

**Correction**  
**Declaration of Restrictive Covenants of**  
**The Landing at Heritage Oaks**  
**Subdivision**

**Basic Information**

Date: April 19, 2021

Declarant: Alethium Development, 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.

Declarant's Address: PO Box 803, Belton, Bell County, Texas 76513

Property Owners Association: The Landing at Heritage Oaks Homeowners Association, Inc., a Texas nonprofit corporation

Property Owners Association's Address: PO Box 803, Belton, Belton, Bell County, Texas 76513

Property: All the real property shown on the Final Plat for The Landing at Heritage Oaks subdivision, recorded as Instrument No. **2021-22313**, Official Public Records of Bell County, Texas.

**Definitions**

"ACC" means the Architectural Control Committee established in this Declaration.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Board" means the Board of Directors of the Property Owners Association.

"Builder" or "Builders" means a builder approved by Declarant and who owns one or more Lots for construction of improvements upon one or more Lots for resale to others.

"Builder Member" means a builder approved by Declarant and who owns one or more Lots for construction of improvements upon one or more Lots for resale to others.

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot on the plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Property Owners Association.

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

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

“Governing Documents” means this Declaration and the certificate of formation, Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

“Living Unit” means a single-family residence and its garage situated on a residential lot.

“Lot” means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded as Instrument No. 2021-22313 of the real property records of Bell County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Property Owners Association” or “Association” means The Landing at Heritage Oaks Homeowners Association, Inc., a Texas non-profit corporation, its successors, assigns, and replacements as provided in this Declaration, that has jurisdiction over all Properties located within the land encumbered or to be encumbered under this Declaration, as may be amended. It has the power, duty, and responsibility of maintaining and administering the Common Area and administering and enforcing the Declaration and any amended or supplemental Declaration.

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

“Rules and Regulations” means the rules and regulations promulgated by the Board from time to time and which may be filed in the Real Property Records of Bell County, Texas.

“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.

“Structure” means any improvement on a Lot (other than a Residence), including, but not limited to, a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, storage building, or recreational equipment.

“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.

## **Clauses and Covenants**

### **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other

occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Governing Documents and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

4. Declarant has the right to file an amendment to these restrictive covenants, without the necessity of joinder by another Owner of Lots within the subdivision, or any interest therein, for so long as Declarant owns a lot within the subdivision for development purposes, for any reason. Notwithstanding the foregoing, Declarant has the right to file an amendment to these restrictive covenants, without necessity of joinder by any other Owner of Lots within the subdivision, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, removing any contradiction in the terms hereof, or for the purpose of making such additions or amendments hereto as may be required by FHA, HUD, or VA to qualify the properties for mortgage guaranties issued by FHA and/or the VA.

#### **B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

#### **C. Property Rights**

Every Owner, guest, invitee, customer, and tenant will have a right and easement of ingress and egress, use, and enjoyment, in and to the Common Area that will be appurtenant to and will pass with the title to every Lot, subject to the following provisions.

1. The right of the Property Owners Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

2. The right of the Property Owners Association to suspend an Owner's voting rights and the right to use any facility for any period during which any assessment of the Property Owners Association against that Owner's Lot remains unpaid, and for infractions by an Owner of the Restrictive Covenants contained in this Declaration and/or the Property Owners

Association Rules and Regulations for the duration of the infraction.

3. The right of the Property Owners Association to grant easements in and to the Common Area to any public agency, authority, or utility for such purposes as benefits the Properties and Owners.

4. The right of the Property Owners Association to borrow money for the purpose of improving the Common Area, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located on the Common Area, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided a majority of each Class of Members present or represented by proxy at a meeting called for such purpose will approve; provided however, the lien and encumbrance of any such mortgage given by the Property Owners Association will be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision.

5. The right of the Property Owners Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Property Owners Association. No such dedication or transfer will be effective unless an instrument agreeing to such dedication or transfer has been approved by a majority of the Class A Members of the Property Owners Association who are present or represented by proxy entitled to cast a meeting duly called for such purpose, and by the Class B Members so long as the Class B membership exists.

6. The right of the Property Owners Association to convey small portions of the Common Area to adjacent Owners when, in the sole opinion of the Board, the portion of the Common Area to be conveyed is so small in size, amount, and value that it will have no material consequence to or impact upon the Property Owners Association or the Subdivision or negatively affect the overall usage of the Common Area by the Owners as a result of such conveyance. In such an event, the Board may authorize such conveyance without the joinder of any other Owner.

7. The right of the Property Owners Association to prescribe Rules and Regulations as they may be expanded, amended, or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of the Owner's Lot may be affected by this provision and that the Rules and Regulations may change from time to time. The Board has the authority to enforce the Rules and Regulations by all appropriate means, including but not limited to the imposition of fines if notice and opportunity to be heard are given. A Member found to have violated the Rules and Regulations will be liable to the Property Owners Association for all damages and costs, including reasonable attorney's fees.

#### **D. Use and Activities**

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.

2. *Prohibited Activities.* Prohibited activities are—
- a. any activity that is otherwise prohibited by the Governing Documents;
  - b. any illegal activity;
  - c. any nuisance, noxious, or offensive activity;
  - d. any dumping of rubbish;
  - e. any storage of—
    - i. building materials except during the construction or renovation of a Residence or a Structure;
    - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
    - iii. unsightly objects unless completely shielded by a Structure;
  - f. any exploration for or extraction of minerals;
  - g. any keeping or raising of animals, livestock, poultry, or Exotic or Dangerous Animal (as defined below) of any type except for such as dogs and cats generally recognized as common domesticated household pets (collectively "Pets"). An "Exotic or Dangerous Animal" is an animal that may pose a safety or health threat to the Owners of the Subdivision, their guests, invitees, or tenants, and includes the (a) dog breeds of pit bull and rottweiler, regardless of whether the animal is purebred, a mixed breed, or registered with the AKC or similar registration organization; (b) poisonous insects, amphibians, or reptiles; (c) boa constrictors and other constrictor reptiles; (d) animals considered "feral" or wild by nature except guinea pigs, hamsters, and gerbils; (e) ferrets, and (f) alligators. Additional breeds of animals may be added to the definition of Exotic or Dangerous Animal from time to time, as determined necessary by the Declarant or Association Board, in their sole discretion, and the Rules and Regulations will be amended to include such breed of animal.
    - i. No more than four (4) Pets (in any combination, but in no event will the combination include more than two (2) dogs and two (2) cats) may be kept on a Lot. No Pet may be bred, kept, or maintained for any commercial purpose on a Lot. The ACC may grant authority to keep, maintain, or shelter more than the allowed number of Pets on a Lot, when the ACC, pursuant to receipt of a written application, determines that such applicant has adequate shelter for, and

is capable of keeping or maintaining the pets without posing a nuisance to other Owners. The ACC may elect to terminate this authority if its terms or other provisions of the animals and pets covenant are not complied with.

- ii. All Pets must be kept in strict accordance with all local and state laws and ordinances (including leash laws), and in accordance with all rules established by Declarant or The Landing at Heritage Oaks Homeowners Association, Inc. (the "Association"). All Pets must be vaccinated in accordance with local custom and laws. Each Pet must wear a tag provided by a licensed veterinary to evidence the up-to-date rabies vaccination. All Pets must be kept indoors, in a fenced area on the Owner's Lot (fenced with materials as required by the Fences article of these Covenants, or by electronic animal control device), or on a leash. It will be the responsibility of the owner of the Pet to prevent the animals from running loose or becoming offensive or a nuisance to other Owners of the Subdivision, their guests, invitees, or tenants. Offensive barking or howling is considered an "offensive activity" and is not permitted. Barking or howling that continues for more than 15 consecutive minutes is conclusively presumed to constitute offensive activity. It is the responsibility owner of their Pet to clean up after it when in the Common area or on the private property of others. Pets are not permitted in any Common Area except on a leash.
- h. any commercial or professional activity except reasonable home office use;
- i. the renting of a portion of a Residence or Structure;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except—
  - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
  - ii. political signage not prohibited by law or the Governing Documents;
- l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;

- o. hunting and shooting;
- p. occupying a Structure that does not comply with the construction standards of a Residence; and
- q. any activity that is otherwise prohibited by the Governing Documents.

3. No motor vehicle, including automobiles, vans or SUVs, can be parked in a front yard, except in the driveway of any Lot. Automobiles cannot be maintained, repaired, serviced, rebuilt or dismantled on any Lot, except within the confines of the garage. No vehicle can be painted on any property in the Subdivision. This provision does not prevent a vehicle from being washed or polished in the driveway of any Lot.

4. No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs and trailers), towed trailer unit, motorcycle, disabled junk, or abandoned vehicle, motor home, mobile home, recreational vehicle, or any other vehicle, the primary purpose of which is for recreational, sporting, or commercial use, will be parked or stored in, on, or about any Lot or street within the Subdivision, except within the attached garage or unless such vehicle is approved by the ACC. These vehicles must be removed from the general area within 72 hours unless approved in writing by the ACC.

5. Vehicles with signage or with tonnage exceeding three-fourths (3/4) ton, campers, mobile homes, motor homes, boats or trailers are not permitted to be parked overnight or for extended periods during the day in, on or about the streets of Subdivision, or be parked in, on or about the front or side yards of any lot therein. When such vehicles are parked in the rear yard they must be screened from adjacent lots and public view.

6. Hazardous Cargo: No motor vehicle, trailer or container of any type or size that normally (or occasionally) transports hazardous, flammable, explosive or poisonous cargo is allowed in, on or about any part of Subdivision at any time. Pest control vehicles are permitted in Subdivision for residence service visits only and may NOT remain overnight or for extended periods during the day unless parked inside a locked garage.

7. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite, or other signals of any kind will be placed, allowed, or maintained upon a Lot that is visible from any street, private right-of-way, Common Area, or other Lot unless it is otherwise impossible to receive signals from the location. In that event, the receiving device may be placed in a visible location as approved by the ACC. The ACC may require as much screening as possible while not substantially interfering with reception. The Declarant and the Association will have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable systems, or other apparatus for the transmission of television, radio, satellite, or other signals for the benefit of all or a portion of the Properties. No satellite dishes larger than 1 meter in diameter will be permitted. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No Multichannel Multipoint Distribution Service ("MMDS") antenna mast may exceed the center ridge of the roofline by the height established by the Telecommunications Act of 1996 (the "Act"), as it may be amended from time to time. No exterior antennas, aerials, satellite dishes, or other apparatus that transmit television, radio, satellite, or other signals of any kind will be permitted, placed, allowed, or maintained upon any portion of the Property. The Declarant, by promulgating this

Article is not attempting to violate Texas law as it may be amended from time to time. This Article will be interpreted to be as restrictive as possible while not violating the Texas law.

**E. Construction and Maintenance Standards**

1. *Lots*

- a. *Consolidation of Lots.* An Owner of adjoining Lots may consolidate those Lots into one site for the construction of a Residence only if the Owner has obtained approval from the ACC and Bell County Commissioner's Court. Each consolidated Lot will meet all lawful requirements of any applicable statute, ordinance, or regulation.
- b. *Subdivision Prohibited.* No Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

2. *Residences and Structures*

- a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Maximum Height.* The maximum height of a Residence is two-story. The maximum height of the home and accessory buildings on any lot shall be forty-five feet (45') measured from the finished grade of the lot to the highest peak of the roof.
- c. *Required Area.* The total area of a Residence, exclusive of porches and garages, must be at least 2,800 square feet. The total area of the first story of a two-story Residence, exclusive of porches and garages, must be at least 1,800 square feet.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.
- e. *Building Setback Lines.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures (other than sidewalks and driveways) must be located behind the front wall of the Residence. In no event may any Residence or Structure (other than sidewalks and driveways) be located within 10 feet of a side Lot line or within 15 feet of



- a rear Lot line. The ACC may establish additional setback requirements as it deems necessary.
- f. *Approval of Plans by ACC.* Prior to commencement of any work on a Lot, including any grading or clearing thereof (other than weed or trash removal), the Owner thereof shall have received approval of all plans in accordance with Section H of these Restrictions.
  - g. *Garages.* No front entry garages on a Lot may be constructed without ACC approval. Each Residence must have at least a two-car garage accessed by a driveway. Garages may be detached or attached to the residence or to breezeways or covered porches attached to the residence. Garages must have operable doors to facilitate vehicular parking inside. Garage doors are to be sectional and roll-up in design. The garage door exterior must be painted or stained to harmonize with the residence and other residences within the Subdivision, and shall at no time contain "garage door art" of any type or kind, whether painted or applied.
  - h. *Garage Conversions.* Enclosure or conversion of a garage, or portion thereof, to living, storage, or other use is permitted only if upon completion, the residence is served by garage space compliant with all covenants. Driveway material to the enclosed converted space must be replaced with landscaping. Garage conversion plans, whether attached or detached, must receive prior Declarant or ACC approval. Converting a garage, or a portion thereof, to temporary or permanent pet space through partial or full wall enclosure (screened or otherwise) of the garage door opening is not permitted.
  - i. *Ceiling Height.* Per city code.
  - j. *Ridge Vents.* Only continuous shingle covered ridge vents will be allowed. Any other venting must be concealed from any street elevations of the house.
  - k. *Gutters.* Rain gutters are optional on each residence. Gutter colors should be coordinated with the trim color of the house.
  - l. *Fireplace Chimneys/Stack Vents.* Chimney caps are required. All roof penetrations must be located in the rear of the home where possible or at the least visible section of roof mass. Fireplace chimneys must be constructed of:
    - i. brick, stone or stucco to match the residence or
    - ii. constructed with fiber-cement siding (and trims) and painted to match the exterior paint of the residence.
  - m. *Skylights/Solar Collectors.* Skylights shall not be located on any

elevation of the home which faces a street. Only flat skylights shall be allowed elsewhere. There shall be no solar collectors on any home, unless prior approval of the Committee is obtained. Skylights and any proposed solar collectors must be shown on plans when submitted or (if after construction) on a drawing submitted to the ACC.

