("Old Glory" or "Stars & Stripes"), the Texas state flag ("Lone Star Flag"), and the official or replica flag of any branch of the United States armed forces are the permitted flags that may be flown on a lot. Without the prior approval of the board, no other types of flags, pennants, banners, or similar types of displays are permitted on a lot if the display is visible from a street. As used in these Flag Regulations, "flag" means "permitted flag" in most contexts.

C.5.2. Board. As stated below, illumination and certain permanent installations require the prior written approval of the board. The Association may require an owner to remove or replace a flag, flagpole, and flag apparatus that do not comply with these Flag Regulations. Accordingly, an owner is encouraged to apply to the board for confirmation that a proposed flag, flagpole, or flagstaff conforms to these Flag Regulations.

C.5.3. Suitability. The materials, design, and method of installation used on the lot to display a flag must be suitable for owner's selected location and use. Flags, flagpoles, flagstuffs, and their appurtenances are manufactured and marketed to a wide variety of standards and applications. Residential quality (as compared to commercial quality) is generally suitable for the Property. Permanent installations generally require higher quality materials than do temporary uses. Certain locations and elevations require higher wind speed ratings.

C.5.4. Size, Number & Location. The maximum flag size permitted is 3 feet by 5 feet. Up to two permitted flags may be flown simultaneously from one flagpole. One in-ground flagpole up to 20 feet in height (measured from the lot's typical surface elevation) may be installed in the front yard, provided the lot has a front building setback line of at least 15 feet. Installations in front yards with smaller setbacks require the board's prior written approval. More than one in-ground flagpole per lot is not permitted without the board's prior written approval. No part of a flagpole base may be above-grade (on the surface) or visible from a street without the board's prior written approval. In lieu of an in-ground flagpole in the front yard, a flag may be flown from a flagstaff wall-mounted to the first floor facade of the house and projecting at an angle of approximately 45 degrees. Without the board's prior written approval, a flagpole may not be installed in the side yard of a corner lot or the rear yard of a lot that backs up to a street or common area. An owner may not install or affix a flag display in a common area or public right-of-way.

C.5.5. Condition. Both flag and flagpole must be in good condition at all times. A deteriorated flag may not be flown. A deteriorated or structurally unsafe flagpole must be repaired, replaced, or removed. Mounting apparatus and external halyards must be secured to prevent being a continual or reoccurring source of noise that is objectionable to residents of nearby homes. An in-ground flagpole or facade-mounted flagstaff must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling.



C.5.6. Use & Abandonment. If a permitted flag is not displayed from a permanently installed flagpole for more than a year, the board may declare the flagpole to be abandoned, in which case the board may require that it be used for its intended purpose or removed by the lot owner.

C.5.7. Ordinances. The display of a flag, and the location and construction of the supporting flagpole, must comply with applicable zoning ordinances, easements, and setbacks of record.

C.5.8. Illumination. The size, location, direction, and intensity of lights used to illuminate a displayed flag **must be approved by the board**.

C.5.9. Guidelines. A flag must be displayed in a manner that is appropriate for flag displays in residential neighborhoods, within the context of the applicable federal or state guidelines. The "Federal Flag Code," U.S.C. Secs. 5-10, functions as a voluntary aspirational guide for U. S. flag displays by civilians. The general guidelines for displaying the Texas flag are in Chapter 3100, Government Code. This Section's reference to the federal and state guidelines is not intended to invoke strict compliance with any or every provision in the guidelines. Neither the ARC nor the board may be compelled to act on a complaint that a flag display is perceived to be inappropriate.

C.5.10. Severability. If any part of this Section is deemed to be unenforceable as to the flag of the United States under applicable federal law, the rest of this Section will continue to apply to the U. S. flag, and the unenforceable provision will continue to apply to other types of permitted flags.

C.6. SIGNS - POLITICAL. **[LAW-BASED SECTION]** This Section recognizes that State law allows the use of political signs on residential property under certain circumstances. To the full extent protected by applicable law (such as TX Prop Code Sec. 202.009 and local ordinances, if any), an owner may place political signs on the owner's lot, subject only to the limitations of this Section, to the extent permitted or not prohibited by public law. In addition to remedies available to the Association for a violation of the Governing Documents, the Association may exercise self-help to remove a political sign that violates this Section. Unless the Rules or public law provide otherwise:

- (1) A political sign may be displayed on a lot for up to 90 days before and 10 days after the date of the election to which the sign relates, but no earlier or later.
- (2) A political sign must be ground-mounted, and may not be mounted, installed, posted, or displayed in any other manner. Specifically, a political sign may not:
  - (a) Be displayed from a window, balcony, facade of a building, roof, fence, or any other structure or improvement on a lot.
  - (b) Be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object.
  - (c) Include the painting of architectural surfaces (e.g., not painted on a building or fence).
- (3) A political sign must be located on the lot of the owner or resident who authorizes the sign, and may not be located on common areas, rights-of-way within the Property, or the lot of an owner or resident who has not granted prior authorization for the political sign.
- (4) Only one political sign for each candidate or ballot item may be displayed on a lot at a time.
- (5) A political sign must not: (a) contain language, graphics, or any display that would be offensive to the ordinary person; (b) be accompanied by music, other sounds, or streamers; (c) be distracting to motorists; (d) contain balloons, lights, or nonstandard decorative components; (e) contain flora or any other similar landscaping components; (f) contain roofing, siding, paving, or any other similar building materials; (g) violate a law or threaten the public health or safety; or (h) exceed four feet by six feet in size.



*(End of Chapter)*

## CHAPTER D

### APPEARANCE & ARCHITECTURAL RESTRICTIONS FOR VINEYARD CREEK ESTATES

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**NOTE:** Every appearance and architectural restriction is subject to the right of the Association's board or the ARC, as applicable, to grant a variance on a case-by-case basis.

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D.1. **ARTICLE 1, BY REFERENCE.** Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

D.2. **NO CHANGES.** The primary architectural restriction is a blanket Property-wide prohibition on any visible change to a home's exterior or to the yards and grounds without the prior written approval of the ARC. The following Sections address select aspects of the Property.

D.3. **ACCESSORY SHEDS.** This Section applies to accessory sheds, structures, and buildings (referred to here collectively as "sheds") on a lot, such as gazebos, tool sheds, storage sheds, pool houses, playhouses, greenhouses, and dog houses. Accessory sheds are prohibited (not allowed) on lots, without the prior written approval of the ARC. To be approved by the ARC, an accessory shed must have the permitted features. If an accessory shed is installed in violation of this Section, the ARC reserves the right to determine that the accessory shed is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

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#### **BETTER SAFE THAN SORRY**

GET ARC APPROVAL BEFORE YOU SHOP FOR, PURCHASE,  
OR BEGIN CONSTRUCTION OF A SHED.

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D.3.1. **Permitted Features.** An accessory shed with the following features may be approved by the ARC:

- (1) Only one per lot.
- (2) Designed for outdoor use.
- (3) Not more than 6 feet in height above grade at the eave.
- (4) Not more than 8 feet above grade at the shed's highest point.
- (5) Less than 100 square feet of floor space (e.g. 10' x 10').
- (6) All visible surfaces in muted neutral colors, such as tan, gray, beige, green, brown.
- (7) Substantially screened from view by a fence or acceptable landscape material.
- (8) Not located in front yards or in unfenced portions of side yards facing streets.
- (9) Within fenced yard, located to minimize visibility from streets and common areas.

