

the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, 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. The party exercising such rights 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 mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 11.8* may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant 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 purposes contained in this *Section 11.8*.

**11.9. Cellular Tower and Telecommunications Easement.** Declarant hereby grants and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area, or any portion of the Property which Declarant intends to designate as Common Area (the "CTT Easement Area") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee will have the right, from time to time, but no obligation, to Record a written notice which identifies the portion of the Common Area to which the CTT Easement Area pertains, and Declarant, or its assignee, may fence, install landscaping, or otherwise install improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither the Association, nor any Owner other than the Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment. In addition, Declarant hereby reserves for itself and its assigns a non-exclusive, perpetual and irrevocable easement over the Property for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third-party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this Section. The rights reserved to Declarant under this Section shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Property shall have any rights to income derived from or

in connection with the rights and easements granted in this Section, except as expressly approved in writing by Declarant. EACH OWNER AND RESIDENT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT ITS ASSIGNS UNDER THIS SECTION (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. The provisions of this Section shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

## ARTICLE 12 DEVELOPMENT RIGHTS

**12.1. Development by Declarant.** It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots and Common Areas and to subdivide with respect to all or any portion of the Property pursuant to the terms of this *Section 12.1*, subject to any limitations imposed on portions of the Property by any applicable Plat. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "Development Rights", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions set out in *Section 4.3*. These rights may be exercised with respect to any portions of the Property or the Common Area. As each portion of the Property is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such Property.

**12.2. Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property or the Common Area. The construction, placement or maintenance of Improvements by Declarant or its designee will not be considered a nuisance, and Declarant hereby reserves the right and

privilege for itself to conduct the activities enumerated in this *Section 12.2* until twenty-four (24) months after expiration or termination of the Development Period.

**12.3. Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property. Upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Declaration, and such added lands will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant will be required only to Record a notice of addition of land containing the following provisions:

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

**12.4. Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw land from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

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

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

otherwise provide in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Declaration (without the necessity of complying with the withdrawal provisions set forth in *Section 12.4*). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Declaration.

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

### ARTICLE 13 DISPUTE RESOLUTION

*This Article 13 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Lots, Common Area, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Lot and the Common Area, this Article 13 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.*

**13.1. Introduction and Definitions.** The Association, the Owners, Declarant, Homebuilders, and all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 13* by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots, Common Area or any Improvement within, serving or forming a part of the Property (individually, a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. Notwithstanding anything contained in this *Article 13*, any Claim brought by an Owner related to a residence that is subject to a warranty agreement provided by the Declarant or Homebuilder will not be subject to this *Article 13* and will be governed by the warranty agreement, unless the Parties agree to have the dispute governed by this *Article 13*. This

*Article 13* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

13.1.1 **"Claim"** means:

(i) Claims relating to the rights and/or duties of Declarant, the Association, or the ACC, under the Restrictions.

(ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Association, and any claim asserted against the ACC.

(iii) Claims relating to the design or construction of the Common Area or any Improvements located within or on Common Area.

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

13.1.3 **"Respondent"** means any Party against which a Claim has been asserted by a Claimant.

**13.2. Mandatory Procedures.** Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 13.8* below, a Claim must be resolved by binding arbitration.

**13.3. Claim Affecting Common Areas.** In accordance with *Section 4.12* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 13.1* above, relating to the design or construction of Improvements on a Lot (whether one or more). Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. Each Lot Owner, by accepting an interest in or to title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event the Association asserts a Claim related to the Common Area, as a precondition to providing the Notice defined in *Section 13.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim related to the Common Area, the Association must:

13.3.1 **Obtain Owner Approval of Engagement.**

*The requirements related to Owner approval set forth in this Section 13.3.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm or attorney engaged by the Association to prosecute a Claim relating to the design or construction of the Common Area. The engagement agreement between the Association and the law firm or attorney may include requirements that the Association pay costs, fees, and expenses to the law firm or attorney which will be paid through Assessments levied against Owners. The financial agreement between the Association and the law firm or attorney may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association and the law firm or attorney is terminated or if the Association agrees to settle the Claim. In addition, the financial arrangement between the Association and the law firm or attorney may include additional costs, expenses, and interest charges. This financial obligation can be significant. The Board may not engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or execute a written agreement between the Association and a law firm or attorney for the purpose of prosecuting a Claim relating to the design or construction of Common Area unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 13.3.1.*

Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area if the agreement between the Association and law firm or attorney includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iii) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association must approve the law firm and attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney.