- n. *Window Coverings.* No foil, sheets, reflective materials, paper or other inappropriate materials or bright colors shall be used on any windows for drapes, sunscreens, blinds, shades or other purpose on a temporary or permanent basis. Interior window coverings shall be lined in a neutral color so as not to detract from the exterior of the home.
- o. *Exterior Doors.* Either Metal, Fiberglass or Solid core wood doors are acceptable.
- p. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within one hundred eighty (180) days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within one hundred eighty (180) days and the Lot restored to a clean and attractive condition.
- q. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC.
- r. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- s. *Sidewalks.* When the Residence is constructed, the Lot may not be improved with sidewalks.
- t. *Landscaping.* Landscaping must be installed within forty-five (45) days after occupancy. The minimum landscaping is specified below in this Declaration and in the standards of the ACC.
- u. *Completion of Improvements.* Once construction of a house (or any addition thereto) or outside structure has commenced. it must be completed within twelve (12) months. If such improvements are not completed within the time period specified in this section, then the lot owner shall remove the foundation from the lot and restore the lot to a clean and attractive appearance (unless otherwise approved by the ACC).

### 3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only composition, tile, or metal roofs may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks

must be painted to match the roof color. All roofs must have a minimum 10/12 pitch slope unless otherwise approved by the ACC. All roofs must have a minimum of 30-year roof shingles. Wood shake or wood shingle roofing materials are not permitted. Preferred vent pipe and flue locations are behind the front roof ridge.

- b. *Fascia, Eaves & Soffits.* Fascia, eaves, and soffits shall be constructed of Hardy Plank or similar. No vinyl or aluminum will be permitted.
- c. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence.
- d. *Exterior Walls.* All Residences must have at least ninety percent (90%) of their exterior walls, including exposed foundation, be masonry, minus windows and doors, unless otherwise approved by the ACC. No aluminum or vinyl siding will be allowed unless otherwise approved in writing by the ACC. Any siding visible from the street is prohibited unless decorative and approved by the ACC in writing.
- e. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.
- f. *Driveways.* All driveways must be surfaced with concrete and constructed with 3/8" rebar and not wire. Driveways may not be surfaced with dirt, gravel, shell, or crushed rock.
- g. *Insulation.* For exterior walls, cavity fibrous or cellulose insulation shall be installed at minimum level of R-15 or spray foam at minimum depth of 3.5". Attic insulation shall be spray foam attic ceiling at minimum of 5.5".
- h. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

#### 4. *Construction Deposit*

- a. At the time of submission of plans and specifications to the ACC, the Owner shall make a \$500 Construction Deposit payable to Alethium Development. (or its designee). The ACC shall have the right to require the Owner to increase the amount of this Construction Deposit at any time such Construction Deposit has been depleted by prior violations (so that the Construction Deposit on account is \$500). The purpose of the Construction Deposit is to insure:
  - i. Plans are submitted to the Committee as set forth. In the event construction of a house or other improvement are started without the prior written approval of the plans for such, then the entire amount of the Construction Deposit shall be automatically forfeited as liquidated damages to the Association. Further, all other rights of

the Developer, the Committee and the Association may have with respect to approval of the plans shall continue, including rights to injunctive relief, damages and other rights.

- ii. Landscaping is accomplished as set forth in Section 3.9 above. In the event landscaping is not accomplished according to Section 3.9 above, then the entire amount of the Construction Deposit shall be automatically forfeited as liquidated damages to the Developer. Further, all other rights of the Developer, the Committee and the Association may have with respect to approval of the plans shall continue, including the right to fine the Owner, rights to injunctive relief, damages and other rights.
- iii. A clean job site, compliance with the Restrictions, overall community appearance, and that the structure to be constructed is built according to the approved plans. A written notice will be issued by the Committee to the Lot Owner regarding any violations or damage caused by the construction. Examples of damage are the breaking of any sidewalk in the Subdivision, "rutting" of any right of way, servitudes or other lots in the Subdivision caused by construction related vehicles, the spilling of concrete on any streets or other areas of the Subdivision and any trash or debris dispensed in the Subdivision. If the violation or damage has not been corrected within five (5) days after the date of the notice, the violation or damage may be corrected by the Committee and the cost of the same shall be charged to the Lot Owner. Said amount may be deducted, without further notice, from the Construction Deposit until said deposit is exhausted, at which time the Lot Owner will be billed for any additional expense. The Association shall have lien rights to enforce payment of any amount billed but not collected within thirty (30) days after the date of such bill. Notwithstanding the provisions of this Section however, neither Developer, the Association nor the ACC shall be responsible for the damage to any Lot caused by the activities of the Owner (or builder or others involved in any activity on their behalf) of any other Lot, and shall not be held responsible for any such damage if deductions are not made from the Construction Deposit or other damage collection provisions are not made for such damage. If no violations or damage occur (or if no deductions for such damage are made from the Construction Deposit by the Committee or the Association), the Construction Deposit will be refunded in full to the original submitter of the Construction Deposit after satisfactory completion of construction of improvements on the Lot in accordance with the approved plans and completion of landscaping as set forth in these Restrictions. To the extent any of the Construction Deposit was spent for correction of any violations or damage, any balance will be refunded to the original submitter of the Construction Deposit after the satisfactory completion of the improvements and

landscaping.

5. *Foundations*

- a. Foundations shall be designed by a professional engineer with post stress system for each home. The Committee's approval of construction plans for a home is limited only to appearance and not structural design or engineering for which the Committee takes no responsibility and shall have no liability. If any more than fifteen inches ( 15") of slab shows above ground level the excess amount must be covered by a brick ledge.

6. *Spillage.*

- a. Operators of vehicles are required to see that they do not spill any damaging materials while within the Subdivision. If spillage of a load occurs, operators are responsible for cleaning up the same. If an operator does not clean up a spill, the cost of the cleanup will be deducted from the Construction Deposit of the responsible Lot Owner. If the cost of the cleanup exceeds the available amount of the Construction Deposit, the responsible Lot Owner will be billed for and be obligated to pay the cost of such clean up.

7. *Athletic and Play Facilities.*

- a. Basketball goals, swings, slides, playhouses, sandboxes, or any other sporting or play equipment (temporary or permanent) may not be attached to the front of a dwelling or located in front of a dwelling or located in front of a corner side (unfenced) yard without the consent of the ACC. In no event should basketball or other sporting items be placed on the street.

8. *Trash Receptacles.*

- a. All trash and rubbish shall be kept in appropriate containers intended for temporary storage of trash and rubbish, and shall be stored adjacent to the house or any building structure on a lot. The ACC has the right to specify a specific location on each Owner's Lot in which garbage containers must be placed for trash-collection service.

9. *Rubbish, Trash and Garbage.*

- a. No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

10. *Outbuilding Construction.*

- a. All outbuildings or storage buildings must be of new construction from the ground up. Any outbuilding or storage building constructed on a Lot within the Subdivision

must be of a type, design, and material matching or harmonizing with the Residence and approved by the Declarant or the ACC prior to construction. No portable building (i.e., metal or plastic storage building or “Morgan building”) may be moved onto any Lot within the Subdivision.

#### 11. *Retaining Walls*

a. Any retaining wall constructed as a part of the Lot's landscaping must be constructed of masonry materials approved by the Declarant or ACC. Engineered plans compliant with all applicable codes and sealed by a registered professional engineer, must be submitted for retaining walls exceeding two (2) feet in height. Railroad ties may not be used in any retaining wall or other form of landscaping.

#### 12. *Fences*

a. All fence plans, designs, location, and placement must be approved by the Declarant or the ACC, which has the right to require certain types of fences and certain types of materials to be used, including but not limited to columns constructed of brick, stone, or masonry matching the house with ornamental iron in between wood or similar material.

b. All perimeter privacy fencing must be installed by the purchaser of the Lot within thirty (30) days of the closing date of the purchase unless a Builder or Declarant has already installed the perimeter privacy fencing. All perimeter privacy fencing must be approved and constructed, according to Declarant's fence plans (a copy of such fence plans may be obtained by Declarant), of cedar with metal posts. All fences located between Residences must present a uniform appearance and be in line with each other. All cedar fences must be at least six (6) feet in height.

c. Chain link fences are prohibited except for use in the construction of a fenced-in area or dog run located within the privacy fenced rear yard of an Owner and provided that the chain link fence is not visible from a street or roadway.

d. All other fences must be of a height, style, and design that may be approved by Declarant or the ACC.

e. In the event that any fence intersects (the “Intersecting Fence”) with any fence that is of a higher or lower height, the Intersecting Fence will be increased or decreased in height, at a steady rate, over the last ten (10) feet in length of such Intersecting Fence before it intersects with the higher or lower fence so that there is a smooth transition from the lower level to the higher level. Unless otherwise approved by the Declarant or the ACC, no two (2) fence segments of different heights will meet without the ten-(10) foot transition area required above. For purposes of this paragraph, a fence will “intersect” with another fence at any point where there is an appearance from any street or roadway that the fence segments meet or are in close proximity to each other.

f. Each Owner will be responsible for the maintenance, repair, replacement, and upkeep of his fence.

g. Divider fences are fences located on or parallel to a property line common

with two or more Lots. Such fences may not be placed inside the property line if they will create an area that may not be properly maintained or will prevent a neighbor fence connection.

h. Drainage and Fence Easements (defined below) created hereby permit installation and maintenance of any future drainage structures required to provide adequate drainage between Lots and for connection of divider fences. A Lot Owner may not prohibit an adjacent Lot Owner from connecting to a fence.

i. Fences must be functional, well maintained, and in plumb, level, and square condition, with gates and pickets in place. Damaged or deteriorated fences must be repaired or replaced promptly by the Owner. If the original Owner of a divider fence is unknown, repair or replacement expense for divider fencing on a common property line is to be shared equally by the respective Lot Owners.

j. Privately owned, street-facing fences that are not maintained, as set forth above, may be repaired or replaced by the Property Owners Association at the respective Lot Owner's expense. Easements for access to Lots for such fence repair or replacement are hereby created.

k. All wood privacy fences must be stained immediately upon installation of the fence. Fence stain shall be cedar in color, equal to or comparable with Flood brand "CWF-UV Oil", PPG brand "Sun-Proof Solid Stain," or alternate as authorized by the ACC.

l. Drainage and Fence Easements.

i. A five (5) foot wide easement (the "Fence Easement") will run adjacent and parallel to and on each side of a Lot's side and rear boundary lines and will run the entire length of a Lot's side and rear boundary lines. An easement is hereby reserved for the use and benefit of the adjacent Lot Owner, the Declarant, and the Property Owners Association to provide ingress, egress, and regress upon, over, and across the Fence Easement to the extent such Fence Easement is necessary to permit fences to connect with other fences and to allow the Declarant or the Property Owners Association to repair or replace any Owner-neglected fence or Owner-neglected landscaping, including trimming of brush, vines, shrubbery, and trees that are located with or protrude into the Fence Easement, as the Declarant or the Property Owners Association in its sole discretion deems appropriate.

ii. Each Owner has the ultimate responsibility for the construction and installment of and maintenance, upkeep, repair, and replacement of any and all Owner-owned improvements located or to be located within the Fence Easement, including but not limited to any fencing, decorative lighting, and landscaping. The Property Owners Association, at the Property Owners Association's sole discretion, will have the right to control the construction, installation, and maintenance, upkeep, repair, and replacement of any and all Property Owners Association-owned improvements located or to be located within the Fence Easement, including but not limited to any entrance walls, entrance monuments,

fencing, and decorative lighting, with the exception of landscaping. The Property Owners Association will have the right and responsibility for landscaping that portion of the Fence Easement that lies between any entrance wall or fence and the street running parallel to any entrance wall or fence, as shown on the Subdivision Plat.

iii. No Owner may damage, deface, or mar the surface or any portion of any improvements constructed or installed within the Fence Easement. No structure, planting, fence or other material may be placed or permitted to remain within the Fence Easement that may damage the surface of any improvements constructed by Declarant or the Property Owners Association within the Fence Easement, or interfere with the right of ingress, egress, and regress over the Fence Easement or any ingress easement granting access to the Fence Easement. Neither the Property Owners Association nor Declarant will be liable for any damages done by them or their assigns, agents, employees, or servants to property of the Owners situated on land covered by the Fence Easement.

iv. Easements for drainage throughout the Subdivision are reserved as shown on the Subdivision Plat or by written instrument filed in the Official Public Records of Real Property of Bell County, Texas, prior or subsequent to the filing of the Subdivision Plat. No Owner of any Lot in the Subdivision may perform or cause to be performed any act that would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate, or impede the natural flow of water over and across the easements.

