

No high fencing of lots less than 90ac

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR MILLER CREEK RANCH SUBDIVISION**

THE STATE OF TEXAS

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§
§

COUNTY OF BURNET

Property: MILLER CREEK RANCH, a subdivision in Burnet County, Texas, according to the plat recorded under Document No. _____, Official Public Records of Burnet County, Texas.

THIS MILLER CREEK RANCH COVENANTS AND RESTRICTIONS (herein called "**Declaration**"), is made as of the date hereinafter set forth by **MILLER CREEK, LLC**, a Texas limited liability company (hereinafter referred to as "**Declarant**"), as follows:

RECITALS

A. Declarant owns the Property (defined below) and is developing the Property for single family residential purposes.

B. Declarant is implementing a uniform plan for improving, developing and selling the Property for the benefit of the present and future Owners of the Property, and will convey the Property subject to the covenants, easements, restrictions, liens and charges in this Declaration. Declarant is will enforce this Declaration until the Control Transfer Date (defined below), at which point the Owners of the Property will enforce this Declaration.

ACCORDINGLY, Declarant declares: (i) all the Property will be held, sold, conveyed, and occupied subject to the liens, easements, restrictions and covenants in this Declaration, which will run with the Property; (ii) this Declaration will bind all parties with any right, title, or interest in or to any of the Property, as well as their heirs, successors, and assigns as Owners (defined below); (iii) this Declaration will benefit each Owner; and (iv) each contract or deed executed after this Declaration as to any portion of the Property will be held, executed, delivered, and accepted subject to the liens, easements, covenants and restrictions in this Declaration regardless of whether set out or referred to in the contract or deed.

ARTICLE I

DEFINITIONS

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

"Assessment" means assessments levied under this Declaration.

“Assessment Lien” means the lien created by this Declaration.

“Common Area” means a fee simple or an easement interest in land benefitting the Property and designated by Declarant as Common Area. Common Area may include, but is not limited to, roadways, easements, rights-of-way, utility facilities, water quality, drainage and/or detention areas, and the Improvements therein.

“Control Transfer Date” means the date Declarant no longer owns or has any legal or equitable interest in any of the Property. As long as Declarant is the beneficiary of any deed or trust or vendor’s lien against any of the Property Declarant has an equitable interest in a portion of the Property.

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

"Declarant" means Miller Creek, LLC, a Texas Limited Liability Company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Declaration” means this instrument, as amended from time to time.

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

“Improvement” means every structure and appurtenance to a structure of every type and kind within the Property. Improvement includes but is not limited to, buildings, barns, pens, sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, Landscaping, roadways, poles, signs, exterior air conditioning or water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telecommunication or other utilities.

“Landscaping” means any modification of a Lot, including but not limited to berms, irrigation systems, subsurface drainage systems, paving, introduced gravel or rock, nonstructural retaining walls, and introduced vegetation.

"Lot" means each tract of land designated as a lot on the Plat.

“Mortgage” means a mortgage or deed of trust against any of the Property given to secure the payment of a debt.

“Mortgagee” means the holder or holders of any Mortgage.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded in Instrument No. _____ of the

real property records of Burnet County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Property” means, at any specific point in time, at any specific point in time, Lots of Miller Creek Ranch, a subdivision in Burnet County, Texas, according to the Plat recorded under Document No. _____, Official Public Records of Burnet County, Texas.

“Public View” means, as to a Lot, visibility of a location on that Lot from Common Area or another Lot.

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

“Required Vote” means the affirmative vote of 2/3rds of the aggregate votes of Lot owners who are eligible to vote in person or by proxy at a meeting duly called to vote on a matter, provided such written notice is given to all Members at least 30 days in advance stating the purpose of the meeting.

“Restrictions” means this Declaration, as amended, the Certificate, the Bylaws and any promulgated rules.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

“Visible Location” means a location on a Lot or Common Area in Public View.

