

1.3 Assessment. “Assessment” or “Assessments” shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.4 Association. “Association” shall mean and refer to the Elm Creek South , Phase 1, Property Owners Association, a Texas non-profit corporation, its successors and assigns. Elm Creek South Property Owners Association shall consist of members from all units or phases of the Property unless otherwise determined by the Developer.

1.5 Board. “Board” shall mean the Board of Directors of the Association.

1.6 Bylaws. “Bylaws” shall mean the Bylaws of the Association to be adopted by the Board, and as from time to time, amended.

1.7 Certificate of Formation. “Certificate of Formation” shall mean the Certificate of Formation of Elm Creek South Subdivision, Phase 1, which is filed in the office of the Secretary of State of Texas, and as from time to time amended.

1.8 Common Area. “Common Area” shall mean that portion of the Property owned or leased by the Association for the common use and enjoyment of the Members of the Association including but not limited to, all parks, recreational facilities, community facilities, landscaping, sprinkler systems, pavement, streets (to the extent not owned by appropriate governmental authorities), gates, walkways, traffic islands, open spaces, landscape buffers, easements owned by the Association, parking lots, pipes, wires, conduits and other public utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies).

1.9 Design Guidelines. “Design Guidelines” shall mean the criteria and guidelines established by the Architectural Control Committee for the design and/or construction of all Improvements, landscaping and other exterior items within the Subdivision.

1.10 Development Period. The “Development Period” is the period of time beginning on the date when the Declaration has been recorded and ending six months after the date that the Declarant no longer owns any portion of the Property, unless earlier terminated by a recorded written instrument executed by the Declarant. The Development Period is the period in which the Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

1.11 Improvement. “Improvement” shall mean every structure and all appurtenances thereto of every type and kind located on any Lot in the Subdivision, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, basketball goals, hot tubs, swimming pools, and swimming pool equipment and covers, garages, storage buildings, tree houses, playscapes, fences, gates, trash enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pumps, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.12 Lot or Tract. “Lot”, “Lots”, “Tract” or “Tracts” shall mean any parcel or parcels of land within the Subdivision shown as a subdivided lot on a plat of the Subdivision, together with all Improvements located thereon.

1.13 Member. “Member” or “Members” shall mean any person, persons, entity or entities holding membership rights in the Association.

1.14 Mortgage. “Mortgage” shall mean any mortgage or deed of trust lien covering all or any portion of the Subdivision given to secure the payment of a debt.

1.15 Mortgagee. “Mortgagee” or “Mortgagees” shall mean the holder or holders of any Mortgage or Mortgages.

1.16 Owner. “Owner” or “Owners” shall mean and refer to a person or persons, entity or entities holding a fee simple interest in all or any portion of the Subdivision but shall not include the Developer or a Mortgagee until such Mortgagee forecloses on one or more Lots in the Subdivision.

1.17 Person. “Person” or “Persons” shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.18 Plans and Specifications. “Plans and Specifications” shall mean any and all documents designed to guide or control the construction or creation of any Improvement, including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.19 Plat. “Plat” shall mean a final plat of any portion of the Property, as defined below.

1.20 Property. “Property” shall mean that real property which is subject to the terms of this or any other declaration for ELM CREEK SOUTH SUBDIVISION, PHASE 1, and subject to the jurisdiction of the Association. The Property acreage may be increased or decreased at the sole discretion of the Developer.

1.21 Supplemental Declaration. “Supplemental Declaration” shall mean and refer to any declaration of covenants, conditions and restriction which may be recorded hereafter in order (i) to incorporate Additional Property into the Development, (ii) to subject any area of the Property to further covenants, conditions or restrictions, or (iii) to withdraw land from the Property.

1.22 Utility Lot. “Utility Lot” shall mean and refer to any Lot to be used solely for utility purposes or conveyed to a utility provider.

ARTICLE II ADDITIONS TO THE PROPERTY

2.1 Phased Subdivision.

(A) Incorporation and Withdrawal. The Declarant, its successors and assigns, shall have the sole right, without requiring the consent or approval of any third party, including the Owners of any Lots or lienholders on those Lots, at any time prior to June 1, 2030, to (i) annex or incorporate within the scheme of this Declaration additional lots or phases of the property (a) following the acquisition of such property, or (b) barring acquisition of such property, with the consent of the record owner of such other property; or (ii) withdraw any property owned by the Declarant from the Subdivision or (iii) remove property owned by the Declarant from the terms of these Restrictions.