D.3.2. **Additional Requirements.** The ARC may impose additional requirements on a case-by-case basis to reduce the potentially negative impact of an accessory shed on a neighboring home or on views from common areas or from streets within and around the Property. For example, the ARC may require that the visible features of an accessory shed be visually harmonious with the house or fence to which it is most visually related or physically attached, including matching major materials such as siding and roofing, dominant colors, construction details, and pitch of roof.

D.3.3. **Exempt.** This Section does not apply to an accessory shed that has all of the following features: (1) is not visible because it is not as tall as the fence, (2) is not visible because it is screened from view, (3) has a floor area that does not exceed 100 square feet, and (4) is the only accessory shed on the lot. An accessory shed that complies with each of these criteria does not require ARC approval.

D.4. **APPEARANCE.** Both the lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring lots. The ARC is the arbitrator of acceptable appearance standards.

D.5. **CARPORTS.** Carports are prohibited. The only covered parking on a lot is the attached garage, unless the home is designed with an attached porte cochere that was approved by the ARC.

D.6. COLOR CHANGES. The colors of buildings, fences, exterior decorative items, window treatments, and all other improvements on a lot are subject to regulation by the ARC. Because the relative merits of any color are subjective matters of taste and preference, the ARC determines the colors that are acceptable to the Association. No change or addition of colors that are visible from the street is permitted without the prior written approval of the ARC.

D.7. DECORATION - HOLIDAY. A resident may display religious, cultural, and holiday decorations, subject to this Section and to the Association's right to regulate the time, place, frequency, and manner of displays that are visible from the street. Decorations, including lighting displays, are permitted provided (1) they are customary for residential neighborhoods of comparable density, (2) they are to scale or proportionate to the size and setback of the home, (3) they do not create a noise or light disturbance for neighbors, (4) they are appropriate for the holiday, and (5) they are installed no earlier than 30 days before the holiday, and are removed within 10 days after the holiday. A lot-specific variation from these requirements requires the board's prior written approval. A variation with Property-wide applicability may be made by board announcement to the membership.

D.8. DECORATION - OTHER. Except for the limited privilege of holiday decorations, residents must refrain from individualizing and decorating the exteriors of their homes. What is appealing and attractive to one person, may be objectionable to another. For that reason, the Association prohibits exterior "decorations" by owners without the prior written approval of the ARC. See the "Yard Art" Section.

D.9. FRONT PORCHES. This Section applies to a front porch that is visible from the street. An owner will use and maintain the front porch in a neat and attractive manner that is consistent with the community standard. If the ARC perceives that the appearance of a porch detracts from the overall appearance of the Property, the ARC may limit the colors, numbers, sizes, or types of furnishings, plantings, and other items kept on the porch. A porch may not be used for storage.

D.10. GARAGES. Without the prior written approval of the ARC, the original garage area of a home may not be enclosed or converted to a use that prevents the parking of standard-size operable vehicles therein - the number of vehicles matching the number of original garage spaces.

D.11. LIGHTS - EXTERIOR. Exterior light sources on a lot should be unobtrusive, shielded to prevent glare, directed away from neighboring homes and yards, with little if any spillover light on neighboring property. All visible exterior light fixtures on a lot should be consistent in style and finish with the architecture of the home. This Section does not apply to light sources for which the Association is responsible.

D.12. PATIO COVERS. Without the prior written approval of the ARC, patio covers that are not part of the original design and construction of the home are prohibited. If a patio cover is installed in violation of this Section, the ARC reserves the right to determine that the patio cover is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

D.13. RAIN BARREL REGULATIONS. [LAW-BASED SECTION] To the extent permitted and protected by applicable law (TX Prop Code Sec. 202.007), an owner may install rain barrels or a rainwater harvesting system on his lot, subject to the requirements of this Section.

D.13.1. ARC. Owner must apply to the ARC for approval of the barrel or system, pursuant to the Architectural Covenants Article of the Declaration. In reviewing the application, the ARC may exercise all of the following rights: (1) To require that the color of the barrel or system be consistent with the color scheme of the home to which it pertains. (2) To prohibit words, text, graphics, or other displays that are not typically displayed by the manufacturer of the barrel or system. (3) To regulate the size, type, and shielding of, and the materials used in the construction of a barrel, system, or other appurtenance that is or would be visible from a street, another lot, or a common area, provided (a) the regulation does not prohibit the economic installation of the device or appurtenance on the lot and (b) there is a reasonably sufficient area on the lot in which to install the device or appurtenance.

D.13.2. Prohibited Locations. An owner may not install a rain barrel or rainwater harvesting system between the front of the home and an adjoining or adjacent street, or in a common area.

D.14. **RELIGIOUS DISPLAYS. [LAW-BASED SECTION]** To the extent permitted and protected by applicable law (such as TX Prop Code Sec. 202.018), an owner or resident may display or affix one or more religious items to the outside surface of the home's front door or its door frame if the display meets all of the below-stated requirements. Any other display is subject to disapproval by the ARC. This limited right to exterior displays based on religious belief does not extend to any other feature or modification of an entry door or door frame. In addition to remedies available to the Association for a violation of the Governing Documents, the Association may exercise self-help to remove a religious display that violates this Section. Requirements for a permitted religious display: (1) the display is motivated by the owner or resident's sincere religious belief; (2) the display of one or more items does not exceed a collective total size of 25 square inches; (3) the display does not extend past the outer edge of the front door frame; (4) the display does not violate a law or threaten public health or safety; and (5) the display is not patently offensive to a passerby of average sensibilities.

D.15. **TELEVISION RECEPTION.** Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the structure (such as in an attic or garage), (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the owner may install the Antenna in the least conspicuous location on the lot where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law. A radio transmitting or receiving tower, such as used with ham radios, is not permitted on a lot if it is readily visible from a street.

D.16. **WATER WELLS.** Water wells on residential lots are prohibited, and underground well water may not be used by the lot owner for any purpose, even nonpotable uses such as landscape irrigation. This Section may not be construed to prevent the Association from installing water wells on common areas or using well water for common purposes.

D.17. **WINDOW TREATMENTS.** This Section applies to the windows of a dwelling that are visible from the street. The window treatments within the dwelling must be maintained in good condition and not detract from the appearance of Vineyard Creek Estates. Window treatments that from the street appear to be white, off white, or other light neutral color are permitted. The ARC may (1) prohibit the use of multi colors, bright colors, bold prints, stripes, and bed sheets; (2) require the use of a uniform color for all street-facing windows on a dwelling; and (3) require an owner to change or remove a window treatment that the ARC determines to be inappropriate or unattractive.

