

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR CHITAL LAKES SUBDIVISION**

THE STATE OF TEXAS §

COUNTY OF BURNET §

**Property:** BEING LOTS ONE (1) THROUGH SEVENTEEN (17), FINAL PLAT OF CHITAL LAKES A PRIVATE SUBDIVISION 399.59 ACRES OUT OF THE HARRY SIMON AND VOLUME 1071 PAGE 931 O.P.R.B.C.T, BURNET COUNTY, TEXAS, AND SHOWN ON PLAT RECORDED IN DOCUMENT NO. \_\_\_\_\_, OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS.

**THIS DECLARATION** (herein so called), is made as of the date hereinafter set forth by **NMS BERTRAM PROPERTY INVESTORS, LLC**, a Texas limited liability company (hereinafter referred to as **“Declarant”**).

**ARTICLE I  
DEFINITIONS**

“Assessment” means assessments levied under this Declaration.

“Assessment Lien” means the lien created by this Declaration.

“Board” means the Bylaws of the Company, as amended from time to time.

“Certificate” means the Certificate of Formation of the Company on file with the Secretary of State of the State of Texas, as amended from time to time.

“Common Area” means a fee simple or an easement interest in land benefitting the Property and designated by Declarant as Common Area. Common Area may include, but is not limited to, the private roads, easements, rights-of-way, utility facilities, water quality, drainage and/or detention areas, and the Improvements therein.

“Company” means Chital Lakes Maintenance Company, a Texas non-profit corporation.

“Control Transfer Date” means the date Declarant no longer owns or has any legal or equitable interest in any of the Property. As long as Declarant is the beneficiary of any deed or trust or vendor’s lien against any of the Property Declarant has an equitable interest in a portion of the Property.

“Covenants” means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means NMS Bertram Property Investors, LLC, a Texas Limited Liability Company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Declaration" means this instrument, as amended from time to time.

"Easements" means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

"Improvement" means every structure and appurtenance to a structure of every type and kind within the Property. Improvement includes but is not limited to, buildings, barns, pens, sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, Landscaping, poles, signs, exterior air conditioning or water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telecommunication or other utilities.

"Landscaping" means any modification of a Lot, including but not limited to berms, irrigation systems, subsurface drainage systems, paving, introduced gravel or rock, nonstructural retaining walls, and introduced vegetation.

"Lot" means each tract of land designated as a lot on the Plat.

"Member" means a Person with membership rights in the Company

"Mortgage" means a mortgage or deed of trust against any of the Property given to secure the payment of a debt.

"Mortgagee" means the holder or holders of any Mortgage.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded in Instrument No. \_\_\_\_\_ of the real property records of Burnet County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Property" means, at any specific point in time, at any specific point in time, Lots of Chital Lakes, a subdivision in Burnet County, Texas, according to the Plat recorded under Instrument No. \_\_\_\_\_, Official Public Records of Burnet County, Texas.

"Public View" means, as to a Lot, visibility of a location on that Lot from Common Area or another Lot.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

“Required Vote” means the affirmative vote of 2/3rds of the aggregate votes of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on a matter, provided such written notice is given to all Members at least 30 days in advance stating the purpose of the meeting.

“Restrictions” means this Declaration, as amended, the Certificate, the Bylaws and any promulgated rules.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

“Visible Location” means a location on a Lot or Common Area in Public View.

## **ARTICLE II**

### **DECLARANTS RIGHTS**

2.1 Addition or Deletion of Land. Before the Control Transfer Date, Declarant may unilaterally annex land under this Declaration or may unilaterally withdraw any land within the Property from this Declaration with the consent of the owner of the applicable land (if not Declarant). Declarant will accomplish any annexation or withdrawal by recording a notice of addition or notice of withdrawal in the Official Public Records of Burnet County, Texas. An annexation or withdrawal is effective when the notice of addition or notice of withdrawal is recorded in the Official Public Records of Burnet County, Texas. After an annexation, this Declaration will apply to the annexed land and the rights, privileges, duties and liabilities of the Person subject to this Declaration will be the same as to the annexed lands as to the lands originally covered by this Declaration. Notices of addition or withdrawal must state that the land is being annexed or withdrawn, and must include at least the following provisions:

- (a) a reference to this Declaration that includes the document number under which this Declaration is recorded in the Official Public Records of Burnet County, Texas;
- (b) a statement that this Declaration will apply to the annexed land (or that this Declaration no longer applies to land being withdrawn);
- (c) a legal description of the annexed or withdrawn land; and
- (d) if Declarant does not own the land being annexed or withdrawn, the signatures of both such owner and Declarant.

When a notice of addition is recorded the land annexed by that notice of addition will be included in the term "Property" for all purposes hereof (unless subsequently withdrawn). After

the Control Transfer Date, the Board may annex additional land under this Declaration or remove land from this Declaration, subject to (i) Member approval by at least a Required Vote, and (ii) written consent of the Person owning the land to be added or withdrawn.

2.2 Development by Declarant. Notwithstanding any other provision of this Declaration, Declarant, in Declarant's discretion, may divide or subdivide the Property into one or more areas, record Plats, re-subdivide Lots created by a Plat in such sizes, locations and configurations as Declarant may elect, modify private roads, Common Areas and rights of way, and/or market and develop all or any of the Property without the consent of the Company or any Member. Declarant's rights within the Property include, but are not limited to, the right to excavate and grade, to alter drainage patterns and facilities, to construct any and all types of Improvements, to install and maintain construction, sales and leasing offices and similar facilities, to maintain construction staging areas, and to post signs incidental to construction, marketing, sales, and leasing anywhere within the Property, including Common Areas.

2.3 Transfer of Declarant Rights. On the Control Transfer Date, Declarant's approval and other rights under Articles 3, 4, 5, 6 and 9 of this Declaration will transfer to the Board.