### 13. *Sprinkler Systems.*

a. Initial installation of the irrigation or water sprinkling system must be completed by the Builder Member or Owner within 30 days of the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ACC.

b. All front and side yards of Lots must have an underground irrigation or a water-sprinkling system for the purpose of providing sufficient water to preserve and maintain the landscaping of the Lot in a healthy and attractive condition. Each Owner will be responsible for the maintenance, repair, replacement, and upkeep of his irrigation or water sprinkling system.

### 14. *Trees*

a. Removal of trees more than two (2) inches in diameter or more than six (6) feet in height is prohibited without the written permission of the Declarant or the ACC, excepting trees located within the footprint of the Residence, garage, walks, drives, and patios, and on an adjacent two (2) foot perimeter to the footprint.

b. Each front yard of a lot must have a minimum of two (2) hardwood trees of at least a diameter of three (3) inches and height greater than six (6) feet. Any required tree plantings necessary to achieve the foregoing requirement must be completed within 30 days of



the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ACC.

15. *Tree Houses*

- a. No tree houses may be constructed in any tree on any Lot.

16. *Flagpoles and Flags*

a. Each Lot (or dwelling site) is limited to one flagpole and one flag. Flagpoles may be attached to a dwelling or freestanding and must be constructed of permanent, long-lasting materials harmonious with the dwelling. Ground mounted poles may not exceed 20' in height and flags may not exceed 3' x 5'. Permitted flags include the flag of the United States of America, the flag of the State of Texas, and an official or replica flag of any branch of the United States armed forces, or any flag with prior approval of the ACC. External flag halyards must be secured so as not to produce noise offensive to nearby lots. Lights to illuminate flags must not develop excessive glare to nearby streets or lots. The location of flagpoles must be approved prior to installation by the Declarant or ACC.

17. *Landscaping.*

a. All landscaping (planting of trees, grass sod, and landscaping beds) of each Lot must be completed within 30 days of the completion of the Residence but in any event prior to the Owner occupancy of the Residence, unless Owner has received an extension from the ACC, in a design and manner approved by the Declarant or the ACC. The front and side yards of all Lots, from the front wall of the house, will be fully sodded with St. Augustine, Bermuda, Prairie Buffalo Grass, or other sod, drought-resistant landscaping, or water-conserving natural turf approved by the Architectural Committee. Each Builder Member or Owner will cause the front and side yard lawns for each Lot bearing a completed Residence to be installed with fully sodded grass or landscaping within 30 days of the completion of the Residence. Any lawn will include the unpaved area between the Lot and the curb of any street or roadway adjacent to such Lot. If, however, construction of the Residence is completed at a time of year when seasonal or other conditions make installation of the sod, grass, trees, shrubbery, or other landscaping improvements impractical, the Builder Member and/or Owner will enter into a separate written Agreement with the ACC or the Property Owners Association, in form and substance required by the ACC or the Property Owners Association, extending the date for installation of the lawn and landscaping and establishing a date by which such lawn and landscaping will be installed.

b. Owners may enter into voluntary agreements for joint lawn maintenance of all or any part of the lawn; provided, however, that lawn maintenance will remain the ultimate responsibility of each Owner. Builder Members will be responsible for maintaining a healthy lawn until the Residence is sold to a third party.

c. With the affirmative vote and approval of the Owners of 75% of the Lots in the Subdivision, a Landscaping Committee may be created. If a Landscaping Committee is created, it will be responsible for the ordinary maintenance of the landscaping of all Lots, but excluding any Patio. The members of such a Landscaping Committee will be appointed by the

Board of Directors and will serve at the pleasure of the Board of Directors. A “Patio” is any intimate garden, courtyard, or porch area immediately adjacent to the Residence, whether covered or not. Ordinary maintenance will include sodding (after the initial sodding), mowing, fertilizing, weed control, and the planting, care and replacement of trees and shrubbery (after the initial planting), but will not include irrigation, which shall remain the obligation of the Lot owner.

- i. If created, the landscaping maintenance described in this section will be the sole obligation of the Landscaping Committee, and the Owners will have no individual right or obligation to maintain, alter, add to, or replace the landscaping of the Owner’s respective Lot.
  - ii. If created, the operations of the Landscaping Committee will be funded by adjustments to the Annual Assessments described below.
  - iii. If created, the Landscaping Committee must approve, in advance, any replacement or modification of the landscaping of a Lot by an Owner. If an Owner-requested replacement or modification of the landscaping is approved by the Landscaping Committee, the Owner will be solely responsible for the installation and planting of such replacement or modification of the landscaping; however, such replacement or modification to the landscaping must be completed, at the sole discretion of the Landscaping Committee, within a reasonable period of time. The Owner will be responsible for any extraordinary care or maintenance of the replacement or modification of the landscaping upon his Lot.
- d. No vegetables will be grown in any yard that faces a street or Common Area.

18. *Carports.*

- a. No carports may be constructed on any Lot. No add-on patio covers may be constructed on any Lot unless approved by the Declarant or the ACC.

19. *Jobsite.*

- a. Contractors are required to keep their job sites as neat and clean as possible. Construction materials shall be stored in a neat and orderly manner at all times during construction. Mud from construction vehicles on the streets of the Subdivision shall be removed before each day’s end. Materials are not permitted to accumulate on any Lot for a period exceeding 30 days from their first delivery. Contractors and their workers, subcontractors or suppliers may not bring or consume alcohol or illegal substances in the Subdivision.

**F. Owners’ Obligation to Repair**

- 1. Owner solely will be responsible for exterior maintenance upon each Lot and

associated building, fence, structure, underground irrigation, or water sprinkling system, or improvement that is subject to assessment hereunder, including paint, repair, replace, and care for roofs, gutters, downspouts, exterior fence or wall surfaces and structures, exterior building surfaces (including glass, windows, light bulbs, awnings, door fixtures, and hardware), outdoor lighting, walks, driveways, parking areas, and other exterior improvements. The Property Owners Association will be only be responsible for the maintenance of Declarant's fence facing FM 93.

2. Maintenance and repair of all such areas and items set forth above as the Owner's responsibility will be the sole responsibility of the individual Owner, unless the Property Owners Association, in the Property Owners Association's sole discretion and in accordance with the provisions of the Declaration, deems that maintenance, repair, or care of other items or areas by the Property Owners Association or its representative would be in the best interest of the Property Owners Association. In the event that the need for maintenance or repair is caused through the willful or negligent action or inaction of the Owner, his family, or guests, invitees, or tenants, the cost of such maintenance or repairs will be added to and become a part of the assessment to which such Lot is subject in accordance with the provisions of the Declaration. The Property Owners Association or its representative has the right to enter any Lot for the purpose of performing its duties hereunder.

3. Each Owner will, at his sole cost and expense, repair his Residence, keeping the same in a condition comparable to the condition of such Residence at the time of its initial construction, excepting only normal wear and tear.

#### **G. Property Owners Association**

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Governing Documents.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Governing Documents. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

- a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot owned. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.
- b. *Class B.* The Class B Members will be Declarant who is entitled to fifteen (15) votes per Lot owned. Class B membership will cease and be converted to Class A membership at such time as the Declarant has conveyed and/or sold the last of the Lots within the Subdivision, whether in a single or multiple transaction, to an Owner or to any governmental

authority for public use.

4. *General Powers and Duties of the Board of Directors of the Property Owners Association.* The Board, for the benefit of the Owners, will have the following general powers and duties, in addition to the specific powers and duties provided in this Declaration and in the Bylaws of the Property Owners Association:

- a. To execute on behalf of all Owners all declarations of Ownership for tax assessment purposes with regard to the Common Area.
- b. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.
- c. To enter into contracts, maintain one or more bank accounts, and generally have all the power necessary or incidental to the operation and management of the Property Owners Association.
- d. To protect or defend the Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements or repairs.
- e. To make reasonable Rules and Regulations for the operation of the Common Area and to amend them from time to time; provided that any rule or regulation may be amended or repealed by an instrument signed by a majority of the Owners.
- f. To make available for inspection by Owners within 60 days after the end of each year an annual report and to make all books and records of the Property Owners Association available for inspection by Owners at reasonable times and intervals.
- g. To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and, if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.
- h. To enforce the provisions of any Rules and Regulations, Restrictive Covenants, or other provisions of this Declaration or by the Bylaws of the Property Owners Association, and to enjoin and seek damages and fines from any Owner for violation of the same.
- i. To collect all Charges and enforce all penalties for non-payment, including the assessment of a Fine and Late Fee, the filing of liens, and the institution of legal proceedings.
- j. To establish or amend monetary "fines" system that will include due process hearings and a discretionary range of fine amounts, which, when levied, will constitute a permitted Member Charge secured by the lien herein established.
- k. To establish reserve funds that may be maintained or accounted for separately from other funds maintained for annual operating expenses.
- l. To convey small portions of Common Area to adjoining Owners if, in the opinion of the Board, such conveyance does not materially impact the Property Owners Association or the Subdivision or negatively affect the overall usage of the Common Area by the

Owners.

5. The Board will have the exclusive right to contract for all goods, services, and insurance payments to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as provided in this Declaration.

6. The Board, on behalf of the Property Owners Association, will have full power and authority to contract with any Owner or other person or entity for the performance by the Property Owners Association of services that the Board is not otherwise required to perform pursuant to the terms of this Declaration, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interest of the Property Owners Association.

## H. ACC

### 1. *Establishment*

- a. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Governing Documents.
- b. *Members.* The ACC consists of at least three (3) persons appointed by the Board. The Board may remove or replace an ACC member at any time.
- c. *Term.* ACC members serve until replaced by the Board or they resign.

2. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Governing Documents to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.*Plan Review*

- a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.
- b. *Procedures*
  - i. *Complete Submission.* Within thirty (30) days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

- ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within thirty-one (31) days after complete submission, the submitted plans and specifications are deemed approved.
  - c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within ten (10) days after the ACC's action. The Board shall determine the appeal within fifteen (15) days after timely notice of appeal is given. The determination by the Board is final.
  - d. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.
  - e. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.
  - f. *Variance.* The ACC may grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the ACC, in its sole and absolute discretion, the variance will not impair or detract from the high-quality development of the Property and the variance is justified due to unusual or aesthetic considerations or unusual circumstances. Despite anything to the contrary in this Declaration, the ACC is authorized, at its sole discretion, to waive any requirements relating to garages (including size), carports, dwelling size, masonry or other building materials, fences, the Common Area, easements, and setbacks, and the decision will be binding on all Owners of Property encumbered by this Declaration. All variances must be evidenced by written instrument in recordable form and must be signed by at least three (3) of the Voting Members of the Architectural Committee. The granting of a variance will not operate to waive or amend any of the terms or provisions of the covenants and restrictions applicable to the Lots for any purpose except as to the particular property and the particular instance covered by the variance, and a variance will not be considered to establish a precedent or future waiver, modification, or amendment of the terms and provisions of this Declaration.
3. *Contractor Review*
- a. The plans and specifications submitted to the ACC must identify the

contractor proposed by the Owner to construct the Residence or Structure. The ACC shall have the right, in its sole discretion, to approve or disapprove the use of any contractor.