ARTICLE II

DECLARANTS RIGHTS

2.1 Addition or Deletion of Land. Before the Control Transfer Date, Declarant may unilaterally annex land under this Declaration or may unilaterally withdraw any land within the Property from this Declaration with the consent of the owner of the applicable land (if not Declarant). Declarant will accomplish any annexation or withdrawal by recording a notice of addition or notice of withdrawal in the Official Public Records of Burnet County, Texas. An annexation or withdrawal is effective when the notice of addition or notice of withdrawal is recorded in the Official Public Records of Burnet County, Texas. After an annexation, this Declaration will apply to the annexed land and the rights, privileges, duties and liabilities of the Person subject to this Declaration will be the same as to the annexed lands as to the lands originally covered by this Declaration. Notices of addition or withdrawal must state that the land

is being annexed or withdrawn, and must include at least the following provisions:

- (a) a reference to this Declaration that includes the document number under which this Declaration is recorded in the Official Public Records of Burnet County, Texas;
- (b) a statement that this Declaration will apply to the annexed land (or that this Declaration no longer applies to land being withdrawn);
- (c) a legal description of the annexed or withdrawn land; and
- (d) if Declarant does not own the land being annexed or withdrawn, the signatures of both such owner and Declarant.

When a notice of addition is recorded the land annexed by that notice of addition will be included in the term "Property" for all purposes hereof (unless subsequently withdrawn). After the Control Transfer Date, the Owners may annex additional land under this Declaration or remove land from this Declaration, subject to (i) approval by at least a Required Vote, and (ii) written consent of the Person owning the land to be added or withdrawn.

2.2 Development by Declarant. Notwithstanding any other provision of this Declaration, Declarant, in Declarant's discretion, may divide or subdivide the Property into one or more areas, record Plats, re-subdivide Lots created by a Plat in such sizes, locations and configurations as Declarant may elect, modify roadways, Common Areas and rights of way, and/or market and develop all or any of the Property. Declarant's rights within the Property include, but are not limited to, the right to excavate and grade, to alter drainage patterns and facilities, to construct any and all types of Improvements, to install and maintain construction, sales and leasing offices and similar facilities, to maintain construction staging areas, and to post signs incidental to construction, marketing, sales, and leasing anywhere within the Property, including Common Areas.

2.3 Transfer of Declarant Rights. On the Control Transfer Date, Declarant's approval and other rights under Articles 3, 4, 5, and 6 of this Declaration will transfer to the Owners.

ARTICLE III

GENERAL RESTRICTIONS

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

3.1 Division and Consolidation. Excluding Lots owned by Declarant (which may be divided and/or reconfigured as described in Section 2.2), except as allowed in the last 2 sentences of this Section 3.1, once a Plat is recorded, no Lot shown on that Plat may be divided to create additional Lots, nor may any Owner of a Lot adjust boundary lines with an adjacent Lot or convey easements, licenses or interests other than the entire fee simple interest in that Owner's Lot, without obtaining Declarant's prior written approval in each case. This Section 3.1 does not require Declarant approval to the grant of a Mortgage or the conveyance of undivided fee simple

Remember no lot can be less than 12ac for 20 years. That was put in the restrictions when we purchased the land!

6/4

If they combine a lot they are still responsible for the association fees. In other words you cant assemble lots to avoid paying multiple lot fees.

interests in a single Lot to persons holding same as tenants in common. An Owner of adjacent Lots may combine the adjacent Lots into one Lot. For all other purposes of this Declaration (e.g., setback lines), the consolidated lots will be treated as a single Lot.

3.2 Hazardous Activities; Hunting. No activity shall be conducted on the Property that is or may be unsafe or hazardous to persons or property or which violates a regulation or code of any applicable governmental authority. Hunting must strictly comply with all regulations of Burnet County, the State of Texas, and all applicable agencies of either such entity. No hunting blind or feeder may be placed within 300' from any Lot boundary line. On Lots less than 30 acres in size, hunting may be only with non-mechanized bows. No gun or rifle ranges are permitted to be constructed on any lot. less than 50ac is limited to two hunting blinds

NUISANCE
(NOISE)
1. dog
2. gun
3. whatever

3.3 Waste Water. Before occupying any residential dwelling on a Lot, the Owner must construct a septic system on the Lot in compliance with all applicable regulations of governmental authorities and arrange, at such Owner's expense, for the regular servicing and repair of such system. All septic systems must be kept in good working order, odor free at all times. If an Owner uses a recreational vehicle or other temporary structure as a dwelling, the Owner must either install such a septic system on the Lot to service such vehicle, home or structure, or use a holding tank to contain the wastewater generated from such vehicle, home or structure, and arrange for the regular servicing and emptying of any such holding tank at the Owner's expense. In no event may wastewater be discharged onto the Lot.