### **ARTICLE III** **GENERAL RESTRICTIONS**

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

3.1 Division and Consolidation. Excluding Lots owned by Declarant (which may be divided and/or reconfigured as described in Section 2.2), except as allowed in the last 2 sentences of this Section 3.1, once a Plat is recorded, no Lot shown on that Plat may be divided to create additional Lots, nor may any Owner of a Lot adjust boundary lines with an adjacent Lot or convey easements, licenses or interests other than the entire fee simple interest in that Owner's Lot, without obtaining Declarant's prior written approval in each case. This Section 3.1 does not require Declarant approval to the grant of a Mortgage or the conveyance of undivided fee simple interests in a single Lot to persons holding same as tenants in common. An Owner of adjacent Lots may combine the adjacent Lots into one Lot but in that instance the Owner of the consolidated Lots will pay Assessments as if no consolidation had occurred (e.g., if 2 Lots are combined to become 1 Lot, the Owner will pay Assessments as if the Owner owned 2 Lots). For all other purposes of this Declaration (e.g., setback lines), the consolidated lots will be treated as a single Lot. As to any Lot that contains at least 40 acres when created by a Plat, the Owner of such Lot may divide the Lot, subject to Declarant's prior written approval as to configuration, access and impact on development of other Lots or Common Areas, into no more than 2 separate Lots, each of which contains at least 20 acres.

3.2 Hazardous Activities; Hunting. No activity shall be conducted on the Property that is or may be unsafe or hazardous to persons or property or which violates a regulation or code of any applicable governmental authority. Hunting must strictly comply with all regulation of Burnet County, the State of Texas, and all applicable agencies of either such entity. No hunting blind or feeder may be placed within 150' from any Lot boundary line for hunting with compound bows, non-mechanized bows, crossbows and shotguns. Rifle hunting is only permitted only at the back of the lots within 300' of back property line. Hunting blind and feeder must be placed "In-line" at North 69 degrees East for Lots 1, 3, 5 through 10, North 21 degrees West for Lot 10 and 11, and South 69 degrees West for Lots 2, 4, 12 through 17. Exotics (axis, fallow, aoudad, Pere David) can be hunted during the typical whitetail deer season and a special season from April 1<sup>st</sup> to June 15<sup>th</sup> of each year. One deer, whether whitetail, axis, fallow, aoudad, Pere David can be harvested each year per lot.

3.3 Waste Water. Before occupying any residential dwelling on a Lot, the Owner must construct a septic system on the Lot in compliance with all applicable regulations of governmental authorities and arrange, at such Owner's expense, for the regular servicing and repair of such system. All septic systems must be kept in good working order, odor free at alltimes. If an Owner uses a recreational vehicle or other temporary structure as a dwelling, the Owner must either install such a septic system on the Lot to service such vehicle, home or structure, or use a holding tank to contain the wastewater generated from such vehicle, home or structure, and arrange for the regular servicing and emptying of any such holding tank at the Owner's expense. In no event may wastewater be discharged onto the Lot.

3.4 Mining and Drilling. None of the Property may be used to mine, quarry or otherwise remove minerals, rocks, stones, sand, gravel, aggregate, earth or water, except that water wells may be installed on a Lot to provide water only to the residences, animals or livestock located on such Lot. Withdrawal of water for use for any commercial purpose is prohibited, and the transport of water off the Property is prohibited. The bore of any water well may not exceed 5" in diameter.

3.5 Animals. No kennels, boarding facilities, feed lots or other commercial facilities for the care, breeding or maintenance of animals may be operated from the Property, except cattle, goats, horses, chickens and other livestock may be bred or maintained on a Lot so long as the number of animal units on a Lot does not exceed that recommended for livestock management by Texas Parks and Wildlife or the Burnet County Extension Office. Except as a part of a 4-Hproject or for household consumption, no swine may be raised on the Property. No vicious or dangerous animals are allowed on the Property.

3.6 Rubbish, Debris and Odors. No rubbish or debris of any kind, including lumber, grass, plant waste, shrub or tree clippings, metals, chemicals, bulk materials, scrap, refuse, trash, or piles of weeds, brush or other natural materials, shall be placed, released, discharged or allowed to accumulate on the Property except that piles of brush for wildlife habitat may be maintained to support wildlife ad valorem tax valuations (so long as any such piles are located outside of Public View on a Lot). No odors shall be permitted to arise from rubbish or debris so as to render any of the Property unsanitary, unsightly, offensive, or detrimental to other areas of the Property, other land or the occupants of either. Refuse, garbage, and trash must be kept at all times in covered, animal-proof containers out of Public View (except as required to make same available for collection, and then only as reasonably necessary to effect such collection). Each Owner must enter into a contract for the regular removal of trash from the Lot at the expense of such Owner unless the Company elects to contract for the provision of trash service to the Property. If the Company elects to contract for the provision of trash service to the Property, the Company may require each Owner to transport trash from the Owner's Lot, at such Owner's

expense, to a centralized location within or adjacent to the Property designated by the Company for such purpose. A centralized trash location may be located outside of the Main Entry Gate.

3.7 Signs. No sign of any kind shall be displayed in Public View on any Lot without Declarant's prior written approval, except 1 sign of no more than 6 square feet advertising the Lot for sale.

3.8 Temporary Structures. No tent, shack, or other temporary building, improvement or structure may be placed in a Visible Location on a Lot without Declarant's prior written approval.

3.9 Vehicles. No broken-down vehicles may be kept on a Lot without the written consent of Declarant. No semis or construction equipment may be kept on a Lot, except if it is kept in a barn, shop, or garage without the written consent of Declarant. RV's and trailers must be stored out of sight and enclosed within 12 months of purchase.

3.10 Mobile Homes and Manufactured Housing. No mobile homes or manufactured housing are permitted on the Property.

3.11 Minimum Residence Size. Minimum square footage on any house must be at least 1,800 feet. A minimum of twenty-five percent (25%) overall and three (3) feet of masonry on three (3) sides of the house is required. Masonry shall include stone, brick, or stucco, and does not include Hardie Plank or any related fiber cement products like Hardie Plank.

3.12 Light Trespass. Light trespass is prohibited. No luminaire installed within the Subdivision shall create conditions of light trespass. All outdoor lighting, except governmental owned streetlights, shall be shielded so that the light source shall not be visible from any other property. All privately owned exterior lighting not adaptively controlled shall be extinguished by 11:00 p.m.