## I. Assessments

1. Declarant for each Lot owned by it within the Properties, covenants, and each Builder Member and every Owner, by acceptance of a deed, whether or not it is so expressed in the deed or other conveyance, will be deemed to covenant and agree to pay to the Property Owners Association:

- a. Annual assessments or charges;
- b. Special assessments, to be fixed, established, and collected from time to time as provided below;
- c. Member Charges levied against individual Owners to reimburse the Property Owners Association for extra or unusual costs incurred by the Property Owners Association for curing the Owner's violation of a restrictive covenant contained in this Declaration; and
- d. Fines and Late Fees levied against individual Owners. The Charges, together with interest, reasonable attorney's fees, and costs of collection as provided in this Declaration, will be a charge on the land and will be a continuing lien upon the Lot against which the Charges are made. Each Charge, together with interest, reasonable attorney's fees, and cost of collection as provided in this Declaration, also will be the personal obligation of the Owner of the Lot at the time the obligation accrued.

2. The Charges levied by the Property Owners Association will be used for the purpose of promoting the recreation, health, safety, and welfare of the Members, and, in particular, for the improvement, maintenance, and operation of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area by Members.

a. *Annual Assessments.* The annual assessments ("Annual Assessments") for both Class A and Class B membership will be determined by the Board in the manner provided below after determination of current maintenance costs and anticipated needs of the Property Owners Association during the year for which the assessment is made. The maximum Annual Assessment may be adjusted by a majority vote of the Board, without membership vote, but will not increase by more than 10% of the prior year's Annual Assessment unless approved by the Owners using the procedures stated below for Special Assessments; provided, however, that if a Landscape Committee is created pursuant to Section E, paragraph 17, a one-time increase to the Annual Assessments in excess of 10% is permitted, without further approval by the Owners, in an amount to be determined by a majority vote of the Board.

- i. The Property Owners Association may increase the maximum Annual Assessment rate by more than the amount specified above only upon receipt of a majority of the approving vote of the Owners present in person or represented by proxy at a meeting called for vote on the

proposed increase.

ii. The Annual Assessment will be established by Declarant. The initial Annual Assessment for all Lots will be \$600.00. The Board may, in its discretion, increase or decrease the Annual Assessment from time to time. The initial Annual Assessment, or a pro rata portion of the Annual Assessment based upon the date of closing of the Lot, will be due and payable from the new Owner at the closing of the initial sale of the Lot by Declarant to a third party or the initial sale by a Builder Member to a third party.

iii. Any increase or decrease in the Annual Assessment will be made on a pro rata basis.

iv. Regardless of anything herein to the contrary, the Charges will not apply to Declarant, as owner of or holder of title of any Lot unless Declarant occupies a Living Unit constructed upon its Lot or uses the Living Unit for its own personal use as rental property. Annual Assessments and Special Assessments (as defined below) will not apply to Builder Members in the business of purchasing Lots for construction of improvements and subsequent resale to a third party unless the Builder Member occupies the Living Unit constructed on its Lot or uses the Living Unit for its own personal use as rental property. Membership Assessments (as defined below) will not apply to Builder Members for Lots purchased for resale to third parties but will apply to any subsequent sale and purchase of Lots to third parties.

b. *Membership Assessments.* In addition to the Annual Assessments provided for above, the Property Owners Association may levy a membership assessment (“Membership Assessment”) on Class A membership at any time a Lot is sold by the Owner, including Declarant, to a third party. The Membership Assessment will be established by Declarant so long as the Declarant is the Owner of a Lot and thereafter determined and established by the Board. The Membership Assessment will be collected from the purchaser of the Lot at closing. The initial Membership Assessment for a Lot (the “Membership Assessment”) to be collected at the sale of a Lot will be as follows:

i. For each sale of a Lot: \$520.00, or such other amount as determined by the Board.

c. *Special Assessments.* In addition, the Annual Assessment and Membership Assessment provided for above, the Property Owners Association may levy a special assessment (“Special Assessment”) on Class A membership and Class B membership as follows:

i. For the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement on or which is a part of the Common Area in an amount determined by the Board;

ii. To respond to the unusual emergency needs of the Property



Owners Association as may be expected to appear from time to time in an amount determined by the Board; or

iii. For such other lawful purpose related to the use of the Properties as the Board or the Owners may determine, provided that this assessment will have the approval of a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the date, time, and purpose of the meeting will be sent to all Owners.

d. *Member Charge.* In addition to the Annual Assessment, Membership Assessment, and Special Assessment described above, the Property Owners Association, by vote of the Board, may impose a charge ("Member Charge") upon any Owner for the purpose of reimbursing the Property Owners Association for all direct and indirect costs incurred by the Property Owners Association with regard to the maintenance, repair, or replacement of improvements on any particular Lot when the Board has determined the maintenance, repair, or replacement of improvements associated with the Lot has been neglected to the point where conditions existing on the Lot are not in conformance with the maintenance obligations set forth in this Declaration or in the Restrictive Covenants, or an Owner places anything in the Common Area. The Owner of the Lot will be notified in writing of the Board's determination and the specific deficiencies found to exist. The Owner will be afforded a reasonable period of time to respond to the Board's notice and to correct the deficiencies. The Owner will be assessed the cost necessary to reimburse the Property Owners Association for any and all costs to secure compliance, including attorney's fees.

e. *Fines and Late Fees.* In addition the Annual Assessment, Membership Assessment, Special Assessment, and Member Charge described above, the Property Owners Association, by vote of the Board, may impose fines and late fees upon any Owner for non-compliance or violations of the covenants of the Declaration or the Restrictive Covenants, or for late or nonpayment of any Annual Assessment, Membership Assessment, Special Assessment, or Member Charge. The Owner of the Lot will be notified in writing of the fine or Late Fee assessed to the Owner and the cause of such Fine or Late Fee. The Owner will be afforded a reasonable period of time and notice to pay the applicable delinquent Annual Assessment, Membership Assessment, Special Assessment, or Member Charge, prior to the assessment of any Fine or Late Fee. The Owner will be assessed the cost necessary to reimburse the Property Owners Association for any and all costs to secure compliance, including attorney's fees.

f. *Due Dates, Budget, and Late Charges.* The Annual Assessments will be due and payable and collected as the Board determines. The amount of the Annual Assessment will be an amount that bears the same relationship to the Annual Assessment provided for above as the remaining number of months in that calendar year bear to twelve. The Board will use reasonable efforts to provide each Owner with an invoice statement as of the appropriate amount due, but any failure to provide a notice will not relieve any Owner of the obligation.

i. The Membership Assessment is due and payable at the closing of a sale of any Lot to a third party.

ii. The due date of any Special Assessment will be as set out above or as fixed in the resolution authorizing such assessment.

iii. The Member Charge and Fine and Late Fee are due and payable within 30 days after the Owner was served with notice by the Property Owners Association of the amount of the Member Charge or Fine or Late Fee.

iv. Each year, the Board will adopt an annual budget and set the amount of the Annual Assessment, taking into consideration the Property Owners Association operating cost for the then current year, expected increases or decreases in the costs over the next year, and future needs of the Property Owners Association. The annual budget will be adopted by the Board at least 30 days prior to the commencement of each calendar year.

v. Any assessment, Member Charge, or Fine or Late Fee not paid within 30 days after the due date will bear interest from the due date at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. If the Board refuses or fails to determine a rate of interest, the rate of interest will be the lesser of 18% per annum or the maximum rate allowed by law.

g. *Assessment Lien and Foreclosure.* All amounts assessed in the manner provided in this Declaration but unpaid will, together with the cost of collection, including attorney fees as provided in this Declaration, become a continuing lien and charge on the Lot covered by the Assessment that will bind the Lot in the hands of the Owner and the Owner's heirs, devisees, personal representatives, successors, or assigns. This lien will be superior to all other liens and charges against the Lot, except for tax liens and all amounts unpaid on a mortgage lien of record of first or second priority granted to an institutional lender, securing in either instance amounts borrowed for the purchase or improvement of the Lot in question. The Association will have the power to subordinate the Assessment lien to any other lien. This power will be entirely discretionary with the Board and the subordination must be signed by a duly authorized officer of the Association. To evidence the Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by the lien and a description of the Lot. This notice will be signed by one of the officers of the Association and will be recorded in the office of the County Clerk of the county where the Property is located. The lien for payment of Assessments will attach with the priority above set forth from the date that the payment becomes delinquent. The Association may direct its legal counsel to initiate legal proceedings in a court of competent jurisdiction seeking one or both of the following remedies:

(a) Foreclosure of the assessment lien. The Association may not, however, file an application for an expedited court order authorizing foreclosure of the Association's assessment lien or a petition for judicial foreclosure of the Association's assessment lien until the Association has (i) provided written notice of the total amount of the delinquency giving rise to the foreclosure to all lienholders of record (evidenced by a deed of trust) whose liens are inferior or subordinate to the Association's assessment lien, and (ii) provided each such lienholder an opportunity to cure the delinquency before the sixty-first (61st) day after the date the Association mails the notice. The notice to lienholders must be sent by certified mail to the address for the lienholder shown in the deed of trust

burdening the Lot(s) subject to the Association's assessment lien.

(b) Recovery of a personal judgment against the Current Owner and, where different, from the Delinquent Owner or from the Current Owner only, for all amounts owing arising from the unpaid Assessments and their collection, including all attorney fees and costs.

The Association will have the power to bid on the property at a foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with it. On the written request of any Mortgagee, the Association will report to the Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after they are due.

## **J. Common Area**

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to—

- a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
- b. suspend an Owner's rights under the Governing Documents;
- c. grant an easement approved by the Board over the Common Area for utility, drainage, fencing, or other purposes; and
- d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of two-thirds of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Governing Documents.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

4. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## **K. General Provisions**

1. *Term.* This Declaration runs with the land and is binding in perpetuity.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Governing Documents is not a waiver.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by vote of two-thirds of the votes in the Property Owners Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

5. *Conflict.* This Declaration controls over the other Governing Documents.

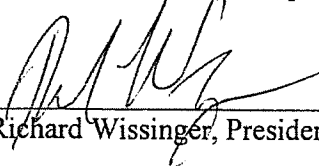
6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Property Owners Association's records, and the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.

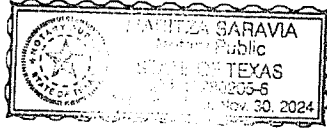
8. *Annexation of Additional Property.* On written approval of the Board and not less than two-thirds of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

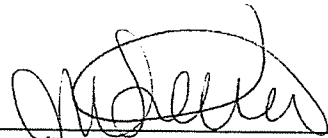
**This Declaration is made to correct and to replace a Declaration dated April 19, 2021, recorded as Instrument No. 2021023794 of the Official Public Records of Bell County, Texas. The prior instrument inadvertently omitted provisions regarding increases to the Annual Assessments in the event a Landscaping Committee is created. This Declaration is made to correct that omission, is effective April 19, 2021, and in all other respects confirms the prior Declaration.**

Alethium Development, LLC,  
a Texas limited liability company

By:   
Richard Wissinger, President

This instrument was acknowledged before me on April 20th, 2021, by Richard Wissinger, President of Alethium Development, LLC, a Texas limited liability company, as an act of the company.



