

DECLARATION OF
COVENANTS, CONDITIONS
& RESTRICTIONS
OF
HURTA RIVER ESTATES
A PLANNED DEVELOPMENT COMMUNITY
Smithville, Bastrop County, Texas
Revised January 1, 2024

DECLARANT

HURTA REAL ESTATE, LLC
A Texas Limited Liability Company

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OF
HURTA RIVER ESTATES
A PLANNED DEVELOPMENT COMMUNITY**

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**DECLARATION OF COVENANTS CONDITIONS &
RESTRICTIONS**

FOR

HURTA RIVER ESTATES

A PLANNED DEVELOPMENT COMMUNITY

This Declaration of Covenants, Conditions & Restrictions for Hurta River Estates, A Planned Development Community, is made by Hurta Real Estate, LLC, a Texas limited liability company (“**Declarant**”), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Hurta River Estates, A Planned Development Community (“Hurta River Estates”). Declarant also desires to provide a reasonable and flexible procedure by which Declarant may expand the Property to include additional real property, and to maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for preservation, administration, and maintenance of portions of Hurta River Estates and to protect the value, desirability, and attractiveness of Hurta River Estates. As an integral part of the development plan, Declarant deems it advisable to create a property Owners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Declarant **DECLARES** that the Property described in Appendix A, and any additional property made subject to this Declaration by recording one or more amendments of or supplements to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant’s representations and reservations in the attached Appendix B, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the property.

ARTICLE 1
DEFINITIONS

DEFINITIONS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. “Applicable Law” means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are “Applicable Law” on the date of the Governing Document and are not

intended to apply to the Project if they cease to be applicable by operation of law, or if they are replaced or superseded by one (1) or more other statutes or ordinances.

1.2. “Architectural Reviewer” also referred to herein as “**Architectural Control Committee**” or “**ACC**” means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant’s designee, or Declarant’s delegatee. Thereafter, the Board-appointed Architectural Control Committee is the Architectural Reviewer.

1.3. “Areas of Common Responsibility” means that portion of the Property for which the Association has maintenance responsibilities, as described with more particularity in Article 6 of this Declaration.

1.4. “Assessment” means any charge levied against a Lot or Owner by the Association, pursuant to the Governing Documents or State law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 7 of this Declaration.

1.5. “Association” means the Association of Owners of Lots in the Property, initially organized as Hurta River Estates Owners Association, Inc., a Texas nonprofit non-stock corporation and planned development association and serving as the “property owners’ association” defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, and the Bylaws. Association is also referred to as “**HOA.**”

1.6. “Board” means the Board of Directors of the Association.

1.7. “Bylaws” means the Bylaws of the Association, as they may be amended from time to time.

1.8. “City” means the City of Smithville, Texas, in which the Property is located.

1.9. “Commercial Building” means a detached commercial building on an individually-owned Lot as shown on the Plat. The term Commercial Building may be used to include the “**Lot**” where applicable. In all instances involving assessments Commercial Building includes Lot, even if no Commercial Building has been built on the applicable Lot.

1.10. “Common Area” means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 5 below and as referenced in Appendix B of this Declaration, and sometimes referred to as Common Elements. Common Area may include property owned by the local governing authority but maintained by the Association.

1.11. “Declarant” means Hurta Real Estate, LLC, a Texas limited liability company, which is developing the Property, or the successors and assigns of Hurta Real Estate, LLC, which acquire any portion of the Property for the purpose of development and which are designated as Successor Declarant by Hurta Real Estate, LLC or by any such successor or assign in a document recorded in

the Official Public Records of Bastrop County, Texas. Declarant is sometimes referred to herein as “**Developer.**”

1.12. “**Declarant Control Period**” means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix B of this Declaration.

1.13. “**Declaration**” means this document, as it may be amended from time to time.

1.14. “**Development Period**” means the fifteen (15)-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to Appendix B hereto, including rights relating to development, construction, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own land described in Appendix A. The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

**During the Development Period Appendix B has priority
over the main body of this Declaration.**

1.15. “**Director**” means a Member of the Association's Board.

1.16. “**Dwelling**” means a single-family detached “**Residential Dwelling**” on an individually-owned Lot as shown on the Plat. The term “**Dwelling**” may be used to include the “**Lot**” where applicable. In all instances involving Assessments Dwelling includes Lot, even if no Dwelling has been built on the applicable Lot.

1.17. “**Governing Documents**” means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.

1.18. “**Improvement**” means a Residential Dwelling or a Commercial Building and any appurtenant structures and is generally referred to as a “**Building.**”

1.19. “**Lot**” means a portion of the Property intended for independent ownership. Lots 4 through 53 are zoned “SF-1 Single Family District” for Residential buildings only and Lots 1,2,3, and 54 are zoned “1-General Industrial District” for Commercial buildings or Residential buildings. As a defined term, “Lot” does not refer to Common Areas, even if platted and numbered as a Lot. Where the context indicates or requires, “Lot” includes all Improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot.

1.20. “**Majority**” means more than half. A reference to “a Majority of Owners” in any Document or applicable law means “Owners of at least a Majority of the Lots,” unless a different meaning is specified.

1.21. “Member” means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that Member means a Member of the Board or a Member of a committee of the Association.

1.22. “Occupant” means an Occupant of either a Commercial Building or a Residential Building, regardless of whether the person owns the Building or not.

1.23. “Officer” means an Officer of the Association and shall include but shall not be limited to the offices of President (“**President**”), Secretary (“**Secretary**”), Treasurer (“**Treasurer**”), Vice President (“**Vice President**”) and such other Officers as the Board may designate.

1.24. “Owner” means a holder of recorded fee simple title to a Lot. Declarant is the initial Owner of all Lots. Contract sellers and Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial 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 Member of the Association. A reference in any Governing Document or applicable law to a percentage or share of Owners or Members means Owners of at least that percentage or share of the Lots, unless a different meaning is specified. For example, “a Majority of Owners” means Owners of at least a Majority of the Lots.

1.25. “Plat” means all Plats, singly and collectively, recorded or to be recorded in the Official Public Records of Bastrop County, Texas, and pertaining to the real property described in Appendix A of this Declaration, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the Plat, as it may be amended from time to time. The Final Plat of Hurta River Estates was recorded and filed as File No. 20180768 in the Official Public Records of Bastrop County, Texas.

1.26. “Property” means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Hurta River Estates, A Planned Development Community. The Property is located entirely in the City of Smithville, Bastrop County, Texas. The Property is located on land described in Appendix A to this Declaration and includes every Lot and Common Area thereon.

1.27. “Resident” means an Occupant of a Residential Dwelling or a Commercial Building, regardless of whether the person owns the Lot.

1.28. “Rules” means Rules and regulations of the Association adopted in accordance with the Governing Documents or applicable law. The initial Rules are adopted by Declarant for the benefit of the Association.

1.29. “Underwriting Lender” generally means Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae), or any state or federally insured banking institution, life insurance company or other commercial lender, singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner’s financing options or as a representation that the Property is approved by any institution.

ARTICLE 2
THE PROPERTY

2.1. PROPERTY. The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix B, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. RECORDED EASEMENTS AND LICENSES. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, restrictions, liens, leases, and encumbrances of record appurtenant to or included in the Property or to which any portion of the Property is or may become subject by reservation in this Declaration that can be found in the title policy that is obtained at the time of purchase of a Lot or Dwelling, as well as any shown or referenced on a recorded Plat. Each Owner, by accepting an interest in or title to a Lot or Dwelling, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances.

ARTICLE 3
PROPERTY EASEMENTS AND RIGHTS

3.1. GENERAL. In addition to other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained in this Article.

3.2. OWNER'S EASEMENT OF ENJOYMENT. Every Owner is granted a right and easement of enjoyment over the Common Areas and to use of improvements therein, subject to other rights and easements contained in the Governing Documents. An Owner who does not occupy a Lot delegates this right of enjoyment to the Residents of his Lot. Notwithstanding the foregoing, if a portion of the Common Area, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

3.3. OWNER'S MAINTENANCE EASEMENT. Every Owner is granted an access easement over adjoining Lots, Common Areas, and Areas of Common Responsibility for the maintenance or reconstruction of his Improvements on his Lot, provided exercise of the easement does not damage or materially interfere with the use of the adjoining Lot or Common Area. Requests for entry to an adjoining Lot or Common Area must be made to the Owner of the adjoining Lot, or the Association in the case of Common Areas, in advance for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. If an Owner damages an adjoining Improvement, Area of Common Responsibility, or Common Area in exercising this easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.

3.4. EASEMENT. Every Owner of a Lot is granted a perpetual easement over, under, and through every other Lot in the same for the limited purpose of installing, maintaining, and replacing wires, cables, conduit, and pipes, that serve his Improvement, but only to the extent that

use of this easement is reasonable and necessary. In the event of dispute, the Board is the arbiter of whether the anticipated use of this easement is reasonable and necessary. Reciprocally, the Owner of an Improvement that contains wire, cables, conduit, or pipes that serve one or more other Lots has a duty to refrain from interfering with or damaging those items.

3.5. FIRE 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 public fire safety personnel and to the Association an easement across his Lot for access to and testing of any systems and equipment located therein for the purposes intended by public fire safety authorities.

3.6. OWNER'S INGRESS/EGRESS EASEMENT, Every Owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his Lot.

3.7. RIGHTS OF CITY OF SMITHVILLE. The City of Smithville, including its agents and employees, has the right of immediate access to the Common Areas at all times, if necessary, for the welfare or protection of the public, to enforce City of Smithville ordinances, or for the preservation of public property. If the Association fails to maintain the Common Areas to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least ninety [90] days), the City may maintain the Common Areas at the expense of the Association after giving written notice of its intent to do so to the Association. To fund or reimburse the City's cost of maintaining the Common Areas, the City may levy an assessment against every Lot in the same manner as if the Association levied a special assessment against the Lots. The City may give its notices and demands to any Officer, Director, or agent of the Association, or alternatively, to each Owner of a Lot as shown on the City of Smithville tax rolls. The rights of the City under this Section are in addition to other rights and remedies provided by law.

3.8. ASSOCIATION'S ACCESS 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 Association an easement of access and entry over, across, under, and through the Property, including without limitation all Common Areas and the Owner's Lot and Improvement thereon - including the Residential Dwellings, Commercial Buildings, and yards - for the below-described purposes.

3.8.1. Purposes. Subject to the limitations stated below, the Association may exercise this easement of access and entry for the following express purposes:

- a. To inspect the Property for compliance with maintenance and architectural standards.
- b. To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.

- c. To perform maintenance that is permitted or required of the Owner by the Governing Documents or by applicable law, if the Owner fails or refuses to perform such maintenance.
- d. To enforce architectural standards.
- e. To enforce use restrictions.
- f. The exercise of self-help remedies permitted by the Governing Documents or by applicable law.
- g. To enforce any other provision of the Governing Documents.
- h. To respond to emergencies.
- i. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- j. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

3.8.2. No Trespass. In exercising this easement on an Owner's Lot, the Association is not liable to the Owner for trespass.

3.8.3. Limitations. If the exercise of this easement requires entry onto an Owner's Lot, including into an Owner's fenced yard, the entry will be during reasonable hours and after notice to the Owner. This Subsection does not apply to situations that - at time of entry - are deemed to be emergencies that may result in imminent damage to or loss of life or property.

3.9. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over Common Areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master antenna or cable television, and security.

PLEASE CAREFULLY READ THE SECURITY AND RISK SECTIONS.

3.10. SECURITY. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective Directors, Officers, committees, agents, and

employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts his sole responsibility to provide security for his own person and property and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective Directors, Officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective Directors, Officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.11. RISK. Each Resident uses all Common Areas at his own risk. All Common Areas are unattended and unsupervised. Each Resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Areas.