#### **ARTICLE IV** **USE RESTRICTIONS**

4.1 Residential Use. All Lots, except for Lots specifically designated for commercial use by written consent of Declarant, will be improved and used only for single family residential use (including garages, fences and such other Improvements customarily incident to residential uses). Except for livestock operations that comply with Section 3.5, no Lot or Improvements on a Lot may be used to produce income or for civic or commercial purposes except an Owner or occupant may conduct business activities incidental to the primary residential use of the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the building structures; (b) the business activity conforms to all legal requirements and other provisions of the Restrictions; (c) the business activity does not involve visitation to the Lot by clients, customers, vendors or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or

offensive use, or threaten the security or safety of other residents of the Property (as determined by Declarant). The lease of an entire Lot for single family residential purposes is not conducting a trade or business from a Lot but the term of any such lease shall be at least 6 months.

4.2 Common Area. No Common Area shall be improved, used or occupied except as Declarant may approve, which approval will include the nature and type of use, occupancy or improvement.

## **ARTICLE V**

### **CONSTRUCTION AND DESIGN RESTRICTIONS**

5.1 Driveway. All driveways on a Lot that provide access to a roadway must meet requirements on driveway design, including materials, aprons, location, and point of contact with roadway, specified by Declarant. Driveways must be built with sufficient rise in elevation to allow surface water drainage along the adjacent roadway to continue without interruption or change in direction of flow.

5.2 Construction Debris. During initial construction of a dwelling structure on a Lot, and if required by Declarant, during any remodeling of a structure on a Lot, the Owner must provide on the Lot an enclosed trash storage area or dumpster at least 8' by 8'. Such storage area or dumpster must be removed promptly after construction or remodeling is completed. All dumpsters and portable toilets shall be placed behind construction site.

5.3 Construction Vehicles. No construction vehicles or equipment parked along the street or private road right of way.

5.4 Construction Work/Schedule. No construction to be performed before 7:00 am, after sunset, on Sundays or Holidays.

5.5 Location of Improvements. No Improvements (except Landscaping and entry drives) will be located on any Lot, within one-hundred fifty feet (150') to a front, and one-hundred feet (100') for the side, and three hundred feet (300') to the rear Lot line. On Lot 10 two hundred feet (200') on left side, and Lot 11 two hundred feet (200') on back Lot line. No entry drives will be located within one-hundred-foot (100') side setback lines.

5.6 Drainage. No Owner except Declarant may change the established drainage patterns on the Property unless adequate provision is made for proper drainage and Declarant gives prior written approval of the change.

5.7 Unfinished Structures. No structure may remain unfinished for more than 6 months after construction has begun. The exterior of any structure must be completed within 3 months after construction begins. The primary residence must be completed within 12 months from start date.

5.8 Minimum Residence Size/Timing of Construction. Declarant's approval must be obtained before any Improvement is built or installed within the Property. Declarant may consider all plans and specifications for a proposed Improvement and all other facts in deems relevant in its discretion. No Improvement will be allowed on any Lot Declarant considers incompatible with development within the Property whether due to size or architectural design or the Landscaping, color schemes, exterior finishes and materials or other features, and all decisions of Declarant will be final and binding when made in good faith. Declarant will not review, and is not responsible for reviewing, any proposed Improvement, and approval of any plans or specifications will not be considered approval of, structural safety, engineering soundness, or conformance with building or other codes of governmental entities or utility providers. If Declarant does not respond to a request for approval of plans and specifications within 30 days of receipt of all required information (including additional information requested by Declarant), Declarant shall be deemed to have approved such plans and specifications. Declarant's approval or consent to any plans or specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of Declarant will not waive Declarant's right to withhold approval or consent for other plans or specifications or other matters whatever, subsequently or additionally submitted for approval or consent by the same or a different Person. Declarant, in Declarant's discretion, may modify any of the provisions of this Section 3 that govern the construction of Improvements as to any particular Improvement, but such modification must be in writing and signed by Declarant.

5.9 Architectural Control Committee: Declarant shall create an Architectural Control Committee. The Architectural Control Committee shall consist always of three (3) members. The initial members shall be appointed by the Declarant. Each member of the Committee shall hold office until such time as he or she resigns or has been removed or his or her successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause.

5.7(a) Appointment of Members to Architectural Control Committee: During Declarant's Control Period, the Declarant shall have the exclusive right to appoint and remove all members of the Architectural Committee. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee without Declarant's consent. Notwithstanding anything herein to the contrary, during Declarant's Control Period, Declarant shall have the right, in Declarant's sole and absolute discretion, to veto any Committee action that directly affects the planning, design, construction or development of any Lot owned by Declarant. Declarant must exercise its veto within ten (10) days after it receives notice of the Architectural Committee action affecting a Lot owned by Declarant.

5.7(b) Adoption of Rules: The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties. The Committee Rules may provide requirements and standards with respect to any and all matters with which the Committee is charged in this Declaration. A rule adopted by the Architectural Committee shall not be in effect until approved by the Board. The Committee may adopt procedural and substantive rules as provided herein not in conflict with this Declaration applicable to distinct areas of the Property.

5.7(c) Powers and Duties of Architectural Control Committee: The Architectural Committee shall have all powers and duties conferred or imposed upon it by this Declaration and all inherent powers necessary or proper in the performance of its duties, as set forth in this Declaration or the Committee Rules. In addition thereto, and without limiting the generality of the foregoing, the Architectural Committee shall have the following specific powers and duties:

- (a) To approve all Plans and Specifications for any Improvements constructed within the Property;
- (b) To review and inspect all construction or proposed construction within the property.



(c) To set such height elevations and setback requirements as it deems necessary or proper whether or not such limitations are contained on the face of any applicable plat;

(d) To prescribe for any given section or area of development certain building or architectural restrictions, construction codes, methods of development, limitations on types of building materials, placement of structures, colors, standards and requirements for all aspects of construction, drainage requirements, or other similar restrictions or limitations; to review and approve or disapprove Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding area and The Chital Lakes Subdivision generally;

(e) To review and approve or disapprove Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features;

(f) To review and approve or disapprove Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of compliance of the Plans and Specifications with The Chital Lakes Subdivision Restrictions;

(g) To control the spacing or orientation of all residential dwellings, buildings, garages, accessory buildings, or other Improvements of any type whatsoever, with relation to the front and side yard orientation thereof;

(h) To prescribe design or construction criteria for driveways, fences, walls, landscaping, or other Improvements;

(i) To specify types, colors, quality of roofing materials to be applicable to any given area or street;

(j) To require and issue written approvals as a condition for commencement of construction of any Improvement;

(k) To prescribe and charge reasonable fees for its services.