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**ONE PERSON'S TREASURE IS ANOTHER PERSON'S TRASH.**

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D.18. **YARD ART.** The Association is interested in the appearance of all portions of an improved lot that are visible from the street (the "outside"), such as unfenced yards, porches, sidewalks, window sills, and chimneys. Some changes or additions to the outside may defy easy categorization as an improvement, a sign, or landscaping. This Section confirms that all visible aspects of the outside are within the purview of the ARC, including, without limitation, the installation of religious, cultural, or educational items; the shape of pruned shrubs; the number, shapes, and uses of flower beds; and the integration of items such as wheelbarrows and boulders into the landscaping. The use of any decoration, ornamentation, sculpture, fountain, windsock, garden flag, and similar items on any portion of the outside is prohibited without the prior written approval of the ARC unless (1) the item is expressly permitted by applicable law or a Governing Document, (2) the item is within a fenced portion of the lot and screened from view, or (3) the item is at ground level, within five feet of the building line, does not exceed 24 inches in height, does not exceed 36 inches in width, length, or depth (36 inches collectively if more than one item), and is not found by the ARC to be patently offensive, provocative, or inflammatory.

*(End of Chapter)*

## CHAPTER E

### CONSTRUCTION SPECIFICATIONS FOR VINEYARD CREEK ESTATES

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**NOTE:** Every construction specification is subject to the right of the ARC to grant a variance on a case-by-case basis.

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E.1. ARTICLE 1, BY REFERENCE. Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

E.2. ORIGINAL IMPROVEMENTS EXEMPT. These Construction Specifications begin applying to a lot when the lot is first acquired by a person other than Declarant or a Declarant-approved Builder, and thereafter apply to changes, additions, and removal of and to the original improvements. Declarant and Declarant-approved Builders are presumed to have waivers from the Architectural Reviewer for any non-compliant improvement made by them.

E.3. SPECIFICATIONS. Every aspect of each improvement on a lot must meet or exceed the local government's minimum requirements (if any), and must also be approved by the ARC. Unless a higher or additional standard is established by this Chapter or in another part of the Governing Documents, the local building codes and construction requirements, as amended from time to time, are incorporated herein by reference as the minimum Construction Specifications for Vineyard Creek Estates.

E.4. ROOFS. Because of weather patterns in North Texas, the roof is the exterior component of a house that is most likely to warrant repeated repair or replacement. Because an owner and his contractor may not think to apply to the ARC for approval of a roof repair or replacement necessitated by a dramatic weather event, the burden is on each owner to comply with this Section and to ensure that the roofing contractor also complies. The ARC may permit or require other styles, textures, weights, materials, and colors.

E.4.1. Color. The color of roofing material must be weatherwood or an earth tone color that is equivalent to weatherwood. The color of roof-related materials and appurtenances, such as metal flashing, valleys, vents, ridges, and stacks, must match or closely blend with the primary roofing material. The ARC may permit or require other styles, textures, weights, materials, and colors. Roof repairs and partial replacements must match or closely blend with the remaining portion of the roof.

E.4.2. Material. Roofs must be covered with material having a manufacturer's warranty of at least 20 years. The use of fiberglass shingles is permitted.

E.5. ACCESSORIES. Installation of all exterior items and surfaces visible from the street, such as address numbers, decorative hardware, external ornamentation, lights fixtures, and exterior paint and stain, must be compatible with the community standard and is subject to the ARC's prior approval, including approval of design, color, materials, and location.

E.6. ACCESSORY STRUCTURES. See Appearance & Architectural Restrictions Chapter.

E.7. AIR CONDITIONERS. Air conditioning equipment may not be installed in the front yard of a house, being the area in front of the front building line or the front facade of the house. Residential air conditioning equipment that is typical for the Property may be installed in the sideyard (anywhere behind the front building line), in both fenced and unfenced portions of a sideyard. Screening of sideyard equipment is not required by this Chapter. Window units are prohibited except on portions of a house that are screened from public view.

E.8. CONSTRUCTION ACTIVITY. The construction of a dwelling or other improvement on a lot must be started promptly after the ARC approves the plans and specification. Once started, the improvement must be completed with due diligence. No lot or other part of the Property may be used as a dumping ground. Waste materials incident to construction or repair of improvements on a lot may be stored temporarily on the lot during construction while work progresses and must be removed when construction or repair is complete. At the start of construction - but not before - building material to be used in the construction may be stored on the lot. Owner is responsible for the control of

construction material on the lot, and timely removal of construction material from the lot. Materials intended for use on one lot may not be stored on any other portion of the Property.

E.9. **DRIVEWAYS & CARPORTS.** Only concrete driveways are permitted. Asphalt coatings are not allowed. No carport may be installed, constructed, or maintained on the front of any lot or dwelling, with or without approval of the ARC. No carport may be installed, constructed, or maintained on any other portion of a lot without the ARC's prior written consent. In other words, all carports require the written approval of the ARC, and carports on the front sides or front yards of dwellings are expressly prohibited and may not be authorized.

E.10. **EXTERIOR WALL MATERIALS.** The type, quality, and color of exterior wall materials must be approved by the ARC, in addition to being compliant with local ordinances and codes.

E.11. **GARAGE.** Without the board's prior written approval, the original garage area of a lot may not be enclosed or used for any purpose that prohibits the parking of standard-size automobiles - the number of vehicles matching the number of original garage spaces. The garage or garages must be constructed as part of the house, with the same exterior materials and under the same roof.

E.12. **HOUSES.** The principal improvement on a lot must be one detached single family dwelling. The dwelling size (including the minimum air conditioned space), setbacks, and exterior materials must comply with the applicable requirements of local government and with any higher standards established by the ARC. If circumstances render a lot unsuitable for construction of a dwelling, the lot may be held for a future change of circumstance, or may be converted to an alternate use, such as by conveyance to the Association for use as a common area.

E.13. **LOT REPLATTING.** No lot may be subdivided. One or more lots may be replatted with the approval of all owners of the lots directly affected by the replatting, and subject to the approval of the local government with platting authority. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of lots may not alter the number of votes and assessments allocated to the lots as originally platted. If replatting reduces the number of lots by combining lots, the joined lot will have the votes and assessments allocated to the lots as originally platted. Like the rest of this Chapter, this Section does not apply to lots owned by Declarant or by Declarant-approved Builders.

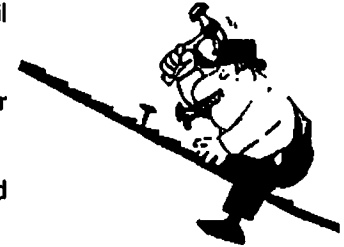
E.14. **MAILBOXES.** Mailboxes must conform to the standard mailbox design established for the Property. The location and dimensions of the mailbox and pedestal must comply with U. S. Postal Service regulations. Mailboxes may not be individualized or decorated, except for address numbers for the property, in professionally made numbers not exceeding two inches in height, affixed to the door of the mailbox, facing the street. The Association may remove and replace, at the owner's expense, any mailbox that does not conform to the Property standard. If the Property is developed with two mailboxes on a single pedestal, the pedestal must be maintained in its original location or on or near the shared boundary line. If the standard design requires a brick or stone pedestal of materials that match the house, a pedestal shared by two houses may be constructed of brick or stone materials that match or are compatible with the brick or stone materials used on the front of either of the two homes served.

E.15. **NEW CONSTRUCTION.** The dwelling must be constructed on the lot. A dwelling or addition constructed elsewhere may not be moved onto a lot. Factory-built homes are not permitted, even though assembled or finished on the lot. However, components of houses (such as roof trusses) may be manufactured off-site. The construction of a dwelling must be started promptly after the ARC approves the dwelling's plans and specifications, and must be completed within 12 months, unless a longer period is authorized in writing by the ARC.

