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## SUPPLEMENTAL DECLARATION FOR REGENCY AT ESPERANZA

[AQ - 55 AND OVER]

THIS IS A COMMUNITY INTENDED FOR OCCUPANCY BY PERSONS AGE 55  
OR OLDER

*Kendall County, Texas*

**NOTE:** NO PORTION OF THE PROPERTY DESCRIBED IN THE MASTER DECLARATION IS SUBJECT TO THE TERMS OF THIS SUPPLEMENTAL DECLARATION FOR REGENCY AT ESPERANZA UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS RECORDED IN THE OFFICIAL PUBLIC RECORDS OF KENDALL COUNTY, TEXAS, IN ACCORDANCE WITH SECTION 7.01 BELOW.

**DECLARANT:** TOLL WEST, INC., a Delaware corporation

THE AQ DEVELOPMENT AREA SUBJECT HERETO IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESPERANZA PHASE 2E, RECORDED AS DOCUMENT NO. 369129 IN THE OFFICIAL PUBLIC RECORDS OF KENDALL COUNTY, TEXAS, AS AMENDED.

REGENCY AT ESPERANZA  
AQ DECLARATION  
[AQ - 55 AND OVER]

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**SUPPLEMENTAL DECLARATION FOR REGENCY AT ESPERANZA**  
**[AQ - 55 AND OVER]**

This Supplemental Declaration for Regency at Esperanza [AQ - 55 and Over] (the "AQ Declaration") is made by TOLL WEST, INC., a Delaware corporation (the "Declarant"), and is as follows:

**RECITALS**

A. Master Declarant previously recorded that certain Declaration of Covenants, Conditions and Restrictions for Esperanza Phase 2E, recorded as Document No. 369129 in the Official Public Records of Kendall County, Texas, as amended (the "Master Declaration"). The Master Declaration encumbers the "Property" as defined therein.

B. Pursuant to this AQ Declaration, portions of the Property may be made subject to this AQ Declaration upon the filing of one or more Notices of Applicability in accordance with Section 7.01 of this Master Declaration, and once such Notices of Applicability have been filed, the portions of the Property described therein will constitute the AQ Development Area and will be governed by and fully subject to this AQ Declaration in addition to the Master Declaration. The Property made subject to the terms and provisions of this AQ Declaration will be referred to herein as the "AQ Development Area".

**This AQ Declaration includes specific restrictions which apply to the AQ Development Area, in addition to the terms and provisions of the Master Declaration.**

NOW, THEREFORE, it is hereby declared: (i) those portions of the Property as and when made subject to this AQ Declaration by the filing of a Notice of Applicability will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (ii) each contract or deed conveying those portions of the Property which are made subject to this AQ Declaration will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this AQ Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Master Declaration.

REGENCY AT ESPERANZA  
AQ DECLARATION  
[AQ - 55 AND OVER]

**ARTICLE 1  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this AQ Declaration will have the meanings hereinafter specified:

**"Age Qualified Occupant"** means a person of not less than fifty-five (55) years of age.

**"Applicable Law"** means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the AQ Development Area, and any other applicable building codes, zoning restrictions, permits and ordinances adopted by a Governmental Entity (defined below), which are in effect at the time a provision of the governing documents is applied, and pertaining to the subject matter of the governing documents provision. Statutes, ordinances and regulations specifically referenced in the governing documents are "Applicable Law" on the effective date of the governing document, and are not intended to apply to the AQ Development Area if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

**"Development Period"** means the period of time beginning on the date when this AQ Declaration has been Recorded, and ending twenty (20) years thereafter, unless earlier terminated by a Recorded instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the AQ Development Area, and the right to direct the size, shape and composition of the AQ Development Area. The Development Period is for a term of years and does not require that Declarant own any portion of the AQ Development Area.

**"Disregarded Resident"** means any Occupant who is either: (i) an employee of the Regency at Esperanza AQ Association, provided that such person performs substantial duties related to the management of the Regency at Esperanza AQ Association or maintenance of any Common Area; or (ii) necessary to provide reasonable accommodation to disabled Occupants.

**"Governmental Entity"** means (a) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (b) a municipal utility district created pursuant to Article XVI, Section 59 of the Constitution of Texas and/or Chapters 49 and 54, Texas Water Code; (c) any other similarly constituted quasi-governmental entity created for the purpose of providing benefits or services to the AQ Development Area; or (d) any other regulatory authority with jurisdiction over the AQ Development Area.

**"Master Assessments"** means any assessment levied by the Master Association, pursuant to the Master Declaration or other Applicable Law.

**"Master Association"** means the Esperanza Community Association, Inc., a Texas non-profit corporation.

**"Master Board"** means the Board of Directors of the Master Association.

**"Master Declarant"** means LOOKOUT DEVELOPMENT GROUP, L.P, a Texas limited partnership, or its successors or assigns.

**"Maximum Number of Lots"** means the maximum number of Lots that may be created and made subject to the terms and provisions of the AQ Declaration. The Maximum Number of Lots for the purpose of the AQ Declaration is [CONFIRM: one-thousand two-hundred (1,200)]. Until expiration or termination of the Development Period, Declarant may unilaterally increase or decrease the Maximum Number of Lots by Recorded written instrument.

**"Notice of Applicability"** means the Recorded notice the Declarant executes for the purpose of adding all or any portion of the Property subject to the Master Declaration to the terms and provisions of this AQ Declaration.

**"Owner"** means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot within the AQ Development Area. Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Regency at Esperanza AQ Member.

**"Occupant"** means a resident, occupant or tenant of a Lot within the AQ Development Area.

**"Property"** means all of that certain real property described as the "Property" in the Master Declaration.

**"Record, Recording, Recordation and Recorded"** means recorded in the Official Public Records of Kendall County, Texas.

**"Regency at Esperanza AQ Assessments"** means assessments the Regency at Esperanza AQ Association may impose under this AQ Declaration.

**"Regency at Esperanza AQ Association"** means Regency at Esperanza AQ Community, Inc., a Texas non-profit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 5* and elsewhere in this AQ Declaration. The failure of the Regency at Esperanza AQ Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Regency at Esperanza AQ Association, which derives its authority from this AQ Declaration, the Master Declaration, the Regency at Esperanza AQ Certificate, the Regency at Esperanza AQ Bylaws, and Applicable Law.

**"Regency at Esperanza AQ Board"** means the Board of Directors of the Regency at Esperanza AQ Association.

**“Regency at Esperanza AQ Bylaws”** means the Bylaws of the Regency at Esperanza AQ Association as adopted and as amended from time to time.

**“Regency at Esperanza AQ Certificate”** means the Certificate of Formation of the Regency at Esperanza AQ Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

**“Regency at Esperanza AQ Community Manual”** means the community manual, which may be initially adopted by the Declarant or the Regency at Esperanza AQ Board and Recorded as part of the initial project documentation for the benefit of the Regency at Esperanza AQ Association. The Regency at Esperanza AQ Community Manual may include the Regency at Esperanza AQ Bylaws, Regency at Esperanza AQ Rules and other policies governing the Regency at Esperanza AQ Association. The Regency at Esperanza AQ Community Manual may be amended, from time to time, by the Declarant or by a Majority of the Regency at Esperanza AQ Board.

**“Regency at Esperanza AQ Documents”** means, singularly or collectively, as the case may be, this AQ Declaration, a Notice of Applicability, the Regency at Esperanza AQ Certificate, Regency at Esperanza AQ Bylaws, the Regency at Esperanza AQ Community Manual, as each may be amended from time to time, and any Regency at Esperanza AQ Rules promulgated by the Regency at Esperanza AQ Association pursuant to this AQ Declaration, as adopted and amended from time to time.

**“Regency at Esperanza AQ Members”** means every person or entity that holds membership privileges in the Regency at Esperanza AQ Association.