5.7(d) Review of Proposed Construction: Whenever in this Declaration or in any Supplemental Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as provided below, prior to commencement of any construction of any Improvement in the Property, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Committee has approved such Plans and Specifications in writing. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee. The Committee may review and approve or disapprove all Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of compliance or lack of

compliance with the Committee Rules. The Committee shall take into consideration the compliance or lack of compliance with the Committee Rules and all matters with which it is charged in this Declaration. Any action of the Committee, including approval of Plans and Specifications and any Improvement constructed pursuant thereto, shall mean only that the proposed Improvement is satisfactory to the Committee. Such action of the Committee shall not be an opinion, approval, warranty or representation by the Committee as to whether the Improvement will satisfy all of the requirements of this Declaration; that the Improvement will be structurally sound; that it will comply with any applicable building code; that it will be free from damage from wind, rain or flood; that it will not encroach on any easements; or that it will not divert surface water in a manner not allowed by law.

5.7(e) Meetings of the Committee: The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may, by resolution, unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section

5.7(i) herein below. In the absence of such designation, the vote of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee.

5.7(f) No Waiver of Future Approvals: The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee shall not be deemed to constitute a waiver of any right withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different Person.

5.7(g) Inspection of Work; Noncompliance: The Committee may inspect all work in progress and any completed Improvement. If the Committee determines the work or Improvement does not comply with The Chital Lakes Subdivision Restrictions, the Committee shall give notice of any noncompliance to the Owner specifying in reasonable detail the particulars of the noncompliance. No work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board should ultimately find that noncompliance exists. If the Owner denies that such noncompliance exists, the Board shall conduct a hearing in accordance with the requirements of the Texas Residential Property Owners Protection Act, as it may be amended, superseded or replaced from time to time, at which hearing it shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Assessment against such Owner and the Improvement in question and the Lot upon which the same is situated for reimbursement and the same shall constitute a lien upon such Lot and Improvement and be enforced as provided in this Declaration.

5.7(h) Non-liability of Committee Members: Neither the Architectural Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of their being in any way connected with the performance of the Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its member or the Board or its member, as the case may be.

5.7(i) Variances: The Architectural Committee may grant variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, or of any plat, including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, materials, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetics or environmental consideration may, in its sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any Supplemental Declaration, or any plat shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or, of any Supplemental Declaration, or of any plat for any purpose except as to the particular property and in the particular instance covered by the variance.

5.10 Masonry Requirements: All residences, whether located on interior or corner Lots, shall have a minimum of 25% of stone or masonry construction. For the purpose of this Declaration, stucco (as defined below), shall be considered as within the definition of masonry. The exposed exterior of foundations in excess of twenty-four (24) inches above finished grade must be constructed of or covered by masonry materials so that no more than twenty-four (24) inches of an unfinished or uncovered exterior of the foundation may be exposed above finished grade. In computing said percentage, (i) gables, and all window and door openings, shall be excluded from the total area of the first story exterior walls, (ii) stone and masonry used on fireplaces, chimneys, and walls of attached garages may be included in the computation as stone or masonry use, and (iii) masonry requirements for detached garages shall be computed separately from the residence. "Stucco" shall mean and refer to a building material used for exterior wall finishing made of cement, sand and lime and applied in a plastic state over a wire or wood lath to form a hard covering which is also referred to as traditional stucco. Stucco as defined herein and used in this Declaration shall not include exterior insulation and finish systems (EIFS) or synthetic stucco including, but not limited to, consisting of polymer based systems or polymer modified mineral based systems.

5.11 Electricity/Utility Poles: The Owner of each Lot shall install underground electric/utility lines for the purpose of receiving electricity and/or other utility services to the Improvement upon said Lot. Construction and location of said underground utility lines shall require the written approval of the Architectural Control Committee before construction commences.

5.12 Concrete Apron and Culvert Requirement: Each Lot shall contain a twenty (20) foot

concrete apron from said Lot connecting to the roads of the Subdivision. Culverts must have a minimum width of sixteen feet and piping beneath driveways for drainage must be buried at appropriate depths and concealed. All concrete apron and culvert construction must be approved in writing by the Architectural Control Committee before construction commences.

5.13 Mailboxes: Each Owners shall use the mail kiosk located at the entrance of the Subdivision, or any other common area location that Declarant shall decide to install the mail kiosk. Owners shall not be allowed to install mailboxes on a Lot.

## **ARTICLE VI**

### **REPAIR AND MAINTENANCE OBLIGATIONS**

6.1 Repair and Maintenance. Each Owner shall keep all Improvements on the Owner's Lot in good, attractive condition and repair, and adequately painted or otherwise maintained. Maintenance obligations include, but are not limited to, maintaining all visible exterior surfaces of Improvements; prompt removal of paper, debris, and refuse; removal of dead or diseased trees and dead or diseased Landscaping from the Property; prompt replacement of dull and/or peeling paint from the exterior of Improvements; watering, fertilizing, weeding, pruning, replanting and replacement of Landscaping as needed; and during construction, cleaning of dirt, construction debris, and other construction-related refuse street and storm drains and inlets as deemed necessary by Declarant. Each Owner must follow Declarant's recommendations as to tree disease control (including without limitation recommendations for the control of oak wilt) immediately. Declarant or the Company may enter any Lot at any reasonable time as provided in Section 7.4(c) below to perform an Owner's maintenance obligations in this Section at the expense of the Owner as provided in Section 7.4(c).

## **ARTICLE VII**

### **THE COMPANY**

7.1 Organization. Declarant will form the Company as a Texas non-profit corporation, created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in the Certificate, Bylaws or this Declaration. Neither the Certificate nor Bylaws may be amended, changed or interpreted so as to be inconsistent with this Declaration.

7.2 Membership. Upon becoming an Owner a Person automatically becomes a Member of the Company. Membership is appurtenant to and runs with ownership of the Lot qualifying the Owner thereof for membership. Membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the fee simple title to the Lot.

7.3 Voting Rights. The right to cast votes, and the number of votes which may be cast, to elect members of the Board and on all other matters to be voted on by the Members is as follows:

- (a) The Owner (including Declarant) of each Lot within the Property will have one

vote for each Lot owned.