E.16. **ROOF - WIND-RESISTANT MATERIAL. [LAW-BASED SECTION]** To the extent permitted and protected by applicable law (TX Prop Code Sec. 202.011), roof shingles with the Permitted Features described below may be used on roofs in the Property if the shingles comply with all of the Qualifying Criteria described below, or - alternatively - if approved by the ARC. Owner is encouraged (but not required) to apply to the ARC for confirmation that the proposed shingles conform to the parameters of applicable law. The Association may require an owner to remove and replace shingles that do not comply with the requirements of applicable law, which are paraphrased in this Section as a convenience.

E.16.1. **Permitted Features.** Subject to the Qualifying Criteria below, roof shingles with any of the following features may be used on roofs of buildings on a lot:

- (1) Roof shingles that are designed primarily to be wind and hail resistant.
- (2) Roof shingles that are designed primarily to provide solar generation capabilities.
- (3) Roof shingles that are designed primarily to be more heating and cooling efficient than customary composite shingles.



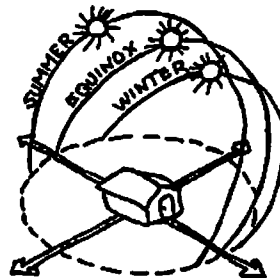
E.16.2. Qualifying Criteria. Shingles with the Permitted Features described above may be used (without ARC approval) only if (when installed) they meet all of the following Qualifying Criteria as compared to roof shingles authorized for use in that location in the Property: (1) similar in appearance, (2) more durable, (3) of equal or greater quality, and (4) match the aesthetics of the surrounding homes.

E.17. SOLAR INSTALLATION REGULATIONS. **[LAW-BASED SECTION]** To the extent permitted and protected by applicable law (TX Prop Code Sec. 202.010), an owner may install solar energy devices defined by Tex Prop Code Sec. 202.010 on the roof or in a fenced yard on his lot, subject to the requirements of this Section.

E.17.1. ARC Approval. **Owner must apply to the ARC** for approval of the device and its proposed location, pursuant to the Architectural Covenants Article of the Declaration. ARC approval may not be withheld if the device meets or exceeds the requirements and limitations of this Section, unless the ARC determines in writing that placement of the device as proposed by the owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist. The Association may order or effect the removal of a solar energy device installed without prior approval by the ARC.

E.17.2. Declarant Rights. During the "Development Period" as defined in the Declaration, Declarant has the right to unilaterally prohibit or restrict the installation of solar energy devices.

E.17.3. Yard Installation. The device may be installed in a fenced or screened portion of the lot, provided the device is not taller than the fence or screen.



- E.17.4. Roof Installation. The device may be installed on the roof if all of the following criteria apply:
- a. The device may not extend higher than or beyond the roofline, the device must conform to the slope of the roof, and the top edge of the device must be parallel to the roofline.
  - b. The color of the device's frame, support bracket, and visible piping or wiring must be a silver, bronze, or black tone commonly available in the marketplace.
  - c. The location of the device must be on a portion of the roof that, in the opinion of the ARC, is the least objectionable location for the device, unless a more visible location on the roof increases the estimated annual energy production of the device by more than 10 percent, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory. The ARC's preference for location may be made on a case-by-case (roof-by-roof) basis, taking into consideration factors such as the topography, location of the lot, location and orientation of the

house on the lot, design of roof, and visibility of the device from adjacent lots, thoroughfares, and common areas. The ARC's guiding principle is to balance between a location that enables the device to be effective and a location that is the least visible and least obtrusive. This subsection may not be construed to prevent the ARC from establishing "standard" locations for locating the devices on roofs in the subdivision.

E.17.5. Prohibited Installations. An owner may not install a solar energy device in a common area. An owner may not install a solar energy device that has been held by a court to violate a law or threaten public health or safety.

E.18. UTILITIES. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a local government; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The ARC may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots. Each lot will use the water and sewage systems of the public or quasi-public provider serving the Property. Individual water supply and sewage disposal systems are not permitted.

*(End of Chapter)*



**CHAPTER F**  
**FENCE SPECIFICATIONS**  
**FOR VINEYARD CREEK ESTATES**

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**NOTE:** Every fence specification is subject to the right of the  
ARC to grant a variance on a case-by-case basis.

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F.1. ARTICLE 1, BY REFERENCE. Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

F.2. ORIGINAL IMPROVEMENTS EXEMPT. These Fence Specifications begin applying to a lot when the lot is first acquired by a person other than Declarant or a Declarant-approved Builder, and thereafter apply to changes, additions, and removal of and to the original fencing or perimeter features of a lot. Declarant and Declarant-approved Builders are presumed to have waivers from the Architectural Reviewer for any non-compliant fencing or perimeter feature installed by them or at their direction.

F.3. INTRODUCTION. Collectively, fences on individual lots create the "face" of the neighborhood from certain directions. Although each owner is solely responsible for the fencing on his lot, a portion of his fencing may serve as a segment in the continuous border around the Property or along a stretch of roadway or common area. The primary purpose of these Fence Specifications is to guide the installation of fences and gates and the construction of retaining walls by persons other than Declarant, homebuilding companies affiliated with Declarant, and Declarant-approved Builders who construct the first generation improvements on lots. These Fence Specifications regulate modifications of existing fences, guide fence reconstructions, and apply to initial fences installed by homebuilders who are not Declarant-affiliated or Declarant-approved. In most contexts, "fence" includes fence gates, whether or not "gate" is specified.

F.3.1. Different Fences on a Lot. Because a lot may have a See-Through Fence on or along one border, and a wood privacy fence on another border, the requirements of this Chapter must be construed as applicable to the particular type of fence on a lot.

F.3.2. Additional Specifications. These Fence Specifications are subject to (1) the ARC's right to adopt additional or different specifications for the maintenance, addition, or reconstruction of fences on improved lots, (2) the respective right of the ARC (for improved lots) and Declarant (for vacant lots) to establish detailed specifications for fences on or along side and rear property lines of lots along designated perimeter, arterial, and collector streets in the Property, and (3) Declarant's right to include different or additional fence specifications in publicly recorded restrictions to which only a portion of Vineyard Creek Estates is subject.

F.4. SWALES. If the fenced portion of a lot contains a drainage swale or channel, the owner must ensure that the fence or gate does not obstruct or restrict the free flow of surface water under and through the fence or gate, which must have openings or be sufficiently elevated to allow the flow of rainfall runoff. *(See the Swales Section of the Landscape Specifications Chapter for additional duties.)*

F.5. "SEE-THROUGH" FENCES. A "See-Through Fence" is a non-privacy fence through which a yard is visible, such as a fence constructed of tubular steel, decorative wrought iron, pipe, or spaced pickets, posts or rails. This Section applies to a lot with any part of its border on, along, or facing a street, right-of-way, common area, or neighboring property from which the lot is separated by a See-Through Fence. Except for mesh fencing and Green Fencing as permitted below, an owner may not install a fence inside and along a See-Through Fence. The combination of a See-Through Fence and a mature Green Fence may be used to substantially screen the yard visually.