**“Regency at Esperanza AQ Rules”** means any instrument, however denominated, which is adopted by the Regency at Esperanza AQ Board for the regulation and management of the AQ Development Area, including any amendments to those instruments.

**“Service Area”** means a group of Lots designated as a separate Service Area pursuant to this AQ Declaration for purpose of receiving benefits or services from the Regency at Esperanza AQ Association. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. Service Area boundaries may be established and modified as provided in *Section 9.14*.

**“Service Area Assessments”** means assessments levied against the Lots in a particular Service Area to fund Service Area Expenses, as described in *Section 6.08*.

**“Service Area Expenses”** means the estimated and actual expenses which the Regency at Esperanza AQ Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.



**"Solar Energy Device"** means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

Any other capitalized terms used but not defined in this AQ Declaration will have the meanings given to such terms in the Master Declaration.

## ARTICLE 2 OCCUPANCY REQUIREMENTS

**2.01 Generally.** Each Lot may be occupied by either: (i) Disregarded Residents; or (ii) no more than four (4) persons, at least one (1) of which shall be an Age Qualified Occupant.

**2.02 Exceptions.** Notwithstanding the provisions of *Section 2.01* to the contrary, a Lot may be occupied by any of the persons set forth below; provided, however, that, in any event, no person may occupy a Lot if occupancy by such person would result in fewer than eighty percent (80%) of all occupied Lots being occupied by at least one (1) Age Qualified Occupant.

(i) Persons nineteen (19) years of age or under, provided that any such persons do not occupy the Lot for more than a maximum period of ninety (90) days within any twelve (12) month period.

(ii) Any person who takes title to a Lot through a conveyance or change of interest by reason of death of the prior Owner of the Lot, whether provided for in a will, trust or decree of distribution.

(iii) Any person granted an exception by the Regency at Esperanza AQ Board, in its sole discretion.

For purposes of calculating the number of occupied Lots, Lots occupied solely by Disregarded Residents shall be excluded from such calculation.

**2.03 Sale or Transfer.** Each Owner shall be responsible for including the statement that Lots are intended for occupancy by Age Qualified Occupants, as set forth above, in conspicuous type in any purchase and sale agreement or transfer documents relating to such Owner's Lot, which agreements or contracts shall be in writing and signed by the purchaser.

**2.04 Notice of Transfer.** In the event of any proposed change in occupancy of any Lot, as a result of transfer, sale, gift, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of such Lot shall immediately notify the Regency at Esperanza AQ Board in writing and provide to the Regency at Esperanza AQ Board the names and ages of all current and proposed Occupants of the Lot and such other information as the Regency at Esperanza AQ

Board may reasonably require to verify the age of each Occupant. No voluntary change in occupancy shall occur unless such change complies with the provisions of this *Article 2*. Persons purporting to acquire title or a right of possession to a Lot by sale, gift or other transfer that do not comply with the requirements set forth in this *Article 2* shall not be entitled to occupy the Lot in question. The Regency at Esperanza AQ Board shall be entitled to bring an action to evict any disapproved Occupant and such person shall be liable for the Regency at Esperanza AQ Board's legal fees and costs, at trial and upon appeal, in connection with any and all legal action taken to enforce the provisions of this *Article 2*.

**2.05 Maintaining Age Records.** The Regency at Esperanza AQ Board will maintain age records of all Occupants. The Regency at Esperanza AQ Board shall publish and adhere to policies, procedures and rules to monitor and maintain compliance with *Section 2.01* and *Section 2.02* and Applicable Law, including policies regarding verification of compliance with Applicable Law. The Regency at Esperanza AQ Association shall develop procedures for determining the occupancy of each Lot. The Regency at Esperanza AQ Association may require Occupants to produce copies of birth certificates, driver's licenses, passports, immigration cards, military identifications and other official documents containing birth date of comparable reliability. In furtherance of the foregoing, at least once each two (2) years, the Regency at Esperanza AQ Association shall conduct a survey of the Occupants of all Lots to determine whether the community is in compliance with the provisions of *Section 2.01* and *Section 2.02* and Applicable Law.

### ARTICLE 3 USE RESTRICTIONS

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

#### **3.01 Single Family Use Restrictions.**

(a) Use Restrictions. The AQ Development Area shall be used solely for single-family residential purposes. The AQ Development Area may not be used for any other purposes without the prior written consent of the Declarant, which consent may be withheld by the Declarant in its sole and absolute discretion. No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of the AQ Development Area, except an Owner or Occupant may conduct business activities within a residence so long as: (i) such activity complies with Applicable Law; (ii) participation in the business activity is limited to the Owner(s) or Occupant(s) of a residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business within the AQ Development Area, sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of Occupants within the Development; (v) the business does not, in the Master Board's judgment, generate a

level of vehicular or pedestrian traffic or a number of vehicles parked within the AQ Development Area which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the AQ Development Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Development as may be determined in the sole discretion of the Master Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the residence nor the Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Homebuilder.

(b) Special Declarant Rights. Notwithstanding any provision in this AQ Declaration to the contrary, until the expiration or termination of the Development Period:

(i) Declarant and/or its licensees may construct and maintain upon portions of the Common Area, any Lot, or any portion of the Property owned by the Declarant such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its assignees shall have an easement over and across the Common Area for access and use of such facilities at no charge; and

(ii) Declarant and/or its licensees will have an access easement over and across the Common Area for the purpose of making, constructing and installing Improvements upon the Common Area.

**3.02 Rentals.** Nothing in this AQ Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purpose, provided that all rentals must be for a term consistent with the requirements *Section 3.62* of the Master Declaration.

**3.03 Trash Containers.** Trash containers and recycling bins must be stored consistent with the requirements *Section 3.11.B* of the Master Declaration.

**3.04 Unightly Articles; Vehicles.** Placement of any unsightly articles or vehicles upon any lot shall be governed in accordance with *Sections 3.19, 3.22, 3.28, 3.31 and 3.48* of the Master Declaration.

**3.05 Signs.** Unless otherwise permitted by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC and in accordance with *Section 3.23* of the Master Declaration. All signs must comply with the Sign Regulations, as defined in the Master Declaration.

**3.06 Maintenance.** Each Owner of a Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep the Owner's entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times in accordance with *Article III* of the Master Declaration. The Declarant during the Development Period and the Regency at Esperanza AQ Board thereafter, shall have the right to designate a portion of any Lot as a "Service Area". A Service Area designation may provide that the Regency at Esperanza AQ Association will assume responsibility for certain maintenance tasks otherwise allocated to an Owner e.g., yard maintenance, and Owners affected by such Service Area designation will be required to pay Service Area Assessments for estimated costs to be incurred by the Regency at Esperanza AQ Association to provide landscaping services to such Service Area. Nothing in this *Section 3.06* will be construed to limit the Declarant or the Regency at Esperanza AQ Association's ability to designate Service Areas or provide the maintenance services which would otherwise be the responsibility of an Owner. The Master Board shall determine whether a violation of the maintenance obligations set forth in this *Section 3.06* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner as determined by the Master Board in its sole discretion:

- (i) Prompt removal of all litter, trash, refuse, and wastes;
- (ii) Lawn mowing and edging;
- (iii) Tree and shrub pruning;
- (iv) Watering;
- (v) Keeping exterior lighting and mechanical facilities in working order;
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive;

- (vii) Keeping planting beds free from turf grass;
- (viii) Keeping sidewalks and driveways in good repair;
- (ix) Complying with all Applicable Law;
- (x) Repainting of Improvements; and
- (xi) Repair of exterior damage, and wear and tear to Improvements.

**3.07 Party Walls.** A fence or wall located on or near the dividing line between two (2) Lots and intended to benefit both Lots constitutes a "Party Wall". The installation and maintenance of any Party Wall shall be subject to the Landscape Design Standards and Guidelines adopted in accordance with the Master Declaration.