OK

3.4 Mining and Drilling. None of the Property may be used to mine, quarry or otherwise remove minerals, rocks, stones, sand, gravel, aggregate, earth or water, except that water wells may be installed on a Lot to provide water only to the residences, animals or livestock located on such Lot. Withdrawal of water for use for any commercial purpose is prohibited, and the transport of water off the Property is prohibited. The bore of any water well may not exceed 5" in diameter.

3.5 Animals. No kennels, boarding facilities, feed lots or other commercial facilities for the care, breeding or maintenance of animals may be operated from the Property, except cattle, goats, horses and other livestock may be bred or maintained on a Lot so long as the number of animal units on a Lot does not exceed that recommended for livestock management by Texas Parks and Wildlife or the Burnet County Extension Office. Except as a part of a 4-H project or for household consumption, no swine may be raised on the Property. No vicious or dangerous animals are allowed on the Property.

3.6 Rubbish, Debris and Odors. No rubbish or debris of any kind, including lumber, grass, plant waste, shrub or tree clippings, metals, chemicals, bulk materials, scrap, refuse, trash, or piles of weeds, brush or other natural materials, shall be placed, released, discharged or allowed to accumulate on the Property except that piles of brush for wildlife habitat may be maintained to support wildlife ad valorem tax valuations (so long as any such piles are located outside of Public View on a Lot). No odors shall be permitted to arise from rubbish or debris so as to render any of the Property unsanitary, unsightly, offensive, or detrimental to other areas of the Property, other land or the occupants of either. Refuse, garbage, and trash must be kept at all times in covered, animal-proof containers out of Public View (except as required to make same

available for collection, and then only as reasonably necessary to effect such collection). Each Owner must enter into a contract for the regular removal of trash from the Lot at the expense of such Owner. A centralized trash location may be located outside of the Main Entry Gate.

3.7 Signs. No sign of any kind shall be displayed in Public View on any Lot without Declarant's prior written approval, except 1 sign of no more than 6 square feet advertising the Lot for sale. Signs that advertise a Lot or residence thereon as being "For Rent", "For Lease" or otherwise advertising the Lot's availability for a rental arrangement are prohibited.

3.8 Temporary Structures. No tent, shack, or other temporary building, improvement or structure may be placed in a Visible Location on a Lot without Declarant's prior written approval.

3.9 Vehicles. No broken-down vehicles may be kept on a Lot in a Visible Location without the written consent of Declarant. On any Lot that Declarant shall give written consent for commercial activity or deem to be a commercial lot, no more than twenty-five (25) vehicles shall be parked on said Lot at any one time.

3.10 Mobile Homes and Manufactured Housing. No mobile homes are permitted on the Property. Recreational Vehicles or Travel Trailers ^{MAY} will be allowed for a maximum term of six (6) months. After the initial six (6) month term, all Recreational Vehicles or Travel Trailer must be enclosed and stored out of Public View or a Visible Location.

3.11 Minimum Residence Size. Minimum square footage on any house must be at least 1,200 feet, including porches and garages.

3.12 Damming of Miller Creek. At no point in time may any Owner construct a dam or divert the natural water flow of water from Miller Creek.

ARTICLE IV

USE RESTRICTIONS

4.1 Residential Use. All Lots, except for Lots specifically designated for commercial use by written consent of Declarant, will be improved and used only for single family residential use (including garages, fences and such other Improvements customarily incident to residential uses). Except for livestock operations that comply with Section 3.5, no Lot or Improvements on a Lot may be used to produce income or for civic or commercial purposes except those specific Lots designated for commercial use by Declarant. The lease of an entire Lot for single family residential purposes is not conducting a trade or business from a Lot, ~~but the term of any such lease shall be at least six (6) months.~~

4.2 Common Area. No Common Area shall be improved, used or occupied except as Declarant may approve, which approval will include the nature and type of use, occupancy or improvement.

Bed and Breakfast, wedding venues, winery's orchards are exceptable

with a variance request

(2 units)

URBO,

ARTICLE V

CONSTRUCTION AND DESIGN RESTRICTIONS

5.1 Driveway. All driveways on a Lot that provide access to a county road or Property roadway must meet requirements on driveway design, including materials, aprons, location, and point of contact with private roads, specified by Declarant. Design requirements for the required apron and culvert mentioned below is attached hereto as Exhibit "A". Driveways must be built with sufficient rise in elevation to allow surface water drainage along the adjacent county road or Property roadway to continue without interruption or change in direction of flow.