F.5.1. Green Fencing. As used in the Governing Documents, a "Green Fence" or "Green Fencing" means a hedge or other screen comprised entirely of natural plants, and does not refer to a manufactured fence that is environmentally friendly. A Green Fence may also be referred to as a living wall or a plant screen. Green fencing may be used on a lot along portions of the lot's boundary on which the owner is permitted to install man-made fences. If the lot is bordered by a See-Through Fence, the owner may plant Green Fencing along the See-Through Fence provided it is planted inside the See-Through Fence and consists of the types of plants that - at maturity - are not reasonably expected to grow through the See-Through Fence. The ARC may require that the height of the Green Fence on the lot not exceed a certain height. This Subsection may not be construed to prohibit the ARC from approving an artificial plant screen that the ARC determines to be suitable for use in a particular location. The

requirements of spacing and height do not apply to plant material installed or maintained by the Association on the outside (such as street-facing side) of a See-Through Fence.

F.5.2. **Mesh Fencing.** Subject to the requirements of this Subsection or other mesh fencing specifications adopted by the Architectural Reviewer, an owner may attach mesh fencing to the lower portion of a See-Through Fence for the purpose of limiting access to and from the lot, such as by small dogs. Mesh fencing must be "nearly invisible" when seen from a reasonable distance. Towards that end, mesh fencing that meets all of the following specifications may be installed without prior approval of the Architectural Reviewer. Mesh fencing that deviates from these specifications or from other mesh fencing specifications adopted by the Architectural Reviewer is not permitted without the Architectural Reviewer's prior written approval, and is subject to removal by the Association.

- a. **Material.** The ARC may require, prohibit, or recommend the use of certain material. As a general rule, the mesh should have square or rectangular openings, be black or dark in color, and have a small and uniform gauge. Wire screen, chain link and chicken wire are specifically prohibited.
- b. **Appearance.** Mesh fencing must be "nearly invisible" or "not noticeable" when seen from a passerby on the other side of the fence. If mesh fencing is used on a lot boundary that is next to a sidewalk, street, or public trail, the appearance factor is more important than for a less-visible lot boundary.
- c. **Installation.** Must be installed on the inside (house facing) side of the See-Through Fence, and attached firmly to the See-Through Fence in a manner that does not damage the See-Through Fence, with anchors that are not more visible than the mesh.
- d. **Height.** The mesh fence may not be higher than three feet above grade, and in any case may not extend above the highest horizontal rail of the See-Through Fence.
- e. **Maintenance.** The owner is solely liable for the maintenance, repair, and replacement of mesh fencing on the inside of a See-Through Fence on or around any portion of the lot's perimeter. If the See-Through Fence is maintained by the Association, the owner will remove the mesh fencing if so requested by the Association for its work on the See-Through Fence. The Association is not liable to the owner for damage to mesh fencing that serves the owner's lot. Any portion of mesh fencing that falls into disrepair or which becomes unsightly must be promptly removed or repaired by the owner.

F.6. **REPLACEMENT FENCES.** As a general rule, a fence that is original to the lot in connection with the home's initial construction or which has the prior written approval of the ARC may be preserved and may also be replaced with a substantially similar fence in the same location. Nevertheless, the owner is required to submit proposed fence plans to the ARC, which has the right to specify the color of stain or treatment, and the right to require that the "finish side" of the fence face outward.

F.7. **MATERIALS.** Material used for new fences and replacement fences must conform to the standard for the subdivision, unless the ARC approves a different material for a specific location and use. The material for the initial subdivision standard wood fence is cedar with steel posts set in concrete. Barbed wire and chain link fencing are prohibited, and are not included within the meaning of "iron," "metal," or "steel" fence materials if those terms are used as permitted materials in the Governing Documents or in an authorization by the ARC. The exposed surface of a retaining wall must be constructed with "milsap stone" with natural mortar, or other materials approved by the ARC. (*Milsap Stone is a native North Central Texas sandstone.*) Railroad ties may not be used for a retaining wall visible from a street.

F.8. **HEIGHT.** Fences must be 6 feet in height, subject to the right of the ARC to approve fences up to 8 feet in height. Fences that adjoin or connect must appear to be the same height at the point of connection, with transitions between the differing heights. Ideally the transition is gradually tapered or stepped-down, such as a one foot drop of elevation for every 10 linear feet of fence, space and terrain permitting.

F.9. **FINISH SIDE.** Some fences are constructed in ways that both sides are equally attractive. This Section pertains to fences for which the two sides are not equal - one side being the "good side" or "finish side", the other side being the "back side" with exposed supporting posts and rails. Any portion of a fence along or facing a front street or side street must have its "good side" facing the street.

F.10. **CONDITION.** Each owner must maintain the fences and gates on his lot in a condition and appearance that is commensurate with the neighborhood.

F.11. **FENCE STAIN.** Wood fences and wood gates must be stained according to the requirements of this Section. As used in this Section, the "exterior side" means the surfaces of a wood fence or gate that is visible to the public, such as the surfaces facing streets, common areas, and adjacent property. For purposes of this Section, "stain" is typically a penetrating wood treatment that allows the wood grain to show through, whereas "paint" is typically a surface treatment that is solid or opaque and shows little if any of the wood grain. Staining is permitted, painting is not.

F.11.1. **ARC Picks Stain.** The ARC may specify one or more brands and/or colors of stain or sealant to be used on the exterior side of wood fences. The ARC may adopt one or more stains for the Property, or different stains for different parts of the Property. Additionally, over time the ARC may change the approved stain or palette of stains to enhance or "freshen" the appearance of the Property, to be applied by owners to new fences or fences that require re-staining.

F.11.2. **Stain Color.** When staining, the owner must use the brand and/or color of stain that is approved for the Property by the ARC, or one that is substantially equivalent (one that, after application, appears to be nearly identical to what the ARC specifies). If the ARC does not publish stains approved for the Property, the exterior side of a fence must be stained with a product that results in a color that appears to match most of the wood fences that are within sight of the owner's lot. The initial stain approved for use by owners is the following, or its replacement or substantial equivalent:

Type: Semi-Transparent  
Color: Dark Sierra (medium brown with a hint of red)  
Brand: Wood Defender (by Standard Paints, Inc.)

F.11.3. **Interior v. Exterior.** The color or brand of stain used on the side facing the interior of the lot may vary from the stain used on the exterior side, must be compatible and harmonious with the exterior color, and may not be dramatically different. Owners on each side of a shared fence are encouraged to use the same stain.

F.11.4. **Application.** On the exterior side, stain must be applied by a professional experienced in fence staining, or by a person who is capable of staining a fence so that it appears to have been professionally applied. Noticeably uneven or incomplete applications of stain are not permitted. Evidence of the device that was used to apply the stain, such as noticeable brush marks, is not permitted.

F.11.5. **Paint Prohibited.** The exterior side of a wood fence or gate must not be painted without the prior written approval of the ARC, which may prohibit the use of paint.

F.11.6. **Interpretation.** Nothing in this Section may be construed to modify the "Uniformity" provision below or to require the Association to stain or seal the exterior sides of wood fences on owners' lots. Similarly, nothing herein may be construed to prevent the Association from facilitating staining or re-staining of owners' fences.