(B) Filing Affidavit. To evidence the incorporation or annexation of additional property (including but not limited to additional Lots) or withdrawal of property from the Subdivision or these restrictions, Declarant shall record an Affidavit stating that such property has been incorporated into, annexed into or withdrawn from the Subdivision or these Restrictions.

(C) Phases. Declarant may develop the Property into additional phases and may, at its sole discretion, encumber each phase with similar or the same restrictions.

2.2 Merger of Consolidation. Upon a merger or consolidation of the Association with another association, the Association’s properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Subdivision and/or the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided.

ARTICLE IV
USE RESTRICTIONS

4.1 General. Except as otherwise provided above or below, the Subdivision shall be improved and used solely for single family residential use, utility use, or for Common Areas. Common Areas may, subject to the approval of Declarant, be improved and used for active and passive recreational purposes for the primary benefit of Owners and occupants of portions of the Property; provided, however that, as to any specific area, Declarant may, in its sole and absolute discretion, permit other improvements and uses.

4.2 Minimum Yards. The location of all Improvements on a Lot shall be subject to approval by the Architectural Control Committee. Except as to Utility Lots, minimum yard and setback requirements may be established in excess of those shown on the plat by the Architectural Control Committee or by Declarant through a Supplemental Declaration in order to maximize open areas, pedestrian and vehicular movement and to benefit the overall appearance of the Property.

4.3 Common Areas. No land with any Common Areas shall be improved, used, or occupied, except in such a manner as shall have been approved by the Board, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Access to any Common Areas may be limited to persons currently paying Assessment fees and other charges, or otherwise conditioned or restricted, or made available to non-Owners, all on such terms and conditions as the Board may determine, in its sole discretion. Notwithstanding, the Developer shall have use of the Common Areas at all times.

ARTICLE V
ELM CREEK SOUTH PROPERTY OWNERS
ASSOCIATION, PHASE 1

The following Sections shall not apply to Utility Lots or Common Areas.

5.1 Organization. The Declarant has caused or shall cause the formation and incorporation of the Association as a nonprofit corporation under the laws of the State of Texas. The Association shall be created for the purposes, charged with the duties, governed by the provisions, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration. Neither the Certificate of Formation nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Nothing in this Declaration shall prevent the creation, by provision therefor in Supplement Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Sub-associations to own, develop, assess, regulate, operate, maintain or manage the Property subject to such Supplemental Declarations.

5.2 Membership. Every person or entity, including but not limited to the Developer, who is a record Owner of a fee or undivided fee interest in any Lot except Utility Lots, shall be a Member of the Association. The foregoing is not intended to include a person or entity holding an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and

may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or Lienholder who acquired title to any Lot which is a part of the Property through judicial or non-judicial foreclosure shall be a Member of the Association. It is understood that the Development may be developed in phases or sections, and upon the completion of development of each individual section or phase by Declarant, such completed section or phase or any part thereof shall, at the option and election of Declarant, be incorporated within the scheme of the Declarations and become bound hereby and a part hereof or may be restricted under separate Declarations but still be a part of the Association.

5.3 Voting Rights. The Association shall have one class of voting memberships. Each Lot shall have one vote regardless of the number of owners of the Lot or members of the Association, even if such lot is exempt from paying dues hereunder. If two (2) or more Lots are combined into one (1) Lot, but the Lot Owner is still paying dues on all Lots (including partial dues) the resulting Lot shall have one vote for each full assessment that is being paid.

5.4 Powers and Authorities of the Association. The Association shall have the powers of the Texas Nonprofit Corporation, subject only to such limitations upon the exercise of such power(s) as are expressly set forth in this Declaration. It shall further have the power to do and perform any and

all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the Laws of Texas. The Association acting through its Board, shall have the power and authority at all time as follows:

5.4.1 Elm Creek South Subdivision, Phase 1 Rules and Company Agreement. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Rules and Regulations not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

5.4.2 Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board are reasonably necessary or appropriate to carry out the Association functions.