5.2 Construction Debris. During initial construction of a dwelling structure on a Lot, and if required by Declarant, during any remodeling of a structure on a Lot, the Owner must provide on the Lot an enclosed trash storage area or dumpster at least 8' by 8'. Such storage area or dumpster must be removed promptly after construction or remodeling is completed.

5.3 Location of Improvements. No Improvements (except Landscaping and entry drives) will be located on any Lot nearer to a front, side or rear Lot line than three hundred feet (300') for Lots greater than one hundred (100) acres or two hundred feet (200') for Lots Less than one hundred (100) acres. The Owner of each Lot shall install aboveground or underground utility lines for the purpose of receiving utility services to any Improvement in accordance with these setback requirements.

5.4 Drainage. No Owner except Declarant may change the established drainage patterns on the Property unless adequate provision is made for proper drainage and Declarant gives prior written approval of the change.

5.5 Unfinished Structures. No structure may remain unfinished for more than twelve (12) months after construction has begun. The exterior of any structure must be completed within six (6) months after construction begins.

5.6 Concrete Apron and Culvert Requirement. Each Lot shall contain a thirty (30) foot concrete apron from said Lot connecting to the roads of the Subdivision. Culverts must have a minimum width of sixteen feet and piping beneath driveways for drainage must be buried at appropriate depths and concealed. All concrete apron and culvert construction must be approved in writing by the Architectural Control Committee before construction commences. Said apron and culver requirements are further described in the attached Exhibit "A".

5.7 \$2500 refundable deposit, with home approval from sign to HOA

ARTICLE VI

REPAIR AND MAINTENANCE OBLIGATIONS

6.1 Repair and Maintenance. Each Owner shall keep all Improvements on the Owner's Lot in good, attractive condition and repair, and adequately painted or otherwise maintained. Maintenance obligations include, but are not limited to, maintaining all visible

50



Is this HOA?

Must maintain to the road

exterior surfaces of Improvements; prompt removal of paper, debris, and refuse; removal of dead or diseased trees and Landscaping from the Property; prompt replacement of dull and/or peeling paint from the exterior of Improvements; mowing, watering, fertilizing, weeding, pruning, replanting and replacement of Landscaping as needed; and during construction, cleaning of dirt, construction debris, and other construction-related refuse from street and storm drains and inlets as deemed necessary by Declarant. Each Owner must follow Declarant's recommendations as to tree disease control (including without limitation recommendations for the control of oak wilt) immediately.

ARTICLE VII

EASEMENTS

7.1 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made before the Property was subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes. Declarant reserves the right to modify, release and/or add to such easements and rights-of-way so as to most efficiently and economically develop the Property. Declarant reserves the right, without the joinder of any Owner or other Person, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, electricity and telecommunications) and storm water drainage in favor of any Person along any front, rear, or side boundary line of any Lot, which said easements shall have a maximum width of 30' from such Lot line.

7.2 Installation and Maintenance. Declarant establishes an easement upon, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities and storm water drainage systems, including but not limited to, water, sewer, gas, telecommunications, and electric lines and appurtenances thereto to the extent such utilities are now or in the future available. This easement allows utility companies, governmental agencies and other service providers to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility and/or drainage easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. No Owner may relocate electric lines, water lines, or other utilities, storm water drainage facilities or appurtenances without Declarant's prior written approval. Any utility company furnishing service may remove trees within the utility easements shown on a Plat or established in this Declaration and may trim overhanging trees and shrubs located on portions of the Property abutting such easements.

7.3 Drainage Easements. Each Owner must provide easements on its Lot for drainage and water flow, as contours of land and the arrangement of Improvements thereon require. No Owner may perform any act that would alter or change the course of drainage within the Property so as to divert, increase, accelerate or impede the flow of water over and across such easements. Without limiting the generality of the preceding sentence, no Owner may:

(a) Alter, change or modify the existing natural vegetation or design of the drainage easement so as to affect the flow of surface water through same;

(b) Alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without Declarant's prior written approval (who may require the Owner, at the Owner's expense, to provide a written report from a licensed civil engineer establishing the proposed action will not adversely affect any other portion of the Property);

(c) Construct, erect or install a fence or other structure of any type or nature in or on the easement area (but Declarant may approve a fence if proper openings are incorporated to accommodate the flow of water over said easement (as established by a written report from a licensed civil engineer approved by Declarant and obtained at the Owner's expense, and as authorized by all applicable governmental agencies);

(d) Store anything, whether temporarily or permanently, within the easement area; or

(e) Place, store or allow accumulation of trash, garbage, leaves, limbs or other debris within or upon the easement area, either on a temporary or permanent basis.