  
\_\_\_\_\_  
Notary Public



Bell County  
Shelley Coston  
County Clerk  
Belton, Texas 76513

Instrument Number: 2021024076  
As  
RESTRICTIONS

Recorded On: April 20, 2021  
Parties: ALETHIUM DEVELOPMENT LLC  
To THE LANDING AT HERITAGE OAKS SUBDIVISION  
Comment:

Billable Pages: 29  
Number of Pages: 30

( Parties listed above are for Clerks' reference only )

**\*\* Examined and Charged as Follows \*\***

CLERKS RMF:	\$5.00
COURT HOUSE SECURITY:	\$1.00
RECORDING:	\$117.00
<b>Total Fees:</b>	<b>\$123.00</b>

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

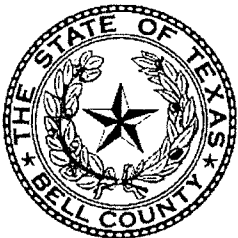
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information**

Instrument Number: 2021024076  
Receipt Number: 190769  
Recorded Date/Time: 04/20/2021 3:52:28 PM  
User / Station: colonec - BCCCD0639

**Record and Return To:**

Harrell, Stoebner & Russell, P.C.  
2106 BIRDCREEK DR  
TEMPLE, TX 76502-1020



I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Real Property Records in Bell County, Texas

Shelley Coston  
Bell County Clerk  
*Shelley Coston*

**Correction**  
**Declaration of Restrictive Covenants of**  
**The Landing at Heritage Oaks**  
**Subdivision**

**Basic Information**

Date: April 19, 2021

Declarant: Alethium Development, 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.

Declarant's Address: PO Box 803, Belton, Bell County, Texas 76513

Property Owners Association: The Landing at Heritage Oaks Homeowners Association, Inc., a Texas nonprofit corporation

Property Owners Association's Address: PO Box 803, Belton, Belton, Bell County, Texas 76513

Property: All the real property shown on the Final Plat for The Landing at Heritage Oaks subdivision, recorded as Instrument No. **2021-22313**, Official Public Records of Bell County, Texas.

**Definitions**

"ACC" means the Architectural Control Committee established in this Declaration.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Board" means the Board of Directors of the Property Owners Association.

"Builder" or "Builders" means a builder approved by Declarant and who owns one or more Lots for construction of improvements upon one or more Lots for resale to others.

"Builder Member" means a builder approved by Declarant and who owns one or more Lots for construction of improvements upon one or more Lots for resale to others.

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot on the plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Property Owners Association.

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

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

“Governing Documents” means this Declaration and the certificate of formation, Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

“Living Unit” means a single-family residence and its garage situated on a residential lot.

“Lot” means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded as Instrument No. **2021-22313** of the real property records of Bell County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Property Owners Association” or “Association” means The Landing at Heritage Oaks Homeowners Association, Inc., a Texas non-profit corporation, its successors, assigns, and replacements as provided in this Declaration, that has jurisdiction over all Properties located within the land encumbered or to be encumbered under this Declaration, as may be amended. It has the power, duty, and responsibility of maintaining and administering the Common Area and administering and enforcing the Declaration and any amended or supplemental Declaration.

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

“Rules and Regulations” means the rules and regulations promulgated by the Board from time to time and which may be filed in the Real Property Records of Bell County, Texas.

“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.

“Structure” means any improvement on a Lot (other than a Residence), including, but not limited to, a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, storage building, or recreational equipment.

“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.

## **Clauses and Covenants**

### **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other



occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Governing Documents and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

4. Declarant has the right to file an amendment to these restrictive covenants, without the necessity of joinder by another Owner of Lots within the subdivision, or any interest therein, for so long as Declarant owns a lot within the subdivision for development purposes, for any reason. Notwithstanding the foregoing, Declarant has the right to file an amendment to these restrictive covenants, without necessity of joinder by any other Owner of Lots within the subdivision, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, removing any contradiction in the terms hereof, or for the purpose of making such additions or amendments hereto as may be required by FHA, HUD, or VA to qualify the properties for mortgage guaranties issued by FHA and/or the VA.

## **B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

## **C. Property Rights**

Every Owner, guest, invitee, customer, and tenant will have a right and easement of ingress and egress, use, and enjoyment, in and to the Common Area that will be appurtenant to and will pass with the title to every Lot, subject to the following provisions.

1. The right of the Property Owners Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

2. The right of the Property Owners Association to suspend an Owner's voting rights and the right to use any facility for any period during which any assessment of the Property Owners Association against that Owner's Lot remains unpaid, and for infractions by an Owner of the Restrictive Covenants contained in this Declaration and/or the Property Owners

Association Rules and Regulations for the duration of the infraction.

3. The right of the Property Owners Association to grant easements in and to the Common Area to any public agency, authority, or utility for such purposes as benefits the Properties and Owners.

4. The right of the Property Owners Association to borrow money for the purpose of improving the Common Area, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located on the Common Area, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided a majority of each Class of Members present or represented by proxy at a meeting called for such purpose will approve; provided however, the lien and encumbrance of any such mortgage given by the Property Owners Association will be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision.

5. The right of the Property Owners Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Property Owners Association. No such dedication or transfer will be effective unless an instrument agreeing to such dedication or transfer has been approved by a majority of the Class A Members of the Property Owners Association who are present or represented by proxy entitled to cast at a meeting duly called for such purpose, and by the Class B Members so long as the Class B membership exists.

6. The right of the Property Owners Association to convey small portions of the Common Area to adjacent Owners when, in the sole opinion of the Board, the portion of the Common Area to be conveyed is so small in size, amount, and value that it will have no material consequence to or impact upon the Property Owners Association or the Subdivision or negatively affect the overall usage of the Common Area by the Owners as a result of such conveyance. In such an event, the Board may authorize such conveyance without the joinder of any other Owner.

7. The right of the Property Owners Association to prescribe Rules and Regulations as they may be expanded, amended, or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of the Owner's Lot may be affected by this provision and that the Rules and Regulations may change from time to time. The Board has the authority to enforce the Rules and Regulations by all appropriate means, including but not limited to the imposition of fines if notice and opportunity to be heard are given. A Member found to have violated the Rules and Regulations will be liable to the Property Owners Association for all damages and costs, including reasonable attorney's fees.

#### **D. Use and Activities**

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.

2. *Prohibited Activities.* Prohibited activities are—
- a. any activity that is otherwise prohibited by the Governing Documents;
  - b. any illegal activity;
  - c. any nuisance, noxious, or offensive activity;
  - d. any dumping of rubbish;
  - e. any storage of—
    - i. building materials except during the construction or renovation of a Residence or a Structure;
    - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
    - iii. unsightly objects unless completely shielded by a Structure;
  - f. any exploration for or extraction of minerals;
  - g. any keeping or raising of animals, livestock, poultry, or Exotic or Dangerous Animal (as defined below) of any type except for such as dogs and cats generally recognized as common domesticated household pets (collectively "Pets"). An "Exotic or Dangerous Animal" is an animal that may pose a safety or health threat to the Owners of the Subdivision, their guests, invitees, or tenants, and includes the (a) dog breeds of pit bull and rottweiler, regardless of whether the animal is purebred, a mixed breed, or registered with the AKC or similar registration organization; (b) poisonous insects, amphibians, or reptiles; (c) boa constrictors and other constrictor reptiles; (d) animals considered "feral" or wild by nature except guinea pigs, hamsters, and gerbils; (e) ferrets, and (f) alligators. Additional breeds of animals may be added to the definition of Exotic or Dangerous Animal from time to time, as determined necessary by the Declarant or Association Board, in their sole discretion, and the Rules and Regulations will be amended to include such breed of animal.
    - i. No more than four (4) Pets (in any combination, but in no event will the combination include more than two (2) dogs and two (2) cats) may be kept on a Lot. No Pet may be bred, kept, or maintained for any commercial purpose on a Lot. The ACC may grant authority to keep, maintain, or shelter more than the allowed number of Pets on a Lot, when the ACC, pursuant to receipt of a written application, determines that such applicant has adequate shelter for, and

is capable of keeping or maintaining the pets without posing a nuisance to other Owners. The ACC may elect to terminate this authority if its terms or other provisions of the animals and pets covenant are not complied with.

- ii. All Pets must be kept in strict accordance with all local and state laws and ordinances (including leash laws), and in accordance with all rules established by Declarant or The Landing at Heritage Oaks Homeowners Association, Inc. (the "Association"). All Pets must be vaccinated in accordance with local custom and laws. Each Pet must wear a tag provided by a licensed veterinary to evidence the up-to-date rabies vaccination. All Pets must be kept indoors, in a fenced area on the Owner's Lot (fenced with materials as required by the Fences article of these Covenants, or by electronic animal control device), or on a leash. It will be the responsibility of the owner of the Pet to prevent the animals from running loose or becoming offensive or a nuisance to other Owners of the Subdivision, their guests, invitees, or tenants. Offensive barking or howling is considered an "offensive activity" and is not permitted. Barking or howling that continues for more than 15 consecutive minutes is conclusively presumed to constitute offensive activity. It is the responsibility owner of their Pet to clean up after it when in the Common area or on the private property of others. Pets are not permitted in any Common Area except on a leash.
- h. any commercial or professional activity except reasonable home office use;
- i. the renting of a portion of a Residence or Structure;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except—
  - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
  - ii. political signage not prohibited by law or the Governing Documents;
- l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;

- o. hunting and shooting;
- p. occupying a Structure that does not comply with the construction standards of a Residence; and
- q. any activity that is otherwise prohibited by the Governing Documents.

3. No motor vehicle, including automobiles, vans or SUVs, can be parked in a front yard, except in the driveway of any Lot. Automobiles cannot be maintained, repaired, serviced, rebuilt or dismantled on any Lot, except within the confines of the garage. No vehicle can be painted on any property in the Subdivision. This provision does not prevent a vehicle from being washed or polished in the driveway of any Lot.

4. No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs and trailers), towed trailer unit, motorcycle, disabled junk, or abandoned vehicle, motor home, mobile home, recreational vehicle, or any other vehicle, the primary purpose of which is for recreational, sporting, or commercial use, will be parked or stored in, on, or about any Lot or street within the Subdivision, except within the attached garage or unless such vehicle is approved by the ACC. These vehicles must be removed from the general area within 72 hours unless approved in writing by the ACC.

5. Vehicles with signage or with tonnage exceeding three-fourths (3/4) ton, campers, mobile homes, motor homes, boats or trailers are not permitted to be parked overnight or for extended periods during the day in, on or about the streets of Subdivision, or be parked in, on or about the front or side yards of any lot therein. When such vehicles are parked in the rear yard they must be screened from adjacent lots and public view.

6. Hazardous Cargo: No motor vehicle, trailer or container of any type or size that normally (or occasionally) transports hazardous, flammable, explosive or poisonous cargo is allowed in, on or about any part of Subdivision at any time. Pest control vehicles are permitted in Subdivision for residence service visits only and may NOT remain overnight or for extended periods during the day unless parked inside a locked garage.

7. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite, or other signals of any kind will be placed, allowed, or maintained upon a Lot that is visible from any street, private right-of-way, Common Area, or other Lot unless it is otherwise impossible to receive signals from the location. In that event, the receiving device may be placed in a visible location as approved by the ACC. The ACC may require as much screening as possible while not substantially interfering with reception. The Declarant and the Association will have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable systems, or other apparatus for the transmission of television, radio, satellite, or other signals for the benefit of all or a portion of the Properties. No satellite dishes larger than 1 meter in diameter will be permitted. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No Multichannel Multipoint Distribution Service ("MMDS") antenna mast may exceed the center ridge of the roofline by the height established by the Telecommunications Act of 1996 (the "Act"), as it may be amended from time to time. No exterior antennas, aerials, satellite dishes, or other apparatus that transmit television, radio, satellite, or other signals of any kind will be permitted, placed, allowed, or maintained upon any portion of the Property. The Declarant, by promulgating this

Article is not attempting to violate Texas law as it may be amended from time to time. This Article will be interpreted to be as restrictive as possible while not violating the Texas law.

## **E. Construction and Maintenance Standards**

### *1. Lots*

- a. *Consolidation of Lots.* An Owner of adjoining Lots may consolidate those Lots into one site for the construction of a Residence only if the Owner has obtained approval from the ACC and Bell County Commissioner's Court. Each consolidated Lot will meet all lawful requirements of any applicable statute, ordinance, or regulation.
- b. *Subdivision Prohibited.* No Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

### *2. Residences and Structures*

- a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Maximum Height.* The maximum height of a Residence is two-story. The maximum height of the home and accessory buildings on any lot shall be forty-five feet (45') measured from the finished grade of the lot to the highest peak of the roof.
- c. *Required Area.* The total area of a Residence, exclusive of porches and garages, must be at least 2,800 square feet. The total area of the first story of a two-story Residence, exclusive of porches and garages, must be at least 1,800 square feet.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.
- e. *Building Setback Lines.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures (other than sidewalks and driveways) must be located behind the front wall of the Residence. In no event may any Residence or Structure (other than sidewalks and driveways) be located within 10 feet of a side Lot line or within 15 feet of

a rear Lot line. The ACC may establish additional setback requirements as it deems necessary.