The approval of the Members required under this Section 13.3.1 must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between the Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by

the Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area or Improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots or the Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Area or Improvements affected by such testing and the estimated costs thereof. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

13.3.2 Provide Notice of the Inspection. As provided in Section 13.3.3 below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

13.3.3 Obtain a Common Area Report.

*The requirements related to the Common Area Report set forth in this Section 13.3.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.*

Obtain a written independent third-party report for the Common Area (the "**Common Area Report**") from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Collin County, Texas (the "**Inspection Company**"). The Common Area Report must include: (i) a description with photographs of the Common Area subject to the Claim; (ii) a description of the present physical condition of the Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area subject to the Claim. For the purpose of subsection (iv) of the previous sentence,

the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Collin County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report must be obtained by the Association. The Common Area Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Area Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Area Report is finalized and delivered to the Association.

13.3.4 Provide a Copy of Common Area Report to all Respondents and Owners. Upon completion of the Common Area Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Area Report, the Association will provide a full and complete copy of the Common Area Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report which will include the date the report was provided. The Common Area Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

13.3.5 Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in *Section 11.8* of the Declaration, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals,



each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

**13.3.6 Hold Owner Meeting and Obtain Approval.** In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association must obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in *Section 13.5*, initiate the mandatory dispute resolution procedures set forth in this *Article 13*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 13.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

**13.3.7 Provide Officer Certification.** Within ten (10) days after a vote of Members called pursuant to this *Article 13*, the secretary or another officer of the Association will provide to Declarant and any Respondent (if different than Declarant): (i) a true and correct copy of the meeting notice provided to Members, for the meeting at which such vote was taken; (ii) copies of the ballots cast at such meeting (whether in person, electronic, or by proxy); (iii) a certification, executed by the issuing officer of the Association that: (a) the information set forth in (i) and (ii) hereinabove is true and correct; (b) the meeting notice provided to Members was provided in accordance with this *Article 13*; and (c) the vote was held in accordance with the Bylaws and this *Article 13*.

**13.4. Claim by Lot Owners.** Pursuant to *Section 13.3* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration

or other proceedings relating to the design or construction of the Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, such Owner shall be required, since a Claim affecting the Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 13.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with *Section 13.3.2* (Provide Notice of Inspection), *Section 13.3.3* (Obtain a Common Area Report), *Section 13.3.4* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 13.3.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 13.3.6* (Owner Meeting and Approval), *Section 13.3.7* (Officer Certification), and *Section 13.5* (Notice). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration.

**13.5. Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 13.6* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 13.6*, to comply with the terms and provisions of Section 27.004 of the Texas Property Code during such sixty (60) day period. *Section 13.6* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 of the Texas Property Code could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 13.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 13.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%)

of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 13.3.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 13.3.6* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas, the Notice will also include a true and correct copy of the Common Area Report.

**13.6. Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (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. If the Claim involves all or any portion of the Property, then 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.

**13.7. Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (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 five (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, Respondent will submit the Claim to mediation in accordance with this *Section 13.7*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 13.8*.

**13.8. Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 13.8*.

**13.8.1 Governing Rules.** If a Claim has not been resolved after mediation in accordance with *Section 13.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 13.8* and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this *Section 13.8*, this *Section 13.8* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to

judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

13.8.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 13.8* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

13.8.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 13.8*.

13.8.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 13.8* and subject to *Section 13.9* below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In addition, for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous;

(iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.

13.8.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Collin County, Texas. Unless otherwise provided by this *Section 13.8*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

13.9. Allocation of Costs. Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

13.10. 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.

13.11. Period of Limitation.

13.11.1 For Actions by an Owner or Resident. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, the exclusive period of limitation for a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable

statute of limitations for such Claim. In no event shall this *Section 13.11.1* be interpreted to extend any period of limitations.

13.11.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 13.11.2* be interpreted to extend any period of limitations.

13.12. Funding the Resolution of Claims. The Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 13*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date this instrument is Recorded.