- (b) In addition to the votes to which it is entitled under Section 7.3(a) as an Owner, Declarant will have 5 votes for each Lot within the Property until the Control Transfer Date. Upon annexation of additional land owned by Declarant under this Declaration, Declarant will have additional votes under this Section 7.3(b) until Declarant no longer owns any of the land so annexed.
- (c) A property interest entitling the Owner thereof to vote held jointly or in common by more than one Owner requires that such Owners designate, in writing, a single Owner entitled to cast that vote. No other person is authorized to vote on behalf of that property interest. A copy of each written designation must be provided to the Board before a joint vote may be cast, and if the Owners do not provide such a designation, their vote will not counted for any purpose unless all Owners holding the joint voting rights vote in the same manner.
- (d) An Owner's right to vote may be suspended by the Company while any Assessment against such Owner's Lot is delinquent.

7.4 Powers and Authority of the Company. The Company has the powers of a Texas nonprofit corporation, subject only to the limitations on the exercise of those powers as are set forth in this Declaration. The Company has the power to do and perform any and all acts necessary, proper for, or incidental to, the exercise of any powers granted to it by the laws of Texas or by this Declaration. Without limiting the generality of the two preceding sentences, the Company and the Board, acting on behalf of the Company, shall have the power and authority at all times as follows:

- (a) Bylaws. To make, establish, promulgate, amend, repeal and re-enact Bylaws. The Bylaws will be established by the Board but may not conflict with this Declaration.
- (b) Assessments. To levy Assessments pursuant to Article 8.
- (c) Right of Entry and Enforcement. When an Owner is in default under these Restrictions, to enter a Lot after 24 hours written notice, without liability to any Owner or occupant, to maintain or repair any Common Area, Improvement, or other facility so as to conform to Article 6. The Company may levy a Compliance Assessment against an Owner and Lot to reimburse the Company for expenses incurred by the Company in entering a Lot and performing maintenance or repair work thereon. Failure to pay a Compliance Assessment on demand is a breach of the Restrictions giving rise to all penalties for breach set forth in Section 11.7. The Company, in its own name and on its own behalf, or in the name of and on behalf of any Owner who agrees, is authorized to begin and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Company has authority to settle claims, enforce liens, and take all such action it considers necessary or

expedient to enforce the Restrictions, but the Board is not and may not be authorized to spend Association funds to bring suit against Declarant. Each Owner will indemnify and hold harmless the Company, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Company's acts or activities under this Section 7.4(c) (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Company's negligence in connection therewith), excluding cost, loss, damage, expense, liability, claim or cause of action arising solely through the Company's gross negligence or willful misconduct. "Gross negligence" does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

(d) Common Area. To own, improve, grant and convey to any Person any Common Area, Improvements thereon, and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

(i) roads, streets, walks, driveways, trails, and paths;

(ii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;

(iii) water systems, storm water drainage systems, sprinkler systems, trash dumpster pads and screening fences; or

(iv) any other Improvement the Board determines will benefit the Owners generally.

The Company may own personal property to use in connection with the Common Area and Improvements therein.

(e) Manager. To retain and pay for the services of a manager to manage and operate the Company, including the Common Area, if the Board elects. Personnel may be employed directly by the Company or furnished by a manager. To the extent permitted by law, the Company and the Board may delegate duties, powers, and functions to the manager. Owners release the Company and the Board from liability for any omission or improper exercise by a manager of any such duty, power, or function so delegated.

(f) Other Property or Amenities. To obtain and pay for any other property (real or personal) or services and to pay any other taxes or assessments the Company or the Board is required to secure or to pay for pursuant to applicable law or this Declaration.

(g) Other Property. To acquire, own, and dispose of real and personal property

through grant, lease, gift, or otherwise.

- (h) Construction in Common Areas. To construct Improvements in Common Areas.
  - (i) Restrictions. After the Control Transfer Date, to enforce the provisions of the Restrictions against the Lots.
  - (j) In General. To do all things reasonably necessary in order to perform the duties of the Company set forth in the Restrictions.
  - (k) Entrance Gate Key Fobs: Each Owner of a Lot inside the Gates of Chital Lakes Subdivision shall receive two (2) key fobs for the purpose of entering and exiting the subdivision. Should an Owner lose both previously provided key fobs, said Owner shall pay to the Company fifty dollars (\$50.00) for a replacement. Should any key fob become defective, Owner shall notify the Company and the Company shall fix the defective fob or provide a new fob.
- 7.5 Duties of the Company. Subject to and in accordance with this Declaration, the Company shall have and perform each of the following duties:
- (a) Common Area. Accept, own and maintain in good condition and repair the Common Area, all Improvements thereon, all appurtenances thereto, and all personal property used in connection with same, including without limitation, all roadways (including rights of way), the Main Entry Gate, trash dumpsters, and associated screening and pad improvements, other entry gates, entry signs and related Landscaping.
  - (b) Taxes. Pay real and personal property taxes and other taxes and assessments levied on or with respect to the Common Area if such taxes and assessments are not levied directly on the Members. The Company will have all rights granted by law to contest the legality and the amount of such taxes and assessments.
  - (c) Insurance. Obtain and maintain in effect policies of insurance as the Board deems reasonably necessary or appropriate to carry out the functions of the Company.
  - (d) Books and Records. Keep books and records of the Company's affairs and make such books and records, together with a current copy of this Declaration, available for inspection by Owners and Mortgagees upon request during normal business hours.
  - (e) Restrictions. After the Control Transfer Date, to enforce the provisions of the Restrictions against the Lots.
  - (f) In General. Carry out and enforce all duties of the Company set forth in this Declaration and in the Restrictions.

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

## **ARTICLE VIII** **FUNDS AND ASSESSMENTS**

### 8.1 In General.

(a) Assessments under this Declaration will be levied on a uniform basis against each Lot within the Property, without regard to improvement, but no Assessments will be levied against Lots owned by Declarant. Declarant will determine the initial date for levy of regular assessments against the Lots. If additional Lots are subsequently annexed into the Property, the Owners of those Lots will be obligated to pay Assessments effective as of the date of annexation unless specified to the contrary in a Supplementary Declaration.

(b) If the obligation to pay an Assessment arises on a day other than the first day of the period for which the Assessment was levied, the Assessment shall be prorated as of the date the obligation first arose.