- f. *Approval of Plans by ACC.* Prior to commencement of any work on a Lot, including any grading or clearing thereof (other than weed or trash removal), the Owner thereof shall have received approval of all plans in accordance with Section H of these Restrictions.
- g. *Garages.* No front entry garages on a Lot may be constructed without ACC approval. Each Residence must have at least a two-car garage accessed by a driveway. Garages may be detached or attached to the residence or to breezeways or covered porches attached to the residence. Garages must have operable doors to facilitate vehicular parking inside. Garage doors are to be sectional and roll-up in design. The garage door exterior must be painted or stained to harmonize with the residence and other residences within the Subdivision, and shall at no time contain "garage door art" of any type or kind, whether painted or applied.
- h. *Garage Conversions.* Enclosure or conversion of a garage, or portion thereof, to living, storage, or other use is permitted only if upon completion, the residence is served by garage space compliant with all covenants. Driveway material to the enclosed converted space must be replaced with landscaping. Garage conversion plans, whether attached or detached, must receive prior Declarant or ACC approval. Converting a garage, or a portion thereof, to temporary or permanent pet space through partial or full wall enclosure (screened or otherwise) of the garage door opening is not permitted.
- i. *Ceiling Height.* Per city code.
- j. *Ridge Vents.* Only continuous shingle covered ridge vents will be allowed. Any other venting must be concealed from any street elevations of the house.
- k. *Gutters.* Rain gutters are optional on each residence. Gutter colors should be coordinated with the trim color of the house.
- l. *Fireplace Chimneys/Stack Vents.* Chimney caps are required. All roof penetrations must be located in the rear of the home where possible or at the least visible section of roof mass. Fireplace chimneys must be constructed of:
  - i. brick, stone or stucco to match the residence or
  - ii. constructed with fiber-cement siding (and trims) and painted to match the exterior paint of the residence.
- m. *Skylights/Solar Collectors.* Skylights shall not be located on any

elevation of the home which faces a street. Only flat skylights shall be allowed elsewhere. There shall be no solar collectors on any home, unless prior approval of the Committee is obtained. Skylights and any proposed solar collectors must be shown on plans when submitted or (if after construction) on a drawing submitted to the ACC.

- n. *Window Coverings.* No foil, sheets, reflective materials, paper or other inappropriate materials or bright colors shall be used on any windows for drapes, sunscreens, blinds, shades or other purpose on a temporary or permanent basis. Interior window coverings shall be lined in a neutral color so as not to detract from the exterior of the home.
- o. *Exterior Doors.* Either Metal, Fiberglass or Solid core wood doors are acceptable.
- p. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within one hundred eighty (180) days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within one hundred eighty (180) days and the Lot restored to a clean and attractive condition.
- q. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC.
- r. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- s. *Sidewalks.* When the Residence is constructed, the Lot may not be improved with sidewalks.
- t. *Landscaping.* Landscaping must be installed within forty-five (45) days after occupancy. The minimum landscaping is specified below in this Declaration and in the standards of the ACC.
- u. *Completion of Improvements.* Once construction of a house (or any addition thereto) or outside structure has commenced. it must be completed within twelve (12) months. If such improvements are not completed within the time period specified in this section, then the lot owner shall remove the foundation from the lot and restore the lot to a clean and attractive appearance (unless otherwise approved by the ACC).

### 3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only composition, tile, or metal roofs may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks



must be painted to match the roof color. All roofs must have a minimum 10/12 pitch slope unless otherwise approved by the ACC. All roofs must have a minimum of 30-year roof shingles. Wood shake or wood shingle roofing materials are not permitted. Preferred vent pipe and flue locations are behind the front roof ridge.

- b. *Fascia, Eaves & Soffits.* Fascia, eaves, and soffits shall be constructed of Hardy Plank or similar. No vinyl or aluminum will be permitted.
- c. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence.
- d. *Exterior Walls.* All Residences must have at least ninety percent (90%) of their exterior walls, including exposed foundation, be masonry, minus windows and doors, unless otherwise approved by the ACC. No aluminum or vinyl siding will be allowed unless otherwise approved in writing by the ACC. Any siding visible from the street is prohibited unless decorative and approved by the ACC in writing.
- e. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.
- f. *Driveways.* All driveways must be surfaced with concrete and constructed with 3/8" rebar and not wire. Driveways may not be surfaced with dirt, gravel, shell, or crushed rock.
- g. *Insulation.* For exterior walls, cavity fibrous or cellulose insulation shall be installed at minimum level of R-15 or spray foam at minimum depth of 3.5". Attic insulation shall be spray foam attic ceiling at minimum of 5.5".
- h. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

#### 4. *Construction Deposit*

- a. At the time of submission of plans and specifications to the ACC, the Owner shall make a \$500 Construction Deposit payable to Alethium Development. (or its designee). The ACC shall have the right to require the Owner to increase the amount of this Construction Deposit at any time such Construction Deposit has been depleted by prior violations (so that the Construction Deposit on account is \$500). The purpose of the Construction Deposit is to insure:
  - i. Plans are submitted to the Committee as set forth. In the event construction of a house or other improvement are started without the prior written approval of the plans for such, then the entire amount of the Construction Deposit shall be automatically forfeited as liquidated damages to the Association. Further, all other rights of

the Developer, the Committee and the Association may have with respect to approval of the plans shall continue, including rights to injunctive relief, damages and other rights.

- ii. Landscaping is accomplished as set forth in Section 3.9 above. In the event landscaping is not accomplished according to Section 3.9 above, then the entire amount of the Construction Deposit shall be automatically forfeited as liquidated damages to the Developer. Further, all other rights of the Developer, the Committee and the Association may have with respect to approval of the plans shall continue, including the right to fine the Owner, rights to injunctive relief, damages and other rights.
- iii. A clean job site, compliance with the Restrictions, overall community appearance, and that the structure to be constructed is built according to the approved plans. A written notice will be issued by the Committee to the Lot Owner regarding any violations or damage caused by the construction. Examples of damage are the breaking of any sidewalk in the Subdivision, "rutting" of any right of way, servitudes or other lots in the Subdivision caused by construction related vehicles, the spilling of concrete on any streets or other areas of the Subdivision and any trash or debris dispensed in the Subdivision. If the violation or damage has not been corrected within five (5) days after the date of the notice, the violation or damage may be corrected by the Committee and the cost of the same shall be charged to the Lot Owner. Said amount may be deducted, without further notice, from the Construction Deposit until said deposit is exhausted, at which time the Lot Owner will be billed for any additional expense. The Association shall have lien rights to enforce payment of any amount billed but not collected within thirty (30) days after the date of such bill. Notwithstanding the provisions of this Section however, neither Developer, the Association nor the ACC shall be responsible for the damage to any Lot caused by the activities of the Owner (or builder or others involved in any activity on their behalf) of any other Lot, and shall not be held responsible for any such damage if deductions are not made from the Construction Deposit or other damage collection provisions are not made for such damage. If no violations or damage occur (or if no deductions for such damage are made from the Construction Deposit by the Committee or the Association), the Construction Deposit will be refunded in full to the original submitter of the Construction Deposit after satisfactory completion of construction of improvements on the Lot in accordance with the approved plans and completion of landscaping as set forth in these Restrictions. To the extent any of the Construction Deposit was spent for correction of any violations or damage, any balance will be refunded to the original submitter of the Construction Deposit after the satisfactory completion of the improvements and

landscaping.

5. *Foundations*

- a. Foundations shall be designed by a professional engineer with post stress system for each home. The Committee's approval of construction plans for a home is limited only to appearance and not structural design or engineering for which the Committee takes no responsibility and shall have no liability. If any more than fifteen inches ( 15") of slab shows above ground level the excess amount must be covered by a brick ledge.

6. *Spillage.*

- a. Operators of vehicles are required to see that they do not spill any damaging materials while within the Subdivision. If spillage of a load occurs, operators are responsible for cleaning up the same. If an operator does not clean up a spill, the cost of the cleanup will be deducted from the Construction Deposit of the responsible Lot Owner. If the cost of the cleanup exceeds the available amount of the Construction Deposit, the responsible Lot Owner will be billed for and be obligated to pay the cost of such clean up.

7. *Athletic and Play Facilities.*

- a. Basketball goals, swings, slides, playhouses, sandboxes, or any other sporting or play equipment (temporary or permanent) may not be attached to the front of a dwelling or located in front of a dwelling or located in front of a corner side (unfenced) yard without the consent of the ACC. In no event should basketball or other sporting items be placed on the street.

8. *Trash Receptacles.*

- a. All trash and rubbish shall be kept in appropriate containers intended for temporary storage of trash and rubbish, and shall be stored adjacent to the house or any building structure on a lot. The ACC has the right to specify a specific location on each Owner's Lot in which garbage containers must be placed for trash-collection service.

9. *Rubbish, Trash and Garbage.*

- a. No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

10. *Outbuilding Construction.*

- a. All outbuildings or storage buildings must be of new construction from the ground up. Any outbuilding or storage building constructed on a Lot within the Subdivision

must be of a type, design, and material matching or harmonizing with the Residence and approved by the Declarant or the ACC prior to construction. No portable building (i.e., metal or plastic storage building or “Morgan building”) may be moved onto any Lot within the Subdivision.

#### *11. Retaining Walls*

a. Any retaining wall constructed as a part of the Lot's landscaping must be constructed of masonry materials approved by the Declarant or ACC. Engineered plans compliant with all applicable codes and sealed by a registered professional engineer, must be submitted for retaining walls exceeding two (2) feet in height. Railroad ties may not be used in any retaining wall or other form of landscaping.

#### *12. Fences*

a. All fence plans, designs, location, and placement must be approved by the Declarant or the ACC, which has the right to require certain types of fences and certain types of materials to be used, including but not limited to columns constructed of brick, stone, or masonry matching the house with ornamental iron in between wood or similar material.

b. All perimeter privacy fencing must be installed by the purchaser of the Lot within thirty (30) days of the closing date of the purchase unless a Builder or Declarant has already installed the perimeter privacy fencing. All perimeter privacy fencing must be approved and constructed, according to Declarant's fence plans (a copy of such fence plans may be obtained by Declarant), of cedar with metal posts. All fences located between Residences must present a uniform appearance and be in line with each other. All cedar fences must be at least six (6) feet in height.

c. Chain link fences are prohibited except for use in the construction of a fenced-in area or dog run located within the privacy fenced rear yard of an Owner and provided that the chain link fence is not visible from a street or roadway.

d. All other fences must be of a height, style, and design that may be approved by Declarant or the ACC.

e. In the event that any fence intersects (the “Intersecting Fence”) with any fence that is of a higher or lower height, the Intersecting Fence will be increased or decreased in height, at a steady rate, over the last ten (10) feet in length of such Intersecting Fence before it intersects with the higher or lower fence so that there is a smooth transition from the lower level to the higher level. Unless otherwise approved by the Declarant or the ACC, no two (2) fence segments of different heights will meet without the ten-(10) foot transition area required above. For purposes of this paragraph, a fence will “intersect” with another fence at any point where there is an appearance from any street or roadway that the fence segments meet or are in close proximity to each other.

f. Each Owner will be responsible for the maintenance, repair, replacement, and upkeep of his fence.

g. Divider fences are fences located on or parallel to a property line common

with two or more Lots. Such fences may not be placed inside the property line if they will create an area that may not be properly maintained or will prevent a neighbor fence connection.

h. Drainage and Fence Easements (defined below) created hereby permit installation and maintenance of any future drainage structures required to provide adequate drainage between Lots and for connection of divider fences. A Lot Owner may not prohibit an adjacent Lot Owner from connecting to a fence.

i. Fences must be functional, well maintained, and in plumb, level, and square condition, with gates and pickets in place. Damaged or deteriorated fences must be repaired or replaced promptly by the Owner. If the original Owner of a divider fence is unknown, repair or replacement expense for divider fencing on a common property line is to be shared equally by the respective Lot Owners.

j. Privately owned, street-facing fences that are not maintained, as set forth above, may be repaired or replaced by the Property Owners Association at the respective Lot Owner's expense. Easements for access to Lots for such fence repair or replacement are hereby created.

k. All wood privacy fences must be stained immediately upon installation of the fence. Fence stain shall be cedar in color, equal to or comparable with Flood brand "CWF-UV Oil", PPG brand "Sun-Proof Solid Stain," or alternate as authorized by the ACC.

l. Drainage and Fence Easements.