**DECLARANT:**

**LENNAR HOMES OF TEXAS AND  
CONSTRUCTION, LTD.,** a Texas limited partnership

By: U.S. Home Corporation, a Delaware corporation,  
its General Partner

By: Jennifer Eller  
Printed Name: Jennifer Eller  
Title: Authorized Agent

THE STATE OF TEXAS §

COUNTY OF Johnson §

This instrument was acknowledged before me this 12<sup>th</sup> day of November, 2019,  
by Jennifer Eller, Authorized Agent of U.S. Home Corporation, a  
Delaware corporation, the General Partner of Lennar Homes of Texas Land and Construction,  
Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.

(SEAL)



Stephanie Robertson  
Notary Public Signature

Signature Page  
BRIDGEWATER

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

## EXHIBIT "A"

### PROPERTY DESCRIPTION

**BEING** a tract of land situated in the William Johnson Survey, Abstract No. 476, the Sarah D. Terry Survey, Abstract 890 and the William W. Bell Survey, Abstract 37 all being within Collin County, Texas, and being a portion of a called 99.493 acre tract of land described in a deed to Boat Investments, LLC, according to the document filed of record in Instrument No. 20170810001064370, a portion of a called 87.918 acre tract of land described in a deed to Boat Investments, LLC, according to the document filed of record in Instrument No. 20170915001242470 and a portion of a called 302.255 acre tract of land described in a deed to Boat Investments, LLC, according to the document filed of record in Instrument No. 20170626000832040, all being of recorded in the Deed Records of Collin County, Texas (D.R.C.C.T.), said tract being more particularly described as follows:

**BEGINNING** at point in the south line of F.M. 546 A.K.A. East Lucas Branch Road, for the north end of a corner clip at the most northerly northwest corner of said 99.493-acre tract, from which a PK Nail found for reference bears South 03°28'24" East, 0.15 feet;

**THENCE** South 88°39'25" East, with the north line of said 99.493-acre tract, same being the common south line of said F.M. 546, a distance of 887.44 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for the northeast corner of the herein described tract;

**THENCE** over and across the above-mentioned Boat Investments tracts the following twenty-seven (27) courses and distances:

S 1°33'33" W, a distance of 347.98 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

S 1°33'08" W, a distance of 3.22 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a tangent curve to the right having a central angle of 9°03'10", a radius of 1640.20 feet, a chord bearing and distance of S 6°04'43" W, 258.88 feet;

With said curve to the right, an arc distance of 259.15 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

S 10°36'18" W, a distance of 320.50 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

S 10°36'18" W, a distance of 90.24 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a tangent curve to the left having a central angle of 100°42'17", a radius of 1160.14 feet, a chord bearing and distance of S 39°44'51" E, 1786.58 feet;



With said curve to the left, an arc distance of 2039.10 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a non-tangent curve to the left having a central angle of  $10^{\circ}05'34''$ , a radius of 991.57 feet, a chord bearing and distance of  $N 85^{\circ}29'12'' E$ , 174.44 feet;

With said curve to the left, an arc distance of 174.67 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

$N 80^{\circ}48'29'' E$ , a distance of 456.64 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a tangent curve to the right having a central angle of  $7^{\circ}28'31''$ , a radius of 3750.00 feet, a chord bearing and distance of  $N 84^{\circ}32'44'' E$ , 488.91 feet;

With said curve to the right, an arc distance of 489.26 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

$N 88^{\circ}17'00'' E$ , a distance of 128.73 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

$S 1^{\circ}43'00'' E$ , a distance of 100.00 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

$S 1^{\circ}28'10'' E$ , a distance of 402.11 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

$S 1^{\circ}43'26'' E$ , a distance of 170.41 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a non-tangent curve to the left having a central angle of  $8^{\circ}30'03''$ , a radius of 2475.00 feet, a chord bearing and distance of  $S 85^{\circ}03'57'' W$ , 366.87 feet;

With said curve to the left, an arc distance of 367.21 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a reverse curve to the right having a central angle of  $0^{\circ}35'43''$ , a radius of 2525.00 feet, a chord bearing and distance of  $S 81^{\circ}06'47'' W$ , 26.23 feet;

With said curve to the right, an arc distance of 26.23 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a non-tangent curve to the right having a central angle of  $6^{\circ}17'39''$ , a radius of 381.56 feet, a chord bearing and distance of  $S 4^{\circ}57'45'' E$ , 41.90 feet;

With said curve to the right, an arc distance of 41.92 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

$S 1^{\circ}43'00'' E$ , a distance of 379.04 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a tangent curve to the right having

a central angle of 4°26'37", a radius of 1855.00 feet, a chord bearing and distance of S 0°30'18" W, 143.83 feet;