(c) Each unpaid Assessment, together with interest thereon and costs of collection set out herein, will be the personal obligation of the Owner of the Lot against which the Assessment fell due, and will be secured by a vendor's lien against such Lot and all Improvements thereon. No Owner may exempt himself from liability for such Assessments. The Company may enforce payment of Assessments in accordance with the provisions of this Article.

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

8.3 Regular Annual Assessments. Promptly after formation of the Company, and thereafter before the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Company during such year in performing its functions under the Restrictions, including but not limited to duties required and activities authorized herein of the Company and the Board, and including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will be levied, and the level of Assessments set by



the Board will be final and binding so long as it is made in good faith. If the sums collected are inadequate for any reason, including nonpayment of Assessments by any Owner, the Company may at any time and from time to time levy additional Assessments for the same year in the same manner. Regular Assessments will be due and payable to the Company at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion. ***Beginning January 1, 2025, all property owners shall be subject to a fee of Four Hundred Dollars (\$400.00) per year to fund maintenance of the subdivision.***

8.4 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever the Board considers special Assessments necessary to enable the Board to carry out the functions of the Company under the Restrictions. The amount of any special Assessment shall be at the reasonable discretion of the Board.

8.5 Compliance Assessments. The Board may levy a Compliance Assessment against any Lot to reimburse the Company in accordance with Section 7.4(c) for costs (including attorney's fees) incurred to place that Lot in compliance with the Restrictions.

8.6 Initial Sale Fee. The first time a Lot is sold by Declarant to an unaffiliated third party, a fee in the initial amount of **\$1,000.00** will be due and payable to the Company, \$500 by the Declarant and \$500 from purchaser. On each subsequent sale of such a Lot, a fee in the initial amount of **\$500.00** will be due and payable to the Company. The Board may adjust such fees from time to time in the Board's discretion. The fees shall be deemed "Assessments" for all purposes of this Declaration.

8.7 Interest. Late Fees. In the event of default in the payment of any Assessment, the defaulting Owner shall pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (if there is no such highest rate, then at the rate of 18% per year), together with all costs and expenses of collection, including reasonable attorneys' fees. The Board may charge late fees for delinquent payment of Assessments in such amounts as the Board elects from time to time.

8.8 Assessment Lien and Foreclosure. All sums assessed under this Article but unpaid, together with interest, any late fees and the costs of collection, are secured by the Assessment Lien, which is a continuing lien and charge on the Lot assessed, which will bind such Lot, its Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The Assessment Lien is superior to all other liens and charges against the Lot except tax liens and liens of first Mortgages that secure unpaid sums borrowed to acquire or improve the Lot in question, which are superior to the Assessment Lien. The Company, in the discretion of the Board, may subordinate an Assessment Lien to any other lien. Such subordination must be signed by a duly authorized officer of the Company. To evidence an Assessment Lien, the Company shall prepare a Notice of Lien stating the amount of the unpaid debt, the Owners of the Lot covered by the lien and a description of the Lot. Such notice shall be signed by an officer of the Company and shall be recorded in the Official Public Records of Burnet County, Texas. The Assessment Lien shall attach with the priority above set forth from the date that the payment secured becomes delinquent. On the written request of any Mortgagee, the Company shall report to said Mortgagee any Assessment which then has been unpaid more than 30 days after the date

due.

Each Owner, by accepting a deed to his Lot, recognizes the Assessment Lien as existing before his ownership of his Lot and grants the Board the right and power to bring all actions against such Owner or Owners personally to collect unpaid Assessments and other sums due hereunder as a debt, and to enforce the Assessment Lien by all methods available for the enforcement of liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter). By acceptance of the deed to his Lot, each Owner GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Company (from time to time serving) as trustee (and to any substitute or successor trustee as hereinafter provided for), that Owner's Lot and all rights appurtenant thereto, in trust, to secure such Owner's payment of Assessments and other sums due hereunder from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Company and filed in the Official Public Records of Burnet County, Texas. If the Board elects to foreclose an Assessment Lien due to nonpayment of sums secured by such lien, it will be the duty of the trustee, or his successor, as hereinabove provided, at the Board's request (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto, in accordance with the provisions of Texas Property Code §51.002 (or the successor to such statute), and to make due conveyance to the purchaser(s), with general warranty of title to such purchaser(s) binding upon the Owner(s) of such Lot and his heirs, executors, administrators and successors. Notice pursuant to such statute shall be deemed given upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner(s) at the most recent address as shown by the records of the Company, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person with knowledge of the facts to the effect that such service was completed will be prima facie evidence of the fact of such service. In any foreclosure proceeding, whether judicial or non-judicial, the Owner must pay the costs, expenses, and reasonable attorneys' fees incurred.

At any foreclosure, judicial or non-judicial, the Company may bid up to the amount of the sum secured by the Assessment Lien (including late fees, interest, costs and attorneys' fees), and may apply as a cash credit against its bid all sums due to the Company secured by the Assessment Lien foreclosed. From and after any such foreclosure, the occupants of such Lot will pay a reasonable rent for the use of such Lot, such occupancy shall constitute a tenancy-at-will, and the purchaser at such foreclosure may have appointed a receiver to collect such rent, and may sue to recover possession of such Lot by forcible detainer without further notice.

This Section 8.8 is intended to comply with the provisions of Texas Property Code §51.002, relating to non-judicial sales by power of sale. If §51.002 is amended so as to affect this Section, the President of the Company, without joinder of any Owner, Mortgagee or other person, may by amendment to this Declaration filed in the Official Public Records of Burnet County, Texas, amend this Section so as to comply with said amendments to §51.002.

## **ARTICLE IX** **EASEMENTS**

9.1 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made before the Property was subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes. Declarant reserves the right to modify, release and/or add to such easements and rights-of-way so as to most efficiently and economically develop the Property. Declarant reserves the right, without the joinder of any Owner or other Person, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, electricity and telecommunications) and storm water drainage in favor of any Person along any front, rear, or side boundary line of any Lot, which said easements shall have a maximum width of 30' from such Lot line.

9.2 Installation and Maintenance. Declarant establishes an easement upon, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities and storm water drainage systems, including but not limited to, water, sewer, gas, telecommunications, and electric lines and appurtenances thereto to the extent such utilities are now or in the future available. This easement allows utility companies, governmental agencies and other service providers to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility and/or drainage easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. No Owner may relocate electric lines, water lines, or other utilities, storm water drainage facilities or appurtenances without Declarant's prior written approval. Any utility company furnishing service may remove trees within the utility easements shown on a Plat or established in this Declaration and may trim overhanging trees and shrubs located on portions of the Property abutting such easements.