5.4.3 Records. To keep books and records of the Association's affairs.

5.4.4 Assessments. To levy assessments as provided in Article VII below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article VII hereof in order to raise the total amount for which the levy in question is being made.

5.4.5 Right of entry and Enforcement. To enter at any time in an emergency (or in the case of non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, Contractor or Subcontractor, upon any Lot and into any Improvement thereon, excluding a completed, occupied Dwelling, for the purpose of enforcing subdivision restrictions or for the purpose of maintaining or repairing any area, landscaping, Improvement or other facility to conform to subdivision Restrictions. The expenses Incurred by the Association in connection with such entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be due no later than the first day of the following month, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the subdivision Restrictions. The Association is also authorized to settle claims, enforce liens, file suit to recover damages, fees and costs, request injunctive relief and take any action as it may deem necessary or expedient to enforce subdivision Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

The Association is hereby granted a perpetual easement to enter Lots for the purposes set forth above and shall in no event be liable for a trespass action or any damages, losses or expenses caused by such entry.

5.4.6 Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

5.4.7 Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Common Areas for the purpose of constructing, erecting, operating, repairing or maintaining the following:

- (1) Parks, open spaces, parkways or other recreational facilities or structures;
- (2) Roads, streets, walks, driveways, trails and paths;
- (3) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (4) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines;
- (5) Drainage easements; and/or
- (6) Any similar public, quasi-public or private improvements or facilities; provided, however, that the Association shall not convey fee simple title in and to, or mortgage all or any portion of any Common Area without the consent of at least sixty-seven (67%) of the Owners

(excluding Declarant).

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

5.4.8 Manager. To retain and pay for the services of a person or firm (the “Manager”) to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

5.4.9 Association Property Services. To pay for utility services for all Common Areas and to maintain and repair all easements, roads, parks, median strips and other areas in the Property not otherwise dedicated and/or accepted by a governmental entity.

5.4.10 Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Certificate of Formation or Bylaws of the Association.

5.4.11 Construction on Association Property. To construct new Improvements or additions to Common Areas as provided in this Declaration.

5.4.12 Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or any Person.

5.4.13 Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise and to own and operate any and all types of facilities for both active and passive recreation.

5.4.14 Fines. To levy fines in order to enforce compliance with subdivision restrictions.

55 Maintenance and Landscape Authority. The Association shall maintain and repair easements, entrances, gates, roads, roadways, rights-of-way, and other areas of the Property, as appropriate, and all streets and roadways within the Property, which are owned by the Association or have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Association shall be authorized to landscape all easements, access easements, rights-of-way, median strips, sidewalks, paths, trails, detention ponds and other areas of the Property, as appropriate. During the Development Period, the Association, shall maintain all Common Areas dedicated to the Association and not maintained by Developer. The Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located in any public right-of-way.

56 Lighting. The Association shall pay for any electrical service and for all other costs and expenses necessary to operate and maintain the lighting whether within street rights-of-ways, or on Common Areas where necessary.

57 Common Areas. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

5.7.1 To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever purpose which may be located in said area; and to accept, own, operate and maintain all other Common Areas, real and personal, conveyed or leased to the Association by the Declarant and to maintain in good repair and condition all lands improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, mowing and removal of rubbish or debris of any kind.

5.7.2 To construct, maintain, repair and replace landscape improvements and irrigation systems which lie within public rights-of-way, pursuant to any agreement with Uvalde County or other appropriate governmental authority.

5.7.3 To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

5.7.4 Upon the approval of two-thirds (2/3rds) of the Owners, to execute mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association. Additionally, the Association may accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether Declarant or the Association, on the improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees or Assessment paid by the members of the Association, as the case may be, but subject to the limitations imposed by this Declaration.

5.7.5 To take out and maintain a current policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Area, as well as casualty coverage on all real and personal property owned by the Association, and in such amounts as determined by the Board, if the Board shall deem the same appropriate.

5.7.6 To make any rules or regulations it deems necessary for such Common Areas.

58 Indemnification. The Association shall defend and indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceedings by settlement, or upon a plea of Nolo Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

59 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant or which would be detrimental to the sale of Lots within the Property.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

The following Sections shall not apply to Utility Lots or Common Areas.