**3.08 No Warranty of Enforceability.** Declarant makes no warranty or representation as to the present or future validity or enforceability of the governing documents. Any Owner acquiring a Lot in reliance on one or more of the governing documents will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

**3.09 Compliance with Governing Documents and Regency at Esperanza AQ Documents.** Each Owner, his or her family, occupants of a Lot, and the Owner's tenants, guests, invitees, and licensees will comply strictly with the provisions of the governing documents (as defined in the Master Declaration) and the Regency at Esperanza AQ Documents, as may be amended from time to time. Failure to comply with any of the governing documents or the Regency at Esperanza AQ Documents will constitute a violation of thereof and may result in a fine against the Owner in accordance with *Section 5.09* of the Master Declaration and *Section 6.14* of this AQ Declaration, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Master Board on behalf of the Master Association, the Regency at Esperanza AQ Board on behalf of the Regency at Esperanza AQ Association, the ACC, or by an aggrieved Owner. Without limiting any rights or powers of the Master Association, the Regency at Esperanza AQ Association, either the Master Board, Regency at Esperanza AQ Board or the ACC may (but neither will be obligated to) remedy or attempt to remedy any violation of any of the provisions of the governing documents or Regency at Esperanza AQ Documents, and the Owner whose violation has been so remedied will be personally liable to the Master Association or Regency at Esperanza AQ Association, as applicable, for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Master Association or Regency at Esperanza AQ Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable

against a Lot will be secured by the liens reserved in this AQ Declaration for Regency at Esperanza AQ Assessments and/or the Master Declaration for Assessments and may be collected by any means provided in this AQ Declaration and/or the Master Declaration for the collection of Regency at Esperanza AQ Assessments or Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will release and hold harmless the Master Association, the Regency at Esperanza AQ Association and their officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Master Association's or Regency at Esperanza AQ Association's acts or activities under this Section (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Master Association's or Regency at Esperanza AQ Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Master Association's or Regency at Esperanza AQ Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

**3.10 Release.** EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE REGENCY AT ESPERANZA AQ ASSOCIATION, THE MASTER ASSOCIATION, DECLARANT, THE ACC AND THEIR AFFILIATES, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF SUCH OWNER'S USE OF ANY COMMON AREA.

None of the Regency at Esperanza AQ Association, Master Association or Declarant will assume any responsibility or liability for any personal injury or property damage which is occasioned by use of any Common Area, and in no circumstance will words or actions by the Regency at Esperanza AQ Association, Master Association or Declarant constitute an implied or express representation or warranty regarding the fitness or condition of any Common Area.

**3.11 Decorations and Lighting.** All seasonal decorations for holidays must comply with Section 3.43 of the Master Declaration.

#### ARTICLE 4 CONSTRUCTION RESTRICTIONS

**4.01 Construction of Improvements.** Unless prosecuted by the Master Declarant or Declarant, no Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any portion of the AQ Development Area unless placed, maintained, erected or constructed in accordance with Applicable Law and approved in advance and in writing by the ACC in accordance with the Master Declaration.

4.02 **Xeriscaping.** Xeriscaping may only be installed upon an Owner's Lot in accordance with *Section 3.51* of the Master Declaration and the Rules and Regulations.

4.03 **Solar Energy Device.** Solar Energy Devices may only be installed in accordance with *Section 3.05.G.12* of the Master Declaration and shall be subject to Section II of the Rules and Regulations.

4.04 **Rainwater Harvesting Systems.** Rainwater Harvesting Systems may only be installed in accordance with *Section 3.56* of the Master Declaration and shall be subject to Section III of the Rules and Regulations.

4.05 **Standby Electric Generators.** As part of the installation and maintenance of a generator on an Owner's Lot, an Owner must first obtain the advance written approval of the ACC pursuant to *Article 3* of the Master Declaration and shall be subject to Section XIII of the Rules and Regulations.

4.06 **Subdividing.** Lots may only be subdivided in accordance with *Section 2.04* of the Master Declaration.

4.07 **Building Materials.** All building materials must be approved in advance by the ACC and be consistent with the requirements *Section 3.05.B* of the Master Declaration.

#### ARTICLE 5 REGENCY AT ESPERANZA AQ COMMUNITY, INC.

5.01 **Organization.** The Regency at Esperanza AQ Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Regency at Esperanza AQ Certificate nor the Regency at Esperanza AQ Bylaws will, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the Master Declaration or this AQ Declaration.

5.02 **Membership.** Any person or entity, upon becoming an Owner, will automatically become a member of the Regency at Esperanza AQ Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, if requested by the Regency at Esperanza AQ Board, an Owner must provide the Regency at Esperanza AQ Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any Occupant other than the Owner.

5.03 **Governance.** The Regency at Esperanza AQ Board will consist of at least three (3) persons elected at the annual meeting of the Regency at Esperanza AQ Association, or at a

special meeting called for such purpose. Notwithstanding the foregoing provision or any provision in this AQ Declaration to the contrary, until one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this AQ Declaration and have been conveyed to Owners which are not (i) the Declarant or (ii) a Homebuilder, Declarant will have the sole right to appoint and remove all members of the Regency at Esperanza AQ Board. Within one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this AQ Declaration and have been conveyed to Owners which are not (a) the Declarant or (b) a Homebuilder, the Regency at Esperanza AQ Board shall hold a meeting of Regency at Esperanza AQ Members of the Regency at Esperanza AQ Association for the purpose of electing one-third of the Regency at Esperanza AQ Board (the "Initial Member Election Meeting"), which Regency at Esperanza AQ Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Regency at Esperanza AQ Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

**5.04 Voting.** In any situation in which an Owner or Regency at Esperanza AQ Member is entitled individually to exercise the vote allocated to such Owner's Lot, if there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot determine among themselves and advise the Secretary of the Regency at Esperanza AQ Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot, and Majority agreement shall be conclusively presumed unless another co-Owner of the Lot protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement and if the vote is cast differently by co-Owners on a matter, the voting interest will be split proportionality between each co-Owner, e.g., if there are two co-Owners of a Lot which has been allocated one vote, and one co-Owner votes for the matter and the other co-Owner votes against the matter, each co-Owner will be allocated one-half (1/2) vote. If there are more than two co-Owners and the vote is not evenly split between co-Owners, the vote of a majority of the co-Owners will prevail for purposes of the matter to which the vote applies. In no event shall the vote for such Lot exceed the total votes to which such Lot is otherwise entitled pursuant to *Section 5.05*.

**5.05 Voting Allocation.** The number of votes which may be cast for election of members to the Regency at Esperanza AQ Board (except as provided by *Section 5.03*) and on all other matters to be voted on by the Regency at Esperanza AQ Members will be calculated as set forth below.

- (a) The Owner of each Lot will have one (1) vote for each Lot so owned.
- (b) In addition to the votes to which Declarant is entitled by reason of *Section 5.05(a)*, for every one (1) vote outstanding in favor of any other person or entity,



Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) Declarant may cast votes allocated to the Declarant pursuant to this *Section 5.05*, shall be considered a Regency at Esperanza AQ Member for the purpose of casting such votes, and need not own any portion of the AQ Development Area as a precondition to exercising such votes.

**5.06 Powers.** The Regency at Esperanza AQ Association will have the powers of a Texas non-profit corporation. It will further have the power to do and perform any and all acts that 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 or this AQ Declaration. Without in any way limiting the generality of the two preceding sentences, the Regency at Esperanza AQ Board, acting on behalf of the Regency at Esperanza AQ Association, will have the following powers at all times:

(i) Regency at Esperanza AQ Rules, Regency at Esperanza AQ Bylaws and Regency at Esperanza AQ Community Manual. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Regency at Esperanza AQ Rules, Regency at Esperanza AQ Bylaws and the Regency at Esperanza AQ Community Manual not in conflict with the Master Declaration or this AQ Declaration, as it deems proper, covering any and all aspects of the AQ Development Area (including the operation, maintenance and preservation thereof) or the Regency at Esperanza AQ Association. Any Regency at Esperanza AQ Rules, and any modifications thereto to existing Regency at Esperanza AQ Rules, Regency at Esperanza AQ Bylaws or the Regency at Esperanza AQ Community Manual, proposed by the Regency at Esperanza AQ Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(ii) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Regency at Esperanza AQ Board, are reasonably necessary or appropriate to carry out the Regency at Esperanza AQ Association's functions.