7.4 Surface Areas. The surface of easement areas for underground utility services (if any) may be used for Landscaping subject to compliance with other provisions of this Declaration, but neither Declarant nor any supplier of any utility service who uses an easement area will be liable to any Owner for damage done by either of them or their respective agents, employees, servants, or assigns, to any Landscaping as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area.

ARTICLE VIII

THE COMPANY

8.1 Organization. Declarant will form the Company as a Texas non-profit corporation, created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in the Certificate, Bylaws or this Declaration. Neither the Certificate nor Bylaws may be amended, changed or interpreted so as to be inconsistent with this Declaration.

8.2 Membership. Upon becoming an Owner a Person automatically becomes a Member of the Company. Membership is appurtenant to and runs with ownership of the Lot qualifying the Owner thereof for membership. Membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the fee simple title to the Lot.

8.3 Voting Rights. The right to cast votes, and the number of votes which may be cast, to elect members of the Board and on all other matters to be voted on by the Members is as

follows:

- (a) The Owner (including Declarant) of each Lot within the Property will have one vote for each Lot owned.
- (b) In addition to the votes to which it is entitled under Section 8.3(a) as an Owner, Declarant will have 5 votes for each Lot within the Property until the Control Transfer Date. Upon annexation of additional land owned by Declarant under this Declaration, Declarant will have additional votes under this Section 8.3(b) until Declarant no longer owns any of the land so annexed.
- (c) A property interest entitling the Owner thereof to vote held jointly or in common by more than one Owner requires that such Owners designate, in writing, a single Owner entitled to cast that vote. No other person is authorized to vote on behalf of that property interest. A copy of each written designation must be provided to the Board before a joint vote may be cast, and if the Owners do not provide such a designation, their vote will not counted for any purpose unless all Owners holding the joint voting rights vote in the same manner.
- (d) An Owner's right to vote may be suspended by the Company while any Assessment against such Owner's Lot is delinquent.

8.4 Powers and Authority of the Company. The Company has the powers of a Texas nonprofit corporation, subject only to the limitations on the exercise of those powers as are set forth in this Declaration. The Company has the power to do and perform any and all acts necessary, proper for, or incidental to, the exercise of any powers granted to it by the laws of Texas or by this Declaration. Without limiting the generality of the two preceding sentences, the Company and the Board, acting on behalf of the Company, shall have the power and authority at all times as follows:

- (a) Bylaws. To make, establish, promulgate, amend, repeal and re-enact Bylaws. The Bylaws will be established by the Board but may not conflict with this Declaration.
- (b) Assessments. To levy Assessments pursuant to Article 9.
- (c) Right of Entry and Enforcement. When an Owner is in default under these Restrictions, to enter a Lot after 24 hours written notice, without liability to any Owner or occupant, to maintain or repair any Improvement or other facility so as to conform to Article 6. The Company may levy a Compliance Assessment against an Owner and Lot to reimburse the Company for expenses incurred by the Company in entering a Lot and performing maintenance or repair work thereon. The Company, in its own name and on its own behalf, or in the name of and on behalf of any Owner who agrees, is authorized to begin and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Company has authority

to settle claims, enforce liens, and take all such action it considers necessary or expedient to enforce the Restrictions, but the Board is not and may not be authorized to spend Association funds to bring suit against Declarant. Each Owner will indemnify and hold harmless the Company, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Company's acts or activities under this Section 8.4(c) (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Company's negligence in connection therewith), excluding cost, loss, damage, expense, liability, claim or cause of action arising solely through the Company's gross negligence or willful misconduct. "Gross negligence" does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

- (d) Common Area. To own, improve, grant and convey to any Person any Common Area, Improvements thereon, and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:
- (i) roads, streets, walks, driveways, trails, and paths;
 - (ii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
 - (iii) sewers, water systems, storm water drainage systems, sprinkler systems, trash dumpster pads and screening fences, and pipelines; or
 - (iv) any other Improvement the Board determines will benefit the Owners generally.

The Company may own personal property to use in connection with the Common Area and Improvements therein.