i. A five (5) foot wide easement (the "Fence Easement") will run adjacent and parallel to and on each side of a Lot's side and rear boundary lines and will run the entire length of a Lot's side and rear boundary lines. An easement is hereby reserved for the use and benefit of the adjacent Lot Owner, the Declarant, and the Property Owners Association to provide ingress, egress, and regress upon, over, and across the Fence Easement to the extent such Fence Easement is necessary to permit fences to connect with other fences and to allow the Declarant or the Property Owners Association to repair or replace any Owner-neglected fence or Owner-neglected landscaping, including trimming of brush, vines, shrubbery, and trees that are located with or protrude into the Fence Easement, as the Declarant or the Property Owners Association in its sole discretion deems appropriate.

ii. Each Owner has the ultimate responsibility for the construction and installment of and maintenance, upkeep, repair, and replacement of any and all Owner-owned improvements located or to be located within the Fence Easement, including but not limited to any fencing, decorative lighting, and landscaping. The Property Owners Association, at the Property Owners Association's sole discretion, will have the right to control the construction, installation, and maintenance, upkeep, repair, and replacement of any and all Property Owners Association-owned improvements located or to be located within the Fence Easement, including but not limited to any entrance walls, entrance monuments,

fencing, and decorative lighting, with the exception of landscaping. The Property Owners Association will have the right and responsibility for landscaping that portion of the Fence Easement that lies between any entrance wall or fence and the street running parallel to any entrance wall or fence, as shown on the Subdivision Plat.

iii. No Owner may damage, deface, or mar the surface or any portion of any improvements constructed or installed within the Fence Easement. No structure, planting, fence or other material may be placed or permitted to remain within the Fence Easement that may damage the surface of any improvements constructed by Declarant or the Property Owners Association within the Fence Easement, or interfere with the right of ingress, egress, and regress over the Fence Easement or any ingress easement granting access to the Fence Easement. Neither the Property Owners Association nor Declarant will be liable for any damages done by them or their assigns, agents, employees, or servants to property of the Owners situated on land covered by the Fence Easement.

iv. Easements for drainage throughout the Subdivision are reserved as shown on the Subdivision Plat or by written instrument filed in the Official Public Records of Real Property of Bell County, Texas, prior or subsequent to the filing of the Subdivision Plat. No Owner of any Lot in the Subdivision may perform or cause to be performed any act that would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate, or impede the natural flow of water over and across the easements.

### 13. *Sprinkler Systems.*

a. Initial installation of the irrigation or water sprinkling system must be completed by the Builder Member or Owner within 30 days of the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ACC.

b. All front and side yards of Lots must have an underground irrigation or a water-sprinkling system for the purpose of providing sufficient water to preserve and maintain the landscaping of the Lot in a healthy and attractive condition. Each Owner will be responsible for the maintenance, repair, replacement, and upkeep of his irrigation or water sprinkling system.

### 14. *Trees*

a. Removal of trees more than two (2) inches in diameter or more than six (6) feet in height is prohibited without the written permission of the Declarant or the ACC, excepting trees located within the footprint of the Residence, garage, walks, drives, and patios, and on an adjacent two (2) foot perimeter to the footprint.

b. Each front yard of a lot must have a minimum of two (2) hardwood trees of at least a diameter of three (3) inches and height greater than six (6) feet. Any required tree plantings necessary to achieve the foregoing requirement must be completed within 30 days of

the completion of the Residence but in any event prior to Owner occupancy of the Residence, unless Owner has received an extension from the ACC.

15. *Tree Houses*

- a. No tree houses may be constructed in any tree on any Lot.

16. *Flagpoles and Flags*

- a. Each Lot (or dwelling site) is limited to one flagpole and one flag. Flagpoles may be attached to a dwelling or freestanding and must be constructed of permanent, long-lasting materials harmonious with the dwelling. Ground mounted poles may not exceed 20' in height and flags may not exceed 3' x 5'. Permitted flags include the flag of the United States of America, the flag of the State of Texas, and an official or replica flag of any branch of the United States armed forces, or any flag with prior approval of the ACC. External flag halyards must be secured so as not to produce noise offensive to nearby lots. Lights to illuminate flags must not develop excessive glare to nearby streets or lots. The location of flagpoles must be approved prior to installation by the Declarant or ACC.

17. *Landscaping.*

- a. All landscaping (planting of trees, grass sod, and landscaping beds) of each Lot must be completed within 30 days of the completion of the Residence but in any event prior to the Owner occupancy of the Residence, unless Owner has received an extension from the ACC, in a design and manner approved by the Declarant or the ACC. The front and side yards of all Lots, from the front wall of the house, will be fully sodded with St. Augustine, Bermuda, Prairie Buffalo Grass, or other sod, drought-resistant landscaping, or water-conserving natural turf approved by the Architectural Committee. Each Builder Member or Owner will cause the front and side yard lawns for each Lot bearing a completed Residence to be installed with fully sodded grass or landscaping within 30 days of the completion of the Residence. Any lawn will include the unpaved area between the Lot and the curb of any street or roadway adjacent to such Lot. If, however, construction of the Residence is completed at a time of year when seasonal or other conditions make installation of the sod, grass, trees, shrubbery, or other landscaping improvements impractical, the Builder Member and/or Owner will enter into a separate written Agreement with the ACC or the Property Owners Association, in form and substance required by the ACC or the Property Owners Association, extending the date for installation of the lawn and landscaping and establishing a date by which such lawn and landscaping will be installed.

- b. Owners may enter into voluntary agreements for joint lawn maintenance of all or any part of the lawn; provided, however, that lawn maintenance will remain the ultimate responsibility of each Owner. Builder Members will be responsible for maintaining a healthy lawn until the Residence is sold to a third party.

- c. With the affirmative vote and approval of the Owners of 75% of the Lots in the Subdivision, a Landscaping Committee may be created. If a Landscaping Committee is created, it will be responsible for the ordinary maintenance of the landscaping of all Lots, but excluding any Patio. The members of such a Landscaping Committee will be appointed by the

Board of Directors and will serve at the pleasure of the Board of Directors. A "Patio" is any intimate garden, courtyard, or porch area immediately adjacent to the Residence, whether covered or not. Ordinary maintenance will include sodding (after the initial sodding), mowing, fertilizing, weed control, and the planting, care and replacement of trees and shrubbery (after the initial planting), but will not include irrigation, which shall remain the obligation of the Lot owner.

- i. If created, the landscaping maintenance described in this section will be the sole obligation of the Landscaping Committee, and the Owners will have no individual right or obligation to maintain, alter, add to, or replace the landscaping of the Owner's respective Lot.
- ii. If created, the operations of the Landscaping Committee will be funded by adjustments to the Annual Assessments described below.
- iii. If created, the Landscaping Committee must approve, in advance, any replacement or modification of the landscaping of a Lot by an Owner. If an Owner-requested replacement or modification of the landscaping is approved by the Landscaping Committee, the Owner will be solely responsible for the installation and planting of such replacement or modification of the landscaping; however, such replacement or modification to the landscaping must be completed, at the sole discretion of the Landscaping Committee, within a reasonable period of time. The Owner will be responsible for any extraordinary care or maintenance of the replacement or modification of the landscaping upon his Lot.

d. No vegetables will be grown in any yard that faces a street or Common Area.

18. *Carports.*

a. No carports may be constructed on any Lot. No add-on patio covers may be constructed on any Lot unless approved by the Declarant or the ACC.

19. *Jobsite.*

a. Contractors are required to keep their job sites as neat and clean as possible. Construction materials shall be stored in a neat and orderly manner at all times during construction. Mud from construction vehicles on the streets of the Subdivision shall be removed before each day's end. Materials are not permitted to accumulate on any Lot for a period exceeding 30 days from their first delivery. Contractors and their workers, subcontractors or suppliers may not bring or consume alcohol or illegal substances in the Subdivision.

**F. Owners' Obligation to Repair**

1. Owner solely will be responsible for exterior maintenance upon each Lot and



associated building, fence, structure, underground irrigation, or water sprinkling system, or improvement that is subject to assessment hereunder, including paint, repair, replace, and care for roofs, gutters, downspouts, exterior fence or wall surfaces and structures, exterior building surfaces (including glass, windows, light bulbs, awnings, door fixtures, and hardware), outdoor lighting, walks, driveways, parking areas, and other exterior improvements. The Property Owners Association will be only be responsible for the maintenance of Declarant's fence facing FM 93.

2. Maintenance and repair of all such areas and items set forth above as the Owner's responsibility will be the sole responsibility of the individual Owner, unless the Property Owners Association, in the Property Owners Association's sole discretion and in accordance with the provisions of the Declaration, deems that maintenance, repair, or care of other items or areas by the Property Owners Association or its representative would be in the best interest of the Property Owners Association. In the event that the need for maintenance or repair is caused through the willful or negligent action or inaction of the Owner, his family, or guests, invitees, or tenants, the cost of such maintenance or repairs will be added to and become a part of the assessment to which such Lot is subject in accordance with the provisions of the Declaration. The Property Owners Association or its representative has the right to enter any Lot for the purpose of performing its duties hereunder.

3. Each Owner will, at his sole cost and expense, repair his Residence, keeping the same in a condition comparable to the condition of such Residence at the time of its initial construction, excepting only normal wear and tear.

#### **G. Property Owners Association**

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Governing Documents.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Governing Documents. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

- a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot owned. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.
- b. *Class B.* The Class B Members will be Declarant who is entitled to fifteen (15) votes per Lot owned. Class B membership will cease and be converted to Class A membership at such time as the Declarant has conveyed and/or sold the last of the Lots within the Subdivision, whether in a single or multiple transaction, to an Owner or to any governmental

authority for public use.

4. *General Powers and Duties of the Board of Directors of the Property Owners Association.* The Board, for the benefit of the Owners, will have the following general powers and duties, in addition to the specific powers and duties provided in this Declaration and in the Bylaws of the Property Owners Association:

a. To execute on behalf of all Owners all declarations of Ownership for tax assessment purposes with regard to the Common Area.

b. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

c. To enter into contracts, maintain one or more bank accounts, and generally have all the power necessary or incidental to the operation and management of the Property Owners Association.

d. To protect or defend the Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements or repairs.

e. To make reasonable Rules and Regulations for the operation of the Common Area and to amend them from time to time; provided that any rule or regulation may be amended or repealed by an instrument signed by a majority of the Owners.

f. To make available for inspection by Owners within 60 days after the end of each year an annual report and to make all books and records of the Property Owners Association available for inspection by Owners at reasonable times and intervals.

g. To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and, if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

h. To enforce the provisions of any Rules and Regulations, Restrictive Covenants, or other provisions of this Declaration or by the Bylaws of the Property Owners Association, and to enjoin and seek damages and fines from any Owner for violation of the same.

i. To collect all Charges and enforce all penalties for non-payment, including the assessment of a Fine and Late Fee, the filing of liens, and the institution of legal proceedings.

j. To establish or amend monetary "fines" system that will include due process hearings and a discretionary range of fine amounts, which, when levied, will constitute a permitted Member Charge secured by the lien herein established.

k. To establish reserve funds that may be maintained or accounted for separately from other funds maintained for annual operating expenses.

l. To convey small portions of Common Area to adjoining Owners if, in the opinion of the Board, such conveyance does not materially impact the Property Owners Association or the Subdivision or negatively affect the overall usage of the Common Area by the

Owners.

5. The Board will have the exclusive right to contract for all goods, services, and insurance payments to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as provided in this Declaration.

6. The Board, on behalf of the Property Owners Association, will have full power and authority to contract with any Owner or other person or entity for the performance by the Property Owners Association of services that the Board is not otherwise required to perform pursuant to the terms of this Declaration, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interest of the Property Owners Association.

## H. ACC

### 1. *Establishment*

- a. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Governing Documents.
- b. *Members.* The ACC consists of at least three (3) persons appointed by the Board. The Board may remove or replace an ACC member at any time.
- c. *Term.* ACC members serve until replaced by the Board or they resign.

2. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Governing Documents to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.*Plan Review*

- a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.
- b. *Procedures*
  - i. *Complete Submission.* Within thirty (30) days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

- ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within thirty-one (31) days after complete submission, the submitted plans and specifications are deemed approved.
- c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within ten (10) days after the ACC's action. The Board shall determine the appeal within fifteen (15) days after timely notice of appeal is given. The determination by the Board is final.
- d. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.
- e. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.
- f. *Variance.* The ACC may grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the ACC, in its sole and absolute discretion, the variance will not impair or detract from the high-quality development of the Property and the variance is justified due to unusual or aesthetic considerations or unusual circumstances. Despite anything to the contrary in this Declaration, the ACC is authorized, at its sole discretion, to waive any requirements relating to garages (including size), carports, dwelling size, masonry or other building materials, fences, the Common Area, easements, and setbacks, and the decision will be binding on all Owners of Property encumbered by this Declaration. All variances must be evidenced by written instrument in recordable form and must be signed by at least three (3) of the Voting Members of the Architectural Committee. The granting of a variance will not operate to waive or amend any of the terms or provisions of the covenants and restrictions applicable to the Lots for any purpose except as to the particular property and the particular instance covered by the variance, and a variance will not be considered to establish a precedent or future waiver, modification, or amendment of the terms and provisions of this Declaration.

### 3. *Contractor Review*

- a. The plans and specifications submitted to the ACC must identify the

contractor proposed by the Owner to construct the Residence or Structure. The ACC shall have the right, in its sole discretion, to approve or disapprove the use of any contractor.

## **I. Assessments**

1. Declarant for each Lot owned by it within the Properties, covenants, and each Builder Member and every Owner, by acceptance of a deed, whether or not it is so expressed in the deed or other conveyance, will be deemed to covenant and agree to pay to the Property Owners Association:

- a. Annual assessments or charges;
- b. Special assessments, to be fixed, established, and collected from time to time as provided below;
- c. Member Charges levied against individual Owners to reimburse the Property Owners Association for extra or unusual costs incurred by the Property Owners Association for curing the Owner's violation of a restrictive covenant contained in this Declaration; and
- d. Fines and Late Fees levied against individual Owners. The Charges, together with interest, reasonable attorney's fees, and costs of collection as provided in this Declaration, will be a charge on the land and will be a continuing lien upon the Lot against which the Charges are made. Each Charge, together with interest, reasonable attorney's fees, and cost of collection as provided in this Declaration, also will be the personal obligation of the Owner of the Lot at the time the obligation accrued.

2. The Charges levied by the Property Owners Association will be used for the purpose of promoting the recreation, health, safety, and welfare of the Members, and, in particular, for the improvement, maintenance, and operation of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area by Members.

a. *Annual Assessments.* The annual assessments ("Annual Assessments") for both Class A and Class B membership will be determined by the Board in the manner provided below after determination of current maintenance costs and anticipated needs of the Property Owners Association during the year for which the assessment is made. The maximum Annual Assessment may be adjusted by a majority vote of the Board, without membership vote, but will not increase by more than 10% of the prior year's Annual Assessment unless approved by the Owners using the procedures stated below for Special Assessments; provided, however, that if a Landscape Committee is created pursuant to Section E, paragraph 17, a one-time increase to the Annual Assessments in excess of 10% is permitted, without further approval by the Owners, in an amount to be determined by a majority vote of the Board.

- i. The Property Owners Association may increase the maximum Annual Assessment rate by more than the amount specified above only upon receipt of a majority of the approving vote of the Owners present in person or represented by proxy at a meeting called for vote on the

proposed increase.

ii. The Annual Assessment will be established by Declarant. The initial Annual Assessment for all Lots will be \$600.00. The Board may, in its discretion, increase or decrease the Annual Assessment from time to time. The initial Annual Assessment, or a pro rata portion of the Annual Assessment based upon the date of closing of the Lot, will be due and payable from the new Owner at the closing of the initial sale of the Lot by Declarant to a third party or the initial sale by a Builder Member to a third party.

iii. Any increase or decrease in the Annual Assessment will be made on a pro rata basis.

iv. Regardless of anything herein to the contrary, the Charges will not apply to Declarant, as owner of or holder of title of any Lot unless Declarant occupies a Living Unit constructed upon its Lot or uses the Living Unit for its own personal use as rental property. Annual Assessments and Special Assessments (as defined below) will not apply to Builder Members in the business of purchasing Lots for construction of improvements and subsequent resale to a third party unless the Builder Member occupies the Living Unit constructed on its Lot or uses the Living Unit for its own personal use as rental property. Membership Assessments (as defined below) will not apply to Builder Members for Lots purchased for resale to third parties but will apply to any subsequent sale and purchase of Lots to third parties.

b. *Membership Assessments.* In addition to the Annual Assessments provided for above, the Property Owners Association may levy a membership assessment (“Membership Assessment”) on Class A membership at any time a Lot is sold by the Owner, including Declarant, to a third party. The Membership Assessment will be established by Declarant so long as the Declarant is the Owner of a Lot and thereafter determined and established by the Board. The Membership Assessment will be collected from the purchaser of the Lot at closing. The initial Membership Assessment for a Lot (the “Membership Assessment”) to be collected at the sale of a Lot will be as follows:

i. For each sale of a Lot: \$520.00, or such other amount as determined by the Board.

c. *Special Assessments.* In addition, the Annual Assessment and Membership Assessment provided for above, the Property Owners Association may levy a special assessment (“Special Assessment”) on Class A membership and Class B membership as follows:

i. For the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement on or which is a part of the Common Area in an amount determined by the Board;

ii. To respond to the unusual emergency needs of the Property

Owners Association as may be expected to appear from time to time in an amount determined by the Board; or

iii. For such other lawful purpose related to the use of the Properties as the Board or the Owners may determine, provided that this assessment will have the approval of a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the date, time, and purpose of the meeting will be sent to all Owners.

d. *Member Charge.* In addition to the Annual Assessment, Membership Assessment, and Special Assessment described above, the Property Owners Association, by vote of the Board, may impose a charge (“Member Charge”) upon any Owner for the purpose of reimbursing the Property Owners Association for all direct and indirect costs incurred by the Property Owners Association with regard to the maintenance, repair, or replacement of improvements on any particular Lot when the Board has determined the maintenance, repair, or replacement of improvements associated with the Lot has been neglected to the point where conditions existing on the Lot are not in conformance with the maintenance obligations set forth in this Declaration or in the Restrictive Covenants, or an Owner places anything in the Common Area. The Owner of the Lot will be notified in writing of the Board’s determination and the specific deficiencies found to exist. The Owner will be afforded a reasonable period of time to respond to the Board’s notice and to correct the deficiencies. The Owner will be assessed the cost necessary to reimburse the Property Owners Association for any and all costs to secure compliance, including attorney’s fees.

e. *Fines and Late Fees.* In addition the Annual Assessment, Membership Assessment, Special Assessment, and Member Charge described above, the Property Owners Association, by vote of the Board, may impose fines and late fees upon any Owner for non-compliance or violations of the covenants of the Declaration or the Restrictive Covenants, or for late or nonpayment of any Annual Assessment, Membership Assessment, Special Assessment, or Member Charge. The Owner of the Lot will be notified in writing of the fine or Late Fee assessed to the Owner and the cause of such Fine or Late Fee. The Owner will be afforded a reasonable period of time and notice to pay the applicable delinquent Annual Assessment, Membership Assessment, Special Assessment, or Member Charge, prior to the assessment of any Fine or Late Fee. The Owner will be assessed the cost necessary to reimburse the Property Owners Association for any and all costs to secure compliance, including attorney’s fees.

f. *Due Dates, Budget, and Late Charges.* The Annual Assessments will be due and payable and collected as the Board determines. The amount of the Annual Assessment will be an amount that bears the same relationship to the Annual Assessment provided for above as the remaining number of months in that calendar year bear to twelve. The Board will use reasonable efforts to provide each Owner with an invoice statement as of the appropriate amount due, but any failure to provide a notice will not relieve any Owner of the obligation.

i. The Membership Assessment is due and payable at the closing of a sale of any Lot to a third party.

ii. The due date of any Special Assessment will be as set out above or as fixed in the resolution authorizing such assessment.

iii. The Member Charge and Fine and Late Fee are due and payable within 30 days after the Owner was served with notice by the Property Owners Association of the amount of the Member Charge or Fine or Late Fee.

iv. Each year, the Board will adopt an annual budget and set the amount of the Annual Assessment, taking into consideration the Property Owners Association operating cost for the then current year, expected increases or decreases in the costs over the next year, and future needs of the Property Owners Association. The annual budget will be adopted by the Board at least 30 days prior to the commencement of each calendar year.

v. Any assessment, Member Charge, or Fine or Late Fee not paid within 30 days after the due date will bear interest from the due date at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. If the Board refuses or fails to determine a rate of interest, the rate of interest will be the lesser of 18% per annum or the maximum rate allowed by law.

g. *Assessment Lien and Foreclosure.* All amounts assessed in the manner provided in this Declaration but unpaid will, together with the cost of collection, including attorney fees as provided in this Declaration, become a continuing lien and charge on the Lot covered by the Assessment that will bind the Lot in the hands of the Owner and the Owner's heirs, devisees, personal representatives, successors, or assigns. This lien will be superior to all other liens and charges against the Lot, except for tax liens and all amounts unpaid on a mortgage lien of record of first or second priority granted to an institutional lender, securing in either instance amounts borrowed for the purchase or improvement of the Lot in question. The Association will have the power to subordinate the Assessment lien to any other lien. This power will be entirely discretionary with the Board and the subordination must be signed by a duly authorized officer of the Association. To evidence the Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by the lien and a description of the Lot. This notice will be signed by one of the officers of the Association and will be recorded in the office of the County Clerk of the county where the Property is located. The lien for payment of Assessments will attach with the priority above set forth from the date that the payment becomes delinquent. The Association may direct its legal counsel to initiate legal proceedings in a court of competent jurisdiction seeking one or both of the following remedies:

(a) Foreclosure of the assessment lien. The Association may not, however, file an application for an expedited court order authorizing foreclosure of the Association's assessment lien or a petition for judicial foreclosure of the Association's assessment lien until the Association has (i) provided written notice of the total amount of the delinquency giving rise to the foreclosure to all lienholders of record (evidenced by a deed of trust) whose liens are inferior or subordinate to the Association's assessment lien, and (ii) provided each such lienholder an opportunity to cure the delinquency before the sixty-first (61st) day after the date the Association mails the notice. The notice to lienholders must be sent by certified mail to the address for the lienholder shown in the deed of trust



burdening the Lot(s) subject to the Association's assessment lien.

(b) Recovery of a personal judgment against the Current Owner and, where different, from the Delinquent Owner or from the Current Owner only, for all amounts owing arising from the unpaid Assessments and their collection, including all attorney fees and costs.

The Association will have the power to bid on the property at a foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with it. On the written request of any Mortgagee, the Association will report to the Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after they are due.

## **J. Common Area**

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to—

- a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
- b. suspend an Owner's rights under the Governing Documents;
- c. grant an easement approved by the Board over the Common Area for utility, drainage, fencing, or other purposes; and
- d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of two-thirds of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Governing Documents.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

4. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## **K. General Provisions**

1. *Term.* This Declaration runs with the land and is binding in perpetuity.
2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Governing Documents is not a waiver.
3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by vote of two-thirds of the votes in the Property Owners Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

5. *Conflict.* This Declaration controls over the other Governing Documents.

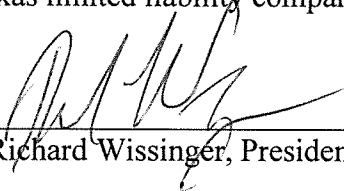
6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Property Owners Association's records, and the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.

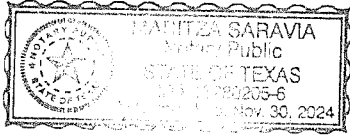
8. *Annexation of Additional Property.* On written approval of the Board and not less than two-thirds of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

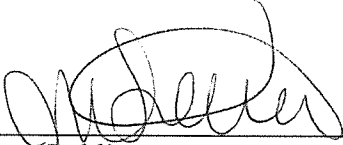
**This Declaration is made to correct and to replace a Declaration dated April 19, 2021, recorded as Instrument No. 2021023794 of the Official Public Records of Bell County, Texas. The prior instrument inadvertently omitted provisions regarding increases to the Annual Assessments in the event a Landscaping Committee is created. This Declaration is made to correct that omission, is effective April 19, 2021, and in all other respects confirms the prior Declaration.**

Alethium Development, LLC,  
a Texas limited liability company

By:   
Richard Wissinger, President

This instrument was acknowledged before me on April 20th, 2021, by Richard Wissinger, President of Alethium Development, LLC, a Texas limited liability company, as an act of the company.



  
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Notary Public