(iii) Records. To keep books and records of the Regency at Esperanza AQ Association's affairs, and to make such books and records, together with current copies of the Regency at Esperanza AQ Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(iv) Regency at Esperanza AQ Assessments. To levy and collect Regency at Esperanza AQ Assessments and to determine Regency at Esperanza AQ Assessment Units, as provided in *Article 6* below.

(v) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Regency at Esperanza AQ Documents or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Regency at Esperanza AQ Documents. The expense incurred by the Regency at Esperanza AQ Association in connection with the entry upon any Lot or and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Regency at Esperanza AQ Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Regency at Esperanza AQ Assessments. The Regency at Esperanza AQ Association will 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 Regency at Esperanza AQ Documents. The Regency at Esperanza AQ Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Regency at Esperanza AQ Documents; provided, however, that the Regency at Esperanza AQ Board will never be authorized to expend any Regency at Esperanza AQ Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Regency at Esperanza AQ Association may not alter or demolish any Improvements on any Lot, in enforcing this AQ Declaration before a judicial order authorizing such action has been obtained by the Regency at Esperanza AQ Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE REGENCY AT ESPERANZA AQ ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE REGENCY AT ESPERANZA AQ ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.06(V) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE REGENCY AT ESPERANZA AQ ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE REGENCY AT ESPERANZA AQ ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE**

**NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(vi) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Regency at Esperanza AQ Association.

(vii) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Regency at Esperanza AQ Association, including its property, to the extent deemed advisable by the Regency at Esperanza AQ Board. Additional personnel may be employed directly by the Regency at Esperanza AQ Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Regency at Esperanza AQ Board may delegate any other duties, powers and functions to the Manager. **THE REGENCY AT ESPERANZA AQ MEMBERS HEREBY RELEASE THE REGENCY AT ESPERANZA AQ ASSOCIATION AND THE MEMBERS OF THE REGENCY AT ESPERANZA AQ BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(viii) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, and all other utilities, services, repair and maintenance.

(ix) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Regency at Esperanza AQ Association or the Regency at Esperanza AQ Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Regency at Esperanza AQ Documents or as determined by the Regency at Esperanza AQ Board.

(x) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Regency at Esperanza AQ Association hereunder must be approved in advance and in writing by the Declarant.

(xi) Authority with Respect to AQ Declaration. To do any act, thing or deed that is necessary or desirable, in the judgment of the Regency at Esperanza AQ Board, to implement, administer or enforce any of the Regency at Esperanza AQ Documents. Any decision by the Regency at Esperanza AQ Board to delay or defer the exercise of the power and authority granted by this *Section 5.06* will not subsequently in any way limit, impair or affect ability of the Regency at Esperanza AQ Board to exercise such power and authority.

**5.07 Indemnification.** To the fullest extent permitted by Applicable Law but without duplication of (and subject to) any rights or benefits arising under the Regency at Esperanza AQ Certificate or Regency at Esperanza AQ Bylaws, the Regency at Esperanza AQ Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Regency at Esperanza AQ Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Regency at Esperanza AQ Board or a court of competent jurisdiction that he: (i) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Regency at Esperanza AQ Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Regency at Esperanza AQ Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**5.08 Insurance.** The Regency at Esperanza AQ Board may purchase and maintain, at the expense of the Regency at Esperanza AQ Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Regency at Esperanza AQ Association against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee member, employee, servant or agent of the Regency at Esperanza AQ Association, or arising out of the person's status as such, whether or not the Regency at Esperanza AQ Association would have the power to indemnify the person against such liability or otherwise.

**5.09 Bulk Rate Contracts.** Without limitation on the generality of the Regency at Esperanza AQ Association powers set out in *Section 5.06* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Regency at Esperanza AQ Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Regency at Esperanza AQ Association may enter into Bulk Rate Contracts with any service providers chosen by the Regency at Esperanza AQ Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Regency at Esperanza AQ Board may determine in its sole and absolute discretion. The Regency at Esperanza AQ Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Regency at Esperanza AQ Assessments (Regular Regency at Esperanza AQ Assessments or Individual Regency at Esperanza AQ Assessments, as the case may be) against such Owner's Lot. In this regard, it is agreed and understood that, if any

Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Regency at Esperanza AQ Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this AQ Declaration with respect to the failure by such Owner to pay Regency at Esperanza AQ Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this AQ Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Regency at Esperanza AQ Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Regency at Esperanza AQ Board deems appropriate, any utility service or other service provided at the cost of the Regency at Esperanza AQ Association and not paid for by such Owner (or Occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or Occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**5.10 Protection of Declarant's Interests.** Despite any assumption of control of the Regency at Esperanza AQ Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Regency at Esperanza AQ Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by the Declarant, the Regency at Esperanza AQ Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Regency at Esperanza AQ Board by Owners other than Declarant until the expiration or termination of the Development Period.

**5.11 Right of Action by Regency at Esperanza AQ Association or Master Association.** Neither the Regency at Esperanza AQ Association nor the Master Association shall have the power to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a Claim, as such term is defined in *Section 8.01* below, relating to the design or construction of Improvements on a Lot. This *Section 5.11* may not be amended or modified without the written and acknowledged consent of the Declarant and Regency at Esperanza AQ Members entitled to cast at least one hundred percent (100%) of the total number

of votes of the Regency at Esperanza AQ Association, which must be part of a Recorded amendment instrument.

**5.12 Regency at Esperanza AQ Association's Access, Maintenance and Landscape Easement.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Regency at Esperanza AQ Association an easement of access, maintenance and entry over, across, under, and through the AQ Development Area, including without limitation, each Lot and all Improvements thereon for the following purposes:

(i) to perform inspections and/or maintenance that is permitted or required of the Regency at Esperanza AQ Association by the Regency at Esperanza AQ Documents or by Applicable Law;

(ii) to perform maintenance that is permitted or required of the Owner by the Regency at Esperanza AQ Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance;

(iii) to maintain and provide any services required to be performed by the Regency at Esperanza AQ Association to any Service Area;

(iv) to enforce the Regency at Esperanza AQ Documents;

(v) to exercise self-help remedies permitted by the Regency at Esperanza AQ Documents or by Applicable Law;

(vi) to respond to emergencies;

(vii) to grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the AQ Development Area; and

(viii) to perform any and all functions or duties of the Regency at Esperanza AQ Association as permitted or required by the Regency at Esperanza AQ Documents or by Applicable Law.

**5.13 Easement to Inspect and Right to Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for the Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the AQ Development Area, including the Lots, and a perpetual nonexclusive easement of access throughout the AQ Development Area to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of

illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 5.13* may not be construed to create a duty for Declarant, the Master Association, the Regency at Esperanza AQ Association or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advance written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the AQ Development Area, including without limitation, all Common Areas, the Owner's Lot and all Improvements thereon for the purposes contained in this *Section 5.13*.