61 Approval of Plans and Specifications. All Dwellings constructed on any portion of the Properties shall be designed by and constructed in accordance with the plans and specifications of a licensed architect or professional designer unless otherwise approved by the Committee. All fill brought onto the Lot must be approved by the Committee prior to placing on Lot. No Improvement shall be commenced, erected, constructed, placed or maintained upon any Lot, no site or dirt work shall be commenced, and no exterior addition to or change or alteration shall be made until the Plans and Specifications therefor shall have been submitted to and approved by the Architectural Control Committee. Construction of any structure approved by the Committee shall be commenced within six months of such approval or the approval shall be null and void and of no further effect and such plans and specifications must then be resubmitted for approval.

62 Membership of Architectural Control Committee. The Architectural Control Committee shall consist of not less than three nor more than five voting members (“Voting Members”) and such additional nonvoting members serving in an advisory capacity (“Advisory Members”) as the voting members of the Committee deem appropriate. The members of the Architectural Control Committee are not required to be Lot Owners or Members of the Association.

63 Actions of the Architectural Control Committee. The Architectural Control Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Control Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Control Committee taken without a meeting, shall constitute an act of the Architectural Control Committee.

64 Term. The Declarant shall appoint the initial members of the Architectural Control Committee. Such members shall serve until the termination of the Development Period or until Developer delegates its rights by execution of a written document filed with the records of the Association. If any member resigns during the Development Period, the Declarant shall appoint its replacement. Such members are not required to be a Lot Owner. The Architectural Control Committee will act solely in the Declarant’s interest and will owe no duty to any other Owner or the Association until the earlier of the termination of the Development Period or the Declarant delegates its rights, in writing, to the Members.

65 Adoption of Rules. The Architectural Control Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable. The Architectural Control Committee shall adopt Design Guidelines which shall be incorporated herein for all purposes.

66 Review of Proposed Construction. Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Control Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts and information which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Lot or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Control Committee along with a review fee established by the Architectural Control Committee but not to exceed \$500.00, and construction thereof may not commence unless and until the Architectural Control Committee has approved such Plans and Specifications in writing. The Architectural Control Committee may postpone review of the Plans and Specifications until such time as the Architectural Control Committee has received all information reasonably requested. If the Architectural Control Committee fails to approve or disapprove in writing any plans and specifications within thirty days following the submission or plans, or the receipt of any requested additional information, such plans and specifications shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance of such plans and specifications. The Architectural Control Committee shall perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Control Committee. The Architectural Control Committee’s approval of any Plans and Specifications shall not be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes. All decisions of the Architectural Control Committee may be appealed to the Board of Directors of the Association. The appeal process shall be established by the Board of Directors but shall be similar to the process set forth in Section 209.006 and 209.007 of the Texas Property Code.

Simultaneously with the submission of any plans and specifications, the Builder or Owner of the Lot shall submit an amount for a construction deposit to the Association. Such amount shall be determined by the Board of Directors and set forth in the Design Guidelines, but shall not exceed \$1,000.00. This deposit shall be to guarantee that the Owner of the Lot, as well as any Contractor or Subcontractor, adheres to the provisions of this Declaration. If the Committee or the Association must remedy a violation, the cost of such remedy shall be charged against these funds. This provision does not limit any other relief to which the Association or Committee is entitled to under this Declaration, at law or in equity or limit the amount of damages for which the Owner is liable. If, upon the completion of the Dwelling and all landscaping, the covenants have been complied with, the lesser of one-half of the deposit or any amount not used for remedying a violation shall be returned to the person or entity which deposited the funds. No interest shall accrue on such

funds.

6.7 Variances. The Committee and/or the Developer (prior to the termination of the Development Period) may, on a case by case basis, authorize variances from compliance with any of the provisions of either (i) the Restrictions or (ii) minimum acceptable construction standards, regulations and Design Guidelines as promulgated from time to time by the Developer or the Committee. Notwithstanding, after the termination of the Development Period, both the Developer and the Committee shall have the right to grant a variance from the Building set-back line restrictions. Either party may grant this variance as it determines, in its sole discretion is needed, without the consent of the other. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of these Restrictions for any purpose except as to the particular Lot and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot concerned.

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

6.9 Work in Progress. The Architectural Control Committee, at its option, may, but shall not be required to, inspect all work in progress to ensure compliance with approved Plans and Specifications. For this purpose, the Committee shall have a nonexclusive easement for ingress and egress across each Lot.

6.10 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Control Committee and upon written request by the Owner of the Lot, the Architectural Control Committee shall issue a "Certificate of Compliance With Approved Plans and Specifications" in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Control Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Control Committee of the actual consideration of the Improvements or of the workmanship or material thereof.

The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Control Committee of the construction workmanship, material and or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the Lot.

6.11 Non-Liability of Committee Members. NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

ARTICLE VII FUNDS AND ASSESSMENTS

7.1 Assessments. Developer shall not be required to pay an Assessment on any Lot owned by Developer. No Utility Company shall be required to pay an Assessment on any Utility Lot. All other Assessments established hereunder or by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot within the Property. Lots which have been re-platted to create a larger lot shall continue to pay assessments at a rate equal to one assessment for Each Lot. The Developer shall determine the assessments against each Lot until the end of the Development Period.

(A) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against

which the Assessment falls due, and shall become a lien against each such Lot and all Improvements thereon. The Developer and/or the Association may enforce payment of such assessments in accordance with the provisions of this Article.

(B) Where the obligation to pay an Assessment first arises after either the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose to the duration of the Assessment year or other period remaining after said date.

7.2 Maintenance Fund. The Developer shall initially establish, and the Board shall thereafter continue, a maintenance fund into which shall be deposited all monies paid the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the establishment or other maintenance funds by a Sub-association pursuant to any Supplement Declaration.

Regular Annual Assessments. Prior to the beginning of each fiscal year the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under Elm Creek South subdivision, Phase 1 Restrictions, including but not limited to, the cost of all maintenance, the cost of enforcing restrictions, and a reasonable provision for contingencies and appropriate replacement reserves. Assessments sufficient to pay such estimated net expenses and the level of Assessment set by the Board shall be final and binding so long as it is made in good faith. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal quarterly installments on or before the first day of each quarter, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular Assessment per Lot for the year 2023 exceed the sum of \$500.00 per lot, per year. Thereafter, the regular Assessment permitted hereunder shall not be increased by more than ten percent (10%) per year.

7.3 Special Assessments. In addition to the Regular Annual Assessment, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots and may be enforced in the same manner as the Regular Annual Assessment.

7.4 Owner's Personal Obligation for Payment of Assessments. The regular Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments by nonuse of the Common Areas or sale of his Lot. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment from the due date at a percentage rate of twelve percent (12.0%) per annum, or the highest amount allowed by law, whichever is lower, together with all costs, and expenses of collection, including reasonable attorney's fees.

7.5 Creation of Lien and Personal Obligation. In order to secure the payment of the assessments, fees and other charges hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on, either judicially or non-judicially, in compliance with the applicable law, such as Section 51 of the Texas Property Code (and any successor statute) and Section 209 of the Texas Property Code and each such owner hereby expressly grants the Association a power of sale in connection with such statute. The Association shall, whenever it proceeds with foreclosure pursuant to the provisions of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Uvalde County, Texas. In the event that the Association has determined to foreclose the lien pursuant to the provisions of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by the Association, the Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended and shall convey such Lot to the highest bidder for cash by Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner.

Subject to Section 51 and 209 of the Texas Property Code, following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder. In the event of non-payment by any Owner of any assessment, fee or other charge levied hereunder, the Association may, in addition to foreclosing the lien and exercising the remedies provided, upon ten (10) days prior written notice to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 7.6 to comply with the provisions of Section 51 and 209 of the Texas Property Code and Rules 735 and 736 of the Texas Rules of Civil Procedure relating to non-judicial foreclosure sales by power of sale and, in the event of the amendment of Sections 51, or 209 of the Texas Property code, or Rules 735 or 736 of the Texas Rules of Civil Procedures hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration file in the Real Property Records of Uvalde County, Texas, amend the provisions hereof so as to comply with said amendments to said Sections.