With said curve to the right, an arc distance of 143.86 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a non-tangent curve to the right having a central angle of 53°48'09", a radius of 85.00 feet, a chord bearing and distance of S 10°19'36" W, 76.92 feet;

With said curve to the right, an arc distance of 79.82 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

S 9°51'58" W, a distance of 553.20 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

N 80°08'02" W, a distance of 245.07 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a tangent curve to the left having a central angle of 9°28'56", a radius of 525.00 feet, a chord bearing and distance of N 84°52'30" W, 86.79 feet;

With said curve to the left, an arc distance of 86.89 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

N 89°36'58" W, a distance of 382.53 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract at the beginning of a non-tangent curve to the left having a central angle of 158°19'43", a radius of 50.00 feet, a chord bearing and distance of N 84°31'11" W, 98.22 feet;

With said curve to the left, an arc distance of 138.17 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

N 79°19'50" W, a distance of 24.33 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

S 84°47'44" W, a distance of 110.67 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for a corner of this tract;

S 72°49'33" W, a distance of 20.98 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set in the south line of the above mentioned 87.918 acre tract for a corner of this tract, same being the northeast corner of Lafon Estates, an addition to Collin County according to the plat filed of record in Volume F, Page 24, Plat Records Collin County, Texas (P.R.C.C.T.), from said 5/8 inch iron rod a 1/2 inch iron rod with plastic cap stamped "COWAN" found for reference to said corner bears S 12°54'52" W, 0.47 feet;

**THENCE** N 87°16'58" W, with said south line, same being common with the north line of said Lafon Estates, passing at a distance of 911.42 feet the northwest corner of said addition, same being the northeast corner of that tract of land conveyed to Billy Ray Horton, according to the

document filed of record in Volume 4886, Page 5135 (D.R.C.C.T.) continuing with said south line and a portion of the common north line of said Horton tract, for a total distance of 1542.90 feet to a 1/2 inch iron rod found in said common line for the southeast corner of that tract of land conveyed to Dewayne Harper, according to the document filed of record in Volume 5594, Page 1104, (D.R.C.C.T.) same being the most southerly southwest corner of this tract;

**THENCE** N 3°40'23" E, with the common east line of said Harper tract and a west line of this tract, a distance of 386.79 feet to a point for the northeast corner of said Harper tract and common corner of this tract, from which a 1/2 iron rod found for reference to said corner bears N 64°17'59" E, 0.33 feet;

**THENCE** N 86°47'49" W, with the common north line of said Harper tract and a south line of this tract, a distance of 324.77 feet to a 1/2 inch iron rod found in the east line of County Road Number 437, a.k.a. Pecan Drive for the northwest corner of said Harper tract and common most northerly southwest corner of this tract;

**THENCE** with the east lines of said County Road, the common west lines of the above mentioned 87.918 and 99.493 acre tract same being the west lines of this tract, the following four (4) courses and distances:

N 22°34'44" W, a distance of 22.66 feet to a 1/2 inch iron rod found for a corner of this tract at the beginning of a non-tangent curve to the right having a central angle of 25°58'32", a radius of 872.20 feet, a chord bearing and distance of N 9°11'28" W, 392.04 feet;

With said curve to the right, an arc distance of 395.42 feet to a 1/2 inch iron rod found for a corner of this tract;

N 4°01'19" E, a distance of 1106.07 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for the common northwest corner of the above mentioned 87.918 acre tract and southwest corner of the above mentioned 99.493 acre tract and corner of this tract from which a 1/2 inch iron rod with plastic cap stamped "COWAN" found for reference to said corner bears S 47°05'57" E, 0.39 feet;

N 1°30'24" E, a distance of 2081.48 feet to a 1/2 inch iron rod with plastic cap stamped "GEER 4117" found for the most southerly northwest corner of said 99.493 acre tract at the south end of the above mentioned corner clip for a corner of this tract;

**THENCE** N 50°37'09" E, with said corner clip, a distance of 68.37 feet to the **POINT OF BEGINNING** and containing 7,491,941 square feet or 171.991 acres of land, more or less.



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
11/13/2019 02:20:37 PM  
\$338.00 DFOSTER  
20191113001444880

EXHIBIT "A" – Page 4  
BRIDGEWATER

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS