



VG-1011-2024-3540764

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg, Texas 78540

Document No: 3540764

Billable Pages: 20

Recorded On: April 17, 2024 02:02 PM

Number of Pages: 21

AMENDMENT

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

Total Recording: \$ 111.00

*****THIS PAGE IS PART OF THE DOCUMENT*****

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 No: 3540764
Receipt No: 20240417000238
Recorded On: April 17, 2024 02:02 PM
Deputy Clerk: Elisa Castillo
Station: CH-1-CC-K32

Record and Return To:

Amanda Cid-Galvan
4502 N Gwin Rd
original returned to customer
EDINBURG TX 78542



STATE OF TEXAS
COUNTY OF HIDALGO

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 Hidalgo County, Texas.

Arturo Guajardo Jr.
County Clerk
Hidalgo County, Texas

**AMENDMENT TO DECLARATION OF COVENANTS,
STIPULATIONS AND RESTRICTIONS OF
AUBURN ESTATES PHASE II SUBDIVISION**

STATE OF TEXAS

COUNTY OF HIDALGO

This AMENDMENT restatement of the Declaration of Covenants, Stipulations and Restrictions for AUBURN ESTATES PHASE II SUBDIVISION, Hidalgo County, Texas is made this **10TH** day of **APRIL 2024**, by the owner of the described lots, hereinafter called Declarants and pursuant to SB 1588 of the 87th Legislative update of the Texas Property Code.

SECTION I

Declarant is lot owner of certain property situated in Hidalgo County, Texas which is described as follows: Lots 1 through 41 and common area, Inclusive of Auburn Estates Phase II Subdivision, Hidalgo County, Texas.

The above-described property is subject to the Amended Declaration of Covenants, Stipulations and Restrictions recorded under document # (to be filled upon recording of plat) 3101385 Official Records of Hidalgo County, Texas. The Properties in the subdivision have will be, sold, and conveyed subject to the amended covenants, stipulations and restrictions established in those recorded instruments, and said amended covenants, stipulations and restrictions run with the real property and are binding on all parties having right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and insure to the benefit of each owner thereof. The Properties in the subdivision have will be, sold, managed by developer, and conveyed subject to the amended covenants, stipulations and restrictions established in those recorded instruments, and said amended covenants, stipulations and restrictions run with the real property and are binding on all parties having right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and insure to the benefit of each owner thereof. The Development period shall last until full completion of all transfers of real property to homeowners and easements, community property is transferred and titled to the property owner association.

SECTION II

In accordance with Paragraph 3, GENERAL POSSESSORY, of the amended declaration of covenants, stipulations and Restrictions, AUBURN ESTATES PHASE II, SUBDIVISION the declaration may be amended by an Instrument signed by the Acting Board of Directors in place during the development period or owners of at least 75% of the lots agreeing in such change. The undersigned declarant, consisting of 75% or more of the lot owners, desire to amend restate the Declaration of Covenants, Stipulations and Restrictions as recorded under document (to be filled upon recording of plating) 3101385, Official Records, Hidalgo County, Texas.

SECTION III

Declarants for themselves, their successors, and assigns, hereby declare their intent to amend and restate the Amended Declaration of Covenants, Stipulations and Restrictions, for AUBURN ESTATES PHASE II SUBDIVISION as recorded as stated above. Declarants hereby declare that all of the properties described above shall be held, sold, and conveyed subject to the following Amended Declaration of covenants, Amended Stipulations and Restrictions, as restated herein, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or the above described properties, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. This restatement of the Amended Declaration of Covenant, Stipulations and Restriction, shall replace all prior Declarations and Amendments and shall operate as covenants running with the land for the benefit of each of the parties having ant right title or interest, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. Declarant or Developer may appoint a Board of Directors to oversee the management and operations of the association until a new board is put into place by the directors. Acting directors must ensure the association has no pending invoices or outstanding debts to the developer, host the election and voting of a new board to transition ownership of the association or contract an association management agency that will over see all operations. Said management company will act as the board of direct for the association, may charge a fee pursuant to the contract for services.

(hereinafter "Owner" , "Declarant" or "Developer"), Intending to place certain restriction Covenants, traditions stipulations and reservations upon and against the property to establish a uniform plan for its development, improvements and sale and to preserve this uniform plan to benefit owners of lots in the subdivision hereafter, "Homeowners") , here declare that all of the subdivision lots shall be held, sold and conveyed subject to the following restrictions, covenants and conditions, to protect the value of the real property and to run with it and bind and benefit all parties owning an interest in such real property. THE PREVISIONS OF THIS AMENDED DECLARATION OF RESTRICTIONS, RESERVATIONS AND COVENANTS SHALL YIELD TO ANY STRICTER REQUIRMENT IN THE CODE OF ORDINANCES OF THE CITY OF MCALLEN.

AUTHORITY OF ASSOCIATION TO AMEND DEDICATORY INSTRUMENT. (a) A dedicatory instrument created by a developer of a residential subdivision or by a property owners' association in which the developer has a majority of the voting rights or that the developer otherwise controls under the terms of the dedicatory instrument may not be amended during the period between the time the developer loses the majority of the voting rights or other form of control of the property owners' association and the time a new board of directors of the association assumes office following the loss of the majority of the voting rights or other form of control.

SECTION IV

ARCHITECTURAL REVIEW AUTHORITY

1. ARCHITECTURAL REVIEW AUTHORITY. In this section, "architectural review authority" means the governing authority for the review and approval of improvements within a

subdivision. During the development period the developer will serve as a director and shall appoint committee members at the developer's discretion. The initial committee shall serve until the organization the development period ends and a new Board of Directors is put in place.

All buildings plans and specifications are subject to approval of the Committee to assure reasonable congruity in designs materials, method of construction, and general appearance. Failure of the Committee to respond within thirty (30) days to any written request for approval of plans or specifications shall be deemed an approval.

This section:

(1) applies only to a property owners' association that consists of more than 40 lots; and

(2) does not apply during a development period or during any period

or during any period in which the declarant:

(A) appoints at least a majority of the members of the architectural review authority or otherwise controls the appointment of the architectural review authority; or

(B) has the right to veto or modify a decision of the architectural review authority.

(c) A person may not be appointed or elected to serve on an architectural review authority if the person is:

(1) a current board member;

(2) a current board member's spouse; or

(3) a person residing in a current board member's household.

(d) A decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision may be appealed to the board. A written notice of the denial must be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice must:

(1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and

(2) inform the owner that the owner may request a hearing under Subsection (e) on or before the 30th day after the date the notice was mailed to the owner.

(e) The board shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Only one hearing is required under this subsection.

(f) During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative will each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner under Subsection (d).

(g) The board or the owner may request a postponement. If requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties.

(h) The property owners' association or the owner may make an audio recording of the meeting.

(i) The board may affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the subdivision's declaration.

SECTION V

USE RESTRICTIONS

1. RECORDED SUBDIVISION MAP OF THE PROPERTY. All dedications, limitations, restrictions, and reservations shown on the recorded plat of the subdivision are here incorporated by reference into this instrument.

2. EASEMENTS. Any utility company of the City of McAllen, using the easements shown on the recorded subdivision plat shall be liable for damages to fences, shrubbery, trees, or flowers or any other property of the owner of the land covered by such easement.

3. RESIDENTIAL CONSTRUCTION. Construction shall commence within two (2) years from the purchase of the property, no building visible from a public street shall be created, altered, or permitted to remain on any lot in the subdivision other than one residential dwelling not exceeding two story in height, And an attached private garage for two cars. Exterior walls shall be brick veneer, stone, stucco, or any combination. Exterior wall color shall be approved by the ACC. No less than 70% of residence yard visible from street shall be sodden with grass upon completion of construction.

4. MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS. The living area of the main structure on any lots, exclusive of open porches and garages, shall not be less than 1,200 square feet.

5. COMPOSITE BUILDING SITE. No one may construct a home in other than one lot. Two or more adjoining lots for the construction of a single home shall not be permitted. The houses constructed on lots 9 and 10 must face west.

No private dwelling house erected upon any lots shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, as herein required. Nor shall any residence, when completed, be in any way occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding trailer home or construction trailer, or other temporary structure shall be placed or erected upon any. Lot either permanently or temporarily. Rental of any servants. Should any structure be destroyed or partially destroyed, owner shall immediately remove or rebuked said structures.

6. NO STORAGE. No Boats, trailers, travel trailers, eighteen wheelers and cabs or trailers, inoperable automobiles shall be parked for more than three days on the public street right of way or in driveways. Vehicles must be screened from public view if within the garage or behind a solid fence enclosing the rest of the lot. Violations of this restriction shall be subject to tow away laws of the city of McAllen.

7. ANIMALS No animals shall be raised, bred, or kept on any lot other than 4 to 5 household pets for noncommercial purposes. Household pets should be kept within fenced areas and shall be subject to the city of McAllen leash laws.

8. WALLS, FENCES AND HEDGES. No fences or hedges shall be allowed near to the front lot line than the front wall of the residence, all lots shall be fenced. No side or rear fence, hedge shall be less than 6'0 or more than 7'6" high and shall comply with applicable City ordinance. All fences shall be constructed of cedar and sealed with Thompson water seal. Painted fence shall be water sealed and maintained. Chain-link block brick and stucco fences will not be permitted. Each fence for each property shall be erected within three months of the home construction completion date.

9. LOT MAINTENANCE. Owners and Occupants of lots shall maintain grass in a sanitary helpful and attractive manner free of weeds and not more than one foot high. NO lot shall be used for storage of materials and equipment except as necessary for customary residential requirements or incident to construction of improvements. No lot owner or occupant shall permit garbage trash or rubbish to accumulate, no burn fuse other than an incinerator as permitted by law. Drying of clothes in public view is prohibited yard equipment firewood and lumber are allowed in amounts customary for a single-family residence but are to be stored out of the view of public streets.

Vacant lots must be periodically mowed and kept clear and free of debris at all times. The Association may contact for the mowing of unkempt lots which shall be performed at the expense of the representative lot owners.

9a. Temporary Turn Around. Riverside Development LLC will be responsible for the maintenance and removal of the Temporary turn around.

10. SIGNS, ADVERTISEMENT, BILLBOARDS. No signs advertisements or billboards shall be displayed on any lot other than builders sign advertising model homes or for-sale signs not exceeding five square feet in size. Owner or his assigns shall have a right to remove any non-conforming signs advertisements or billboards with liability.

11. ROOFING MATERIALS. Roof pitch must be 7:12 or greater, to ensure uniformity through the subdivision. Roofing materials shall be 30years, dimensional composition shingles as manufactured by owners coming and shall be of "Driftwood of teak color". The architectural control committee shall have exclusive authority to approve roofing materials proposed for residence in the subdivision.

12. RADIO AND TELEVISION ANTENA, SATELITE DISHES. No antenna structure shall be permitted no satellite dish shall be erected forward of the front building setback line of a lot nor encroach on any easement. All such structures shall be screened from the public view behind a solid at least six feet high. Any and all Dishes mounted Satellite dishes so shall be installed at the rear of the house. All electrical services and telephone lines shall be placed under ground and no outside electrical lines shall be placed overhead.

13. GARAGES. All homes must be designed with two car garage entries.

14. MAILBOXES. Mailboxes may be constructed of brick, stucco, and stone. Wood mailboxes and prohibited.

15. PROHIBITATION OF OFFENSIVE ACTIVITIES. No activity that is noxious offensive or constitutes a public nuisance shall be conducted on any lot. No activity shall be permitted on any lot that is not related more residential purposes other than customary home site activities. No

professional, business, or commercial activity to which the general public is invited or allowed shall be conducted on any lot.

16. LANDSCAPING. Prior to occupancy of a house the lot shall be landscaped with grass, shrubs, and trees. Landscaping shall be maintained year-round.

17. SETBACKS. All front, side and rear setbacks must be approved by the architectural Control Committee and must meet the requirements of the City of McAllen, and the setback requirements set forth on the plat. Setbacks are as follows: (As to Lots 1-20) Front side setbacks shall be 25 feet, rear shall be 10 feet or greater for easement, sides shall be 6 feet or greater for easement. (As to Lots 21-41) Front setbacks shall be 20 feet, rear shall be 41.25 feet or greater for easement, side shall be feet or greater for easement. Side Corner lots shall be 10 feet or greater for easement. Garage shall be 18 feet except where greater setback is required, Greater setback applies.

18. ASSOCIATION POLICY; FINES. (A) A property owners' association board shall adopt an enforcement policy regarding the levying of fines by the property owners' association. The policy must include:

- (1) general categories of restrictive covenants for which the association may assess fines;
- (2) a schedule of fines for each category of violation; and
- (3) information regarding hearings

(B) The enforcement policy adopted pursuant to Subsection (b) may reserve the board's authority to levy a fine from the schedule of fines that varies on a case-by-case basis.

(C) Each property owners' association shall:

- (1) provide a copy of the policy to an owner of each property in the subdivision by:

(A) posting the policy on an Internet website maintained by the property owners' association or an agent acting on behalf of the association and accessible to members of the association; or

(B) annually sending a copy of the policy, separately or included in routine communication from the property owners' association to property owners, by:

- (i) hand delivery to the owner;
- (ii) first class mail to the owner's last known mailing address; or
- (iii) e-mail to an e-mail address provided to the property owners' association by the owner; and

(2) make the policy available on any publicly accessible Internet website maintained by the property owners' association or an agent acting on behalf of the association.

SECTION VI

COMMON AREA MAINTENANCE

1. COMMON AREA MAINTENANCE. The Developer, the Homeowner's Association, their successors, and assigns, and not the City of McAllen, shall be obligated to maintain, repair, replace and renew the Common Area including but not limited to Subdivision entrance." The Developer shall be the responsible party but may transfer all obligations referred to in this section to the Auburn Estates Phase II Subdivision Homeowner's Association INC., upon conveyance to it of title or all the Common Area. Prior to Developer's conveyance of title to the Homeowners Association of all the Common Area, the Homeowners Association shall determine the pro rata shares of all the costs of maintenance.

The Common Area Maintenance.

The Calculation of the cost of Common Area maintenance

The Calculation of rendition to owner of statements for the Common Area Maintenance

The collection of the common area Maintenance Assessments and the disbursement thereof to pay the cost of common Area Maintenance.

The collection of the common area improvement Assessments and the disbursement to pay the cost of common area improvements.

All other general duties are responsible fairly related to the foregoing functions and the duties and responsibilities of the Association set forth in the Declaration, payment of utility bills relating to lighting and watering of common areas, which are not paid by county or city.

2. COMMON AREA DEDICATION. Notwithstanding anything contained in the Declaration to the contrary. The Declarant's and the Association upon its succeeding to Declarant's rights, shall have the right, power and authority to offer to dedicate to any public or quasi-public authority water lines, sanitary sewer system, storm water facilities, and streets situated in Common Areas. Such dedication and acceptance there of shall not in and of itself relieve the Association from the obligation of Common Area maintenance within dedicated areas, nor relieve the owners of the obligation to participate in the payment of the cost of such maintenance as herein provided.

SECTION VII

HOMEOWNERS ASSOCIATION

1. ASSOCIATION MEMBERSHIP. Each lot owner shall be a member of the association. Membership shall be appurtenant to and may not be separated from the ownership of a Lot. An Owner may assign its rights or obligations hereunder to an individual residing upon said Lot (if not the owner); provided, however, that no such assignments shall relieve or release such owner from his obligation under this Declaration, or his lot from the effect of this Declaration.

2. VOTING and RIGHT TO VOTE. (a) This section) This applies to a property owners' association that:

- (1) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more
- 2) is a corporation that:

(A) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation.

(b) A property owners' association described by Subsection (a) may not bar a property owner from voting in an association election unless denial is solely based on the fact that:

- (1) there is a pending enforcement action against the property owner; or
- (2) the property owner owes the association any delinquent assessments, fees, or fines.

Members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned, when more than one person holds an interest in any lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

A vote cast by a member of a property owners' association must be in writing and signed by the member if the vote is cast:

- (1) outside of a meeting;
- (2) in an election to fill a position on the board
- (3) on a proposed adoption or amendment of a dedicatory instrument;
- (4) on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment; or
- (5) on the proposed removal of a board member.

If a property owners' association elects to use a ballot for a vote on a matter other than a matter described in the section above the ballot must be:

- (1) in writing and signed by the member; or
- (2) cast by secret ballot

If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

The association must take measures to reasonably ensure that:

- (1) a member cannot cast more votes than the member is eligible to cast in an election or vote; and
- (2) the association counts every vote cast by a member that is eligible to cast a vote.
- (3) in any election for the board, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot, and that any disruptive observer may be removed.

3. BOARD MEMBERSHIP. A person may not serve on the board of a property owners' association if the person cohabits at the same primary residence with another board member of the association.