ARTICLE 4 **GENERAL RESTRICTIONS**

4.1. LAND USE. Lots 4-53 are zoned "SF-1 Single Family District" and shall be used for single-family residential purposes. Only one single family residence shall be permitted on each Lot. A servant or guest house will be allowed in addition to the primary residence on Lots with room to do so if it is built of similar materials as the primary residence. The servant or guest house will be subject to City of Smithville and utility providers' approval. A servant or quest Improvement would not have to conform to the square footage requirements of the primary Improvement but must be approved by the Architectural Control Committee in advance and must be built behind the primary Improvement. The guest Improvement must also be constructed simultaneously with, or after the construction of the primary residence. Temporary uses may be made of the Lots by Developer for model houses, parking lots and/or sales offices, which shall be permitted until such units are sold or until permanent cessation of such uses takes place.

4.1.1. Commercial Zoning. Lots, 1, 2, 3, and 54 are zoned "I-General Industrial District" by the City of Smithville. However, while this zoning classification allows many different types of commercial activity on the commercially zoned Lots, the Developer intends to ensure that any businesses allowed on the commercial Lots, in the Developer's and/or the ACC's opinion, would be a type of business whose Buildings and activities on the Lots would not detract from the aesthetics of the area, or create a nuisance to the neighborhood. The commercial zoning designation on tracts 1, 2, 3, and 54 allows residential use as well, should any future owner of these Lots desire to use a commercially zoned Lot for the construction of a residence. Lots 1, 2, 3, and 54 will be separated from the residential section and the entrance street to the residential portion of the subdivision by privacy fencing, which will be permanent and maintained by the subdivision Owner's Association.

Any persons or entities that desire to purchase a commercially zoned Lot must submit their type of business and building plans to the ACC for consideration and approval. If in the opinion of the ACC and Hurta Real Estate, LLC the type of business and building plans would not detract from the aesthetics of the area or be a nuisance to the neighborhood, approval will be granted in writing as long as it fits the City of Smithville zoning designation as well.

4.1.2. Commercial Properties Exterior Illumination. All exterior illumination must be approved in advance and in writing by the ACC and shall be designed and located to avoid the spreading of light onto adjacent property or the night sky.

4.1.3. Commercial Property Screening. Unless otherwise approved in advance and in writing by the ACC, no lumber, metals, bulk materials or scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Commercial Properties, except within enclosed structures, or appropriately screened from view.

The ACC is empowered to reject a plan that meets these requirements, if in the ACC's sole discretion the Commercial Property would detract from the general welfare of HURTA RIVER ESTATES.

4.2. BUILDING TYPES. No building will be erected, altered, placed, or permitted to remain on any Residential Lots other than site-built Improvements constructed of new materials and having a minimum of seventeen hundred (1,700) square feet of climate-controlled area and if more than one story, the ground floor shall be not less than fifteen hundred (1,500). Permission must be granted in writing by the Architectural Control Committee to deviate from this requirement.

4.3. SHEDS AND OUTBUILDINGS. All sheds, outbuildings are restricted to one per primary improvement and must conform to the color scheme of the primary improvement. All sheds, outbuildings must have approval granted in writing from the Architectural Control Committee.

4.3.1 Non-River Lots. All sheds, outbuildings located on lots 4-38 shall be constructed of new materials with similar construction as the improvement.

4.3.2 River Lots. All sheds, outbuildings located on lots 39-53 will be under the same restrictions referenced in 4.3.1 unless building past the floodplain line shown on the plat of Hurta River Estates. In such cases, outbuildings located on river Lots can be constructed of alternative materials such as metal/wood if in the opinion of the ACC those materials would not detract from the appearance of the subdivision.

4.4. GARAGES AND CARPORTS. Each single-family residential structure shall have a minimum of a two-car garage or a carport. For Improvements that have carports, the carports must be placed to the rear of the Improvement and be constructed of the same roofing material and structure support posts as the Improvement. All carports must be approved in advance by the ACC in writing. All Improvements must face interior roads, with the exception of Lot 53.

4.5. TIME FOR CONSTRUCTION.

4.5.1. Construction of a Structure. The Construction of a structure or Improvement shall be continuous and proceed in an orderly fashion without interruption, and any structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction.

4.5.2. Commencement of Construction. Commencement of construction shall mean the first on-site work for construction, including but not by way of limitation, excavation or site preparation for the purpose of foundation.

4.5.3. Construction Materials and Equipment. Materials and equipment necessary for construction, and all debris resulting from clearing or construction shall be confined to the Lot and stored in either a dumpster or bin and removed at the end of construction, and shall not be left on any other Lots, Common Areas or Roadway.

4.6. SIDING: METAL ROOFS: WOOD. ASPHALT AND COMPOSITION ROOF SHINGLES. All plans must have rock, brick, stucco, or a combination of these materials on the front elevation and side elevations (exclusive of side gables, all dormers, and front gables on non-load bearing areas). Hardi plank siding that exceeds twenty-five (25) percent of exterior must be approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, the ACC is empowered to reject a plan that meets these masonry requirements, if in the ACC's sole discretion the building would detract from the general appearance of the neighborhood. All siding shall be a lightweight concrete product. The eaves and soffits shall not be considered in computing the amount of exterior siding used. The use of wooden roof shingles is specifically prohibited. Metal roofs, asphalt roof shingles and composition roof shingles are allowed with the prior written consent of the ACC. The roof shingles shall be a minimum of thirty (30)-year dimensional asphalt or composition minimum quality or grade.

4.7. TEMPORARY STRUCTURES. No structure of a temporary character, including but not limited to, a tent, shack, garage, house trailer, camper or other temporary facility shall be used on any Lot as a residence either temporarily or permanently.

4.8. SET-BACK REQUIREMENTS. No building or structure shall be located on any Lot nearer the property lines than the setback lines on the recorded plat.

Front Setback = 25 feet
Side Setback = 10 feet
Side Setback Adjacent to Street = 25 feet
Rear Setback = 10 feet

Fences, eaves, steps, terraces, patios, swimming pools, and walls shall not be considered as part of a structure for purposes of this section, but any object(s) within the setback area is also subject to approval by the City of Smithville. In the event the buyer

purchases two or more adjoining Lots and desires to construct an Improvement across the common side lines, the ACC may permit such act by written waiver of the side Lot line setbacks, provided there is not then, or known to be planned, any utility easement along the common side Lot line. Said approval will be subject to the approval of and compliance with any City, County or State statutes or guidelines.

4.9. NATURAL GAS UTILIZATION. Each house constructed on a Lot in the Subdivision shall be connected to the natural gas distribution system installed by the natural gas provider under an agreement with HURTA REAL ESTATE, LLC, and each house must utilize at a minimum both gas water heating and gas central comfort heating appliances. The owner of the Lot shall pay, or cause to be paid, the normal connection charge, if any, directly to natural gas provider. Alternatively, if the owner of a Lot does not wish to connect to the natural gas distribution system as described herein, the owner shall pay a "non-utilization charge" to the natural gas provider in the amount of One Thousand Sixty-Two and No/100 Dollars (\$1,062.00). The owner of the Lot must elect to connect to the natural gas distribution system or pay the non-utilization charge at the time architectural plans for the house are submitted for approval, and the sum shall be due and payable at the time. It is the obligation and responsibility of the ACC to collect and pay this fee.

4.10. FENCES. The construction of fences shall be restricted, and no fence shall be constructed on the Property without the prior written consent of the ACC. Chain link, wire, concrete, or concrete block fences are specifically prohibited on Lots 4-38, and in the non-floodplain areas of Lots 39-53. The ACC may, in its sole discretion, prohibit the construction of any proposed fence, or specify a different type of material for which any proposed fence must be constructed.

4.10.1. Interior Lot Fences. Fences shall be no more than six feet (6') in height and shall be built of wrought iron and/or wooden privacy fence. These same rules apply to Lots 39-53 with the exception listed below. No fence facing a street from the front of a residential structure and extending to the side Lot lines may be built more than twenty (20') feet from the back wall of the main residential structure. These restrictions will not apply to Lot 39 as long as the developer still owns that Lot.

4.10.2. River Lots. River Lots will be under the same restrictions listed above up to the floodplain shown on the plat of Hurta River Estates. After which, an alternative fence may be installed with written approval from the ACC.

The existing subdivision privacy fence with rock columns built by the Developer that is located on the back property lines of Lots 1, 2, 3, and 54, and the side property lines of Lots 3, 4, 53, and 54 are to be permanently maintained by the HOA and future owners of these Lots agree to allow access to the fence when maintenance is required. Owners of these Lots are not allowed to remove or replace this fence. The existing four board fence situated on the North property line of the subdivision will be allowed to remain until any Lot owner with this fence desires to replace it, If a Lot owner desires to replace that fence then any new fence built in its place must conform to

the restrictions above or be built the same as it was when the subdivision was established (four [4] board fence). Any new fence built in its place must be built to keep any cattle on the neighboring property out. If this fence is removed it must be replaced.

No barbed wire fencing is allowed in the subdivision with the exception of existing grandfathered barbed wire fencing located on the outside property lines of Lots 39, 53, and 54.

Any deviation on fencing must have the written approval of the ACC prior to construction and the ACC may deviate from the restrictions above if they feel it is in the best interest of the subdivision.

4.11. DRAINAGE. There shall be no interference with the established drainage patterns over any of the Property, except by HURTA REAL ESTATE, LLC, unless adequate provision is made for proper drainage and written approval by the ACC and the City of Smithville is obtained prior to any construction work or other activity which may cause such interference with established drainage patterns.

4.12. SWIMMING POOLS. Movable above-ground swimming pools are strictly prohibited with the exception of children's play pools that hold no more than 50 gallons. All swimming pools must be in a fenced enclosure.

4.13. RESUBDIVISION. No Lot in the subdivision may be further subdivided.

4.14. BUSINESS. No gainful occupation, trade, or other non-residential use shall be conducted on any residential Lot, with the exception of a job that allows one to work from the interior of a Improvement without public interaction onsite or providing an in-Improvement daycare for which a State issued license is not required.

4.15. CLOTHESLINES. No clotheslines shall be constructed, placed, or erected on any Lot in such a way as to be visible from outside that Lot.

4.16. PARKING. No inoperative vehicle may be kept on any Lot at any time. However, motorhomes, campers, boats, trailers, trucks above one ton, tractors etc., will be allowed to be stored on a Lot as long as they are not visible from the streets in the Subdivision.

4.17. SOLAR EQUIPMENT. Request for approval of installation of any type of solar equipment shall be included in the Plans and Specifications and approved in writing by the ACC.

4.18. EASEMENTS. HURTA REAL ESTATE, LLC, for and on behalf of itself and the Association, reserves easements for installation and maintenance of any and all utilities as shown on the Plat. The easements are for the purpose of installing, using and maintaining public utilities. The easements are for the general benefit of the Subdivision and the property owners and are reserved and created in favor of all utility companies serving the subdivision. Furthermore,

Developer reserves an easement over and across all parkways, streets, and common areas as shown on Plat.

4.19. ANIMALS. No Kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any part of the Property.

4.19.1. Non-River Lots. (Changed last year to allow residents to have chickens)

The keeping of ordinary household pets such as dogs or cats is allowed, but no livestock or other animals may be kept on any portion of the Property with the exception of chickens. A maximum of two (2) adult dogs and/or two (2) adult cats shall be permitted. Every owner shall erect appropriate fencing to confine all of their household pets within their Lot. All dogs off the Owner's Lot shall be on an apparatus of sufficient strength to control the dog. No animals shall be permitted until appropriate fencing is complete. Any deviation from this shall be with written permission from the ACC. The keeping of chickens is allowed with the exception of roosters. A maximum of 3 chickens shall be permitted when kept in a pen, coop or other enclosure which shall be distant at least fifty (50) feet from every building or structure used for sleeping, dining or living and they shall be kept in such a manner as not to become offensive to adjacent neighbors or to the public.

4.19.2. River Lots. The keeping of ordinary household pets such as dogs and cats are allowed. In addition, no poultry, fowl, swine, or any other animal, except horses or cattle, are permitted and may be kept on any portion of the Property. A maximum of two (2) adult dogs and/or two (2) adult cats shall be permitted. Horses and/or cows are allowed on River Lots. A maximum of 5 livestock head shall be permitted on Lots 39-53 with the exception of provisions made and approved by the City for Lot 39 until it is sold. Every owner shall erect appropriate fencing to confine all of their animals within their Lot.

4.20. RUBBISH AND DEBRIS. No rubbish or debris of any kind (including weeds, brush, or material of any nature deemed to be rubbish or debris by the ACC) shall be placed or permitted to accumulate upon any portion of the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its Occupants. The ACC shall determine what constitutes rubbish, debris, or odors and what conditions render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other Property or to its Occupants, and the decision of the ACC shall be final and binding on all parties. Refuse garbage and trash shall be kept at all times in a covered container, and such container must be kept within an enclosed structure or appropriately screened from view at all times. Trash containers that have been brought to the curb for trash pickup shall not curbside for more than 24 hours. In the event of bad weather causing trash pickup to be delayed, trash may be kept curbside until trash is picked up and be brought back to their enclosed structures as soon as possible after being emptied, but in no event later than midnight of that day. No garbage or trash shall be permitted to be buried on any Lot at any time. Composting shall be permitted of vegetative matter and only if such composting is: (i) confined to an area to the rear of the house and in a receptacle approved by the ACC, (ii) not visible from neighboring Property or from any street, and (iii) maintained in an inoffensive manner.

4.21. SIGNS. No sign larger than six (6) square feet shall be displayed to the public view except for signs which are part of HURTA REAL ESTATE, LLC's overall marketing plan for the

property. Builders and/or Model Homes may erect one sign, no larger than thirty-two (32) square feet in area, per Lot which has a model home or home under construction or for sale. Such sign will be removed from the property immediately upon sale and closing of the home. Except as



provided by this Section, the ACC shall have the right to approve signs of any type advertising a portion of the Property for sale or lease and it may set standards for the same. HURTA REAL ESTATE, LLC, or its assigns, will have the right to enter any Lot and to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above and in doing so shall not be subject to any liability of trespass or other tort in connection therewith or arising out of such removal. Owners may erect small identification signs with their names and address, subject to the ACC approval. Any sign deemed inappropriate by the ACC will not be allowed and subject to removal by the ACC.

4.22. NUISANCES. No nuisance, obnoxious or offensive activities shall be carried on any Lot so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its Occupants. Without limiting the generality of any of the foregoing provisions, no excessive dog barking, no exterior speakers, horns, whistles, bells, or any other devices except security devices used exclusively for security purposes shall be located, used, or placed on any such Property which are audible from neighboring Property.

4.23. DRIVEWAYS. All driveways must be at least twelve feet (12') wide and constructed of concrete with the exception of driveways located in the floodplain areas of Lots 39-53 or driveways within an enclosed privacy fenced area. Any deviation from this requirement must be approved in writing by the ACC.

4.24. MAILBOXES. No mailbox shall be erected on any Lot. Developer will provide centrally located mail kiosks for mail delivery and pickup.

4.25. YARDS. All yards, including trees and plantings of all types, shall be well maintained and kept neat, trim, and free of debris at all times. The front yard of any residence shall be sodded to the curb of the street from the home. Sodding is required on the sides of the home between the home and the side property lines with the exception of Lot #s 4, 15, 39, 40, 52, 53. On lots 4 & 15, sodding on the south side of the house must extend at least 20 feet past the side of the house, and if not sodded further than that, it must be seeded to a successful full coverage. Other than on the South side of Lots 4, 15, sodding requirements remain the same for those lots. On lot 39, sodding requirements are the same with the exception that the South side must only be sodded to the floodplain line as shown on the subdivision plat. On lot 40, sodding requirements are the same with the exception of the east side of the home, where sodding will only be required up to the Cul-de-sac. Lots 52 & 53 have buildable areas close to the river that are above base flood elevation. Should any owner of lots 52 & 53 build close to the river away from the homes up top, sodding requirements do not apply. Any areas inside of a privacy fenced area that is not visible from the street or other properties in the subdivision does not require sodding. Flower beds around a home or along the property lines are allowed in lieu of sodding those areas. All required sodded areas of each residence shall contain an underground sprinkler system of a design adequate to water the sodded area. Property owner will install and maintain the underground sprinkler system. Any deviation from this requirement must be approved in writing by the ACC. Floodplain areas on the River Lots are to be kept free of weeds by either mowing, shredding, or by application of chemicals approved by law.

4.26. TREES. With exception of trees along the river on the bottom level, native trees larger than eight (8) inches in diameter, measured six (6) feet from the base of the tree, on any Lot shall not be destroyed or removed from any Lot without the prior approval of the ACC, except such trees as may be necessary for the construction and maintenance of roads, driveways, residence, garages, accessory building, patios and decks, or trees that have died.

4.27. ALTERATION OR REMOVAL OF IMPROVEMENTS. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with written approval of the ACC.

4.28. USE OF RECREATION AND COMMON AREAS. Recreational and Common Areas shall be any landscaped areas, medians, fences built by HURTA REAL ESTATE, LLC or entry walls, including lighting, irrigation, and other features that are either located within public right of way or other dedicated easements, or areas specifically designated through easement or conveyed fee simple to the Owners Association or if located in the public right of way or other dedicated easement will not be conveyed but will nevertheless be maintained by the subdivisions HOA for the benefit of its members.

4.29. CONSTRUCTION ACTIVITIES. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including HURTA REAL ESTATE, LLC) upon Property within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with the provision of this Declaration, and conforms to usual construction practice in the area. In the event of any dispute regarding such matters, a temporary waiver of the application provision, including, but not limited to, any provision prohibiting temporary waiver of the applicable provision and any provision prohibiting temporary structures may be granted by the ACC, provided that such waiver shall be only for the reasonable person of such construction.

ARTICLE 5 **COMMON AREA**

5.1. OWNERSHIP. The designation of real property as a Common Area is determined by the Plat and this Declaration, and not by the ownership of the Property. This Declaration contemplates that the Association will eventually hold title to every Common Area capable of independent ownership by the Association. The Declarant may install, construct, or authorize certain improvements on Common Areas in connection with the initial development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to Common Areas, including maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the Common Areas, unless this Declaration elsewhere provides for a different allocation for a specific Common Area.

5.2. ACCEPTANCE. By accepting an interest in or title to a Lot, each Owner is deemed (1) to accept the Common Area of the Property, and any improvement thereon, in its then-existing "as is" condition; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Area; (3) to acknowledge that transfer of a Common Area's title to the Association by or through the Declarant is a ministerial

task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the Common Area, regardless of changes in the Association's Board of Directors or management.

5.3. COMPONENTS. The Common Area of the Property consists of the following components on or adjacent to the Property, even if located on a Lot or a public right-of-way:

- a. All of the Property save and except the Lots and Dwellings.
- b. Any area shown on the Plat or by metes and bounds as Common Area or an area to be maintained by the Association.
- c. Any modification, replacement, or addition to any of the above-described areas and improvements.
- d. Personal property owned by the Association, such as books and records, office equipment, and supplies.

ARTICLE 6 **LOTS, DWELLINGS & AREA OF COMMON RESPONSIBILITY**

6.1. LOTS. The Property is divided into platted Lots described in Appendix A and which may not be obvious on visual inspection of the Property. Portions of the Lots are burdened with easements for the use and benefit of the Association, Owners, Residents, City of Smithville, and utility companies.

6.2. IMPROVEMENTS. Each Lot is to be improved with either a Residential Dwelling or Commercial Building. The Owner of a Lot owns every component of the Lot and any Improvements, including all the structural components and exterior features of the Improvements.

6.3. AREA OF COMMON RESPONSIBILITY. The initial designation of the Area of Common Responsibility is located in the column so titled in the Maintenance Responsibility Chart attached hereto as Appendix F.

6.4. ALLOCATION OF INTERESTS. The interests allocated to each Lot are equal.

6.4.1. Common Expense Liabilities. The percentage or share of liability for common expenses allocated to each Lot is uniform for all Lots, regardless of the value, size, or location of the Lot.

6.4.2. Votes. The one (1) vote appurtenant to each Lot is uniform and weighted equally with the vote for every other Lot, regardless of any other allocation appurtenant to the Lot.

ARTICLE 7
COVENANT FOR ASSESSMENTS

7.1. PURPOSE OF ASSESSMENTS. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

7.2. PERSONAL OBLIGATION. An Owner is obligated to pay Assessments levied by the Board against the Owner or his Dwelling. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Elements or common services, or by abandonment of his Dwelling. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the land. Any variance from this requirement to pay Assessments must be in writing and signed by the Association.

7.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of Owners representing at least sixty-seven percent (67%) of the votes in the Association. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget. At least thirty (30) days prior to the effective date of a special assessment or increase in regular assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the special assessment or increase. The special assessment or increase will automatically become effective unless Owners representing at least a Majority of the votes in the Association disapprove the special assessment or increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved by the Board.

**IF YOU OWN A HURTA RIVER ESTATES LOT, YOU MUST
PAY ASSESSMENTS TO THE ASSOCIATION.**

7.4. TYPES OF ASSESSMENTS. There are four (4) types of Assessments: Regular, Special, Individual, and Deficiency.

7.5. REGULAR ASSESSMENTS.

7.5.1. Purpose of Regular Assessments. Regular Assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the Common Elements, and improvements, equipment, signage, and property owned or maintained by the Association. This may include property owned by the City of Smithville but maintained by the Association.
- b. Maintenance, repair, and replacement, as necessary, of the Area of Common Responsibilities.
- c. Utilities billed to the Association.
- d. Services obtained by the Association and available to all Dwellings.
- e. Taxes on property owned by the Association and the Association's income taxes.
- f. Management, legal, accounting, auditing, and professional fees for services to the Association.
- g. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- h. Insurance premiums and deductibles.
- i. Contributions to the reserve funds.
- j. Any other expense which the Association is required by law or the Governing Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Governing Documents.

7.5.2. Annual Budget. The Board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for Assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

7.5.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Lot will be liable for its allocated share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

7.5.4. Supplemental Increases. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated common

expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

7.6. SPECIAL ASSESSMENTS. In addition to Regular Assessments, and subject to the Owners' control for Assessment increases, the Board may levy one (1) or more special assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by at least a Majority of the votes in the Association: (a) acquisition of real property, (b) construction of additional improvements to the Property -- not repair or replacement of existing improvements, and (c) any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

7.7. INDIVIDUAL ASSESSMENTS. In addition to Regular and Special Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or his Dwelling into compliance with the Governing Documents; fines for violations of the Governing Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

7.8. DEFICIENCY ASSESSMENTS. The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of any Common Area if insurance proceeds awards prove insufficient.

7.9. DUE DATE. The Regular Assessment rate is Four Hundred Dollars (\$400.00) payable annually to the Association and due on the 31st day of January.

7.10. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and may fund reserves out of Regular Assessments.

7.10.1. Operations Reserves. The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.

7.10.2. Replacement & Repair Reserves. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Elements.

7.11. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of Owners representing at least a Majority of the votes in the Association and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

7.12. HOA SALE FEES. This Section addresses the expenses, fees, charges, and contributions (hereafter, collectively, the "HOA Sale Fees") that are charged by the Association or its manager, and that arise at the time of a sale or purchase of a Lot and Improvements. As used in this Section, "HOA Sale Fees" does not include a buyer's prepaid and/or pro rata Assessments. HOA Sale Fees are not refundable by the Association or the Association's manager and may not be regarded as a prepayment of or credit against Assessments. HOA Sale Fees generally fall into two types of categories budget enhancing fees, such as contributions to the reserve or operating funds of the Association, and administrative fees, such as fees for resale certificates, estoppel certificates, copies of governing documents, compliance inspections, ownership record changes, and priority processing.

ARTICLE 8 **ASSESSMENT LIEN**

8.1. ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Lot.

8.2. SUPERIORITY OF ASSESSMENT LIEN. The Assessment Lien is superior to all other liens and encumbrances on an Improvement, except only for (a) real property taxes and Assessments levied by governmental and taxing authorities, (b) a deed of trust or vendor's lien recorded before this Declaration, (c) a recorded deed of trust lien securing a loan for construction of the original Improvement, and (d) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment Lien is superior to a lien for construction of Improvements to the Lot, regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Improvements, unless the assignment is part of a superior deed of trust lien. The Assessment Lien is subordinate and inferior to a recorded deed of trust lien that secures a first (1st) or senior purchase money mortgage, a FHA-insured mortgage, or a VA-guaranteed mortgage.

8.3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and

after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

8.4. NOTICE AND RELEASE OF NOTICE. The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Official Public Records of Bastrop County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

YES, THE HOA CAN FORECLOSE!
If you fail to pay Assessments to the Association, you may lose title to your Lot, if the Association forecloses its Assessment Lien against your Lot.

8.5. FORECLOSURE OF LIEN. The Assessment Lien must be enforced in accordance with Chapter 209, TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT, through a judicial foreclosure. The Association is advised to use extreme caution in pursuing foreclosure of a lien and should retain the services of an experienced Property Owners Association attorney in such event.

ARTICLE 9
EFFECT OF NONPAYMENT OF ASSESSMENTS

An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

9.1. INTEREST. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

9.2. LATE FEES. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

9.3. COLLECTION EXPENSES. The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the

Association to collect the delinquent Assessments, including any attorney fees and processing fees charged by the manager.

9.4. ACCELERATION. If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

9.5. SUSPENSION OF USE AND VOTE. If an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right of the Owner and the Residents of the Owner's Dwelling to use Common Elements and common services during the period of delinquency. The Association may not suspend an Owner or Resident's right of access to the Lot. Subject to the below-described limitations, the Association may also suspend the Owner's right to vote appurtenant to the Lot during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends a Member's right to vote, the suspended Member may nevertheless participate as a Member for the following activities: (1) be counted towards a quorum, (2) attend meetings of the Association, (3) participate in discussion at Association meetings, (4) be counted as a petitioner for a special meeting of the Association, and (5) vote to remove a Director, and for the replacement of the removed Director. If the number of suspended Members exceeds twenty percent (20%) of the total Members (Co-Owners of a Lot constituting one Member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the Membership and to preserve the Membership's right to remove and replace Directors.

9.6. ASSIGNMENT OF RENTS. Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of Assessments to the Association. If an Owner's account becomes delinquent during a period in which the Improvement is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

9.7. MONEY JUDGMENT. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

9.8. NOTICE TO MORTGAGEE. The Association may notify and communicate with any holder of a lien against a Lot and Improvement regarding the Owner's default in payment of Assessments.

9.9. APPLICATION OF PAYMENTS. The Association may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment or payment to which the payer attaches conditions or directions contrary to the Association's policy

for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Owner's account.

ARTICLE 10
MAINTENANCE AND REPAIR OBLIGATIONS

10.1. OVERVIEW. Generally, the Association maintains the Common Areas, and the Owner maintains his Lot and Improvement.

10.2. ASSOCIATION MAINTAINS. The Association's maintenance duties will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas:

- a. The Common Areas.
- b. The Areas of Common Responsibility, if any.
- c. Any real and personal property owned by the Association, but which is not a Common Area, such as a Lot owned by the Association.
- d. Any property adjacent to the Property if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the Owner or operator of said property.
- e. Any area, item, easement, or service - the maintenance of which is assigned to the Association by this Declaration or by the Plat.

10.3. AREA OF COMMON RESPONSIBILITY. On the date of this Declaration, the initial designation of components of Lots and Improvements as Areas of Common Responsibility is shown on Appendix F of this Declaration.

10.4. OWNER RESPONSIBILITY. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the architectural control requirements of Article 11 and the use restrictions of Article 12.

10.4.1. Improvement Repairs. All Improvements will be maintained with an eye towards uniformity and architectural harmony. This Section is necessitated by periods during which the Association may be lax about enforcing architectural uniformity, or during periods in which the Area of Common Responsibility is limited.

- a. The exterior of each Improvement on a Lot must be maintained and repaired in a manner that is consistent for all Lots.

b. If an Owner desires to upgrade a component of the exterior, such as replacing architectural composition roofing with metal roofing, the decision to change a standard component of his Improvement must be approved by the Architectural Reviewer. Thereafter, the new building standard will apply to repairs or replacement of the component, as needed, on other Lots.

c. Unless a change of component has been approved, repairs, replacement, and additions to the exteriors of the Improvements must conform to the original construction. For example, if the Improvement was constructed with thirty (30) year architectural laminated shingles, shingles may not be replaced with three (3)-tab shingles unless three (3)-tab shingles have been approved as the new standard for the Improvements. Similarly, the siding on one Improvement may not be replaced with wood, while another is replaced with vinyl, and a third is replaced with cement fiberboard.

d. Ideally, all the Improvements in the Property will generally have the same architectural requirements, without extreme individuality. Nothing in this Section may be construed to prevent the Association from requiring uniform architectural standards for the entire Property. This Section may not be construed as authority for one Lot Owner to “do its own thing.”

e. Exterior colors for facia and Cornish and shingles must be approved by the Association to maintain architectural harmony in the community.

10.4.2. Foundation. Each Owner of a Lot Improvement is solely responsible for the maintenance and repair of the foundation on the Improvement.

10.4.3. Roofs. Each Owner of a Lot Improvement is solely responsible for the maintenance, repair, and replacement of all components of the roof of his Improvement.

10.4.4. Maintenance. Each Owner, at the Owner’s expense, must maintain all improvements on the Lot, except any area designated as an Area of Common Responsibility. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Lot’s Improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

10.4.5. Avoid Damage. An Owner may not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

10.4.6. Responsible for Damage. An Owner is responsible for his own willful or negligent acts and those of his or the Resident’s family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas, the Area of Common Responsibility, or the property of another Owner.

10.5. OWNER'S DEFAULT IN MAINTENANCE. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. **If** the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

ARTICLE 11 **ARCHITECTURAL COVENANTS AND CONTROL**

11.1. PURPOSE. Because the Residential and Commercial Buildings are part of a single, unified community, the Association has the right to regulate the exterior design, use, and appearance of the Improvements and Common Elements in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to the then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements to the Property, including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

11.2. EXERCISE OF ARCHITECTURAL CONTROL. During the Development Period, Declarant or its delegatee is the sole architectural authority for the Property, pursuant to the architectural control provisions in Appendix B. After the Development Period, the Board or a committee appointed by the Board exercises architectural control over the Property. Whomever exercises architectural control pursuant to this Declaration is hereafter referred to as the "Architectural Reviewer."

**DON'T MAKE CHANGES (no matter how pretty) TO THE
PROPERTY UNLESS YOU HAVE WRITTEN
ARCHITECTURAL APPROVAL.**

11.3. LIMITS ON LIABILITY. The Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Article. The Architectural Reviewer and each of its Members has no liability for decisions made in good faith by the Architectural Reviewer, and which are not arbitrary or capricious. The Architectural Reviewer is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with City of Smithville codes and ordinances, State and Federal laws. Approval of a modification or

improvement by the Architectural Reviewer may not be deemed to constitute a waiver of the Architectural Reviewer's right to withhold approval of similar proposals, plans, or specifications that are subsequently submitted.

11.4. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENTS. Without the Architectural Reviewer's prior written approval, a person may not commence or continue any construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction and property use that may adversely affect the general value or appearance of the Property.

11.5. ARCHITECTURAL APPROVAL. To request architectural approval, an Owner must make written application and submit to the Architectural Reviewer TWO (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the Owner may but is not required to submit letters of support or non-opposition from Owners of Improvements that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer may retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction and property use that may alter or adversely affect the value, use, or appearance of the Property.

11.5.1. Ordinance. The Architectural Reviewer will not grant approval for any proposed work that would be inconsistent with the architectural requirements of any applicable governing Smithville City Ordinance.

11.5.2. Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

If you don't get an "OK" in writing, you can't do it.

11.6. OWNER'S DUTIES. If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the proposed work, provided plans and specifications are strictly adhered to, the work is completed in a timely manner, and adheres to City of Smithville requirements.

ARTICLE 12 **USE RESTRICTIONS**

12.1. VARIANCE. The use of the Property is subject to the restrictions contained in this Article, and subject to any Rules which may be adopted pursuant to this Article. The Board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or

Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances.

12.2. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property.

12.3. RULES AND REGULATIONS. In addition to the restrictions contained in this Article, each Residential Dwelling and Commercial Building is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Elements.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Lots.
- f. The use, maintenance, and appearance of roofs.
- g. Landscaping and maintenance of yards.
- h. The occupancy and leasing of Dwellings.
- i. Animals.
- j. Vehicles.
- k. Disposition of trash and control of vermin, termites, and pests.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for Residents.

12.4. AGES OF RESIDENTS. No person under the age of eighteen (18) years may occupy a Residential Dwelling unless he lives with a Resident who is his spouse, parent, legal guardian, or a designee of his parent or legal guardian. Upon request by the Association, an Owner must provide satisfactory proof of the ages and relationships of the Occupants of his Residential Dwelling.

12.5. ANNOYANCE. No Residential Dwelling or limited Common Element may be used in any way that: (a) may reasonably be considered annoying to neighbors; (b) may be calculated to reduce the desirability of the Property as a residential neighborhood; (c) may endanger the health or safety of Residents; (d) may result in the cancellation of insurance on any portion of the Property; or (e) will violate any law. The Board has the sole authority to determine what constitutes an annoyance.

12.6. APPEARANCE. Both the exterior and interior of the Improvements must be maintained in a manner so as not to be unsightly when viewed from the street, Common Elements, or neighboring Lots. The Board will be arbitrator of acceptable appearance standards.

12.7. DECLARANT PRIVILEGES. In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents, as provided in Appendix B of this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

12.8. DRAINAGE. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

12.9. DRIVEWAYS. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

12.10. FIRE SAFETY. No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property, including any sprinkler heads and water lines in and above the ceilings of the Improvements, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

12.11. GARAGES. Any automatic garage door opener is to be maintained by the Owner. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving unless the resident is present in the garage, or around the outside of garage. All Residents must park in the garage area of their Residential Dwelling or on the driveway in front of their home. Resident's guests may park their cars in the street for up to eight (8) hours. No trailer, mobile home, boat, recreational vehicle, truck larger than one (1) ton, flatbed truck, or vehicle other than passenger automobiles shall be permitted to park overnight on any streets or alleys located within the Property.

12.12. LANDSCAPING. No person may perform landscaping, planting, or gardening anywhere upon the Property outside his enclosed back yard or within the front yard on his Lot without the Board's prior written authorization. To the extent that a new Residential Dwelling's front yard has not been landscaped (to include installation of at least one (1) tree, grass, and flower beds), the Owner must install landscaping in the front yard of the Dwelling within three (3) months of the date the new Dwelling is completed.

VOLUME CONTROL
Although music is a universal language, no one type or volume of music is universally loved. Please be mindful of your neighbor's needs for quiet time at home.

12.13. NOISE & ODOR. A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Residential Dwellings or Commercial Buildings. The Rules may limit, discourage, or prohibit the use of noise-producing activities and items in the Buildings and on the Common Elements, such as security devices and wind chimes.

12.14. RESIDENTIAL USE. The use of a Residential Dwelling is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using the Dwelling for personal business or professional pursuits provided that: (a) the uses are incidental to the use of the Dwelling as a residence, (b) the uses conform to applicable governmental ordinances, (c) there is no external evidence of the uses, (d) the uses do not entail visits to the Dwelling by employees or the public, and (e) the uses do not interfere with Residents' use and enjoyment of neighboring Residential Dwellings. In-home daycare that would not require a license will be allowed.

12.15. COMMERCIAL USE. A commercially zoned Lot may be used for either Commercial or Residential purposes as described in Section 4.1.1. herein.

12.16. SIGNS. Residents may place one (1) political sign and one sign advertising that their Dwelling is for sale or lease of standard and customary size (no oversized signs larger than those usually used to campaign or offer a home for sell or lease) on their Lot without prior authorization from the Board. Other than those two (2) signs, no signs or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Dwellings without written authorization of the Board. The Board's authorization may specify the location, nature, dimensions, number, and time period of any advertising sign. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Association may effect the immediate removal of any sign or object that violates this Section or which the Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal. Residents may also place a sign not larger than 2' x 3' during appropriate seasons to advertise or promote school functions, such as school football players' residences and local support.

YES, THERE ARE LOTS OF RULES!
Every Resident of HURTA RIVER ESTATES is expected to comply with these rules and with Rules adopted by the Board of Directors.

12.17. STRUCTURAL INTEGRITY. No person may directly or indirectly do any work or modification that will impair a Building, an easement, or a real property right.