F.12. **FENCES BY DECLARANT OR BUILDER.** Any fence installed, modified, treated, or stained by Declarant or a Declarant-approved Builder in connection with new home construction is deemed to have been approved by the Architectural Reviewer.

F.13. **UNIFORMITY.** Notwithstanding anything to the contrary in any instrument pertaining to the Property, the ARC may require that all fences along a particular stretch within the Property or along the perimeter of the Property, such as along or visible from a road or common area, be relatively uniform in height, color, material, and appearance. Towards that end, the ARC may specify the brand and color of stain or sealant, and may require certain treatments for transitions between fences and at changes in grade or elevation.

F.14. **VIOLATIONS.** If any aspect of a fence violates this Chapter, the ARC reserves the right to determine that the fence is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to modify it or to remove it. Because the value of uniformity may not be apparent when a small number of variances are granted or a small number of violations are ignored, this Chapter controls over specific approvals and authorizations granted by the ARC to individual owners over time, and also controls over violations that have been tolerated for long periods of time. The existence of a particular fence treatment in the Property may not be construed as evidence that the treatment is approved for use with other fences.

*(End of Chapter)*

## CHAPTER G

### LANDSCAPE SPECIFICATIONS FOR VINEYARD CREEK ESTATES

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**NOTE:** Every landscape specification is subject to the right of the ARC to grant a variance on a case-by-case basis.

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G.1. ARTICLE 1, BY REFERENCE. Article 1 of the Owners Manual of Rules & Regs for Vineyard Creek Estates is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

G.2. APPLICABILITY. **This Chapter does not pertain to the Area of Common Responsibility** or to vacant lots owned by Declarant or a Declarant-approved Builder. This Chapter does pertain to (1) a vacant lot owned by an owner other than Declarant or a Declarant-approved Builder and used in connection with an improved lot, (2) every improved lot owned by an owner other than Declarant or a Declarant-approved Builder, and (3) an improved lot owned by a Declarant-approved Builder for the first 200 calendar days following substantial completion of the home. It is the duty of each owner (other than Declarant or a Declarant-approved Builder) to make the lot compliant with these specifications if the lot is not compliant at time of acquisition. In addition to the initial landscape installation for a lot for which this Chapter applies, the lot must continue to meet the minimum landscaping requirements, except as modified from time to time by the ARC for the Property, or for a particular lot.

G.3. LANDSCAPING OVERVIEW. Landscaping includes all forms of plant life, such as turf grass, ornamental grass, ground cover, trees, shrubs, vines, flowers, and other vegetation. **All portions of an improved lot not covered by structures and flatwork must be landscaped, including fenced and unfenced portions.** Every improved lot must continue to meet the minimum landscape requirements (some of which are stated in the Turf, Trees, and Shrubs Sections below), except as modified by the ARC for the Property over time, or on a lot-by-lot basis, or to encourage xeriscaping. This Chapter may not be construed to prevent an owner from exceeding the minimum requirements. Every aspect of plant material on the portions of a lot that are visible from a street - such as the size, type, location, quality, and quantity - must meet or exceed the requirements of this Chapter and (if any) the local government's minimum requirements (if any).

G.3.1. Timing. Landscaping of all unfenced street-facing portions of a lot (such as the front yard and any street-facing sideyard) must be completed **within 90 days** after (1) death, destruction, or removal of substantial amounts of landscaping, or (2) in the case of a new home, a green tag or occupancy certificate (or the equivalent) is issued for the dwelling and the initial homebuyer acquires title to the lot. Landscaping of the remainder of the lot must be completed **within six months** after the applicable event on which the 30-day period is based.

G.3.2. Access & Visibility. Plants and landscape features must not impair reasonable access to public and private utility lines and easements for installation and repair, or impede sight lines and visibility for traffic purposes.

G.3.3. Proportion. The placement of plants should take into account each plant's expected height and width at maturity.

G.3.4. Yard Ornamentation. See the prohibition against "Yard Art" in the Appearance & Architectural Restrictions. Generally, lawn ornaments visible from a street are prohibited without the prior approval of the ARC, except for certain sizes and locations.

G.3.5. Drainage. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board. Swales, slopes, and depressions on a house lot may be part of the established drainage pattern that must be preserved. See the Swales Section below.

G.3.6. Recommendations. From time to time, the ARC may publish lists of types of trees, shrubs, groundcover, and turf that are recommended for planting on lots. The ARC may also publish lists of plant materials

that are not recommended because they are perceived as undesirable for use in the Property. Owners are encouraged, but not required, to follow the recommendations.

**G.4. RULE OF REASONABLENESS.** The overall purpose of this Chapter is not to achieve landscape perfection. Instead, the purpose is for the Property to maintain an overall appearance that is likely to be attractive to most residents and to a typical prospective homebuyer. Accordingly, substantial compliance for the Property as a whole is the overarching goal of these Landscape Specifications. Although every owner should aspire for the yards on the lot to be fully compliant at all times with this Chapter's requirements, temporary lapses in an owner's maintenance may be tolerated by the Association from time to time, provided the lapse is infrequent and short-lived. In interpreting and enforcing the requirements of this Chapter, the board and the ARC must apply the rule of reasonableness to balance environmental conditions, the owner's circumstances, the collective interests of the Association's members, the effect of the perceived violation, and the inherently subjective elements of many of this Chapter's requirements. Many aspects of landscaping, such as severe or changing weather conditions, are outside the control of mere mortals, and may require accommodations that are not contemplated by this Chapter. Changes in public policy and consumer preferences may also affect the assessment of a perceived violation.

**G.5. PLANT MATERIAL.** All portions of an improved lot not covered by structures and flatwork must be landscaped, including fenced and unfenced portions. The use of artificial turf and artificial plants is prohibited without prior written ARC approval. Owners are required to continually maintain at least the minimum amounts of plant materials identified below, or as modified by the ARC for an owner's lot or for the Property.

**G.5.1. Turf & Groundcover.** All unfenced street-facing yards must be **solidly sodded**, except where devoted to trees, shrubs, and bedding plants, unless other material is approved by the ARC for a specific location. The ARC may permit the use of groundcover in locations that not suited to turf. If any portion of front or unfenced side yards facing a street is not covered with turf or otherwise landscaped, turf must be installed or re-installed within 60 days after the end of an event that causes removal, destruction, or demise of the turf or other landscape material, or as soon thereafter as conditions permit. This Section may not be construed to prevent the ARC from approving non-plant material.

**G.5.2. Trees.** The front yard of every house must have at least one tree with a base diameter (when planted) of at least 3 inches. The use of additional trees in a lot's landscape plan is encouraged, but not required.

**G.5.3. Shrubs.** The front yard of every house should have a mix of shrubs of differing heights and textures to create an attractive "landscaped" appearance for the home. The placement of shrubs should reflect each shrub's expected height and width at maturity. Shrubs should not be allowed to cover windows facing unfenced portions of a lot. Accent plants and ornamental grasses may be considered as "shrubs" if they meet the height and size requirements. For a xeriscaped yard, subject to a landscape plan approved by the ARC, plants such as cacti and yuccas may be substituted for shrubs. **At a minimum, each front yard must have** at least the following shrubs:

- (1) One shrub that will be at least 4 feet tall at maturity (a tree may be substituted for this shrub).
- (2) Twelve 3-to-5 gallon shrubs - of at least two types - that will be at least 30 inches tall at maturity.
- (3) Eight 1-gallon shrubs that will be at least 18 inches tall at maturity.