9.3 Drainage Easements. Each Owner must provide easements on its Lot for drainage and water flow, as contours of land and the arrangement of Improvements thereon require. Said drainage easement shall be located thirty feet (30') along each Lot's front and rear property lines and fifteen feet (15') along each Lot's side property line. No Owner may perform any act that would alter or change the course of drainage within the Property so as to divert, increase, accelerate or impede the flow of water over and across such easements. Without limiting the generality of the preceding sentence, no Owner may:

(a) Alter, change or modify the existing natural vegetation or design of the drainage easement so as to affect the flow of surface water through same;

(b) Alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without

Declarant's prior written approval (who may require the Owner, at the Owner's expense, to provide a written report from a licensed civil engineer establishing the proposed action will not adversely affect any other portion of the Property);

(c) Construct, erect or install a fence or other structure of any type or nature in or on the easement area (but Declarant may approve a fence if proper openings are incorporated to accommodate the flow of water over said easement (as established by a written report from a licensed civil engineer approved by Declarant and obtained at the Owner's expense, and as authorized by all applicable governmental agencies);

(d) Store anything, whether temporarily or permanently, within the easement area; or

(e) Place, store or allow accumulation of trash, garbage, leaves, limbs or other debris within or upon the easement area, either on a temporary or permanent basis.

9.4 Surface Areas. The surface of easement areas for underground utility services (if any) may be used for Landscaping subject to compliance with other provisions of this Declaration, but neither Declarant nor any supplier of any utility service who uses an easement area will be liable to any Owner or to the Company for damage done by either of them or their respective agents, employees, servants, or assigns, to any Landscaping as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area.

## **ARTICLE X** **COMMON AREA**

10.1 Conveyance of Common Area. As Declarant considers appropriate, Declarant will identify and convey to the Company, and the Company must accept, fee simple or easement interests in portions of the Property (or benefitting the Property) to be held by the Company as Common Area. Declarant may make multiple conveyances of Common Area, and the Company's obligations as to the Common Area refer only to the Common Area owned by the Company at the particular point in time. Each conveyance shall be, at Declarant's election, by special warranty deed or easement with special warranty of title, subject in either instance to all matters set forth in this Declaration, all liens securing the payment of taxes for the current and all subsequent years, and all easements, liens, rights of way, prescriptive rights, encroachments, overlapping of improvements, discrepancies, conflicts, leases, reservations, mineral severances, restrictions, covenants, conditions, regulations, and other rights, claims, title exceptions and other matters of any kind or nature affecting all or any of the real property interests conveyed as Common Area, whether of record in the Official Public Records of Burnet County, Texas or apparent on the Common Area. Each conveyance of Common Area is solely for the benefit of the Owners and the Company will hold the Common Area so conveyed solely for the use and benefit of the Owners. Any such conveyance will be made by Declarant and accepted by the Company, "AS IS", "WHERE IS", "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL. DECLARANT WILL NOT MAKE AND NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS,

AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE COMMON AREA, INCLUDING, WITHOUT LIMITATION, THE ACREAGE, WATER, SOIL OR GEOLOGY OF THE COMMON AREA OR ANY SURROUNDING AREAS, (B) THE VALUE OF THE COMMON AREA, (C) THE SUIT ABILITY OF THE COMMON AREA FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY THE COMMON AREA OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENT AL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (E) THE DISPOSAL OR EXISTENCE, IN OR ON THE COMMON AREA, OF ANY ASBESTOS, PCB EMISSIONS, HYDROCARBONS, RADON GAS, OR HAZARDOUS OR TOXIC MATERIALS, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE COMMON AREA OR MATERIALS, IF ANY, INCORPORATED INTO THE COMMON AREA, (G) THE STATE OF REPAIR OR LACK OF REPAIR OF THE COMMON AREA OR ANY IMPROVEMENTS THEREIN OR THERETO, OR (H) ANY OTHER MATTER WITH RESPECT TO THE COMMON AREA. IF THE COMPANY OR ANY OWNER REQUESTS ANY INFORMATION AS TO THE COMMON AREA, THE COMPANY OR OWNER AGREE SUCH INFORMATION WAS NOT INDEPENDENTLY INVESTIGATED OR VERIFIED BY DECLARANT. DECLARANT MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, AND DECLARANT SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE COMMON AREA OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. *The Company indemnifies and holds harmless Declarant from and against all liability, damages, suits, actions, costs and expenses of whatsoever nature including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Company or any of the Owners upon or within the Common Area.*

10.2 Extent of Easements. Every Owner has an easement of enjoyment in and to the Common Area, which right and easement is appurtenance to the Lots, and which is subject to the following:

- (a) The Company's right to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Area;
- (b) The Company's right to sell and convey the Common Area, or any part thereof (but after the Control Transfer Date, such sale or conveyance must be approved by Required Vote);
- (c) The Company's right to borrow money to improve any Common Area, and to

mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, except that after the Control Transfer Date, such mortgage, pledge or hypothecation must be approved by Required Vote;

- (d) The Company's right to take such steps as are reasonably necessary to protect the Common Area, or any part thereof, against foreclosure;
- (e) The Company's right to suspend the easements of enjoyment of any Owner during a period when such Owner is delinquent in the payment of Assessments or due to an infraction of the Company's published rules and regulations; and
- (f) Declarant's right to use and enjoy the Common Area for construction offices, construction staging areas, and any other purposes whatsoever.

10.3 Private Roads. The private roads provide access to all Lots. The private roads are private, and will be owned and maintained by the Company. Vehicular access to all of the Property will be through a controlled entry gate (the "Main Entry Gate"). The Company may make rules governing access to the Property and the use (including parking, cross-walks, and speed limits) of the private roads.