12.18. TELEVISION. Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Without the prior written consent of the Architectural Reviewer, no person may install an antenna, microwave or satellite dish, receiving or transmitting tower on the Common Elements or the exterior of Buildings if it would be visible from a street or alley. Notwithstanding the foregoing and to the extent required by public law, the following items (hereafter "Antenna/Dish") may be installed subject to this Section: (a) reception-only TV antennas, (b) direct Broadcast satellites (DBS) that are one meter or less in diameter, and (c) multipoint distribution service (MDS) antennas that are one meter or less in diameter. The above "Antenna/Dish" must be installed on the rear of the residence and must not be visible from the front street of the Lot or Improvement thereon.

12.18.1. Definitions. As used in this Section “Antenna/Dish Dwelling” means the Dwelling served by a satellite dish or antenna, or the Dwelling that is obviously intended to be served by a satellite dish or antenna, regardless of whether the service is operational. “Antenna/Dish Owner” means the Owner of a Dwelling served by a satellite dish or antenna, regardless of whether the Owner purchases, uses, or has actual knowledge of the satellite dish or antenna.

12.18.2. Location. Without the prior written approval of the Association, an Antenna/Dish may not be placed on any exterior surface of the Dwelling. An Antenna/Dish may be placed or installed on the surface of the roof or the deck or patio of the Improvement, if the Antenna/Dish is not visible from the front street of the Lot or Dwelling.

12.18.3. Owner Responsibility. The installation of an Antenna/Dish on the exterior of a building automatically subjects the Antenna/Dish Dwelling and its Owner to this Section, regardless of who installs the Antenna/Dish and regardless of whether the Antenna/Dish Owner has actual notice of the installation. The Antenna/Dish Owner is solely responsible for (a) the cost of maintaining, repairing, replacing, and removing, as necessary, the Antenna/Dish, and (b) the cost of repairing Common Elements or other Dwellings if such repairs are necessitated by the Antenna/Dish or its installation, maintenance, repair, or replacement, irrespective of whether the repairs are undertaken by the Antenna/Dish Owner or the Association. If required by the Association, the Antenna/Dish Owner will remove the Antenna/Dish, as necessary, to permit the Association to maintain, repair, or replace Common Elements as the Association, in its sole discretion, deems necessary or desirable.

12.18.4. Association Controls. To the extent permitted by public law, the Association may adopt and amend reasonable standards for the color, appearance, location, method of installation, maintenance, camouflaging, screening, and use of Antenna/Dishes. The location and installation of an Antenna/Dish on the Common Elements must have the prior written approval of the Association, unless the location and installation comply with the most current standards that have been adopted and published by the Association.

12.18.5. Interference. An Antenna/Dish or the use of an Antenna/Dish may not interfere with satellite or Broadcast reception to other Residential Dwellings or the Common Elements, or otherwise be a nuisance to Residents of other Dwellings or to the Association. The Board of Directors may determine what constitutes a nuisance to the Association.

12.18.6. Risk. Any Antenna/Dish on the Property exists at the sole risk of the Owner and/or Occupant. The Association does not insure the Antenna/Dish and is not liable to the Antenna/Dish Owner or any other person for any loss or damage to the Antenna/Dish from any cause. The Antenna/Dish Owner will defend and indemnify the Association, its Directors, Officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Antenna/Dish.

12.19. VEHICLES. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and any rules regulating the types,

sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle which the Board deems to be a nuisance, unsightly, or inappropriate. In the absence of any Rules, boats, recreational vehicles and commercial vehicles may only be parked inside a garage or approved structure in an alley or rear yard where appropriate. No repairs may be conducted on vehicles outside the garage, unless not visible from streets or neighboring Lots, except for emergency repairs, and then only to the extent necessary to enable movement to a repair facility. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. The Association may effect the removal of any vehicle in violation of this Section or the Rules without liability to the Owner or operator of the vehicle.

12.20. WINDOW TREATMENTS. Hurta River Estates is designed to have a generally uniform exterior appearance. Therefore, the color and condition of exterior facing all windows panes, window screens, and window treatments must conform to the Residential Dwelling standard. All exterior facing window treatments must be generally uniform in style and quality, and in the opinion of the ACC, not unordinary or outrageous in color. All window treatments within the Residential Dwelling that are visible from the street or another Dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the Architectural Reviewer determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments.

ARTICLE 13 **RESIDENTIAL DWELLING LEASING**

13.1. LEASE CONDITIONS. The leasing of Dwellings is subject to the following conditions: (a) no Dwelling may be rented for transient or hotel purposes or for a period less than thirty (30) days; (b) no Dwelling may be subdivided for rent purposes, and not less than an entire Dwelling may be leased; (c) whether or not it is so stated in a lease, every lease is subject to the Governing Documents; (d) all leases must be in writing and must be made subject to the Governing Documents; (e) an Owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto; and (f) each tenant is subject to and must comply with all provisions of the Governing Documents, Federal and State laws, and local ordinances.

13.2. MORTGAGEES & DECLARANT EXEMPT. A Mortgagee acquiring possession of or title to a Residential Dwelling by exercise of its rights under a deed of trust is exempt from the effect of this Article. This exemption does not pass to the Mortgagee's successors and assigns. During the Development Period, Declarant is exempt from the effect of this Article.

ARTICLE 14 **ASSOCIATION OPERATIONS**

14.1. THE ASSOCIATION. The existence and legitimacy of the Association is derived from this Declaration and the Bylaws of the Association.

14.1.1. Type. The Association must be a nonprofit organization. As long as Texas law requires the incorporation of Owners associations, the Association will be incorporated

as a nonprofit corporation. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

14.1.2. Name. A name is not the defining feature of the Association. Although the initial name of the Association is HURTA RIVER ESTATES OWNERS ASSOCIATION, INC., the Association may operate under any name that is approved by the Board and (1) filed in the Official Public Records of Bastrop County, Texas, as an assumed name, or (2) filed with the Secretary of State of Texas as the name of the filing entity. The Association may also change its name by amending the Governing Documents. Another legal entity with the same name as the Association, or with a name based on the name or location of the Property, is not the Association, which derives its authority from this Declaration.

14.1.3. Duties. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a homeowners association and, as applicable, an unincorporated nonprofit corporation or a nonprofit association organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

14.1.4. Duration. The Association comes into existence on the earlier to occur of the two following events: (1) the date on which the Association's Certificate of Formation is filed with the Secretary of State of Texas, or (2) the date on which a deed to a Lot is recorded in the Official Public Records of Bastrop County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

14.2. BOARD. The Association will be governed by a Board of Directors elected by the Members. Unless the Association's Bylaws or articles of incorporation provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. Unless the Governing Documents expressly reserve a right, action, or decision to the Members/Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association; Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

14.3. MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for Membership. Membership is appurtenant to and may not be separated from ownership of a Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the Membership rights appurtenant to the Lot. A Member who sells his Lot under a contract for deed may delegate his Membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Lot until fee title to the Lot is transferred. Unless the Governing

Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a Majority of all Lots, or at a meeting by Owners of at least a Majority of the Owners that are represented at the meeting.

**EVERY OWNER OF A HURTA RIVER ESTATES LOT
AUTOMATICALLY JOINS A MANDATORY OWNERS
ASSOCIATION.**

14.4. DECISION-MAKING. Any decision or act of the Association may be made by or at the direction of the Board, unless the Governing Documents reserve the decision or act to the Members, the Declarant, or any other person or group. Unless the Governing Documents or applicable law provide otherwise, any action requiring approval of the Members may be approved (1) at a meeting by Owners of at least a Majority of the voting interests that are represented at the meeting, provided notice of the meeting was given to an Owner of each Lot, or (2) in writing by Owners of at least a Majority of all Lots, provided the opportunity to approve or disapprove was given to an Owner of each Lot.

14.5. MANAGER. The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

14.6. COMMUNICATIONS. This Declaration is drafted in an era of rapidly changing communication technologies. Declarant does not intend to limit the methods by which the Association, Owners, and Residents communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Governing Documents or applicable law to make information available to Owners of all Dwellings, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted *via* technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is used by Owners of at least eighty-five percent (85%) of the Dwellings. Also, the Association may employ multiple methods of communicating with Owners and Residents.

14.7. BOOKS & RECORDS. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of applicable law.

14.8. INDEMNIFICATION. The Association indemnifies *every* Officer, Director, and committee Member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable

for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association may maintain general liability and Director's and Officer's liability insurance to fund this obligation.

14.9. OBLIGATIONS OF OWNERS. Without limiting the obligations of Owners under the Governing Documents, each Owner has the following obligations.

14.9.1. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner and will pay Regular Assessments without demand by the Association.

14.9.2. Comply. Each Owner will comply with the Governing Documents as amended from time to time.

14.10. NEW HOME SALES. The sale of a Lot with a Residential Dwelling by Declarant to an Owner is considered a "New Home Sale" for purposes of this Declaration. New Home Sales are not resales.

14.11. RESALES. For purposes of this Declaration, a "resale" is every sale or conveyance of a Lot and Improvement, other than the initial sale of the Lot by Declarant to the initial Owner. An Owner intending to sell his Lot will notify the Association and will request a resale certificate from the Association. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Lot and Improvements to the Association. At time of transfer, the HOA Sale Fees described in Article 7 of this Declaration are due and payable by buyer and/or seller.

14.11.1. Information. Within thirty (30) days after acquiring an interest in a Lot, an Owner will provide the Association with the following information: (1) a copy of the settlement statement or deed by which Owner has title to the Dwelling; (2) the Owner's email address (if any), U. S. postal address, and phone number; (3) any mortgagee's name, address, and loan number; (4) the name and phone number of any Resident other than the Owner; (5) the name, address, and phone number of Owner's managing agent, if any.

14.11.2. Exclusions. The requirements of this Section, including the obligation for the reserve fund contribution and other transfer-related fees, do not apply to the following transfers: (1) the initial conveyance from Declarant; (2) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's Assessment Lien; (3) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (4) transfer to, from, or by the Association; (5) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; (6) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (7) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (8) a disposition by a government or governmental agency.

ARTICLE 15
ENFORCING THE DOCUMENTS

15.1. REMEDIES. The remedies provided in this Article for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by law, the Association has the following rights to enforce the Governing Documents, including Chapter 9 of the TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT (Chapter 209 of the Texas Property Code):

15.1.1. Nuisance. The result of every act or omission that violates any provision of the Governing Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

15.1.2. Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and his Lot and Improvements, if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues and does not constitute a waiver or discharge of the Owner's obligations under the Governing Documents. A fine must be reasonable in nature and amount and cannot be applied without first giving the offender a reasonable amount of time to correct the violation or seek appropriate approvals or corrections for the violation.

15.1.3. Suspension. The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Governing Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Governing Documents.

15.1.4. Public Notice. After giving the Owner at least fifteen (15) days' prior notice of its intent to do so, the Association may record a notice of violation in the Official Public Records of Bastrop County, Texas, describing the Lot and Improvements as to which the violation exists, the nature of the violation, and the provision of the Governing Documents that is being violated. If the violation is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

15.1.5. Self-Help. The Association has the right to enter a Common Element or Lot and Improvements to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Governing Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. The Board will make reasonable efforts to give the violating Owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the Owner. Prior notice is not required (1) in the case of emergencies, (2) to remove violative signs, (3) to remove violative debris, or (4) to remove any other violative item or to abate any other violative condition that is easily

removed or abated and that is considered a nuisance, dangerous, or an eyesore to the neighborhood. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction in a Building or appurtenant Improvements without judicial proceedings. By accepting an interest in or title to a Lot, each Owner grants to the Association all powers and rights necessary to exercise this right of self-help as to property used or owned by the Owner or a Resident, and their respective invitees. Accordingly, this Subsection constitutes an Owner's actual written consent if any is required by applicable law.

15.2. BOARD DISCRETION. The Board may use its sole discretion in determining whether to pursue a violation of the Governing Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

15.3. NO WAIVER. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Governing Documents. Failure by the Association or by any Owner to enforce a provision of the Governing Documents is not a waiver of the right to do so thereafter.

15.4. RECOVERY OF COSTS. The costs of curing or abating a violation are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Governing Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Governing Documents or the restraint of violations of the Governing Documents, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

15.5. NOTICE AND HEARING. Before levying a fine for violation of the Governing Documents, or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by applicable law, such as Chapter 209 of the Texas Property Code. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine -- unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person or may be represented by another person or written communication. The Board may adopt additional or alternative procedures and

requirements for notices and hearing, provided they are consistent with Chapter 209's requirements.

**ARTICLE 16
INSURANCE**

YOU MUST INSURE THE "GUTS" OF YOUR BUILDING AS WELL AS YOUR BUILDING STRUCTURE AND MAINTAIN GENERAL LIABILITY INSURANCE.

16.1. OWNER INSURANCE REQUIREMENTS. Each Owner may be required to furnish annually to the Association and to the complete satisfaction of the Board of Directors, proof of insurance coverage on the Building on his Lot and maintain general liability insurance by a reputable insurance company acceptable to Association and licensed to do business in the State of Texas in an amount equal to the replacement costs of the Building, affording protection against loss or damage from fire or other hazards covered by the standard extended coverage enforcement. Each Owner and Resident is solely responsible for insuring his personal property in his Building and on his Lot, including furnishings, vehicles, and stored items.

16.2. ASSOCIATION INSURANCE REQUIREMENTS. The Association through the Board of Directors, or its duly authorized agent, shall obtain liability insurance policies covering the Common Area and covering all damage or injury caused by the negligence of the Association or any of its agents. Upon written request to the Association, First Mortgages shall be notified of any lapse, cancelation, or material modification of any insurance policy or fidelity bond maintained by the Association.

16.3. INSURANCE PREMIUM RESPONSIBILITY. Premiums for all such insurance authorized under Section 16.2 above shall be a Common Expense payable from Regular Assessments. General liability insurance, structure insurance, and personal property insurance for Dwellings and the contents of Dwellings shall be the sole responsibility of and the expense of each individual Owner and/or Resident pursuant to Section 16.1 above.

**ARTICLE 17
MORTGAGEE PROTECTION**

17.1. INTRODUCTION. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls. Some sections of this Article apply to "Mortgagees," as defined in Article 1. Other sections apply to "Eligible Mortgagees," as defined below.

17.1.1. Known Mortgagees. An Owner who mortgages his Lot and Improvements will notify the Association, giving the complete name and address of his mortgagee and the loan number. The Association's obligations to mortgagees under the Governing Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the

Association, without regard to other holders of mortgages on Improvements. The Association may rely on the information provided by Owners and mortgagees.

17.1.2. Eligible Mortgagees. “Eligible Mortgagee” means the holder, insurer, or guarantor of a first purchase money mortgage secured by a recorded deed of trust lien against an Improvement who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the mortgaged Improvement. A single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Improvement. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee’s request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Governing Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Lots subject to mortgages held by Eligible Mortgagees. For example, “Fifty-One Percent (51%) of Eligible Mortgagees” means Eligible Mortgagees of fifty-one percent (51%) of the Lots that are subject to mortgages held by Eligible Mortgagees.

17.2. AMENDMENT. This Article establishes certain standards for the benefit of Underwriting Lenders and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the Underwriting Lender.

17.3. TERMINATION. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Eligible Mortgagees. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least sixty-seven percent (67%) of Eligible Mortgagees.

17.4. IMPLIED APPROVAL. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within sixty (60) days after receiving the Association’s written request for approval of a proposed amendment, provided the Association’s request was delivered by certified or registered mail, return receipt requested.

17.5. OTHER MORTGAGEE RIGHTS.

17.5.1. Inspection of Books. The Association will maintain current copies of the Governing Documents and the Association’s books, records, and financial statements. Mortgagees may inspect the Governing Documents and records, by appointment, during normal business hours.

17.5.2. Financial Statements. If a Mortgagee submits a written request, the Association will give the Mortgagee a financial statement (which may be unaudited) for the preceding fiscal year within one hundred and twenty (120) days after the Association’s fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

17.5.3. Attendance at Meetings. A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

17.5.4. Right of First Refusal. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

17.5.5. Management Contract. If professional management of the Association is required by this Article, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

17.6. INSURANCE POLICIES. If an Underwriting Lender that holds a mortgage on a Lot and Improvements or desires to finance a Lot and Improvements has requirements for insurance, the Association must try to obtain and maintain the required coverages, to the extent they are reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender. Because underwriting requirements are subject to change, they are not recited here.

17.7. NOTICE OF ACTIONS. The Association will use its best efforts to send timely written notice to Eligible Mortgagees of the following actions:

- a. Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Lot and Improvements.
- b. Any sixty (60)-day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Lot and Improvements.
- c. A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.
- e. Any proposed amendment of a material nature, as provided in this Article.
- f. Any proposed termination of the Association of the Property.

17.8. AMENDMENTS OF A MATERIAL NATURE. A Governing Document amendment of a material nature must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Eligible Mortgagees. This approval requirement does not apply to amendments effected by the exercise of a Development Right provided in Appendix B hereto. A change to any of the provisions governing the following would be considered material:

- a. Voting rights.

- b. Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens.
- c. Reductions in reserves for maintenance, repair, and replacement of Common Elements.
- d. Responsibility for maintenance and repairs.
- e. Reallocation of interests in the general or limited Common Elements, or rights to their use; except that when limited Common Elements are reallocated by agreement between Owners, only those Owners and only the Eligible Mortgagees holding mortgages against those Lots and Improvements need approve the action.
- f. Redefinitions of boundaries of Lots, except that when boundaries of only adjoining Lots are involved, then only those Owners and the Eligible Mortgagees holding mortgages against the Lots or Improvements need approve the action.
- g. Convertibility of Lots into Common Elements or Common Elements into Lots.
- h. Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.
- i. Property or fidelity insurance requirements.
- j. Imposition of any restrictions on the leasing of Residential Dwellings or Commercial Buildings.
- k. Imposition of any restrictions on Owners' right to sell or transfer their Lots and Improvements.
- l. A decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or an Eligible Mortgagee.
- m. Restoration or repair of the Property, in a manner other than that specified in the Governing Documents, after hazard damage or partial condemnation.
- n. Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 18 **AMENDMENTS**

18.1. CONSENTS REQUIRED. As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the Board alone.

Amendment of the Maintenance Responsibility Chart, initially recorded as Appendix E of this Declaration, is subject to the terms of Section 9.3. Otherwise, amendments to this Declaration must be approved by Owners of at least a Majority of the Lots.

18.2. METHOD OF AMENDMENT. For an amendment that requires the approval of Owners, this Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

18.3. EFFECTIVE. To be effective, an amendment approved by the Owners or by the Board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an Officer of the Association, certifying the requisite approval of Owners or Directors and, if required, Eligible Mortgagees; and (3) recorded in the Official Public Records of every county in which the Property is located, except as modified by the following section.

18.4. DECLARANT PROVISIONS. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix B. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an Officer of the Association. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

18.5. ORDINANCE COMPLIANCE. When amending the Governing Documents, the Association must consider the validity and enforceability of the amendment in light of current public law.

18.6. CONDEMNATION. In any proceeding, negotiation, settlement, or agreement concerning condemnation of the Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the Common Area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

ARTICLE 19 **DISPUTE RESOLUTION**

19.1. INTRODUCTION & DEFINITIONS. The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

19.1.1. “Claim” means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Governing Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

19.1.2. “Claimant” means any Party having a Claim against any other Party.

19.1.3. “Exempt Claims” means the following claims or actions, which are exempt from this Article:

- a. The Association’s claim for Assessments, and any action by the Association to collect Assessments.
- b. An action by any Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party’s ability to enforce the provisions of this Declaration.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration, and Rules promulgated by the Association.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.
- e. A dispute that is subject to alternative dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

19.1.4. “Respondent” means the Party against whom the Claimant has a Claim.

19.2. MANDATORY PROCEDURES. Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

19.3. NOTICE. Claimant must notify Respondent in writing of the Claim (the “Notice”), stating plainly and concisely: (1) the nature of the Claim, including date, time, location,

persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

19.4. 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. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

19.5. MEDIATION. If the parties negotiate but do not resolve the Claim through negotiation within one hundred and 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 thirty (30)-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

19.6. TERMINATION OF MEDIATION. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

19.7. ALLOCATION OF COSTS. Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

19.8. ENFORCEMENT OF RESOLUTION. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys' fees and court costs.

19.9. 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. A Party having an Exempt Claim may submit it to the procedures of this Article.

19.10. LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternative dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each Owner, by accepting an interest in or title to a Dwelling, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of Owners of at least seventy-five percent (75%) of the Dwellings.

19.10.1. Owner Approval. The Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least a Majority of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of Assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo.

19.10.2. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a Special Assessment, the Association must levy a Special Assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income or reserve funds or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

19.10.3. Settlement. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

ARTICLE 20 **GENERAL PROVISIONS**

20.1. COMPLIANCE. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and all applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

20.2. HIGHER AUTHORITY. The Governing Documents are subordinate to Federal and State law, and local ordinances. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or conflict with local, State, or Federal law or ordinance. In the event of a conflict between the Governing Documents, the hierarchy of authority

is as follows: this Declaration (highest), Association's Certificate of Formation, Bylaws, and the Rules (lowest). Within the Declaration, Appendix B has the highest authority.

DRAFTER'S DICTUM

Users of this document should periodically review statutes and court rulings that may modify or nullify provisions of this document or its enforcement or may create rights or duties not anticipated by this document.

20.3. NOTICE. Any demand or written notice required or permitted by this Declaration may be sent by electronic, ordinary, or certified mail, postage prepaid, or by any other method or combination of methods permitted or required by applicable law. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the Member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an Owner fails to give the Association an effective address, the notice may be sent to the address of the Owner's Dwelling or Commercial Building. If the Association properly transmits the notice, the Owner is deemed to have been given notice whether or not he actually receives it.

20.4. CHANGING TECHNOLOGY. As technology changes, the terms of the Governing Documents that pertain to communications, notices, and documentation of decisions may be interpreted and applied in ways that are consistent with and customary for the then-current technology for standard business practices, without necessity of amending the Governing Document.

20.5. LIBERAL CONSTRUCTION. The terms and provision of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved first to give effect to Declarant's intent to protect Declarant's interests in the Property, and second in favor of the operation of the Association and its enforcement of the Governing Documents, regardless which party seeks enforcement.

20.6. SEVERABILITY. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

20.7. CAPTIONS. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

20.8. INTERPRETATION. Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

20.9. DURATION. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property and will remain in effect perpetually to the extent permitted by law.

20.10. PREPARER. This Declaration was prepared in the law offices of Martin C. Cude, Jr., Attorney and Counselor, 2178 Kessler Court, Dallas, Texas 75208-2948.

20.11. APPENDIXES. The following appendixes are attached to this Declaration and are incorporated herein by reference:

- A – Legal Description of Subject Land
- B – Declarant Representations & Reservations
- C – Schedule of Allocated Interests
- D – Maintenance Responsibility Chart

SIGNED AND ACKNOWLEDGED

SIGNED this _____ day of _____, 2019.

HURTA REAL ESTATE, LLC
A Texas Limited Liability Company

BY: _____
Brook Hurta, Manager

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on this _____ day of _____, 2019, by Brook Hurta, Manager of HURTA REAL ESTATE, LLC, a Texas limited liability company, on behalf of the limited liability company.

Notary Public in and for
The State of Texas

Notary’s Name: Typed or Printed

APPENDIX A

**LEGAL DESCRIPTION AND
PLAT OF SUBJECT LAND**

**HURTA RIVER ESTATES
A PLANNED DEVELOPMENT COMMUNITY**

(Legal Description and Plat follow on the next pages.)