If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

This subsection does not apply:

- (1) to an association with fewer than 10 residences; or
- (2) during a subdivision's development period to affect the eligibility to serve on the board of:
 - (A) a person who cohabits with a developer of the subdivision regulated by the association; or
 - (B) the developer.

4. ELECTION OF BOARD MEMBERS. (a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

The association must provide notice to the association members soliciting candidates interested in running for a position on the board. The notice must contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10th day after the date the association provides the notice required by this subsection.

The notice required by Subsection (a-1) must be:

- (1) mailed to each owner; or
- (2) provided by:
 - (A) posting the notice
 - (i) in a place located on the association's common property or, with the property owner's consent
 - (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.
 - (C) This section does not apply to the appointment of a board member during a development period.

5. TABULATION OF AND ACCESS TO BALLOTS. (a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section
(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote.

(b-1) A person who tabulates votes under Subsection (b) or who performs a recount may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision, only a person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may be given access to the ballots cast in the election or vote.

6. ASSOCIATION'S COMMON AREA MAINTENANCE OBLIGATIONS. The association shall perform the Common Area Maintenance obligations as set forth in this Declaration. The Association acknowledges and agrees to comply with all McAllen Code of Ordinances, as now or hereafter amended, included but not limited to section 110-72.

7. ADDITIONAL POWERS. The Association, shall have the power to own real and personal property, to obtain policy or policies of insurance insuring the Association and its members to make physical improvements to the Common Areas as the Association shall deem to be in the best interest of the Association and Homeowners, to contract for legal, accounting and other professional services, to borrow funds, to employ employees directly or through an operator to bring an action(s) for injunctive relief and/or damages against any Homeowner for failure to comply with their obligations hereunder and to otherwise do the which is believes is necessary to protect or defend the Common Areas and the Association and properties from loss or damage by suit or otherwise.

8. COVENANTS FOR ASSESSMENTS. The Declarant hereby covenants and each Owner of any Lots by acceptance of a deed therefore, whether or not is shall be so expressed in such deed,

is deemed to covenant and agree to pay to the Association all annual Common Area Maintenance assessments and charges and special assessments. The annual and special assessments, together with interest, late fees, costs, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing vendor's lien upon the property against which each such assessment is made. Each such assessment, together with interest costs and reasonable attorney's fees, shall also be the personal obligation of the person, who is the Owner of such property at the time when the assessments fall due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

9. PURPOSE OF ASSESSMENTS. The assessment levied by the association shall be used exclusively maintenance of the Common Area, and any excess to promote the recreation, health safety and welfare of the Homeowners; the improvements; operation, administration, management and preservation of the Common Area and Common Facilities and the payment of all expenses and obligations lawfully incurred by the Association in fulfilling the Association's duties and obligations as set forth. It is understood that the judgment of the Board of Directors of all Association in establishing the amount of all annual assessments, special assessments, and other charges and in the expenditure of said funds, shall be final and conclusive so long as said judgment is exercised in good faith.

10. BASIS FOR ASSESSMENT. All assessments shall be fixed by the associate and shall be borne in equal shares by the Owners of the Lots located in the subdivision.

11. FIXING OF ASSESSMENTS. All assessments shall be fixed by the association in advance of January 1st each calendar year, after giving due consideration to the anticipated cost of all Common Area Maintenance obligations and other cost of operation the association. The Association shall have the right to collect such assessments in advance or wither an annual quarterly basis. Is at any time the Association determines that the assessments for the fiscal year are insufficient to discharge all assessments to be incurred or payable during the assessment year by the association, the association may increase the assessment to cover such costs (incurred or to be incurred) and such increase shall become effective at the beginning of the next annual or quarterly assessment period. If required, assessment (s) shall be prorated for the period from the commencement there of to the end of them current calendar year of the association.

Until January 1, of next year following year of purchase, the maximum annual assessments shall not exceed \$450.00 per lot or as identified by the current Homeowners Association; thereafter, assessments may not be increased more than 10% of previous assessment until with approval of two thirds of entitled owners who vote in a special election. The association shall have the right to collect late fees up to an amount of 19% interest on the amount due but no less than \$50.00 for each 30-day period if the assessment is not paid **within ten (10) days after the due date**, or such higher rates as may, within legal limits, be set by the association.

12. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized hereunder, the association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction repair or replacement of the common facilities.

13. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association composed of more than 14 lots shall adopt reasonable guidelines to

establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments, or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) The minimum term for a payment plan offered by a property owners' association is three months.

(c) A property owners' association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. The association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan. The association is not required to make a payment plan available to an owner after the period for cure expires. The association is not required to allow an owner to enter into a payment plan more than once in any 12-month period.

(d) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

14. PRIORITY OF PAYMENTS. (a) a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any reasonable attorney's fees or reasonable third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any reasonable attorney's fees incurred by the association
- (5) any reasonable fines assessed by the association; and
- (6) any other reasonable amount owed to the association.

(b) If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:

- (1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and
- (2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

15. METHODS OF PROVIDING NOTICES TO OWNERS. Subject to this section, a property owners' association may adopt a method that may be used by the association to provide a notice from the association to a property owner. All notices, invoices and communication from the association to the homeowner will be sent via email, text message as a primary method and in the alternative first-class mail. Should a second and final notice of communication be required to a homeowner, said notice is to be sent via Certified Return Mail (CMRRR).

16. NOTICE AND QUORUM. (A) All action requiring the approval of the Association shall be taken at meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) days no more than thirty (30) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority vote of the members, members who were not present in person or by proxy may

give their assent in writing, provided the same is obtained by the appropriate offices of the Association not later than thirty (30) days from the date of such meeting.

(B) Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (c-2), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(c-2) A board meeting may be held by electronic or telephonic means provided that:

(1) each board member may hear and be heard by every other board member;

(2) except for any portion of the meeting conducted in executive session:

(A) all owners in attendance at the meeting may hear all board members; and

(B) owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and

(3) the notice of the meeting includes instructions for owners to access any communication method required to be accessible under Subdivision (2)(B).

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website available to association members that is maintained by the association or by a management company on behalf of the association; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:

- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in assessments;
- (6) levying of special assessments;
- (7) appeals from a denial of architectural control approval;
- (8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;
- (9) lending or borrowing money
- (10) the adoption or amendment of a dedicatory instrument;
- (11) the approval of an annual budget or the approval of an amendment of an annual budget;
- (12) the sale or purchase of real property;
- (13) the filling of a vacancy on the board;
- (14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) the election of an officer.

17. EFFECT OF NONPAYMENT OF ASSESSMENTS. The association shall have the right to collect late fees up to an amount of 19% interest on the amount due but no less than \$50.00 for each 30-day period if the assessment is not paid **within ten (10) days after the due date**, or such higher rates as may, within legal limits, be set by the association. The Association may bring an action at law against the Owner personally obligated to pay such assessment or foreclose its lien against such Owners lot. Interest costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such owner, by his acceptance of a deed to his Lot, hereby expressly vest in the Association or its agents, the right and power to bring all actions against such owners personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The liens provided for in this Section shall be favor of the Association and shall be for the benefit of all owners. No Owner may waive or otherwise escape liability of the assessments provided for herein by non-use of the Common Area or abandonment of this lot.

18. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien securing the payments of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of any lots to secure the payments of monies advanced and used for the purpose of purchasing and/or improving such lot provided such purchase money or improvements lien shall have been duly perfected prior to the date such assessment became due. Sale or transfer of any lot pursuant to foreclosure of any such mortgages shall extinguish the lien of such assessments as the payments, which become due prior to such sale or transfer. No sale or transfer shall relieve such lot, and the Owner thereof, from liability for any assessments thereafter becoming due or from the lien thereof.

19. ASSOCIATION RECORDS. Notwithstanding a provision in a dedicatory instrument, a property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records. This section does not apply to the amendment of a declaration during a development period.

An owner or the owner's authorized representative described by Subsection (c) must submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed. The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and: (1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or (2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

If the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:

(1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the property owners' association to copy and forward to the requesting party.

A property owners' association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

A property owners' association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable

An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

to the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

The property owners' association may release or made available for inspection records pertaining to a specific homeowner if a court orders the release of the books and records or orders that the books and records be made available for inspection.

A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
- (2) financial books and records shall be retained for seven years;
- (3) account records of current owners shall be retained for five years;
- (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term
- (5) minutes of meetings of the owners and the board shall be retained for seven years; and
- (6) tax returns and audit records shall be retained for seven years.