- (a) Unless Declarant agrees in writing to the contrary, after the Main Entry Gate is installed, the Main Entry Gate will remain close to the public, for at least 6 months after Declarant sells the last Lot owned by Declarant in the Property.
- (b) ***Each Owner is notified that the streets serving the Lots are not public streets, but are private roadways.*** Declarant will assign to the Company all contractors' construction warranties for the roadways, each of which will cover a period of at least 1 year after substantial completion of the private roads, and the Company will maintain the private roads after substantial completion. Substantial completion will be deemed to have occurred as to any private road on the date Declarant's engineer certifies to Declarant that such private road is substantially complete. ***The cost of maintaining the private roads and Main Entry Gate is included within the Assessment for each Lot.***
- (c) The Company may make reasonable rules and regulations, and may prescribe fines and penalties, as it considers reasonable and necessary, to promote safety within the Property, including without limitation, establishing maximum rates of speed on private roads. If an Owner, Owner's family member, guest or other occupant violates posted maximum rates of speed, that Person may be liable for a fine that will not exceed the maximum fine such Person would be liable if the violation occurred on a public road in Burnet County. If a safety violation by any particular Person occurs more than one time during any 6-month period, the right of such Person to use the private roads (except as a passenger in a vehicle or vianon-motorized modes of transportation) may be suspended for up to 30 days per

violation. Imposition of fines and suspensions of rights to use the private roads will be in accordance with then-current requirements of the Texas Property Code.

***NEITHER THE COMPANY NOR DECLARANT MAKES AND WARRANTY OR REPRESENTATION TO THE OWNERS THAT THE MAIN ENTRY GATE PROVIDES ANY SECURITY WHATSOEVER. EACH OWNER IS SOLELY RESPONSIBLE FOR PROVIDING SECURITY FOR THEIR HOME AND PROPERTY.*** On the Control Transfer Date, Declarant's rights under this Section will transfer automatically to the Board.

10.4 Public Easement. Declarant reserves an easement across the private roads for use for all governmental functions and to provide utility services, whether vehicular or non-vehicular, including fire and police protection, solid and other waste material pickup and any other purpose any governmental authority or utility service provider deems necessary. No governmental entity, utility service provider, trash service provider or their agents or employees is responsible or liable for any damage to the surface of Private Roads because of governmental, utility company or trash vehicles traversing over same. Declarant reserves on behalf of Declarant and the Company an easement on, over and across each Lot within 20' of each private roadway to install, replace, repair, maintain, remove and reinstall traffic and directional signs. On the Control Transfer Date, Declarant's rights under this Section will transfer automatically to the Board.

## **ARTICLE XI MISCELLANEOUS**

11.1 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2050, unless amended as herein provided. After December 31, 2050, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of 10 years each, unless amended or extinguished by a written instrument executed by the Owners of at least 80% of the Lots then subject to this Declaration.

11.2 Amendment.

- (a) By Declarant. This Declaration may be amended unilaterally by Declarant until the Control Transfer Date. No amendment by Declarant is effective until a written amendment executed and acknowledged by Declarant is recorded in the Official Public Records of Burnet County, Texas.
- (b) By Owners. In addition to the method in Section 11.2(a), this Declaration may be amended by recording a written amendment in the Official Public Records of Burnet County executed and acknowledged by the President and Secretary of the Company, which certifies the amendment was approved by Owners entitled to cast at least 80% of the number of votes entitled to be cast pursuant

to Section 7.3.

11.3 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the 3rd day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Company for the purpose of service of notices.

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

11.5 Non-liability. Neither Declarant, the Board, nor any member thereof will be liable to the Company, any Owner or any other Person for any loss, damage, or injury arising out of their being in any way connected with the performance of Declarant's or the Board's duties under this Declaration unless due to the willful misconduct, gross negligence or bad faith of Declarant, the Board or its member,

11.6 Assignment of Declarant. Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person, and may permit the participation, in whole or in part, by any other Person, in any of its privileges, exemptions, rights, and duties hereunder. Any assignment by Declarant will be effective only when an instrument executed and acknowledged by Declarant evidencing such assignment is recorded in the Official Public Records of Burnet County, Texas.

11.7 Compliance with the Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. In addition to the Company's rights set forth herein, if any Owner fails to comply with any of the Restrictions within 10 days after notice of such failure from Declarant or the Board, such failure will give rise to a cause of action to recover sums due for damages or injunctive relief or both, which may be maintained by Declarant, the Board, or by any Owner, at the individual Owner's election and expense. Declarant may establish a schedule of fines for violations of the Restrictions, and may adjust the amounts set forth on such schedule from time to time. The schedule, as adjusted, shall be provided to an Owner upon such Owner's request. If any Owner defaults in the payment of a fine so assessed, such Owner shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the fine, beginning 10 days after the date the fine is assessed (or if there is no such highest rate, then at the rate of 2% per month), together with all costs and expenses of collection, including reasonable attorneys' fees. Declarant also may charge a one-time late fee for delinquent payment of a fine in such amount as Declarant may from time to time deem appropriate. The payment of any fine so assessed, together with attorneys' fees, interest and/or late fees thereon, shall be secured by the Assessment Lien, and shall be subject to the same penalties for non-payment, including without limitation, judicial or non-judicial foreclosure. Once the 10-day notice period of a violation has expired, each day during which a violation continues shall be deemed a separate violation for which an additional fine may be



imposed. On the Control Transfer Date, Declarant's rights under this Section will transfer automatically to the Board.

11.8 No Warranty of Enforceability. While Declarant has no reason to believe that any of the covenants, terms and provisions of the Restrictions are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such covenants, terms, or provisions assumes all risks of the validity and enforceability thereof and, by acquiring the Lot, will indemnify and hold Declarant harmless therefrom.

11.9 Enforcement; Non-waiver. Except as otherwise provided herein, any Owner at such Owner's expense, Declarant, and/or the Company, may enforce any and all provisions of this Declaration and the Restrictions. This right of enforcement includes both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce a provision of the Restrictions at any time will not waive the right thereafter to enforce any such provision or any other provisions of the Restrictions.

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

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

determined. The cost of such mediator shall be paid equally between the parties.

IN WITNESS WHERE OF, Declarant has executed this Declaration on \_\_\_\_\_,  
2024.

**DECLARANT**

NMS Bertram Property Investors LLC

\_\_\_\_\_  
Managing Member

STATE OF TEXAS )

COUNTY OF BURNET )

Before me on this day personally appeared \_\_\_\_\_, whose name is subscribed to the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same as the act of NMS Bertram Property Investors, LLC, a Texas Limited Liability Company, as its Managing Member, for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.