7.6 Notice of Lien. In addition to the right of the Association to enforce the assessments, fees or other charge levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured hereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

7.7 Liens Subordinate to Mortgages. The lien described in this Article VII shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit-sharing trusts or plans, or any other third-party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof, including home equity loans. Each such Mortgagee of a Mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or Mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid assessments, fees or other charges against such Lot which accrued prior to the time such holder acquired title to such Lot. No such sale or transfer shall relieve such holder from liability for any assessments, fees or other charges thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot

shall not affect the Association's lien for assessments, fees or other charges. The Association shall make a good faith effort to give each such Mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of lien described herein, which notice shall be sent the nearest office of such Mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent assessments, fees or other charges upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VII.

ARTICLE VIII EASEMENTS

8.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate,

reserve otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of Person, along and on either or both sides of any Lot line, which said easement shall have a maximum width of 10.0 feet on each side of such Lot line.

82 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the easement area affecting the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, cable television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Control Committee. Additionally, it shall be expressly permissible for the utility companies and other entities supplying service to trim overhanging trees and shrubs which are located on portions of the Property abutting such easements in the event it shall be determined that such overhanging limbs and shrubs shall interfere with the maintenance of the utilities.

83 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Control Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent in any drainage easement, except as approved in writing by the Architectural Control Committee.

84 Surface Areas. Each Owner shall maintain the surface area of all easements located within his Lot and all improvements located therein except for such improvements for which a public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement shall be liable to any owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

85 Title to Easement and Appurtenances Not Covered. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Area or any drainage, water, gas, sewer, storm sewer, electrical light, electrical power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Property, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved by Declarant.

86 Common Areas. Each Owner shall have an easement of use and enjoyment in and to all Common Areas which shall be appurtenant to and shall with title to such Owner's Lot, subject to the following restrictions:

(A) The right of the Association to suspend the Owner's voting rights and right to use the Common Areas for any period, during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;

(B) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;

(C) The right of the Association to borrow money for the purpose of improving the Common Areas and, in furtherance thereof, to Mortgage the Common Areas, all in accordance with the Certificate of Formation and Bylaws;

(D) The right of the Association to make reasonable rules and regulations regarding the

use of the Common Areas and any facilities thereon, including but not limited to the number of guests allowed; and

(E) The right of the Association to contract for services with third parties on such terms as the Association may determine.

87 Road Easement. The roads within Elm Creek South, Phase 1 have been or will be conveyed to the Association for use as a road. Each Lot Owner is hereby granted a nonexclusive easement for vehicular or pedestrian ingress and egress to and from their Lot(s), any public right-of-way and all Common Areas over and across said roads. The Association shall, at all times, allow Lot Owners access over such easements, regardless of whether such Lot Owner is current with his dues or in compliance with these restrictions. Except as specifically set forth herein, no improvement shall be constructed on or over such easement by any Lot Owner and no action shall be taken by any Lot Owner on or over this easement which would prevent other Lot Owners to have access to their individual properties. The Association shall be responsible for the maintenance of such road. Developer reserves the right to grant easements over the roads to third parties who are not Owners within the Property.

88 Drainage Easement. The easements located on the plat as drainage easements shall be maintained by the Lot Owner. The Lot owner shall not fence this area or place any other obstructions within such area that would prevent drainage along this area for the benefit of the subdivision.

89 Access Easement. Access easements are located within the private roads for the purpose of providing public safety services, police, fire and medical services, utility meter reading and other similar services as more fully set forth on the plat.

810 Easements to Serve Additional Land. The Declarant hereby reserves for itself and its duly authorized agents, representatives and employees, successors, assigns, licensees and mortgagees, an easement over the roadways within the Subdivision and/or the Property and any other roadways or access easements and Common Areas for the purposes of enjoyment, use, access, and development of Additional Land, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of the roads, for the posting of signs and for connecting and installing utilities serving the Additional Land. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of Additional Land. Declarant reserves the right to convey this non-exclusive easement to any current or successive owner or owners of any part of the Additional Lands.