**G.6. HAZARD & DEAD TREES.** A hazard tree is a tree that - because of its size, location, and condition - may be expected (by a certified arborist) to cause damage to people or property by breaking or falling, such as during strong winds and ice storms. To avoid liability for damage caused by a hazard tree, each owner is encouraged to maintain the trees on owner's lot in a manner that reduces the likelihood that a tree or a portion of a tree will fall on someone or something of value. A dying or dead tree must be removed by the owner of the lot on which the trunk of the tree is located. Owner is not required by this Chapter to replace the tree if the tree is not needed to meet the this Chapter's minimum requirement, if any, for front yard trees. However, owner should determine if the local government has a tree mitigation ordinance that applies to the Property.

**G.7. YARD MAINTENANCE.** Each owner, at the owner's expense, must regularly maintain the yards on his lot at a level, to a standard, and with an appearance that is commensurate with the neighborhood. "Yards" means all parts of the lot other than the dwelling, including fenced and unfenced portions of the lot, landscape beds, and turf areas. The following requirements may be modified or waived by the ARC in the face of changing environmental conditions, public policies, and community expectations.

G.7.1. **Mowing & Edging.** Lawns must be mowed at regular intervals to maintain an average height of 3 to 5 inches. Nothing growing in a turf area may exceed 6 inches in height. Sidewalks, driveways, and street curbs must be edged at regular intervals.

G.7.2. **Grooming & Dressing.** All yards that are visible from a street or common area, including turf areas and landscape beds, must be maintained so as to appear (from a street or common area) to be well groomed and substantially free of weeds, disease, litter, trash, and debris. Adding mulch to plant beds once a year is recommended.

G.7.3. **Replacements.** Plant material that is diseased, dying, dead, or destroyed must be removed and replaced within 60 days, weather permitting, with plants of a quality and appearance (at maturity) that are comparable, if not superior, to those removed, using the same minimal criteria above for trees, shrubs, and turf, as applicable.

G.7.4. **Irrigation.** Owner must keep the yard irrigation system in good repair - repairing or replacing sprinkler heads, irrigation lines, and other irrigation equipment as needed for optimum landscape maintenance. No part of a landscape irrigation system may be located above ground in unfenced portions of a yard, except for: (1) typical garden hoses having a diameter of one inch or less, (2) customary portable sprinklers, and (3) an above-ground drip irrigation pipe that is concealed by plant material.

G.8. **SWALES.** This Section applies to the Property only if the Property was engineered with swales as part of the Property-wide surface water drainage system, and may not be construed to require swales where none existed at time of construction of the initial dwelling on a lot. A swale (also known as a drainage or grass swale) is typically a wide shallow man-made channel (or ditch) that is designed to trap certain pollutants, promote water infiltration, and reduce the flow speed of storm water runoff. Residential subdivisions are often engineered with swales along the sides of a lot, and sometimes across the rear property line. It is not uncommon for a swale to be "shared" by adjoining property owners, either because it straddles the common property line or because it serves as drainage for both lots, although located entirely on one lot. The owner of a lot with a swale has a perpetual duty to the other owners to keep the swale in good working order. If regularly maintained, grass swales can last indefinitely. The following maintenance duties are hereby assigned to the owner of any lot with a swale that is part of the Property-wide drainage system. *(See the Swales Section of the Fence Specifications Chapter for additional duties.)*

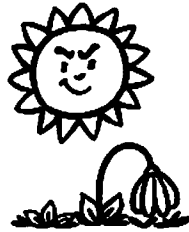
- (1) **PRESERVE AND PROTECT THE SWALE ~ DO NOT FILL IT IN, NOT EVEN A LITTLE.**
- (2) Keep the surface of the swale covered with dense, healthy grass that is regularly mowed. If the grass is not performing well, select and plant a different type of grass. Rock, concrete, or other impervious material may not be used in a swale.
- (3) Periodically inspect the swale for erosion and immediately repair obvious damage to turf or to the soil bed. If the swale develops ruts or holes, repair with suitable soil that is properly tamped and seeded or sodded.
- (4) Regularly remove excess vegetation, trash, and other debris from all parts of the swale.
- (5) Till or aerate the soil at the bottom of the swale if water does not drain out within 48 hours.
- (6) Remove sediment build up when the swale's volume is reduced by 25 percent.
- (7) Preserve the swale's original design. Because swales must slope downhill, on flat lawns they should be deeper as they get longer.

G.9. **XERISCAPING REGULATIONS. [LAW-BASED SECTION]** In the era in which these Regulations are drafted, xeriscaping is a relatively new concept. These Regulations are based partly on State laws of recent origin (TX Prop Code Sec. 202.007) that attempt to manage the transition from water-rich landscaping to xeriscaping.

G.9.1. **Change of Direction.** If consistent with public policy, the Association may encourage or require the use of water conservation landscape design, plant material, and irrigation for lots as well as common areas. After Sell-Out, and from time to time thereafter, the Association may adopt a new landscape plan for some or all common areas. The following Regulations pertain primarily to an owner's use of xeriscaping on the owner's lot.

G.9.2. Maintenance. To the extent the Association regulates yard and landscape maintenance on lots, any landscape maintenance requirements adopted for lots or enforced by the Association or by the ARC may not restrict or prohibit natural turf or landscape design that promotes water conservation, subject to the limitations permitted by applicable State law.

G.9.3. Watering. To the extent permitted and protected by applicable law, an owner may implement efficient irrigation systems on his lot, including underground drip or other drip systems, subject to the requirements of these Regulations. Before installing an efficient irrigation system on the unfenced portions his lot, the **owner must apply to the ARC** for approval of the installation and compliance with visibility limitations, if any, established by the ARC for aesthetic purposes, pursuant to the Architectural Covenants Article of the Declaration.



G.9.4. Turf & Plants. An owner may install and maintain drought-resistant landscaping or water-conserving natural turf on any portion of the lot that is maintained by the owner (not the Association), subject to the following conditions. If the Association has published xeriscaping guidelines, the owner is not required to apply for ARC approval for installations that comply with the guidelines. Otherwise, the owner must submit landscape plans or descriptions that are sufficiently detailed to permit the ARC to determine if the proposed xeriscaping is aesthetically compatible with the community standard for landscaping. The ARC's determination of aesthetic compatibility must be reasonable.

G.9.5. Rock. An owner may use gravel, rocks, or cacti in place of turf on the unfenced portions of his lot only if the **owner obtains the ARC's prior written approval** of the owner's detailed landscape plan. The ARC may prohibit, limit, or regulate the use of gravel, rocks, and cacti in a landscape plan based on aesthetics and surface water drainage, in addition to water conservation.