- (e) Manager. To retain and pay for the services of a manager to manage and operate the Company, including the Common Area, if the Board elects. Personnel may be employed directly by the Company or furnished by a manager. To the extent permitted by law, the Company and the Board may delegate duties, powers, and functions to the manager. Owners release the Company and the Board from liability for any omission or improper exercise by a manager of any such duty, power, or function so delegated.
- (f) Other Property or Amenities. To obtain and pay for any other property (real or personal) or services and to pay any other taxes or assessments the Company or the Board is required to secure or to pay for pursuant to applicable law or this Declaration.

- (g) Other Property. To acquire, own, and dispose of real and personal property through grant, lease, gift, or otherwise.
- (h) Construction in Common Areas. To construct Improvements in Common Areas.
- (i) Restrictions. After the Control Transfer Date, to enforce the provisions of the Restrictions against the Lots.
- (j) In General. To do all things reasonably necessary in order to perform the duties of the Company set forth in the Restrictions.

8.5 Duties of the Company. Subject to and in accordance with this Declaration, the Company shall have and perform each of the following duties:

- (a) Common Area. Accept, own and maintain in good condition and repair the Common Area, all Improvements thereon, all appurtenances thereto, and all personal property used in connection with same, including without limitation, all roadways (including rights of way), and related Improvements.
- (b) Taxes. Pay real and personal property taxes and other taxes and assessments levied on or with respect to the Common Area if such taxes and assessments are not levied directly on the Members. The Company will have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (c) Insurance. Obtain and maintain in effect policies of insurance as the Board deems reasonably necessary or appropriate to carry out the functions of the Company.
- (d) Books and Records. Keep books and records of the Company's affairs and make such books and records, together with a current copy of this Declaration, available for inspection by Owners and Mortgagees upon request during normal business hours.
- (e) In General. Carry out and enforce all duties of the Company set forth in this Declaration and in the Restrictions.

8.6 Indemnity. As further described in the Bylaws, the Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because that Person is or was a director, officer, committee member, employee, servant or agent of the Company or the Board, against all claims and expenses including attorney's fees reasonably incurred by such Person in connection with such action, suit or proceeding, to the full extent permitted from time to time by the Texas Business Organizations Code.

ARTICLE IX

FUNDS AND ASSESSMENTS

9.1 In General.

(a) Assessments under this Declaration will be levied on a uniform basis against each Lot within the Property, without regard to improvement, but no Assessments will be levied against Lots owned by Declarant. Declarant will determine the initial date for levy of regular assessments against the Lots. If additional Lots are subsequently annexed into the Property, the Owners of those Lots will be obligated to pay Assessments effective as of the date of annexation unless specified to the contrary in a Supplementary Declaration.

(b) If the obligation to pay an Assessment arises on a day other than the first day of the period for which the Assessment was levied, the Assessment shall be prorated as of the date the obligation first arose.

(c) Each unpaid Assessment, together with interest thereon and costs of collection set out herein, will be the personal obligation of the Owner of the Lot against which the Assessment fell due, and will be secured by a vendor's lien against such Lot and all Improvements thereon. No Owner may exempt himself from liability for such Assessments. The Company may enforce payment of Assessments in accordance with the provisions of this Article.

9.2 Operating Fund. The Board will establish an operating fund into which will be deposited all monies paid to the Company and from which disbursements shall be made to perform the functions of the Company under this Declaration. The funds of the Company must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

9.3 Regular Annual Assessments. Promptly after formation of the Company, and thereafter before the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Company during such year in performing its functions under the Restrictions, including but not limited to duties required and activities authorized herein of the Company and the Board, and including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will be levied, and the level of Assessments set by the Board will be final and binding so long as it is made in good faith. If the sums collected are inadequate for any reason, including nonpayment of Assessments by any Owner, the Company may at any time and from time to time levy additional Assessments for the same year in the same manner. Regular Assessments will be due and payable to the Company at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

9.4 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever the Board considers special

Assessments necessary to enable the Board to carry out the functions of the Company under the Restrictions. The amount of any special Assessment shall be at the reasonable discretion of the Board.

9.5 Interest. Late Fees. In the event of default in the payment of any Assessment, the defaulting Owner shall pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (if there is no such highest rate, then at the rate of 18% per year), together with all costs and expenses of collection, including reasonable attorneys' fees. The Board may charge late fees for delinquent payment of Assessments in such amounts as the Board elects from time to time.