**5.14 Conveyance of Common Area to the Regency at Esperanza AQ Association.**

The Regency at Esperanza AQ Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate, convey, assign or transfer by written and Recorded instrument property being held by the Declarant or a third party for the benefit of the Regency at Esperanza AQ Association, in the sole and absolute discretion of the Declarant. Upon the Recording of a designation, the portion of the property identified therein will be considered Common Area for the purpose of this AQ Declaration and the Regency at Esperanza AQ Association shall have an easement over and across the Common Area necessary or required to discharge the Regency at Esperanza AQ Association's obligations under this AQ Declaration, subject to any terms and limitations to such easement set forth in the designation. Declarant and its assignees may also assign, transfer or convey to the Regency at Esperanza AQ Association interests in real or personal property within or for the benefit of the Development, for the Development and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Regency at Esperanza AQ Association shall be deemed accepted by the Regency at Esperanza AQ Association upon Recordation, and without further action by the Regency at Esperanza AQ Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Regency at Esperanza AQ Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Regency at Esperanza AQ Association shall in no event be a precondition to acceptance by the Regency at Esperanza AQ Association. The assignment, transfer, and/or conveyance of real or personal property to the Regency at Esperanza AQ Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Regency at Esperanza AQ Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Regency at

Esperanza AQ Association will re-convey to Declarant or to the Master Association any real property that Declarant originally conveyed to the Regency at Esperanza AQ Association for no payment. Declarant and/or its assignees may construct and maintain upon portions of the Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of improvements in the Development, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

**ARTICLE 6  
REGENCY AT ESPERANZA AQ ASSESSMENTS**

**6.01 Purpose of Regency at Esperanza AQ Assessments.** The Regency at Esperanza AQ Association will use Regency at Esperanza AQ Assessments for the general purposes of preserving and enhancing the AQ Development Area, and for the benefit of Owners and Occupants, including but not limited to maintenance of real and personal property, management, and operation of the Regency at Esperanza AQ Association, and any expense reasonably related to the purposes for which the Regency at Esperanza AQ Association was formed. If made in good faith, the Regency at Esperanza AQ Board's decision with respect to the use of Regency at Esperanza AQ Assessments is final.

**6.02 Regency at Esperanza AQ Assessments.**

(a) **Established by Regency at Esperanza AQ Board.** Regency at Esperanza AQ Assessments established by the Regency at Esperanza AQ Board pursuant to the provisions of this *Article 6* will be levied against each Lot in amounts determined pursuant to *Section 6.09* below. The total amount of Regency at Esperanza AQ Assessments will be determined by the Regency at Esperanza AQ Board in accordance with the terms of this *Article 6*.

(b) **Personal Obligation; Lien.** Each Regency at Esperanza AQ Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Regency at Esperanza AQ Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Regency at Esperanza AQ Association against each such Lot and all improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot is created). The Regency at Esperanza AQ Association may enforce payment of such Regency at Esperanza AQ Assessments in accordance with the provisions of this Article.

(c) **Declarant Subsidy.** Declarant may, but is not obligated to, reduce Regency at Esperanza AQ Assessments which would otherwise be levied against Lots



for any fiscal year by the payment of a subsidy to the Regency at Esperanza AQ Association. Any subsidy paid to the Regency at Esperanza AQ Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Regency at Esperanza AQ Association in future years.

(d) Master Association. Each Lot is subject to the terms and provisions of the Master Declaration and accordingly, each Owner will also be a mandatory Member of the Master Association and be required to pay assessments to the Master Association in accordance with the Master Declaration.

**6.03 Maintenance Fund.** The Regency at Esperanza AQ Board will establish a maintenance fund into which will be deposited all monies paid to the Regency at Esperanza AQ Association and from which disbursements will be made in performing the functions of the Regency at Esperanza AQ Association under this AQ Declaration.

**6.04 Regular Regency at Esperanza AQ Assessments.** Prior to the beginning of each fiscal year, the Regency at Esperanza AQ Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Regency at Esperanza AQ Association (the "**Regular Regency at Esperanza AQ Assessments**") which sets forth: (i) an estimate of the expenses to be incurred by the Regency at Esperanza AQ Association during such year in performing its functions and exercising its powers under this AQ Declaration, including, but not limited to, the cost of all management, repair and maintenance; and (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and due consideration to any expected income and any surplus from the prior year's fund. Regular Regency at Esperanza AQ Assessments sufficient to pay such estimated net expenses will then be levied at the level set by the Regency at Esperanza AQ Board in its sole and absolute discretion, and the Regency at Esperanza AQ Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Individual Regency at Esperanza AQ Assessment by any Owner, the Regency at Esperanza AQ Association may at any time, and from time to time, levy further Regular Regency at Esperanza AQ Assessments in the same manner. All such Regular Regency at Esperanza AQ Assessments will be due and payable to the Regency at Esperanza AQ Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Regency at Esperanza AQ Board may designate in its sole and absolute discretion.

**6.05 Working Capital Regency at Esperanza AQ Assessment.** Each Owner (other than Declarant) of a Lot will pay a one-time working capital assessment (the "**Working Capital Regency at Esperanza AQ Assessment**") to the Regency at Esperanza AQ Association in such amount as may be determined by the Declarant, until expiration or termination of the

Development Period, and the Regency at Esperanza AQ Board thereafter. Such Working Capital Regency at Esperanza AQ Assessment need not be uniform among all Lots, and the Declarant or the Regency at Esperanza AQ Board, as applicable, is expressly authorized to establish Working Capital Regency at Esperanza AQ Assessments of varying amounts depending on the size, use and general character of the Lots. The levy of any Working Capital Regency at Esperanza AQ Assessment will be effective only upon the Recordation of a written notice, signed by Declarant or a duly authorized officer of the Regency at Esperanza AQ Association, setting forth the amount of the Working Capital Regency at Esperanza AQ Assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Regency at Esperanza AQ Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Regency at Esperanza AQ Association's assessment lien; (ii) transfer to, from, or by the Regency at Esperanza AQ Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who (a) is a Homebuilder; or (b) acquires a Lot for the purpose of resale to a Homebuilder (a "Development Owner") will not be subject to the Working Capital Regency at Esperanza AQ Assessment; however, the Working Capital Regency at Esperanza AQ Assessment will be payable by any Owner who acquires a Lot from a Homebuilder or Development Owner for residential living purposes or by any Owner who: (I) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (II) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Regency at Esperanza AQ Assessment to a particular Owner, the Declarant during the Development Period, and thereafter the Regency at Esperanza AQ Board's, determination regarding the application of the exception will be binding and conclusive without regard to any contrary interpretation of this Section 6.05. The Working Capital Regency at Esperanza AQ Assessment will be in addition to, not in lieu of, any other Regency at Esperanza AQ Assessments levied in accordance with this Article 6 and will not be considered an advance payment of such Regency at Esperanza AQ Assessments. The Working Capital Regency at Esperanza AQ Assessment hereunder will be due and payable by the transferee to the Regency at Esperanza AQ Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Regency at Esperanza AQ Board, will have the power to waive the payment of any Working Capital Regency at Esperanza AQ Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

**6.06 Special Regency at Esperanza AQ Assessments.** In addition to the Regular Regency at Esperanza AQ Assessments provided for above, the Regency at Esperanza AQ Board may levy special Regency at Esperanza AQ Assessments (the "Special Regency at Esperanza AQ Assessments") whenever in the Regency at Esperanza AQ Board's opinion such

Special Regency at Esperanza AQ Assessments are necessary to enable the Regency at Esperanza AQ Board to carry out the functions of the Regency at Esperanza AQ Association under the Regency at Esperanza AQ Documents. The amount of any Special Regency at Esperanza AQ Assessments will be at the reasonable discretion of the Regency at Esperanza AQ Board.

**6.07 Individual Regency at Esperanza AQ Assessments.** In addition to any other Regency at Esperanza AQ Assessments, the Regency at Esperanza AQ Board may levy an individual assessment (the "**Individual Regency at Esperanza AQ Assessment**") against an Owner and the Owner's Lot. Individual Regency at Esperanza AQ Assessments may include, but are not limited to, the following: (i) interest, late charges, and collection costs on delinquent Regency at Esperanza AQ Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with the Regency at Esperanza AQ Documents; (iii) fines for violations of the Regency at Esperanza AQ Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and project documents; and (vi) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot.