G.10. COMPOSTING REGULATIONS. [LAW-BASED SECTION] To the extent permitted and protected by applicable law (TX Prop Code Sec. 202.007), on his lot an owner may implement measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass, subject to the requirements of this Section. Before installing a composting device on his lot, the **owner must apply to the ARC** for approval of the device, pursuant to the Architectural Covenants Article of the Declaration. To the extent permitted by applicable law, the ARC may regulate the size, type, shielding, materials, and location of the device on the owner's lot. The ARC may require that the composting device be installed only within a fenced portion of the lot. If the fenced portion of the lot has a reasonably sufficient area in which to install the device, the ARC may not impose regulations that prohibit the economic installation of the device on the lot. Specifically:

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**COMPOST WITH CARE ~ A COMPOST BIN IS NOT A GARBAGE CAN**

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- (1) A compost pile or device must be for the owner's private use.
- (2) A compost pile or device may contain yard waste, wood chips, and commercial compost additives. Also, the board may authorize the use of certain vegetable-based kitchen wastes, such as coffee grinds and tea leaves.
- (3) A compost pile or device may not contain any of the following:
  - (a) Manure, urine, or fecal material, such as found in cat litter.
  - (b) Weeds and pathogen-infected materials that may survive the composting process.

- (c) Organic material and food scraps that may attract rodents, vermin, animals, insects, or other pests, such as high protein and fatty food wastes (like meat and fish scraps and bones, and dairy products) and high-carbohydrate wastes (like bread).
- (4) A compost pile or device must be regularly and properly maintained so it does not attract or harbor rodents, vermin, animals, insects, or other pests, and to prevent odors which may be perceived as unpleasant, sweet, sour, or pungent by a person of average sensibilities.
- (5) The ARC may require that all compost on a lot be enclosed in a freestanding compost bin that is no larger in volume than 75 cubic feet, and no higher than 5 feet above grade.
- (6) A compost pile or device must be located (a) in the fenced rear yard on a lot, (b) at least two feet from a fence that serves as a boundary between two lots, or that serves as a boundary between a lot and a common area, (c) more than 20 feet from a home, patio, pool or similar structure on an adjacent lot, and (d) where it will not impede the natural free flow of storm water drainage.
- (7) A compost pile or device may not be installed or maintained by an owner on a common area or in a public right-of-way.



*(End of Chapter)*



# **Deeds/Miscellaneous**

Electronically Recorded

Tarrant County

Official Public Records

12/19/2014 4:32 PM

D214275280

*Mary Louise Garcia*

PGS 2 \$20.00

Submitter: SIMPLIFILE

THE STATE OF TEXAS §  
 COUNTY OF TARRANT §  
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## COMMON AREA DEED

### VINEYARD CREEK ESTATES

**DATE:** December 16, 2014

**GRANTOR:** D. R. Horton - Texas, Ltd.

**ADDRESS:** 6751 North Freeway, Fort Worth, Texas 76131

**GRANTEE:** Vineyard Creek Estates Owners Association

**ADDRESS:** c/o FirstService Residential, 3102 Oak Lawn Avenue, Suite 202, Dallas, Texas 75219

**PROPERTY (including any improvements):**

**TRACT 1A & TRACT 2A of VINEYARD CREEK ESTATES**, an addition to the City of Grapevine, Texas, according to the Amended Final Plat for Lots 1A-21A, Block 1; Lots 1A-28A, Block 2; Tract 1A & Tract 2A of VINEYARD CREEK ESTATES, recorded on August 12, 2014, as Document No. D214174403, Plat Records, Tarrant County, Texas.

This conveyance is made in connection with Grantor's development of Vineyard Creek Estates, a planned development in the City of Grapevine, Texas, that is subject to the Declaration of Covenants, Conditions & Restrictions for Vineyard Creek Estates, recorded on November 5, 2014, as Document No. D214242924, Real Property Records, Tarrant County, Texas, as it may be amended and supplemented from time to time (the "**Declaration**").

In addition to being the owner of the Property, Grantor is the "Declarant" of Vineyard Creek Estates, as defined in the Declaration. Grantee is the association of owners of property in Vineyard Creek Estates, and the "Association" defined in the Declaration.

By this instrument, Grantor conveys the above-described Property to Grantee as Common Areas, subject to all recorded instruments affecting the Property, including the Declaration and the rights, reservations, and easements contained in Appendix B of the Declaration for the benefit of Grantor as Declarant.

For good and valuable consideration, Grantor does **GRANT, SELL, AND CONVEY** unto Grantee all the Property, **TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever, subject to the matters herein stated, without warranty. This conveyance includes any interests in the Property obtained by after-acquired title.

This conveyance is a ministerial task that fulfills a duty of Grantor under the Declaration and an expectation of the City of Grapevine that approves plats of Vineyard Creek Estates. Grantor specifically disclaims any representation, warranty, or guaranty, past, present, or future, of any kind or character, either express or implied, or arising by operation of law, with respect to the Property. This conveyance is on an "AS IS, WHERE IS" BASIS, with all latent and patent defects and faults.

This conveyance is not intended to be a quitclaim and is intended to be a conveyance of the Property rather than merely a conveyance of Grantor's interest therein. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THIS CONVEYANCE IS MADE WITHOUT WARRANTY OF ANY KIND, WHETHER STATUTORY, EXPRESS, IMPLIED, OR ARISING BY COMMON LAW.**

SIGNED on the date stated in the acknowledgment below.

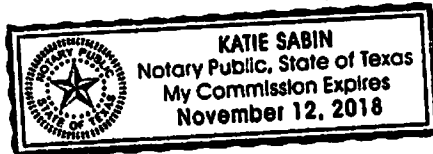
**D. R. HORTON - TEXAS, LTD.,** a Texas limited partnership

By: D. R. HORTON, INC., a Delaware corporation, its authorized agent

By:   
Don E. Allen, Assistant Secretary

THE STATE OF TEXAS §  
COUNTY OF TARRANT §

This instrument was acknowledged before me on this 18<sup>th</sup> day of December 2014 by Don E. Allen, Assistant Secretary of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.



  
Notary Public, The State of Texas

**ACCEPTED BY GRANTEE**

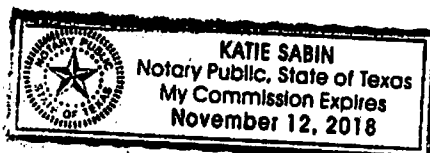
By signing this instrument, Grantee accepts and acknowledges (1) the conveyance of the Property on an **"AS IS, WHERE IS" BASIS, WITH ALL LATENT AND PATENT DEFECTS AND WITHOUT WARRANTY OF ANY KIND;** (2) that Grantor does not represent that the Property has a particular financial value or is fit for a particular purpose, other than the obvious purpose and use on the date of this conveyance; (3) that Grantee is and has been responsible for the maintenance, repair, replacement, and insurance of the Property since the Property became subject to the Declaration; (4) that Grantee is and has been responsible for property taxes on the Property since the Property became subject to the Declaration, for the current year, and for subsequent years; (5) that the Declaration reserves for Grantor certain privileges pertaining to the Property, which Grantor may continue to exercise to the extent permitted by the Declaration; and (6) that Grantee is not relying on any representation, statement, or other assertion by Grantor with respect to the Property.

**VINEYARD CREEK ESTATES OWNERS ASSOCIATION,**  
a Texas property owners association

By:   
Don E. Allen, President

THE STATE OF TEXAS §  
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 18<sup>th</sup> day of December 2014 by Don E. Allen, President of Vineyard Creek Estates Owners Association, a Texas property owners association, on behalf of the association.



  
Notary Public, The State of Texas