9.6 Assessment Lien and Foreclosure. All sums assessed under this Article but unpaid, together with interest, any late fees and the costs of collection, are secured by the Assessment Lien, which is a continuing lien and charge on the Lot assessed, which will bind such Lot, its Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The Assessment Lien is superior to all other liens and charges against the Lot except tax liens and liens of first Mortgages that secure unpaid sums borrowed to acquire or improve the Lot in question, which are superior to the Assessment Lien. The Company, in the discretion of the Board, may subordinate an Assessment Lien to any other lien, such subordination must be signed by a duly authorized officer of the Company. To evidence an Assessment Lien, the Company shall prepare a Notice of Lien stating the amount of the unpaid debt, the Owners of the Lot covered by the lien and a description of the Lot. Such notice shall be signed by an officer of the Company and shall be recorded in the Official Public Records of Burnet County, Texas. The Assessment Lien shall attach with the priority above set forth from the date that the payment secured becomes delinquent. On the written request of any Mortgagee, the Company shall report to said Mortgagee any Assessment which then has been unpaid more than 30 days after the date due.

Each Owner, by accepting a deed to his Lot, recognizes the Assessment Lien as existing before his ownership of his Lot and grants the Board the right and power to bring all actions against such Owner or Owners personally to collect unpaid Assessments and other sums due hereunder as a debt, and to enforce the Assessment Lien by all methods available for the enforcement of liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter). By acceptance of the deed to his Lot, each Owner GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Company (from time to time serving) as trustee (and to any substitute or successor trustee as hereinafter provided for), that Owner's Lot and all rights appurtenant thereto, in trust, to secure such Owner's payment of Assessments and other sums due hereunder from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Company and filed in the Official Public Records of Burnet County, Texas. If the Board elects to foreclose an Assessment Lien due to nonpayment of sums secured by such lien, it will be the duty of the trustee, or his successor, as hereinabove provided, at the Board's request (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto, in accordance with the provisions of Texas Property Code §51.002 (or the successor to such statute), and to make due conveyance to the purchaser(s), with general warranty of title to such

purchaser(s) binding upon the Owner(s) of such Lot and his heirs, executors, administrators and successors. Notice pursuant to such statute shall be deemed given upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner(s) at the most recent address as shown by the records of the Company, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person with knowledge of the facts to the effect that such service was completed will be prima facie evidence of the fact of such service. In any foreclosure proceeding, whether judicial or non-judicial, the Owner must pay the costs, expenses, and reasonable attorneys' fees incurred.

At any foreclosure, judicial or non-judicial, the Company may bid up to the amount of the sum secured by the Assessment Lien (including late fees, interest, costs and attorneys' fees), and may apply as a cash credit against its bid all sums due to the Company secured by the Assessment Lien foreclosed. From and after any such foreclosure, the occupants of such Lot will pay a reasonable rent for the use of such Lot, such occupancy shall constitute a tenancy-at-will, and the purchaser at such foreclosure may have appointed a receiver to collect such rent, and may sue to recover possession of such Lot by forcible detainer without further notice.

This Section 9.6 is intended to comply with the provisions of Texas Property Code §51.002, relating to non-judicial sales by power of sale. If §51.002 is amended so as to affect this Section, the President of the Company, without joinder of any Owner, Mortgagee or other person, may by amendment to this Declaration filed in the Official Public Records of Burnet County, Texas, amend this Section so as to comply with said amendments to §51.002.

ARTICLE X

MISCELLANEOUS

10.1 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2070, unless amended as herein provided. After December 31, 2070, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of 10 years each, unless amended or extinguished by a written instrument executed by the Owners of at least 80% of the Lots then subject to this Declaration.

10.2 Amendment.

- (a) By Declarant. This Declaration may be amended by Declarant until the Control Transfer Date. No amendment by Declarant is effective until a written amendment executed and acknowledged by Declarant is recorded in the Official Public Records of Burnet County, Texas.
- (b) By Owners. In addition to the method in Section 10.2(a), this Declaration may be amended after the Control Transfer Date by recording a written amendment in the Official Public Records of Burnet County executed and acknowledged by at least 80% of the owners of the Lots.

10.3 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the 3rd day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Declarant for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Declarant.

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

10.5 Non-liability. Declarant will not be liable to the any Owner or any other Person for any loss, damage, or injury arising out of their being in any way connected with the performance of Declarant's duties under this Declaration unless due to the willful misconduct, gross negligence or bad faith of Declarant.