**6.08 Service Area Assessments** Prior to the beginning of each fiscal year, the Regency at Esperanza AQ Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Regency at Esperanza AQ Association in the coming year which may include a reasonable provision for contingencies and an appropriate replacement reserve. The total amount of assessments levied to pay for Service Area Expenses for each Service Area (the "**Service Area Assessments**") will be allocated either: (i) equally; (ii) based on Regency at Esperanza AQ Assessment Unit; or (iii) based on the benefit received among all Lots within the benefited Service Area, as determined in the absolute discretion of the Regency at Esperanza AQ Board. All amounts that the Regency at Esperanza AQ Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Regency at Esperanza AQ Association's general funds.

**6.09 Amount of Assessment.**

(a) Regency at Esperanza AQ Assessments to be Levied. The Regency at Esperanza AQ Board will levy Regency at Esperanza AQ Assessments against each "Regency at Esperanza AQ Assessment Unit" (as defined in *Section 6.09(b)* below). Unless otherwise provided in this AQ Declaration, Regency at Esperanza AQ Assessments levied pursuant to *Section 6.04* and *Section 6.06* will be levied uniformly against each Regency at Esperanza AQ Assessment Unit.

(b) Regency at Esperanza AQ Assessment Unit. Each Lot will constitute one "Regency at Esperanza AQ Assessment Unit" unless otherwise provided in *Section 6.09(c)*.

(c) Declarant and Master Declarant Exemption. Notwithstanding anything in this AQ Declaration to the contrary, no Regency at Esperanza AQ Assessments will be levied upon Lots owned by Declarant or Master Declarant.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the AQ Development Area or Lot from Regency at Esperanza AQ Assessments; (ii) delay the levy of Regency at Esperanza AQ Assessments against any un-platted, unimproved or improved portion of the AQ Development Area or Lot; or (iii) reduce the levy of Regency at Esperanza AQ Assessments against any un-platted, unimproved or improved portion of the AQ Development Area or Lot. In the event Declarant elects to delay or reduce Regency at Esperanza AQ Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument.

**6.10 Late Charges.** If any Regency at Esperanza AQ Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Regency at Esperanza AQ Board, at the Regency at Esperanza AQ Board's election at any time and from time to time, to pay a late charge in such amount as the Regency at Esperanza AQ Board may designate, and the late charge (and any reasonable handling costs) will be a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Regency at Esperanza AQ Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**6.11 Owner's Personal Obligation for Payment of Regency at Esperanza AQ Assessments.** Regency at Esperanza AQ Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Regency at Esperanza AQ Assessments. No Owner may exempt himself from liability for such Regency at Esperanza AQ Assessments. In the event of default in the payment of any such Regency at Esperanza AQ Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Regency at Esperanza AQ Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Regency at Esperanza AQ Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

**6.12 Regency at Esperanza AQ Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 6* is, together with late charges as provided in *Section 6.10* and interest as provided in *Section 6.11* hereof and all costs of collection, including attorney's fees as herein provided, are secured by the continuing Regency at Esperanza AQ Assessment lien granted to the Regency at Esperanza AQ Association pursuant to *Section 6.02(b)* above, and will bind each Lot in the hands of the Owner thereof, and such

Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for (i) tax and governmental assessment liens; (ii) liens for Master Assessments; and (iii) all sums secured by a first mortgage Recorded lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; provided that, in the case of subparagraph (iii) above, such Mortgage was Recorded, before the delinquent Regency at Esperanza AQ Assessment was due. The Regency at Esperanza AQ Association will have the power to subordinate the aforesaid Regency at Esperanza AQ Assessment lien to any other lien. Such power will be entirely discretionary with the Regency at Esperanza AQ Board, and such subordination may be signed by an officer of the Regency at Esperanza AQ Association. The Regency at Esperanza AQ Association may, at its option and without prejudice to the priority or enforceability of the Regency at Esperanza AQ Assessment lien granted hereunder, prepare a written notice of Regency at Esperanza AQ Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the officers of the Regency at Esperanza AQ Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this AQ Declaration will be deemed conclusively to have granted a power of sale to the Regency at Esperanza AQ Association to secure and enforce the Regency at Esperanza AQ Assessment lien granted hereunder. The Regency at Esperanza AQ Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Regency at Esperanza AQ Association may have pursuant to Applicable Law and this AQ Declaration, including the rights of the Regency at Esperanza AQ Association to institute suit against such Owner personally obligated to pay the Regency at Esperanza AQ Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Regency at Esperanza AQ Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Regency at Esperanza AQ Association will report to said Mortgagee any unpaid Regency at Esperanza AQ Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Regency at Esperanza AQ Assessment lien, the lien for any Regency at Esperanza AQ Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Regency at Esperanza AQ Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Regency at Esperanza AQ Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this Section 6.12, the Regency at Esperanza AQ Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in

circumstances in which the Regency at Esperanza AQ Association has already foreclosed such lien. Such release will be signed by an officer of the Regency at Esperanza AQ Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Regency at Esperanza AQ Assessment and after the lapse of at least twelve (12) days since such payment was due, the Regency at Esperanza AQ Association may, upon five (5) days' prior written notice (which may run concurrently with such 12 day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Regency at Esperanza AQ Board deems appropriate, any utility or cable services, provided through the Regency at Esperanza AQ Association and not paid for directly by an Owner or occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Regency at Esperanza AQ Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Regency at Esperanza AQ Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this AQ Declaration to the Regency at Esperanza AQ Association, the Owner will pay such amounts to the Regency at Esperanza AQ Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Regency at Esperanza AQ Assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Regency at Esperanza AQ Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Regency at Esperanza AQ Association's records upon the transfer of a Lot to a third party; provided, however, that no administrative transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

**6.13 Exempt Property.** The following area within the AQ Development Area will be exempt from the Regency at Esperanza AQ Assessments provided for in this Article:

- (i) All area dedicated and accepted by a public authority, by the Recordation of an appropriate document;
- (ii) The Common Area; and
- (iii) Any portion of the AQ Development Area owned by Declarant.

**6.14 Fines and Damages Regency at Esperanza AQ Assessment.**

(a) Regency at Esperanza AQ Board Assessment. The Regency at Esperanza AQ Board may assess fines against an Owner for violations of the Regency at Esperanza AQ Documents committed by such Owner, an Occupant or an Owner's or Occupant's guests, agents or invitees pursuant to the *Fine and Enforcement Policy* contained in the Regency at Esperanza AQ Community Manual. Any fine and/or charge for damage levied in accordance with this *Section 6.14* shall be considered an Individual Regency at Esperanza AQ Assessment pursuant to this AQ Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Regency at Esperanza AQ Board may assess damage charges against an Owner for pecuniary loss to the Regency at Esperanza AQ Association from property damage or destruction of any Improvements caused by the Owner, the Occupant or their guests, agents, or invitees. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Regency at Esperanza AQ Documents and/or informing them of potential or probable fines or damage assessments. The Regency at Esperanza AQ Board may from time to time adopt a schedule of fines.

(b) Lien Created. The payment of each fine and/or damage charge levied by the Regency at Esperanza AQ Board against the Owner of a Lot is, together with interest as provided in *Section 6.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Regency at Esperanza AQ Association pursuant to *Section 6.02(b)* of this AQ Declaration. The fine and/or damage charge shall be considered a Regency at Esperanza AQ Assessment for the purpose of this Article and shall be enforced in accordance with the terms and provisions governing the enforcement of Regency at Esperanza AQ Assessments pursuant to this Article.

**6.15 Lien Rights Under the Master Declaration.** In addition to the lien rights granted to the Regency at Esperanza AQ Association pursuant to the terms and provisions of this AQ Declaration, in accordance with Article 5 of the Master Declaration, each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, Master Declarations and agrees to pay Master Assessments in accordance with the terms and provisions of the Master Declaration. Each Master Assessment is a charge on the Lot and is secured by a continuing lien on the Lot as set forth in the Master Declaration. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Master Assessments attributable to a period prior to the date the Owner purchased his Lot. An express lien on each Lot has been granted and conveyed by the Declarant under the Master Declaration to the Master Association to secure the payment of the Master Assessments. Each Owner is advised to review the Master Declaration for more information concerning the liens granted to secure payment of the Master Assessments.