A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that

the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

A judgment ordering the property owners' association to release or allow access to the books or records;

If the property owners' association prevails in an action under this section the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

an attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association and are not subject to inspection by the owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

SECTION VIII

ENFORCEMENT

1. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, levy a fine for a violation of the restrictions or bylaws or rules of the association, or report any delinquency of an owner to a credit reporting service, the association or its agent must give written notice to the owner by certified mail.

(b) The notice must:

- (1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;
- (2) inform the owner that the owner:
 - (A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;
- (3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and
- (4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the owner cures the violation before the expiration of the period for cure described by Subsection (c), a fine may not be assessed for the violation.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(g) For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(h) The following are examples of acts considered incurable for purposes of this section:

- (1) shooting fireworks;
- (2) an act constituting a threat to health or safety;
- (3) a noise violation that is not ongoing;
- (4) property damage, including the removal or alteration of landscape; and
- (5) holding a garage sale or other event prohibited by a dedicatory instrument.

(i) The following are examples of acts considered curable for purposes of this section:

- (1) a parking violation;
- (2) a maintenance violation;
- (3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- (4) an ongoing noise violation such as a barking dog.

2. SEVERABILITY OF RESTRICTIONS. Invalidation of any covenant or restriction herein by judgment or court order shall not affect the validity of any other provision.

3. ADOPTION OR AMENDMENT. This section does not apply to the amendment of a declaration during a development period. This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association. A bylaw may not be amended to conflict with the declaration. The covenants and restrictions of this instrument shall run with and bind the land on a term of thirty years from the date of recordation after which term they shall automatically extend for successive periods of ten years each, this instrument may be amended during its initial thirty year term by a recorded instrument in writing signed by 75% of the owners of lots in the subdivision, casting of one vote per lot or after the initial terms, by a majority of such owners.

4. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board.

The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the association may make an audio recording of the meeting.

Not later than 10 days before the association holds a hearing under this section, the association shall provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intends to introduce at the hearing.

If an association does not provide a packet within the period described above an owner is entitled to an automatic 15-day postponement of the hearing.

During a hearing, a member of the board or the association's designated representative shall first present the association's case against the owner. An owner or the owner's designated representative is entitled to present the owner's information and issues relevant to the appeal or dispute.

An owner or property owners' association may use alternative dispute resolution services.

The notice and hearing provisions and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action.

5. ATTORNEY'S FEES. (a) A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.

6. ASSESSMENT LIEN FILING. (a) In this section, "assessment lien" means a lien, lien affidavit, or other lien instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association.

(b) An assessment lien filed in the official public records of a county is a legal instrument affecting title to real property.

(c) Before a property owners' association files an assessment lien, the association must provide notices of delinquency in accordance with Subsections (d) and (e).

(d) The first notice of delinquency must be provided:

(1) by first class mail to the property owner's last known mailing address, as reflected in records maintained by the association; or

(2) by e-mail to an e-mail address the property owner has provided to the property owners' association.

(e) The second notice of delinquency must be provided by certified mail, return receipt requested, to the property owner's last known mailing address, as reflected in the records maintained by the association, not earlier than the 30th day after notice is given under Subsection (d).

(f) A property owners' association may not file an assessment lien before the 90th day after the date notice of delinquency was sent to the property owner under Subsection (e).

DEFINITIONS

"Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

"Board" means the governing bod of the property owners' association.

"Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

"Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules or regulations.

"Development period" means a period stated in a declaration during which a declarant reserves: (a) a right to facilitate the development, construction, and marketing of the subdivision; or (b) a right to direct the size, shape, and composition of the subdivision.

"Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

"Management company" means a person or entity established or contracted to provide management or administrative services on behalf of a property owners' association.

"Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

"Property owners' association" or "association" means an incorporated or unincorporated association that; (A) is designated as the representative of the owners of property in a residential subdivision; (B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; (C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

"Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

"Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that: (A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only; (B) are recorded in the real property records of the county in which the residential subdivision is located; and (C) require membership in a

property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

"Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

"Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative

"Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for: (A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas; (B) maintenance and improvement of common areas owned by the property owners' association; or (C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

"Verified mail" means any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier.

EXECUTED this 1st day of April, 2024.

Martin Villanueva, Jr.
MARTIN VILLANUEVA, JR.

THE STATE OF TEXAS
COUNTY OF HIDALGO

This instrument was acknowledged before me on this 1st day of April, 2024
by MARTIN VILLANUEVA, JR.

Yohana Alvarez
Notary Public