10.6 Assignment of Declarant. Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person, and may permit the participation, in whole or in part, by any other Person, in any of its privileges, exemptions, rights, and duties hereunder. Any assignment by Declarant will be effective only when an instrument executed and acknowledged by Declarant evidencing such assignment is recorded in the Official Public Records of Burnet County, Texas.

10.7 Compliance with the Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. If any Owner fails to comply with any of the Restrictions within 10 days after notice of such failure from Declarant or the Board, such failure will give rise to a cause of action to recover sums due for damages or injunctive relief or both, which may be maintained by Declarant, the Board, or by any Owner, at the individual Owner's election and expense. Declarant may establish a schedule of fines for violations of the Restrictions, and may adjust the amounts set forth on such schedule from time to time. The schedule, as adjusted, shall be provided to an Owner upon such Owner's request. If any Owner defaults in the payment of a fine so assessed, such Owner shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the fine, beginning 10 days after the date the fine is assessed (or if there is no such highest rate, then at the rate of 18% per month), together with all costs and expenses of collection, including reasonable attorneys' fees. Declarant also may charge a one-time late fee for delinquent payment of a fine in such amount as Declarant may from time to time deem appropriate. The payment of any fine so assessed, together with attorneys' fees, interest and/or late fees thereon, shall be secured by the Assessment Lien, and shall be subject to the same penalties for non-payment, including without limitation, judicial or non-judicial foreclosure. Once the 10-day notice period of a violation has

expired, each day during which a violation continues shall be deemed a separate violation for which an additional fine may be imposed. On the Control Transfer Date, Declarant's rights under this Section will transfer automatically to the Board.

10.8 No Warranty of Enforceability. While Declarant has no reason to believe that any of the covenants, terms and provisions of the Restrictions are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such covenants, terms, or provisions assumes all risks of the validity and enforceability thereof and, by acquiring the Lot, will indemnify and hold Declarant harmless therefrom.

10.9 Enforcement; Non-waiver. Except as otherwise provided herein, any Owner at such Owner's expense, and/or the Declarant, may enforce any and all provisions of this Declaration and the Restrictions. This right of enforcement includes both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce a provision of the Restrictions at any time will not waive the right thereafter to enforce any such provision or any other provisions of the Restrictions.

10.10 Construction. The provisions of the Restrictions are independent and severable, and the invalidity or partial invalidity of any provision will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

10.11 Dispute Resolution. No Owner (a "Complaining Owner") may commence any judicial action or-process against Declarant or the Board (as applicable, the "Adverse Party") until and unless (i) the Complaining Owner notifies the Adverse Party that the Complaining Owner intends to institute a judicial action against the Adverse Party (which notice will reference this Section 10.11), and (ii) the Adverse Party does not elect to submit the dispute to non-binding mediation by notice to the Complaining Owner delivered within 30 days after the Complaining Owner's notice of intent to institute judicial action. If no election is made within said 30-day period, the Complaining Owner may proceed to institute a judicial action against the Adverse Party. If any Adverse Party elects to submit the dispute to non-binding mediation, however, the Adverse Party shall so notify the Complaining Owner within said 30-day period, which notice of election shall include the name of 3 qualified mediators acceptable to the Adverse Party, and no judicial action or process may be commenced against the Adverse Party until the mediation has concluded. A qualified mediator shall be any attorney-mediator with experience in mediating disputes involving real estate who does not reside within the Property, work for any party involved in the dispute or have any conflict of interest with any party involved in the dispute. The Complaining Owner shall have 5 days within which to accept one of the three mediators so named in the notice of election and to so notify the Adverse Party. If the Complaining Owner does not timely notify the Adverse Party of the Complaining Owner's acceptance of a mediator, the Adverse Party may select one of the named mediators as the sole mediator for the mediation.

The mediation shall take place within 30 days after the mediator is determined. The cost of such mediator shall be paid equally between the parties.

IN WITNESS WHERE OF, Declarant has executed this Declaration on _____, 2019.

DECLARANT:

Miller Creek, LLC, a Texas Limited Liability Company,

David Carpenter, Managing Member

STATE OF TEXAS)

COUNTY OF BURNET)

Before me on this day personally appeared David Carpenter, whose name is subscribed to the foregoing instrument and acknowledged to me that David Carpenter executed the same as the act of Miller Creek, LLC, a Texas Limited Liability Company, as its Managing Member, for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2019.

Notary Public, State of Texas
My commission expires: _____