**ARTICLE 7  
DEVELOPMENT**

7.01 **Notice of Applicability.** Upon Recording, this AQ Declaration serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this AQ Declaration. This AQ Declaration shall apply to and burden a portion or portions of the Property upon the Recording of a Notice of Applicability describing such applicable portion of the Property by a legally sufficient description and expressly providing that such Property shall be considered a part of the AQ Development Area and shall be subject to the terms, covenants conditions, restrictions and obligations of this AQ Declaration. To be effective, a Notice of Applicability must be executed by Declarant. To make the terms and provisions of this AQ Declaration applicable to a portion of the Property, Declarant shall be required only to cause a Notice of Applicability to be Recorded containing the following provisions:

- (i) A reference to this AQ Declaration, which reference shall state the document number or volume and page number wherein this AQ Declaration is Recorded;
- (ii) A statement that all of the provisions of this AQ Declaration shall apply to such portion of the Property;
- (iii) A legal description of such portion of the Property; and

**NOTICE TO TITLE COMPANY**

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS AQ DECLARATION AND THIS AQ DECLARATION DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS AQ DECLARATION HAS BEEN RECORDED.

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



- (i) A reference to this AQ Declaration, which will include the recordation information thereof;
- (ii) A statement that the provisions of this AQ Declaration will no longer apply to the withdrawn land; and
- (iii) A legal description of the withdrawn land.

7.03 **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this AQ Declaration, the dispute will be resolved by the Regency at Esperanza AQ Board, who shall delegate such maintenance responsibility to either the Master Association or the individual Owner(s), as determined by the Regency at Esperanza AQ Board in its sole and absolute discretion.

#### ARTICLE 8 DISPUTE RESOLUTION

*This Article 8 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Lots and/or Improvements can create significant financial exposure for the Regency at Esperanza AQ Association and the Regency at Esperanza AQ Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Regency at Esperanza AQ Board and the Regency at Esperanza AQ Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Lot, this Article 8 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Regency at Esperanza AQ Association and a law firm or attorney who will represent the Regency at Esperanza AQ Association in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.*

8.01 **Introduction and Definitions.** The Regency at Esperanza AQ Association, the Owners, Declarant, all persons subject to this AQ Declaration, and any person not otherwise subject to this AQ Declaration who agrees to submit to this Article by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots or any Improvement within, serving or forming a part of the Property (individually, a "Party" and collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the AQ Development Area and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. This Article 8 may only be amended with the prior written approval of the Declarant, the Regency at Esperanza AQ Association (acting through a Majority of the Regency at Esperanza AQ Board), and Owners holding one hundred percent (100%) of the votes in the Regency at Esperanza AQ

Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

(i) "Claim" means:

(A) Claims relating to the rights and/or duties of Declarant, the Regency at Esperanza AQ Association, Master Association, the ACC, or any architectural review authority under the Regency at Esperanza AQ Documents.

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

(C) Claims relating to the design or construction of any Lot or Improvements located on the AQ Development Area.

(ii) "Claimant" means any Party having a Claim against any other Party.

(iii) "Respondent" means any Party against which a Claim has been asserted by a Claimant.

**8.02 Mandatory Procedures.** Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 11.7* below, a Claim will be resolved by binding arbitration.

**8.03 Claim by Lot Owners - Improvements on Lots.** Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to a Lot Owner by the Declarant or a Homebuilder relating to the design or construction of any Improvements located on a Lot, then this *Article 8* will only apply to the extent that this *Article 8* is more restrictive than such Lot Owner's warranty, as determined in the Declarant's sole discretion. If a warranty has not been provided to a Lot Owner relating to the design or construction of any Improvements located on a Lot, then this *Article 8* will apply. Class action proceedings are prohibited, and no Lot Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this AQ Declaration. If a Lot Owner brings a Claim, as defined in *Section 8.01*, relating to the design or construction of any Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in *Section 8.04*, initiating the mandatory dispute resolution procedures set forth in this *Article 8*, or taking any other action to prosecute a Claim, the Lot Owner must:

(a) Provide Notice of the Inspection. As provided in *Section 8.03(b)* below, an Owner Improvement Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Owner Improvement Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Owner Improvement Report, the Improvements and areas of the Improvements to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

(b) Obtain an Owner Improvement Report. The requirements related to the Owner Improvement Report set forth in this *Section 8.03(b)* are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Owner Improvement Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Owner Improvement Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Owner Improvement Report is compromised.

Obtain a written independent third-party report for the Improvements (the "Owner Improvement Report") from an Inspection Company. The Owner Improvement Report must include: (i) a description with photographs of the Improvements subject to the Claim; (ii) a description of the present physical condition of the Improvements; (iii) a detailed description of any modifications, maintenance, or repairs to the Improvements performed by the Owner or a third-party, including any Respondent; (iv) specific and detailed recommendations regarding remediation and/or repair of the Improvements. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Owner Improvement Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Kendall County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Owner Improvement Report must be obtained by the Owner. The Owner Improvement Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (b) the costs and expenses for preparation of the Owner Improvement Report are not directly

paid by the Owner to the Inspection Company no later than the date the Owner Improvement Report is finalized and delivered to the Owner; or (c) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner's agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Owner Improvement Report. For avoidance of doubt, an "independent" report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Owner Improvement Report is finalized and delivered to the Owner.

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

(d) Right to Cure Defects and/or Deficiencies Noted on Owner Improvement Report. Commencing on the date the Owner Improvement Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Owner Improvement Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Owner Improvement Report; and (iii) correct any condition identified in the Owner Improvement Report. As provided in *Section 5.13* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Owner Improvement Report.

**8.04 Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 8.05* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 8.05* to

comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 8.05 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 8.06 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 8.06 is required without regard to the monetary amount of the Claim. If the Claim pertains to Improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

**8.05 Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the AQ Development Area, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the AQ Development Area that is subject to the Claim for the purposes of inspecting the AQ Development Area. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the AQ Development Area to take and complete corrective action.

**8.06 Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent may submit the Claim to mediation in accordance with this Section 8.06. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with Section 8.07.

**8.07 Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 8.07.

(a) **Governing Rules.** If a Claim has not been resolved after mediation in accordance with Section 8.06, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 8.07 and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if

applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this *Section 8.07*, this *Section 8.07* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

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

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

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

(b) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 8.07* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 8.07*.

(d) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this

*Section 8.07* and subject to *Section 8.08* below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In addition, for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.

(c) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Kendall County, Texas. Unless otherwise provided by this *Section 8.07*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

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

**8.09 General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

**8.10 Period of Limitation.**

(a) For Actions by an Owner or Occupant. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging

construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 8.10(a)* be interpreted to extend any period of limitations.

(b) For Actions by the Regency at Esperanza AQ Association. The exclusive period of limitation for the Regency at Esperanza AQ Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Regency at Esperanza AQ Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years and one (1) day from the date that the Regency at Esperanza AQ Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) for all Claims, the applicable statute of limitations for such Claim. In no event shall this *Section 11.10(b)* be interpreted to extend any period of limitations.

**8.11 Approval & Settlement.** The Regency at Esperanza AQ Association must levy a Special Regency at Esperanza AQ Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 8* or any judicial action initiated by the Regency at Esperanza AQ Association. The Regency at Esperanza AQ Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Regency at Esperanza AQ Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

## ARTICLE 9 GENERAL PROVISIONS

**9.01 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this AQ Declaration will run with and bind the AQ Development Area, and will inure to the benefit of and be enforceable by the Regency at Esperanza AQ Association, the Master Association and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this AQ Declaration is Recorded, and continuing through and including January 1, 2081, after which time this AQ Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Regency at Esperanza AQ Members entitled to cast at least sixty-seven percent



(67%) of the total number of votes of the Regency at Esperanza AQ Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Regency at Esperanza AQ Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Regency at Esperanza AQ Bylaws. Regency at Esperanza AQ Notwithstanding any provision in this *Section 9.01* to the contrary, if any provision of this AQ Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty- one (21) years after the death of the last survivor of the now living, as of the date of the Recording of this document, descendants of Elizabeth II, Queen of England.