HURTA RIVER ESTATES

Legal Description and Plat of Subject Land

STATE OF TEXAS
COUNTY OF BASTROP

HURTA LAND, INC.
ANNEXATION PARCEL
97.170 ACRES

All that certain tract or parcel of land containing 97.170 acres for annexation into the City of Smithville, situated in the Edward Burleson Survey, A-16, in Bastrop County, Texas, and being a part of that tract described as 156.886 acres in a deed from Leslie Hurta, et ux, to Hurta Land, Inc. dated July 10, 1992 and recorded in Volume 638, Page 49 of the Bastrop County Official Records, said 97.170 acre tract being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron rod set in the Southwest right-of-way line of State Highway 71 (Variable width - 29.651 acres - Vol. 298, Pg. 101 B.C.O.R.), the existing Smithville City Limits line and the Northeast line of said (called) 156.886 acre Hurta Land tract for the Northeast corner of the tract herein described and the PLACE OF BEGINNING, said point having a coordinate value of North = 9,985,572.25 feet and East = 3,303,646.28 feet according to the Texas State Plane Coordinate System - Central Zone - NAD 83 (CORS 96), from which a concrete monument found for an angle point in said highway right-of-way line and the most Northerly Northeast corner of said 156.886 acre Hurta Land tract bears North 42 degrees 18 minutes 06 seconds West, 2,839.16 feet;

Thence South 42 degrees 18 minutes 06 seconds East, 60.39 feet along said existing City Limits line and the common line between said State Highway 71 right-of-way tract and said Hurta Land, Inc. tract to a concrete monument found for an angle point in said line;

Thence South 28 degrees 15 minutes 56 seconds East, 206.16 feet along said City Limits line and said common line to a concrete monument found for an angle point;

Thence South 42 degrees 18 minutes 07 seconds East, 813.82 feet along said existing City Limits line, State Highway 71 right-of-way line and common line to a point for the North corner of the (called) 4.213 acre City of Smithville tract (Vol. 604, Pg. 545 B.C.O.R.), an angle point in the East line of said (called) 156.886 acre Hurta Land, Inc. tract and an angle point in the East line of the tract herein described, from which a 1/2" iron rod found bears South 03 degrees 35 minutes 57 seconds East, 0.47 feet;

Thence South 03 degrees 35 minutes 57 seconds East, departing said highway right-of-way line, 821.60 feet along said existing City Limits line to a point on the North bank of the Colorado River for the Southwest corner of said (called) 4.213 acre City of Smithville tract, the Southeast corner of said (called) 156.886 acre Hurta Land tract and the Southeast corner of the tract herein described, from which a 1/2" iron rod set for witness bears North 03 degrees 35 minutes 57 seconds West, 40.42 feet;

Thence along the South line of said (called) 156.886 acre Hurta Land tract and the low North bank of the Colorado River as follows:

South 67 degrees 09 minutes 39 seconds West, 541.45 feet;
South 64 degrees 23 minutes 50 seconds West, 144.77 feet;
South 69 degrees 55 minutes 33 seconds West, 123.13 feet;
South 61 degrees 54 minutes 48 seconds West, 138.63 feet;
South 56 degrees 42 minutes 31 seconds West, 48.20 feet;

South 68 degrees 59 minutes 58 seconds West, 69.28 feet;
South 74 degrees 32 minutes 08 seconds West, 145.20 feet;
North 43 degrees 24 minutes 27 seconds West, 15.88 feet;
North 88 degrees 29 minutes 52 seconds West, 30.74 feet;
South 71 degrees 05 minutes 04 seconds West, 385.42 feet;

South 75 degrees 52 minutes 16 seconds West, 148.57 feet;
South 80 degrees 55 minutes 14 seconds West, 175.48 feet;
North 74 degrees 00 minutes 25 seconds West, 36.30 feet;
South 78 degrees 49 minutes 45 seconds West, 54.93 feet;
North 81 degrees 05 minutes 06 seconds West, 45.11 feet;

South 88 degrees 32 minutes 09 seconds West, 89.45 feet;
South 80 degrees 01 minutes 55 seconds West, 156.46 feet;
South 85 degrees 39 minutes 31 seconds West, 144.70 feet to

a point for the most Southerly Southeast corner of the (called) 5 acre American Legion tract (Vol. 101, Pg. 595 B.C.D.R.), the most Southerly Southwest corner of said (called) 156.886 acre Hurta Land tract and the most Southerly Southwest corner of the tract herein described, from which a 1/2" iron rod set for witness bears North 02 degrees 49 minutes 04 seconds West, 14.51 feet;

Thence North 02 degrees 49 minutes 04 seconds West, departing said Colorado River along the common line between said American Legion tract and said Hurta Land tract, 620.82 feet to a 1/2" iron rod found for a common corner;

Thence South 95 degrees 01 minutes 42 seconds East, 214.10 feet along the common line between said American Legion tract and said Hurta Land tract, to a 1/2" iron rod set for a common corner;

HURTA LAND INC.
97.170 ACRE ANNEXATION PARCEL
PAGE 3 OF 5

Thence North 02 degrees 59 minutes 53 *seconds* West, 484.28 feet **along the** common line between said American Legion tract and said Hurta Land tract to a 1/2" iron rod found for the Northeast corner of said American Legion tract, an inside corner of said (called) 156.886 acre Hurta Land tract and an inside corner of the tract herein described;

Thence South 87 degrees 04 **minutes 41** seconds West, 362.68 feet along the common line between said American Legion tract and said Hurta Land tract, to a 1/2" iron rod found in the East margin of American Legion Road (old Highway 71) for the Northwest corner of **said American Legion tract, the most** Northerly Southwest corner of said (called) 156.886 acre Hurta Land tract and the most Northerly Southwest corner of the tract herein described;

Thence North 02 degrees 56 minutes 33 seconds West, 803.31 feet along said East margin of American Legion Road and the West line of said Hurta Land tract to a 1/2" iron rod set for the Northwest corner of the tract herein described, from which a concrete monument found for the Northwest corner of said (called) 156.886 acre Hurta Land tract bears North 02 degrees 56 minutes 33 seconds West, 2,558.64 feet;

Thence North 87 degrees 03 minutes 24 seconds East, departing said American Legion Road and severing said 156.886 acre Hurta Land tract, 364.56 feet to a 1/2" iron rod set within said Hurta Land tract for corner;

Thence South 02 degrees 56 minutes 36 seconds East, 30.89 feet to a 1/2" iron rod set within said (called) 156.886 acre Hurta Land tract for corner;

Thence North 72 degrees 31 minutes 01 seconds East, 1,571.55 feet to the PLACE OF BEGINNING and containing 97.170 acres.

Bearings, distances and coordinates used herein are "GRID" based on the Texas State Plane Coordinate System - North Central Zone - NAD 83(CORS 96). Convergence is +01 degree 38 minutes 31 seconds. Combined factor - 1.0000135 as follows:

HURTA LAND INC.
97.170 ACRE ANNEXATION PARCEL
PAGE 4 OF 5

STATE OF TEXAS

COUNTY OF BASTROP

I, Kevin Von Minden, a Registered Professional Land Surveyor, do hereby certify the foregoing field notes to be true and correct to the best of my knowledge and belief.

BEFCO ENGINEERING, INC.
Surveying Firm i10001700
Consulting Engineering Land Surveying



Kevin Von Minden, R.P.L.S.
Registration No. 4438
September 7, 2017
BEFCO Job No. 16-67518-ANNEX

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HURTA RIVER ESTATES

FINAL SUBDIVISION PLAN

BOWLAND BOWLESON SURVEY, A-16

THIS SUBDIVISION PLAN IS FILED FOR RECORD IN THE PUBLIC RECORDS OF THE COUNTY OF SHELBY, TENNESSEE, THIS _____ DAY OF _____, 20____, AT _____ O'CLOCK _____ M., BY _____, CLERK OF THE COUNTY CLERK'S OFFICE. _____

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

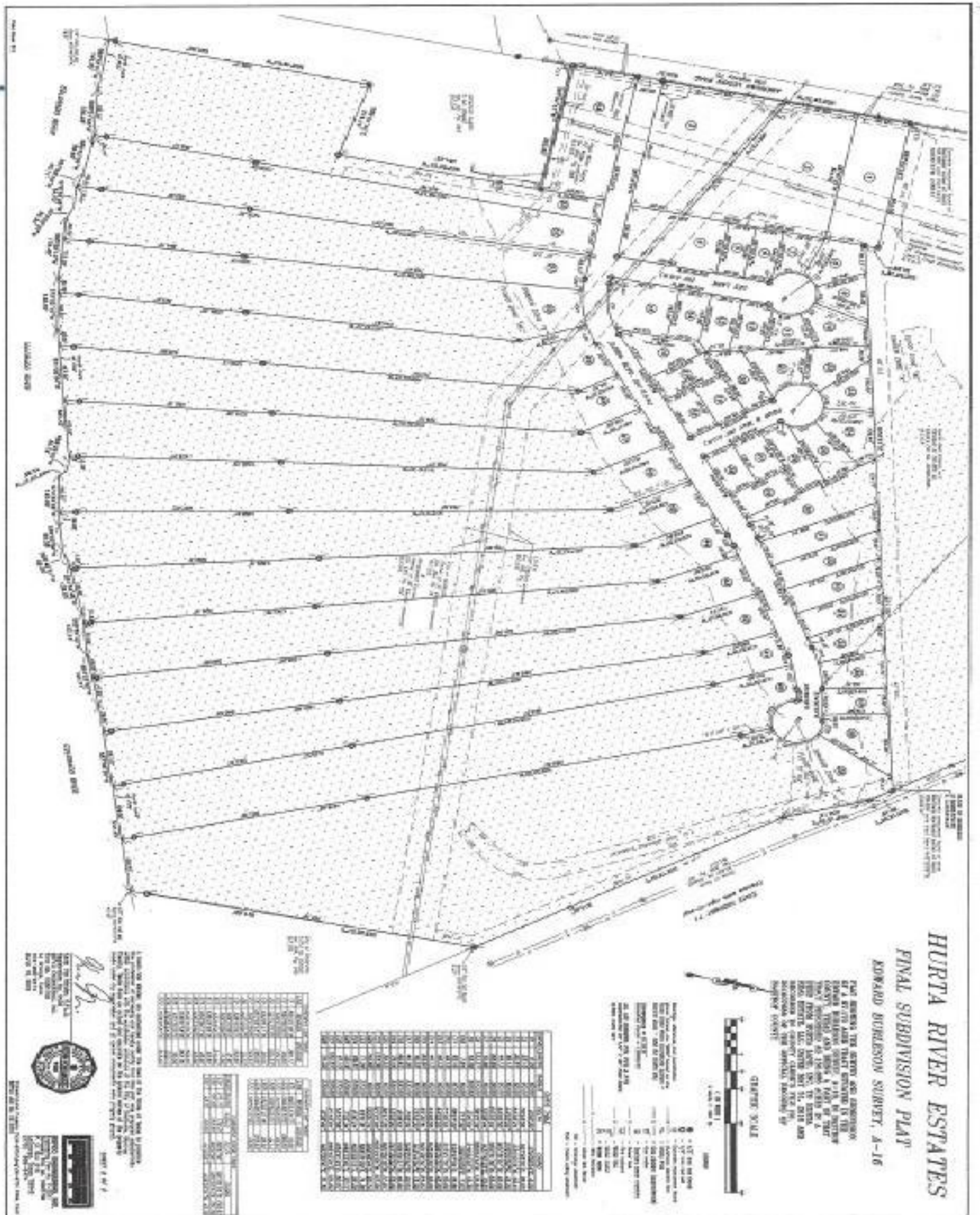
IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at _____, Tennessee, this _____ day of _____, 20____.

CLERK OF COUNTY

FILED FOR RECORD

THIS _____ DAY OF _____, 20____.

4 if



APPENDIX B

DECLARANT REPRESENTATIONS AND RESERVATIONS

HURTA RIVER ESTATES A PLANNED DEVELOPMENT COMMUNITY

B.1. GENERAL PROVISIONS.

B.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

B.1.2. General Reservation & Construction. Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix, which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Governing Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

B.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days' notice.

B.2. DEFINITIONS. As used in this Appendix and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings:

B.2.1. "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association, pursuant to the provisions of this Appendix. The duration of the Declarant Control Period is from the date this Declaration is recorded for a maximum period not to exceed the earliest of (a) fifteen (15) years from date this Declaration is recorded; (b) one hundred and twenty (120) days

after the conveyance of seventy-five percent (75%) of the Lots in the Property has been conveyed to Owners other than Declarant; or (c) when, in the sole opinion of Declarant, the Association is viable, self-supporting, and operational, as evidenced by a written notice executed by Declarant and recorded in the Official Public Records of Bastrop County, Texas.

B.2.2. “Development Period” means the fifteen (15)-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Appendix, including rights relating to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the property described in Appendix A. Declarant may terminate the Development Period at any time by recording a notice of termination.

B.2.3. “Unilaterally” means that the Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as Owners, mortgagees, and the Association. Certain provisions in this Appendix and elsewhere in the Governing Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

B.3. DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE.

Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.3.1. Officers & Directors. During the Declarant Control Period, the Board may consist of three (3) persons. Declarant may appoint, remove, and replace any Officer or Director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a “Leader,” subject to the following limitation.

B.3.2. Transition Meeting. Before the end of the Declarant Control Period or within one hundred and twenty (120) days after the conveyance of seventy-five percent (75%) of the Lots that may be conveyed to Owners other than Declarant, the Owners will elect Directors to the Board at the transition meeting of the Members of the Association. Declarant or the Association will give written notice of the transition meeting to an Owner of each Lot at least ten (10) days before the meeting. For the transition meeting, Owners of ten percent (10%) of the Lots constitute a quorum. The Board elected at the transition meeting will elect the Officers of the Association not later than thirty (30) days after the end of the Declarant Control Period. The Directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing Directors, at which time the staggering of terms will begin.

B.3.3. Management Contract. If Declarant enters into a professional management contract on behalf of the Association during the Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at least thirty (30) days’ notice to the manager, at any time after a Board elected by the Owners takes office.

B.3.4. Common Elements. At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of conveyance and any valid easements. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

B.4. DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL.
Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.4.1. Association Budget. During the Declarant Control Period, the Declarant-appointed Board will establish a projected budget for the Property as a fully developed, fully constructed, and fully occupied residential and business community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared.

B.4.2. Obligation for Assessments. During the Declarant Control Period, Declarant has the following obligation for Assessments and the common expenses of the Association:

a. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's operating expenses and the Regular Assessments received from Owners other than Declarant and will provide any additional funds necessary to pay actual cash outlays of the Association.

b. Following termination of the Declarant Control Period, Declarant, for each Lot owned, is liable for Assessments in the same manner as any Owner

B.4.3. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association reserve funds to pay operational expenses of the Association.

B.4.4. Enhancements. During the Declarant Control and Development Periods, Declarant - solely at Declarant's discretion - may voluntarily provide enhancements for the Property, such as higher levels of maintenance, management, insurance, and seasonal color in landscaping. Such enhancements are not included in the Association's annual operating budget or, alternatively, if included are identified as Declarant enhancements.

B.4.5. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

B.4.6. Budget Control. During the Declarant Control Period, the right of Owners to veto Special Assessments or increases in Regular Assessments is not effective and may not be exercised.

B.5. DEVELOPMENT PERIOD RIGHTS, REPRESENTATIONS & RESERVATIONS. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

B.5.1. General Representations. The Property is not subject to expansion by phasing.

B.5.2. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of Improvements and Common Elements. Changes may also include replat of initial platting of any undeveloped property.

B.5.3. Transfer Fees. During the Development Period, Declarant may not be required to pay transfer-related and resale certificate fees.

B.5.4. Fines and Penalties. During the Development Period, neither Declarant nor Lots owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

B.5.5. Development Rights. Declarant reserves the following Development Rights which may be exercised during the Development Period: (1) to create Improvements, general Common Elements, and limited Common Elements within the Property and (2) to subdivide or convert Lots into Common Elements.

B.5.6. Amendment. During the Development Period, Declarant may amend this Declaration and the other Governing Documents, without consent of other Owners or any mortgagee, for the following limited purpose:

- a. To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Lots and Improvements.
- b. To correct any defects in the execution of this Declaration or the other Governing Documents.
- c. To create additional Lots, general Common Elements, and limited Common Elements within the Property, in the exercise of Development Rights.
- d. To subdivide, combine, or reconfigure Lots or convert Lots into Common Elements, in the exercise of Development Rights.
- e. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Governing Documents.

- f. To change the name or entity of Declarant.
- g. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

B.6. ARCHITECTURAL CONTROL DURING DEVELOPMENT PERIOD.

During the Development Period, Declarant has the absolute right and power of architectural control over the Property.

B.6.1. Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Dwelling, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a developer and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that - during the Development Period - no structural or visible improvements will be started or progressed in or on the Property, including the Owner's Improvements, without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

B.6.2. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) a modifications or architectural committee appointed by Declarant or by the Board, (2) a modifications or architectural committee elected by the Owners, or (3) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

B.6.3. Caveat. A modifications committee may not involve itself with the approval of new Improvements, Common Elements, or Buildings owned or leased by Declarant.

B.7. SPECIAL DECLARANT RIGHTS. Declarant reserves the below-described Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Property during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds a Development Right to create additional Lots or Common Elements or Declarant owns a Lot, whichever ceases last. Earlier termination of certain rights may occur by statute.

- a. The right to complete or make improvements indicated on the Plat.

- b. The right to exercise any Development Right permitted by this Declaration.
- c. The right to make the Property part of a larger or planned community.
- d. The right to use Improvements owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or other projects of Declarant or Declarant's affiliates.
- e. For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property.

DIFFERENT RULES!
The developer has rights and privileges to use the property in ways that are not available to other Owners and Residents.

- f. Declarant has an easement and right of ingress and egress in and through the Common Elements, Lots, and Improvements owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property and/or other projects of Declarant or Declarant affiliates, and for discharging Declarant's obligations under this Declaration.
- g. The right to appoint or remove any Declarant-appointed Officer or Director of the Association during the Declarant Control Period consistent with the Governing Documents.

B.8. ADDITIONAL EASEMENTS & RIGHTS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:

- a. An easement and right to erect, construct, and maintain on and in the Common Elements and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
- b. The right to sell or lease any Lot owned by Declarant. Lots owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Governing Documents.

c. The right of entry and access to all Lots or Improvements to perform warranty-related work, if any, for the benefit of the Lot Owner being entered, adjoining Lots, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

d. An easement and right to make structural changes and alterations on Common Elements and Improvements used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and structures to conform to the architectural standards of the Property.

e. The right to provide a reasonable means of access for the home-buying public through the Property in connection with the active marketing of Lots by Declarant, including the right to require that the gates, if any, be kept open during certain hours or on certain days.

B.9. MARKETING OTHER LOCATIONS. This Declaration grants to Declarant a number of significant rights to market the Property. Declarant hereby reserves for itself and its affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing off-site developments of Declarant or its affiliates for the duration of the Development Period, even though Declarant may have completed the marketing of Lots in the Property. Additionally, Declarant, at Declarant's sole option and discretion, may extend the effect of this Section for up to twelve (12) months after the end of the Development Period.

HOME BUYERS!
**Even after all the Lots are sold, the developer may continue to use
HURTA RIVER ESTATES to help market another project.**

B.10. ACTIONS REQUIRING FHA/VA APPROVAL. This Section applies only (1) during the Development Period, and (2) if the U.S. Department of Housing and Urban Development ("HUD/FHA") insures or the U.S. Department of Veterans Affairs ("VA") guarantees a purchase money mortgage on a Lot and Improvement. During the Development Period, the following actions require the prior written approval of HUD/FHA or VA, as applicable: (1) annexation of additional property to the Property, except for annexation by Declarant pursuant to a plan of development previously approved by HUD/FHA or VA; (2) merger or consolidation with another property Owners association; (3) mortgaging of Common Elements; (4) dedication of Common Elements to a public entity; (5) amendment of a material nature to any Governing Document; or (6) dissolution or amendment of the articles of incorporation. The approval of HUD/FHA or VA, as the case may be, is implied when it fails to respond within thirty (30) days after receiving written request for approval of a proposed action, provided the request was delivered by certified or registered mail, return receipt requested.

B.11. HOME BUYER'S CONTRIBUTIONS AT CLOSING. Declarant may establish a working capital fund for the Association in an amount that is at least equal to two (2) months of

Regular Assessments for all Lots. If Declarant establishes this fund, each Lot Owner's contribution will be collected when the sale of the Lot closes.

B.11.1. Frozen Assets. During the Declarant Control Period, working capital contributions from the Owners may not be used by Declarant or by the Association to pay the Association's operational expenses. This means that Declarant may not use the fund to defray Declarant's expenses, reserve contributions, or construction costs, or to cover the Association's budget deficits during the Declarant Control Period.

B.11.2. Working Capital Fund Transfer. Not later than termination of the Declarant Control Period, the fully funded working capital fund will be transferred to the Association for deposit to a segregated fund. If Declarant has unsold Lots on termination of the Declarant Control Period, Declarant may reimburse itself for a Lot's pre-paid contributions from monies collected at the Dwelling's closing.

B.11.3. New Sales Only. This Section applies only to initial Lot sales by Declarant. Subsequent resales are subject to the "HOA Sale Fees" Section of Article 7 of the Declaration.

B.12. SUCCESSOR DECLARANT. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Official Public Records of Bastrop County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

[End of Appendix B]

APPENDIX C
SCHEDULE OF ALLOCATED INTERESTS

HURTA RIVER ESTATES
A PLANNED DEVELOPMENT COMMUNITY

All Lots will have the same fractional ownership interest and liability in the Common Elements and shall have one (1) vote per Lot.

APPENDIX D

MAINTENANCE RESPONSIBILITY CHART

HURTA RIVER ESTATES A PLANNED DEVELOPMENT COMMUNITY

COMPONENTS OF PROPERTY	AREAS OF COMMON	OWNER RESPONSIBILITY
Building Lot grounds including proper maintenance of grass, trees, and flower beds to ensure a well pleasing appearance and safe conditions	None.	All aspects.
Building Lot structure.	None.	All aspects, including roofs, attics, foundations, patios & decks, if any, A/C slabs, interior and exterior vertical walls, both interior and exterior fixtures, floors, garage, garage door, all aspects of other doors, including paint, door frame, door glass panes, hardware, locks, peepholes, thresholds, insulation and weather stripping, doorbells, chimneys and fireplaces, if any, all tile and sheetrock, window frames, window sill flashings, window seals and sealants, screens, window locks, glass panes, glazing, and interior caulking.
Cable for television or internet	None.	All aspects.
Common Area Grounds.	All aspects.	None.
Concrete driveways & sidewalks.	None.	All aspects, including, routine cleaning.
Displays of street numbers on exterior doors or Dwelling	None.	All aspects.

COMPONENTS OF PROPERTY	AREAS OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY
Fences and gates around private yards	None.	All aspects.
Fences initially built by Declarant	All aspects	All aspects.
Gutters and downspouts.	None.	All aspects,
Heating and cooling systems & water heaters.	None.	All aspects.
Improvements on Lot yards.	None.	All aspects.
Intrusion alarms on doors/windows, smoke/heat detectors, monitoring equipment, if any.	None.	All aspects.
Roof-mounted attachments.	None.	All aspects
Skylights, if any.	None.	All aspects.
Surface water drainage systems.	All aspects, including collection drains and drain systems not handled by the City of Smithville.	None. Prohibited from changing the drainage system.
Television antennas & satellite dishes.	None.	All aspects.
Water, sewer, electrical lines & systems.	None.	All aspects of lines and systems serving the Lot.
Yard, landscaping, irrigation system and sprinklers, if any, <u>on</u>	None.	All aspects.

NOTES ABOUT MAINTENANCE RESPONSIBILITY CHART

- NOTE 1:** The components listed in the first column are applicable only if they exist and may not be construed to create a requirement to have such a component. A skylight is an example of a component that may or may not be on a Residential Dwelling.
- NOTE 2:** “All aspects” means maintenance, repair, and replacement, as needed.
- NOTE 3:** If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner. PROPER NOTICE FOR LAWN MAINTENCE IS CONSIDERED ONE (1) WEEK OR SEVEN (7) DAYS.
- NOTE 4:** During the Development Period, this Maintenance Responsibility Chart may be revised and recoded by Declarant without a vote of the Owners of Hurta River Estates. Thereafter, this Maintenance Responsibility Chart may be revised by the Association, with the approval of Owners representing at least two-thirds (2/3rds) of the Lots in the Property. A revised Maintenance Responsibility Chart must be recorded in the Official Public Records of Bastrop County, Texas.

(End of Appendix D)