811 Oak Wilt. All Owners are advised to secure from the Texas Forest Service, the Texas Extension Forester at Texas A & M University or its local county agent information on oak wilt and other diseases which may infect their trees and possibly spread to trees on other Lots. Each Owner is responsible for taking such actions as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always spreads from a diseased tree to its neighboring oak trees, each

Owner shall properly destroy all infected oak trees, avoid unnecessary pruning, and shall immediately apply dressing to all wounds on all oak trees. If oak wilt is detected, a minimum of 100 feet of the area surrounding the infected oak tree shall be trenched at least three feet (3') deep so as to prevent the oak wilt from spreading through connecting roots. Oak trees are most susceptible to oak wilt from February 1 to June 1. As a precaution, Owners should (i) avoid using firewood from infected oak trees, (ii) dispose of unused oak firewood after one heating season, and (iii) cut firewood only in the summer. Owners should use fungicide propiconazole to treat uninfected oaks when first informed of oak wilt being present on nearby trees. The foregoing information regarding oak wilt is provided to alert Owners and neither Declarant nor the Association shall be liable to any Owner in connection with the existence of spread of oak wilt on any Lot.

812 CZP. Each Owner is required to abide by and comply with all the terms of that certain Contributing Zone Plan ("CZP") recorded in the Official Public Records of Uvalde County, Texas. A copy of the CZP may be obtained from the County of Uvalde.

813 Geological Features: Caves and Sinkholes. Natural caves, sinkholes and/or other geological features may exist on some of the Lots in the Property. Each prospective Owners should personally inspect the Lot in which he is interested and/or seek the advice of a professional engineer and/or geologist to assure himself of the location of any such caves, sinkholes and/or other geological features which may be located thereon.

ARTICLE IX
MISCELLANEOUS

9.1 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until June 1, 2042, unless amended as herein provided. After June 1, 2042, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by no less than 66 2/3 of the Lots within the Property then subject to this Declaration.

9.2 Nonliability of Board and Architectural Control Committee Members. Neither the Architectural Control Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any connected with the performance of the Architectural Control Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Control Committee or its members or the Board or its members, as the case may be. Neither the Architectural Control Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

9.3 Amendment.

(A) By Declarant. This Declaration or any Supplemental Declaration may be amended by the Declarant acting alone until August 1, 2032, or until termination of the Development Period, whichever occurs first, by Declarant filing such Amendment in the Official Public Records of Uvalde County, Texas. No amendments by Declarant after August 1, 2032, shall be effective until there has been recorded in the Official Public Records of Uvalde County, Texas, an instrument approved and executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the Declarant had the requisite number of votes to amend the Restrictions. Notwithstanding the foregoing, Declarant may amend this Declaration at any time (i) to correct typographical and grammatical errors, and (ii) in order to comply with VA or FHA requirements for approval of the Property.

(B) By Owners. In addition to the method in Section 9.3(A), after August 1, 2030 or after the termination of the Development Period whichever occurs first, or at any other time with the consent of the Developer this Declaration may be amended by the recording in the Official Public Records of Uvalde County, Texas, an instrument approved, executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by at least sixty-six and two thirds percent (66 2/3%) of Lots in the Property (i.e. in all phases developed or to be developed). There shall be one vote per lot, regardless of the number of Owners of such Lot. Notwithstanding anything herein, the Design Guidelines may be amended as set forth in said Design Guidelines.

9.4 Notices. Any notice permitted or required to be given this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same

has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

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

9.6 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Control Committee or the Association. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Property, however, the construction of sales and leasing offices and the posting of signs advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by the Declarant.

9.7 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under

this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

98 Enforcement and Nonwaiver.

(A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant and/or the Board shall have the right to enforce all of the provisions of the Elm Creek South Restrictions.

(B) Nonwaiver. The failure to enforce any provision of the Elm Creek South Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(C) Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

99 Construction.

(A) Restrictions Severable. The provisions of Elm Creek South Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

These Restrictions may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

This Declaration may be executed in multiple counterparts.

[The remainder of this page is intentionally left blank. Signature Page follows.]

EXECUTED on the date of acknowledgement to be EFFECTIVE as of the ____ day of _____, 2023.

Upper 1 Development, LLC
a Texas Limited Liability Company

By: _____
Jay Sutherland

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the __ day of _____, 2023, by JAY SUTHERLAND, Authorized Agent OF Upper 1 Development, LLC, a Texas limited liability company.

Notary Public, State of Texas