**9.02 Amendment.** This AQ Declaration may be amended or terminated by the Recording of an instrument setting forth the amendment executed and acknowledged by (i) the Declarant, acting alone; or (ii) by the president and secretary of the Regency at Esperanza AQ Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period), Regency at Esperanza AQ Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Regency at Esperanza AQ Association, and the Master Board (after expiration or termination of the Development Period). The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Regency at Esperanza AQ Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 9.02*, it being understood and agreed that any such amendment must be approved by a vote of the Regency at Esperanza AQ Members, with each Regency at Esperanza AQ Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period.

**9.03 Notice of Plat Recordation.** Declarant may, at any time and from time to time, file a notice of plat recordation (a "**Notice of Plat Recordation**"). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this AQ Declaration after portions of the Property are made subject to a Plat. Unless otherwise provide in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this AQ Declaration (without the necessity of complying with the withdrawal provisions set forth in *Section 7.02* above), if such portions of the Property were made subject to this AQ Declaration upon Recording. Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this AQ Declaration.

**9.04 Notices.** Any notice permitted or required to be given by this AQ Declaration must be in writing and may be delivered either personally or by mail, or as otherwise required

by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Saturday, 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 in writing to the Regency at Esperanza AQ Association and the Master 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 Regency at Esperanza AQ Association and the Master Association.

**9.05 Interpretation.** The provisions of this AQ Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the AQ Development Area, provided, however, that the provisions of this AQ Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the AQ Development Area. This AQ Declaration will be construed and governed under the laws of the State of Texas.

**9.06 Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

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

**9.08 Enforcement and Nonwaiver.** Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, Declarant, the Regency at Esperanza AQ Association and the Master Association will have the right to enforce all of the provisions of this AQ Declaration. The Regency at Esperanza AQ Association, the Master Association and/or Declarant may initiate, defend or intervene in any action brought to enforce any provision of this AQ Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Regency at Esperanza AQ Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant, the Regency at Esperanza AQ Association or the Master Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the AQ Development Area is hereby declared to be a violation of this AQ Declaration and subject to all of the enforcement procedures set forth herein. The failure to enforce any provision of the Regency at Esperanza AQ Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Regency at Esperanza AQ Documents.

**9.09 Severability.** If any provision of this AQ Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this AQ Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**9.10 Captions.** All captions and titles used in this AQ Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

**9.11 Conflicts.** If there is any conflict between the provisions of the Master Declaration, this AQ Declaration, any Rules adopted pursuant to the terms of such documents, or the Regency at Esperanza AQ Documents, the provisions of the Master Declaration, then the AQ Declaration, then the Rules, then the Regency at Esperanza AQ Documents in that order, will govern.

**9.12 Higher Authority.** The terms and provisions of this AQ Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this AQ Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

**9.13 Acceptance by Owners.** Each Owner of a Lot or other real property interest in the AQ Development Area, by the acceptance of a deed of conveyance, and each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this AQ Declaration or to whom this AQ Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each Owner agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant that occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the AQ Development Area, and will bind any person having at any time any interest or estate in the AQ Development Area, and will inure to the benefit of each Owner in like manner as though the provisions of this AQ Declaration were recited and stipulated at length in each and every deed of conveyance.

**9.14 Provision of Benefits and Services to Service Areas.**

(a) **Designation by Declarant.** Declarant, in any Recorded written notice, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Regency at Esperanza AQ Association provide benefits or services to such Lots in addition to those which the Regency at Esperanza AQ Association generally provides to the AQ Development Area. Declarant may unilaterally amend any Recorded written notice to re-designate Service Area boundaries. All costs associated

with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) Petition by Owners. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Regency at Esperanza AQ Board to designate their Lots as a Service Area for the purpose of receiving from the Regency at Esperanza AQ Association: (i) special benefits or services which are not provided to all Lots; or (ii) a higher level of service than the Regency at Esperanza AQ Association otherwise provides. Upon receipt of a petition signed by Owners of a majority of the Lots within the proposed Service Area, the Regency at Esperanza AQ Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Regency at Esperanza AQ Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). Notwithstanding the foregoing, until expiration or termination of the Development Period, the Declarant shall have the right to withhold its consent for any petition to designate Lots as a Service Area in Declarant's sole and absolute discretion. If approved by the Regency at Esperanza AQ Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots within the proposed Service Area, the Regency at Esperanza AQ Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Regency at Esperanza AQ Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

(c) The Regency at Esperanza AQ Association may, from time to time, include additional components of Improvements or Lots or remove components of Improvements or Lots from a Service Area; however, unless otherwise approved by the Declarant during the Development Period, in no event may the Regency at Esperanza AQ Association at any time remove from any Service Area components of any Improvements or Lots previously designated as a Service Area under this AQ Declaration. During the Development Period, any addition to a Service Area must also be approved by the Declarant. After expiration or termination of the Development Period, any addition or removal of components of Improvements or Lots must be approved by two-thirds (2/3) of the total number of votes held by all Lots within a Service Area. During the Development Period, the Service Area may be modified or amended by the Declarant, acting alone. Any modification or amendment to the Service Area must be Recorded.

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*[SIGNATURE PAGE FOLLOWS]*

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

**DECLARANT:**

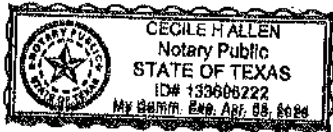
**TOLL WEST, INC.**  
a Delaware corporation

By: *[Signature]*  
Name: Brandon Cooper  
Title: Division President

THE STATE OF TEXAS           §  
  §  
COUNTY OF Williamson       §

This instrument was acknowledged before me on June 14, 2022,  
by Brandon Cooper, Division President of TOLL WEST, INC., a  
Delaware corporation, on behalf of said corporation.

(SEAL)

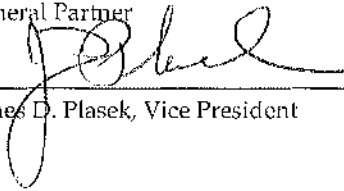


*Cecile H. Allen*  
Notary Public Signature

**ACKNOWLEDGED AND AGREED BY MASTER  
DECLARANT:**

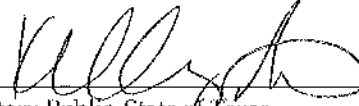
**LOOKOUT DEVELOPMENT GROUP, L.P.,**  
a Texas limited partnership

By: The Lookout Group, Inc.,  
a Texas corporation,  
its General Partner

By:   
James D. Plasek, Vice President

THE STATE OF TEXAS           §  
  §  
COUNTY OF Williamson   §

This instrument was acknowledged before me on this 14<sup>th</sup> day of June,  
2022 by James D. Plasek, Vice President of The Lookout Group, Inc., a Texas corporation, the  
General Partner of Lookout Development Group, L.P., a Texas partnership, on behalf of said  
corporation and partnership.

  
Notary Public, State of Texas



**Kendall County  
Darlene Herrin  
Kendall County  
Clerk**

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**Instrument Number: 371404**

eRecording - Real Property

DECLARATION

Recorded On: June 21, 2022 04:40 PM

Number of Pages: 48

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**" Examined and Charged as Follows: "**

Total Recording: \$210.00

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**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

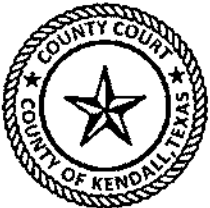
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 371404  
Receipt Number: 20220621000068  
Recorded Date/Time: June 21, 2022 04:40 PM  
User: Maria B  
Station: CClerk01

**Record and Return To:**

Simplifile  
5072 North 300 West  
  
PROVO UT



**STATE OF TEXAS  
COUNTY OF**

**I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Kendall County, Texas.**

Darlene Herrin  
Kendall County Clerk  
Kendall County, TX

*Darlene Herrin*